

# European qualifying examination

## Decision of the Administrative Council of 10 December 2008 amending the Regulation on the European qualifying examination for professional representatives before the European Patent Office (CA/D 26/08)

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION, Having regard to the European Patent Convention, and in particular Article 134, paragraph 2(c) and Article 134a paragraph 1(b), thereof, Having regard to the existing Regulation on the European qualifying examination for professional representatives before the European Patent Office, on a proposal from the President of the European Patent Office,  
HAS DECIDED AS FOLLOWS:

### Article 1

The Regulation on the European qualifying examination for professional representatives before the European Patent Office as adopted on 9 December 1993 (CA/D 15/93) and last amended by decision of the Administrative Council of 24 October 2002 (CA/D 4/02) is replaced by the text contained in the annex to this decision.

### Article 2

This decision shall enter into force on 1 January 2009.  
Done at Munich, 10 December 2008  
For the Administrative Council The Chairman  
Roland Grossenbacher

## ANNEX

### Article 1

The European qualifying examination

1) The European qualifying examination (hereinafter "the examination") is designed to establish whether a candidate is qualified to practise as a professional representative before the European Patent Office (hereinafter "the EPO").

2) The examination shall normally be held once a year. The period between two examinations shall not exceed twenty-five months.

3) The examination shall comprise written papers only.

4) The examination shall cover, as a minimum: the drafting of claims and the introductory part of a European patent application on the basis of information normally available to a professional representative for this task; the preparation of a reply to an official letter in which prior art has been cited; the drafting of a notice of opposition

to a European patent; answering legal questions and drafting legal assessments of specific situations.

5) One or more of the examination papers may be set in more than one technical field.

6) The examination shall be organised and conducted, in accordance with the provisions of this Regulation and the Implementing Provisions to this Regulation (hereinafter "the IPREE"), by a Supervisory Board, an Examination Board, Examination Committees and an Examination Secretariat. Their responsibilities are defined in this Regulation and in the IPREE, both of which shall be published annually.

7) If a pre-examination is held, the provisions of this Regulation shall apply *mutatis mutandis*.

### Article 2

#### The Supervisory Board

1) The Supervisory Board shall consist of two members from the EPO and two members from the Institute of Professional Representatives before the EPO (hereinafter "the Institute").

(a) The two members from the EPO shall be appointed by the President of the EPO from among the employees of the EPO. The two members from the Institute shall be nominated by the President of the Institute from among the members of the Institute and shall be appointed by the President of the EPO.

(b) One deputy for the two EPO members and one for the two Institute members shall be appointed in accordance with (a) above.

(c)(i) A Chairman shall be appointed for a term of two years by the President of the EPO from among the EPO members of the Supervisory Board. A Deputy Chairman nominated by the President of the Institute from among the Institute members of the Supervisory Board shall be appointed for a term of two years by the President of the EPO.

(ii) When the term specified in (i) above expires, a Chairman nominated by the President of the Institute from among the Institute members of the Supervisory Board shall be appointed by the President of the EPO for a term of two years. A Deputy Chairman shall be appointed for a term of two years by the President of the EPO from among the EPO members of the Supervisory Board.

(iii) For subsequent terms the chairmanship shall alternate as provided in (i) and (ii) above.

2) The members and deputy members of the Supervisory Board shall be appointed for a term of two years and may be re-appointed for further terms of two years upon expiry of this term.

3) Members or deputy members of the Supervisory Board whose names are removed from the list of professional representatives before the EPO shall cease to be members of the Supervisory Board on the date of their removal and shall not be eligible for re-appointment as members or deputy members in their capacity as members of the Institute.

4) Members or deputy members of the Supervisory Board who retire or resign from the EPO shall cease to be members of the Supervisory Board on the date of their retirement or resignation and shall not be eligible for re-appointment as members or deputy members in their capacity as EPO employees.

5) If a member or deputy member ceases to be a member of the Supervisory Board by virtue of paragraph 3 or 4 above, a new member or deputy member shall be appointed in accordance with paragraph 1(a) and (b) above to serve the remainder of the term.

