Examiner report

General comments on EPAC 2022

From the results of this first edition of the EPAC examination it would appear that candidates were not able to prepare properly for the rigours of the exam on the basis of the training resources in place.

We hope that with more training and preparation time, the pass rate will rise, especially for the first – multiple choice – part of the exam. We are of the opinion that with enough training and time to prepare for the exam a candidate should be able to correctly answer at least 8 of the 15 questions.

This year, 55% of candidates passed the first part of the exam, and 60% of those candidates also passed the second part, meaning that in total, 35% of the candidates enrolled passed the EPIC 2022 exam.

General comments on EPAC 2022, part 1

For the multiple-choice part of EPAC 22, the average mark was 7.8.

The best-answered questions were 8 and 9, and the worst-answered question was 15.

The lowest-rated candidates got 1 point and the best candidates got 15.

We tried to cover all parts of the syllabus in this part to distribute the questions among the five modules as defined on the syllabus.

General comments on EPAC 2022, part 2

In this part of the exam, the candidates are not required to provide the legal basis relied on for their answers. Nor are they required to enter strategic considerations. They are only required to reply to the examination question asked.

No extra points are awarded for a correct statement not related to the question asked. Likewise, candidates are not penalised for an incorrect statement in the sense that no negative points are given.

If the question is "which steps are necessary", the candidate is required to list the steps needed to perform the specified action, not solely to cite a legal basis or make a general statement.

When a time limit is specified, a starting date for the period should be indicated; when sufficient information is provided to compute a time limit, it should be computed.

Candidates should indicate the exact fees to be paid in the context of the question asked, including the number of pages or claims (where possible), or the year(s) for which annuities have to be paid. An answer just stating that any applicable fees have to be paid will not be awarded any points.

Question 1

Few candidates mentioned the divisional of second generation.

In question (c), most of the candidates identified applicants A and C as being entitled to the reduction of the examination fee but many did not state what had to be done in practice, thereby not answering the question.

Few candidates mentioned that the request for examination had to be refiled in the language of the proceedings.

Question 2

Most of the candidates stated correctly that the request for restoration before the USPTO had to be filed within two months of the date on which priority expired but few calculated the time limit correctly.

Candidates generally recognised the EPO as not being bound by the decision of the receiving Office under the "unintentional criterion". However, many candidates did not correctly indicate what had to be done on entry into the EP phase and by when, thereby not answering the question.

Question 3

Quite a few candidates explained, correctly, that filing a new set of drawings would change the date of filing but were not awarded any points for their observation because it didn't answer the question.

The majority of the candidates realised that incorporation by reference was made at filing because Form PCT/RO/101 was used, and therefore it was possible to save the date of filing. However, the steps to be carried out and by when were often not well explained.

The question specified that the original filing date had to be maintained, so refiling the application was not a remedy in question 3(c).

The part of the question on preventing publication was generally well answered.

Question 4

Candidates correctly answered that the filing fee and the search fee were due, and the applicable time limit was generally calculated correctly. However, few candidates correctly calculated that the additional fee was due for two pages.

The part of the question on the deposit account was not well answered; candidates do not seem familiar with this procedure.

To the question on the unplanned outage of the EPO's online services, many candidates proposed filing using different filing means (e.g. fax) or requesting further processing. However, the question was: "What is the consequence for the time limit ...".

Question 5

Some candidates incorrectly thought that because the noting of loss of rights had not been issued yet, the parent application was still pending. Others proposed to wait for the noting of loss of rights before requesting further processing. However, further processing can be requested before the noting of loss of rights is issued.

Some of the candidates thought that EP-A2 had not been validly filed because it had been filed while the parent application was deemed withdrawn. However, if further processing for the parent application is granted, the legal consequences of the failure to reply to the communication on time (deemed withdrawal) are deemed not to have ensued (Article 121(3) EPC). Therefore, it was not necessary to file a new divisional application. This alternative was not awarded full marks.