6) The Supervisory Board shall be convened by its Chairman. Three members shall constitute a quorum.

7) The Chairman of the Supervisory Board may invite the Chairman of the Examination Board, and experts or advisers as the circumstances may require, to assist the Supervisory Board.

8) If the Chairman decides that a proposal is to be dealt with by written procedure, he shall invite all members to inform the Examination Secretariat, within a reasonable period specified by him, whether they approve the proposal. Replies by three members shall constitute a quorum.

9) All decisions of the Supervisory Board shall be taken by a simple majority of its members. The Chairman shall have a casting vote.

### **Article 3**

#### **Duties of the Supervisory Board**

1) The Supervisory Board shall fix the number of Examination Committees needed for the examination and set the date of the examination.

2) The Supervisory Board shall, in consultation with the Examination Board, determine the nature, structure and number of the examination papers and the time allowed for each.

3) The Supervisory Board shall monitor and evaluate the conduct and results of the examination. It shall also supervise the Examination Secretariat in its duties as specified in Article 9 below and its further duties as specified in the IPREE.

4) Before the draft budget of the European Patent Organisation is forwarded to the Administrative Council,

the Supervisory Board shall be afforded an opportunity to give its opinion on the appropriations for the examination.

5) The Supervisory Board shall decide what statistical information should be compiled by the Examination Secretariat pursuant to Article 22(3) and to whom it should be disseminated.

6) (a) The Supervisory Board shall adopt regulations concerning the conduct of the examination and fraudulent behaviour, including measures to be taken in the event of any failure to comply with those regulations.

(b) The Supervisory Board shall decide on the special conditions which may apply for disabled candidates sitting the examination.

7) The Supervisory Board shall be authorised to draw up and amend the IPREE in accordance with this Regulation after consulting the Examination Board, the Examination Committees and the Examination Secretariat. Prior to their adoption, the President of the EPO may refuse any provision resulting in an increased financial liability for the EPO.

### **Article 4**

#### **The Examination Board**

1) The Examination Board shall consist of eight members.

(a) Four members shall be appointed by the President of the EPO from among the employees of the EPO. Four members nominated by the President of the Institute from among the members of the Institute shall be appointed by the President of the EPO.

(b) The provisions concerning the nomination and appointment of the Chairman and the Deputy Chairman of the Supervisory Board shall apply *mutatis mutandis* to the nomination and appointment of the Chairman and Deputy Chairman of the Examination Board.

(c) No member of the Supervisory Board shall be a member of the Examination Board.

2) The members of the Examination Board shall be appointed for a term of two years and may be re-appointed for further terms of two years upon expiry of this term.

3) Members of the Examination Board whose names are removed from the list of professional representatives before the EPO shall cease to be members of the Examination Board on the date of their removal and shall not be eligible for re-appointment as members in their capacity as members of the Institute.

4) Members of the Examination Board who retire or resign from the EPO shall cease to be members of the Examination Board on the date of their retirement or resignation and shall not be eligible for re-appointment as members in their capacity as EPO employees.

5) If a member of the Examination Board ceases to be a member by virtue of paragraph 3 or 4 above, a new member shall be appointed in accordance with paragraph 1(a) above to serve the remainder of the term.

- 6) The Examination Board shall be convened by its Chairman. Five members shall constitute a quorum.
- 7) If the Chairman decides that a proposal is to be dealt with by written procedure, he shall invite all members to inform the Examination Secretariat, within a reasonable period specified by him, whether they approve the proposal. Replies by five members shall constitute a quorum.
- 8) All decisions shall be taken by a simple majority of the members of the Examination Board present. The Chairman shall have a casting vote.
- 9) If, exceptionally, a decision needs to be taken, whilst the examination is taking place, on the content of the examination or its duration, the Chairman is entitled to take this decision on his own.

#### **Article 5 Chairmanship**

When the Chairman of the Supervisory Board is an employee of the EPO, the Chairman of the Examination Board shall be a member of the Institute and vice versa.

#### **Article 6 Duties of the Examination Board**

- 1) The Examination Board shall advise the Supervisory Board on the conduct and results of the examination.
- 2) Subject to the IPREE, the Examination Board shall give the members of the Examination Committees instructions for:
  - (a) preparing the examination papers
  - (b) preparing the marking sheets
  - (c) marking candidates' answers consistently.
- 3) The Examination Board shall
  - (a) appoint the Chairman of each Examination Committee from among the members of the respective Committee
  - (b) evaluate the content of the draft examination papers and marking sheets, instruct the Examination Committees to amend them where necessary, and make the final selection.
- 4) The Examination Board shall decide on the list of books and documents, including case law, which may be used by candidates during the examination.
- 5) The Examination Board shall scrutinise the marks for each paper proposed by the Examination Committees and decide whether a candidate should pass or fail the examination.  
The Examination Board may revise candidates' marks or instruct the Examination Committees to re-mark their papers according to a revised marking sheet.
- 6) After the examination, the Examination Board shall transmit to the Examination Secretariat a report on each examination paper (examiners' report) and a model solution prepared by the relevant Examination Committee. The report and the model solution will be published in an examination compendium to enable candidates to

prepare for future examinations as specified in the IPREE.

- 7) The Examination Board shall perform such other duties as may be defined in the IPREE.

#### **Article 7 Examination Committees**

- 1) The EPO and Institute members of the Examination Committees shall be appointed by the President of the EPO on a proposal from the Examination Board. No member of the Supervisory Board shall be a member of an Examination Committee.
- 2) Members of the Examination Committees shall have the status of either active or nonactive members. Non-active members shall not participate in any committee activities until their status is changed to that of active members.
- 3) The Examination Committees shall consist of equal numbers of EPO and Institute members. This proportion may, however, be varied in circumstances specified in the IPREE.
- 4) The members of the Examination Committees shall be appointed for a term of two years and may be re-appointed for further terms of two years upon expiry of this term.
- 5) All members of the Examination Committees must have obtained the minimum grades required for the examination papers as specified in the IPREE. The President of the EPO may, in individual cases, grant exceptions subject to a reasoned opinion from the Examination Board.
- 6) Members of the Examination Committees whose names are removed from the list of professional representatives before the EPO shall cease to be members of the Examination Committees on the date of their removal and shall not be eligible for reappointment as members in their capacity as members of the Institute.
- 7) Members of the Examination Committees who retire or resign from the EPO shall cease to be members of the Examination Committees on the date of their retirement or resignation and shall not be eligible for re-appointment as members in their capacity as EPO employees.
- 8) Exceptions to paragraphs (6) and (7) may in special circumstances be granted by the Examination Board to allow a member to complete his term and be re-appointed for one further term only.
- 9) If a member ceases to serve on an Examination Committee by virtue of paragraph 6 or 7 above, a new member may be appointed in accordance with paragraph 1 above to serve the remainder of the term.

#### **Article 8 Duties of the Examination Committees**

- 1) Subject to Article 6(2) the Examination Committees shall:

- (a) be entrusted with the preparation of the examination papers
  - (b) be entrusted with the preparation of the marking sheets
  - (c) provide the Examination Board with any relevant information relating to (a) and (b)
  - (d) mark the answer papers and make a proposal for the grades to be awarded for each paper.
  - (e) Each answer paper shall be marked by two committee members separately.
- 2) The Examination Committees shall advise the Examination Board on the list of books and documents, including case law, which may be used by candidates during the examination.
- 3) The Examination Committees shall perform such other duties as may be defined in the IPREE.

#### Article 9

##### The Examination Secretariat

- 1) The Examination Secretariat (hereinafter "the Secretariat") shall consist of employees of the EPO. The President of the EPO shall provide the Secretariat with the necessary appropriations for running the examination.
- 2) The Secretariat shall:
- (a) support the Supervisory Board, the Examination Board and the Examination Committees in their duties
  - (b) prepare and organise the examination
  - (c) decide on the registration and enrolment of candidates in accordance with this Regulation and the IPREE
  - (d) publish the Compendium and any other information relating to the examination or its conduct.

#### Article 10

##### Functioning of the Examination Board, Examination Committees and Examination Secretariat

- 1) In performing their duties and taking decisions relating to the setting, drafting and marking of the examination papers, the members of the Examination Board and Examination Committees shall only be bound by, and comply with, the provisions of this Regulation and the IPREE.
- 2) In performing its duties relating to registration and enrolment, the Secretariat shall not be bound by any instructions and shall only comply with the provisions of this Regulation and the IPREE.

#### Article 11

##### Conditions for registration and enrolment

- 1) Candidates shall be registered for the examination on request provided that (a) they possess a university-level scientific or technical qualification, or are able to satisfy the Secretariat that they possess an equivalent level of scientific or technical knowledge, as defined in the IPREE, and (b) have started the professional activities defined in paragraph (2)(a) or are employed as defined in paragraph (2)(b).

(2) Subject to paragraph 1, candidates who apply to be enrolled for one or more examination papers must be able to:

(a) satisfy the Secretariat that at the date of the examination they have:

(i) completed a full-time training period of at least three years in one of the contracting states to the European Patent Convention (hereinafter "the EPC"), under the supervision of one or more persons entered on the list of professional representatives before the EPO (Article 134(1) EPC), as an assistant to that person or those persons, and that in the said period they took part in a wide range of activities pertaining to European patent applications or European patents, or

(ii) worked full-time for a period of at least three years in the employment of a natural or legal person whose residence or place of business is within the territory of the EPC contracting states and have represented their employer before the EPO in accordance with Article 133(3) EPC while taking part in a wide range of activities pertaining to European patent applications or European patents, or

(b) satisfy the Secretariat that at the date of the examination they have performed full-time the duties of an examiner at the EPO for at least four years.

3) The duration of the periods of professional activity referred to in paragraph 2(a) may be aggregated to make up a total full-time training period. The periods of professional activity shall only be considered after the qualification required in paragraph (1)(a) has been obtained and subject to any further provisions laid down in the IPREE.

4) In determining the periods of activity referred to in paragraph 2(a) the Secretariat shall also take into account candidates' activities in proceedings relating to national patent applications and national patents.

5) Under the conditions laid down in the IPREE, the Secretariat may grant a reduction, of up to one year, in the duration of the periods of professional activity defined in paragraph 2(a) above.

6) An application for registration and/or enrolment for the examination shall not be deemed to have been filed until after the prescribed fees have been paid within the period laid down in the notice specified in Article 18.

7) If a pre-examination, as referred to in Article 1 of this Regulation and defined in the IPREE, is to be held, candidates who apply for enrolment for this pre-examination must be able to satisfy the Secretariat that at the date of the said pre-examination they have completed the periods mentioned in paragraph 2(a) and (b) above, such periods being reduced by one year. All other conditions applicable to the examination shall apply equally to the pre-examination unless the contrary is specifically stated. Moreover if such a pre-examination is held, candidates who apply to be enrolled for the examination must have obtained a pass grade in the pre-examination.

8) Members of the Supervisory Board, the Examination Board, the Examination Committees and the Secretariat shall not be entitled to enrol for the examination. Former members of these bodies who satisfy the requirements of paragraphs 1 and 2 shall be entitled to enrol, at the earliest, for the third examination following the expiry of their term of office.

#### **Article 12** **Languages**

- 1) The examination papers shall be drawn up in the three official languages of the EPO and all candidates shall receive them in all three languages.
- 2) The candidates' answers shall be given in one of the three official languages of the EPO unless otherwise prescribed in accordance with paragraph 3.
- 3) The IPREE may contain special provisions concerning the use of an official language of a contracting state other than one of the official languages of the EPO.

#### **Article 13** **Examination syllabus**

The examination shall establish whether a candidate has:

- 1) a thorough knowledge of:
  - (a) European patent law as laid down in the EPC and any legislation relating to Community patents
  - (b) the Paris Convention (Articles 1 - 5 quarter and Article 11)
  - (c) the Patent Cooperation Treaty
  - (d) all decisions of the Enlarged Board of Appeal and EPO case law as specified in the IPREE, and
- 2) a general knowledge of the national laws of:
  - (a) the contracting states to the extent that they apply to European patent applications and European patents
  - (b) the United States of America and Japan to the extent that they are of importance in connection with proceedings before the EPO.

#### **Article 14** **Passing the examination**

- 1) Subject to paragraph 2, a candidate shall be declared to have passed the examination if he passes each of the examination papers or if he obtains the minimum grades required for the examination papers as specified in the IPREE.
- 2) Candidates who have been enrolled in accordance with Article 11(2)(b) shall be declared to have passed the examination provided they fulfil the requirements laid down in paragraph 1 and are able to satisfy the Secretariat that they have spent at least two years in any of the capacities defined in Article 11(2)(a).

#### **Article 15** **Choice of papers**

When enrolling, candidates shall indicate which paper or papers they intend to sit.

#### **Article 16** **Re-sitting the examination**

- 1) A candidate who fails the examination may only re-sit a paper or papers he did not pass.
- 2) The IPREE may contain special provisions concerning re-sitting and in particular specify the increment in the fees for re-sitting one or more examination papers.

#### **Article 17** **Fees**

The President of the EPO shall lay down the amount of the fees provided for in this Regulation after the Institute has been consulted. Further provisions relating to the structure of these fees are specified in the IPREE.

#### **Article 18** **Notice concerning the examination**

A notice concerning the examination shall be published in the Official Journal of the EPO specifying the dates of the sessions, the dates by which applications for enrolment must be filed and the documents required.

#### **Article 19** **Communications**

- 1) Any communication concerning the examination shall be addressed to the Secretariat.
- 2) The Secretariat shall inform candidates in writing whether their registration or enrolment has been accepted. In cases of refusal a reasoned decision shall be given.
- 3) Enrolled candidates shall be informed in writing of the date, time and place of the examination. Information relating to this Regulation, the IPREE and any material considered relevant by the Supervisory Board shall be made available to candidates.

#### **Article 20** **Examination in several centres**

Where the examination is to be held in several centres at different locations, the same papers shall be distributed and sat in all centres simultaneously.

#### **Article 21** **Anonymity**

- 1) Candidates' anonymity shall be respected when their answers are marked.
- 2) Candidates' answers may be published for research, statistical or training purposes provided their anonymity is respected.

#### **Article 22** **Results**

- 1) A list of candidates who have been successful in the examination shall be published in the Official Journal of the EPO.
- 2) The Secretariat shall make available to each candidate a copy of his or her own answers.

3) The Secretariat shall be responsible for compiling statistical information concerning the results of the examination and shall disseminate this information in compliance with Article 3(5).

#### **Article 23**

##### **Professional secrecy**

Subject to Articles 21(2) and 22, the members and deputy members of the Supervisory Board and the members of the Examination Board, the Examination Committees and the Secretariat shall be bound to secrecy both during and after their term of office with regard to all matters concerning the preparation of examination papers, the candidates and any relevant deliberations.

#### **Article 24**

##### **Appeals**

1) An appeal shall lie from decisions of the Examination Board and the Secretariat which adversely affect the appellant, but only on the grounds that this Regulation or any provision relating to its application has been infringed.

2) Notice of appeal including the statement setting out the grounds for appeal must be filed in writing with the Secretariat within one month of the date of notification of the decision appealed against. Notice of appeal shall not be deemed to have been filed until the fee for appeal specified pursuant to Article 17 has been paid within the period of one month specified above.

3) If the Examination Board or the Secretariat considers the appeal to be admissible and well-founded, it shall rectify its decision and order reimbursement of the fee for appeal. If the appeal is not allowed within two months from notification of the decision, it shall be remitted to the Disciplinary Board of Appeal of the EPO. Notwithstanding Article 10(1) of the Regulation on discipline for professional representatives, the Disciplinary Board of Appeal shall take its decision in a composition consisting of two legally qualified members of the EPO and one professional representative. The Chairman shall be a legally qualified member.

4) Part IV of the Regulation on discipline for professional representatives shall apply mutatis mutandis to the procedure before the Disciplinary Board of Appeal. If the appeal is admissible and well-founded, the Board of Appeal shall set aside the decision appealed against. If the Board of Appeal allows the appeal, or the appeal is withdrawn, it shall order reimbursement in full or in part of the fee for appeal if this is equitable in the circumstances of the case. (5) The lodging of an appeal shall

not suspend the decision against which the appeal has been lodged.

#### **Article 25**

##### **Transitional provisions**

1) Examination papers sat at the examinations held in 1993 and up to and including 2008 and for which a pass was awarded, shall remain valid provided that the awarded pass was still valid upon the entry into force of the present Regulation.

2) Passes awarded for the examination held in 2009 shall also remain valid for all subsequent examinations.

3) A compensable fail awarded for the examination papers sat as a first module in 2007, 2008 and 2009, pursuant to Article 14 of the Regulation which entered into force on 1 May 1994 and was last amended on 24 October 2002 (hereinafter "the Regulation of 1994"), shall remain valid for the period, and under the conditions, specified in the Regulation of 1994 and its Implementing Provisions.

4) Candidates shall be exempted from the pre-examination according to Article 1(7) of this Regulation provided that:

(a) either they have been successfully enrolled for an examination before the first pre-examination is held, or  
(b) when the pre-examination is held for the first time, they have successfully applied for enrolment for the first time and fulfil the requirements of Article 11(1) to (6) of this Regulation.

5) Article 11(8) shall apply to all previous members of the Examination Board, Examination Committees and Secretariat in accordance with the Regulation of 1994.

6) The Examination Committees' members appointed prior to the entry into force of this Regulation shall be deemed to fulfil the requirements of Article 7(5) of this Regulation.

(7) If a pre-examination as referred to in Article 1 of this Regulation is held, it shall take.

#### **Article 26**

##### **Entry into force**

This Regulation

1) shall enter into force on 1 January 2009.

2) shall not apply to the European qualifying examination to be held in 2009. The said examination shall be governed entirely by the Regulation of 1994; this includes all provisions relating to the bodies envisaged therein as well as to any decisions, appeals or further procedures relating to this examination.

3) shall replace the Regulation of 1994, and shall apply to the European qualifying examination to be held in 2010 and thereafter.

# Implementing provisions to the regulation on the European qualifying examination

The Supervisory Board,  
Having regard to the Regulation on the European qualifying examination for professional representatives which entered into force on 1 January 2009 (OJ EPO 2009, 9), and in particular Article 3, paragraph 7, thereof,  
Has decided as follows:

## Rule 1

### Applications for registration and enrolment

- 1) For registration and enrolment, candidates shall use the registration and enrolment forms published by the Examination Secretariat (hereinafter "the Secretariat").
- 2) On the forms, candidates shall state their surname, given names, address, date and place of birth, and nationality. Where applicable, the forms shall be accompanied by originals or certified copies of:
  - (a) documents providing proof of identity
  - (b) evidence that the candidate possesses the qualification or equivalent level of scientific or technical knowledge required by Article 11(1)(a) of the Regulation on the European qualifying examination for professional representatives before the European Patent Office (hereinafter "the REE"), and
  - (c) a certificate or certificates issued by a professional representative, or by the candidate's employer, attesting to the completion of the period of training or employment required by Article 11(2)(a) REE and indicating the nature and duration of the duties performed by the candidate, or
  - (d) a certificate issued by the European Patent Office (hereinafter "the EPO") attesting that the candidate has performed full-time the duties of an examiner at the EPO for at least four years
  - (e) evidence of circumstances which may give grounds for remission Article 11(5) REE).
- 3) Copies of the documents required under paragraph 2 above can be certified by a competent national authority in a contracting state to the European Patent Convention (hereinafter "contracting state") or by a professional representative before the EPO.
- 4) Where appropriate, applications for enrolment shall also state the language in which the candidate wishes to submit his answers in accordance with Rule 5(1).
- (5) The Secretariat may request additional information.

## Rule 2

### Examination syllabus

The examination syllabus referred to in Article 13 REE

shall cover only those legal texts referred to in Article 13(1)(a) to (c) REE which are in force on 31 December of the year prior to the examination.

The EPO case law referred to in Article 13(1)(d) REE shall be that covered in the latest edition of "Case Law of the Boards of Appeal of the European Patent Office" (hereinafter "the Case Law Book"), the case law referred to in any case law special edition of the Official Journal published after the latest edition of the Case Law Book, and any case law published in the Official Journal on or before 31 December of the year prior to the examination.

## Rule 3

### Marking

When marking answer papers, the members of the Examination Committees shall bear in mind that candidates may have written their answers in a language other than their mother tongue.

Errors of grammar or style shall therefore not be penalised.

## Rule 4

### Marking sheets

- 1) Pursuant to Article 8(1)(d) REE, details of the marking shall be entered on the marking sheets.
- 2) The Secretariat shall make available to each candidate the marking sheets pertaining to his answer papers.

## Rule 5

### Languages

- 1) Pursuant to Article 12(3) REE, candidates may, if they so request when enrolling for the examination, submit their answers in an official language of a contracting state which is not an official language of the EPO. The Secretariat shall then arrange a translation into one of the official languages of the EPO and submit it to the appropriate Examination Committee in addition to the original answer.
- 2) The translations referred to in paragraph 1 shall not entail any additional fee and may be prepared by the Institute of Professional Representatives before the EPO (hereinafter "the Institute").

## Rule 6

### Grades/passing the examination

- 1) Each answer paper shall be marked on a scale from zero to 100 by the relevant Examination Committee.

(a) Where, on the merits of an answer paper, a mark of 50 or more is awarded, a PASS grade shall be awarded for that paper.

(b) Where, on the merits of an answer paper, fewer than 45 marks are awarded, a FAIL grade shall be awarded for that paper.

(c) Where, on the merits of an answer paper, a mark of at least 45 but less than 50 is awarded, the grade awarded for that paper shall be COMPENSABLE FAIL.

2) Subject to Article 14(2) REE, a candidate shall be declared to have passed the examination if he satisfies all of the following conditions:

(a) he has not been awarded a FAIL grade in any of the papers,

(b) he has been awarded a PASS grade in at least two papers, and

(c) his total aggregate mark in the four papers set out in Rule 21 is at least 200.

3) If a candidate re-sits a paper in accordance with Article 16(1) REE, the marks and grade previously obtained for this paper shall no longer be valid.

#### **Rule 7**

##### **Registration and enrolment fees**

Pursuant to Articles 11(6) and 17 REE, the fee for each application for registration and enrolment shall be the basic fee.

#### **Rule 8**

##### **Examination fees**

1) Pursuant to Articles 16 and 17 REE, the fee for sitting a specific examination paper shall be the basic fee.

2) The fee for re-sitting an examination paper for the first time shall be the basic fee.

3) The fee for re-sitting an examination paper for the second time shall amount to 150% of the basic fee.

4) The fee for re-sitting an examination paper for the third time shall amount to 200% of the basic fee.

5) The fee for re-sitting an examination paper for the fourth and subsequent times shall amount to 400% of the basic fee for each such re-sit.

6) The fee increments specified in paragraphs 3 to 5 shall apply as of the examination year 2010. Their calculation shall be based on the examination papers sat in 2010 or thereafter.

#### **Rule 9**

##### **Appeal fee**

Pursuant to Article 24(2) REE, the appeal fee shall amount to 600% of the basic fee.

#### **Rule 10**

##### **Pre-examination**

A pre-examination shall be held for the first time in 2012.<sup>1</sup>

#### **Rule 11**

##### **Qualification required**

1) Pursuant to Article 11(1)(a) REE, a candidate shall be considered to have the necessary qualification if he possesses at least a university-level scientific or technical bachelor's degree, or any equivalent academic degree, in one of the subjects defined in Rule 13 or any subjects equivalent to these, from a university, technical university, technical high school, vocational college, higher technical college or institute, school of engineering, or any similar establishment having at least the academic level of the aforementioned establishments in one of the contracting states.

(2) The academic degree referred to in paragraph 1 shall have been awarded at the end of a full-time course with a minimum duration of three years. At least 80% of the course hours taken to obtain this degree shall have been devoted to scientific and/or technical subjects. (3) If a candidate's qualification does not fulfil the requirements of paragraphs 1 and 2 Rule 14 shall apply.

<sup>1</sup>Provisions relating to the pre-examination are in preparation and will be published in due course to allow sufficient time for candidates' preparation and/or training courses.

#### **Rule 12**

##### **Qualification from a non-contracting state**

1) Should a candidate possess a degree, diploma or certificate from an educational establishment in a non-contracting state, he shall have to satisfy the Secretariat that this is equivalent to a degree as mentioned in Rule 11.

2) In the case referred to in paragraph 1, the Secretariat may require an official document from a competent authority in one of the contracting states attesting that the degree, diploma or certificate is equivalent to a degree as mentioned in Rule 11.

#### **Rule 13**

##### **Qualification subject-matter**

The scientific and/or technical subjects referred to in Rule 11 shall include biology, biochemistry, chemistry, construction technology, electricity, electronics, information technology, mathematics, mechanics, medicine, pharmacology and physics.

#### **Rule 14**

##### **Equivalent knowledge**

If a candidate is not able to prove that he meets the conditions referred to in Rules 11, 12, and 13, he may nevertheless be considered to possess an equivalent level of scientific and/or technical knowledge if he can establish that he has at least ten years' experience in the activities defined in Article 11(2)(a) REE.

### **Rule 15**

#### **Professional activities**

- 1) The professional activities referred to in Article 11(2)(a) REE shall be completed in one or more of the contracting states.
- 2) Only professional activities amounting to a minimum period of three months with at least 50% part-time involvement shall be considered for the purposes of Article 11(3) REE.

### **Rule 16**

#### **Remission**

(1)(a) An academic institution located in one of the contracting states may request that candidates who have successfully completed specialised studies in the field of industrial property at that institution be granted a reduction of six months in the duration of the period of professional activity defined in Article 11(2) REE. Such requests shall be submitted to the Secretariat before completion of the academic year in question and decided upon by the Examination Board on the basis of the following criteria:

- (i) the duration of the studies is at least one full-time academic year,
- (ii) the curriculum and a description of the content of the studies are available to the public; these documents shall be submitted to the Secretariat
- (iii) the number of hours devoted to each subject can be derived from the curriculum,
- (iv) the curriculum indicates which subjects are mandatory and lists the criteria for selecting other subjects,
- (v) on request, all the course material shall be submitted to the Secretariat,
- (vi) at least 600 course hours are devoted to intellectual property,
- (vii) of the 600 course hours mentioned under (vi), at least 350 are devoted to patent matters,
- (viii) of the 350 course hours mentioned under (vii), at least 130 are devoted to European patent law as laid down in the European Patent Convention (EPC) and to the Patent Cooperation Treaty (PCT),
- (ix) of the 600 course hours mentioned under (vi), at least 175 are given by professional representatives before the EPO.

(b) If the Examination Board grants a request under (a), that decision shall be valid only for the academic year in respect of which the request was made and shall apply only to candidates who request a reduction on the basis of that decision and are able to show that they have successfully completed their studies in that academic year at the academic institution in question.

2) The Secretariat may grant a reduction of up to one year of the periods of professional activity defined in Article 11(2)(a) REE to candidates who have been patent examiners with the EPO or one of the national patent offices of the contracting states. Only periods amounting to a

minimum of one year with at least 50% parttime involvement shall be considered. The reduction shall not exceed 25% of the recognised period of activity as a patent examiner.

3) Candidates who have completed the eight months' training with the German patent authorities and have been admitted to sit the qualifying examination for German patent attorneys shall be granted a reduction of six months.

This eight months' training with the German patent authorities does not constitute a period of professional activity as defined in Article 11(2) REE.

4) The period of professional activity under Article 11(2) REE and

### **Rule 17**

#### **Disabled candidates**

1) Disabled candidates are those who can prove that they suffer from a disability severely affecting their capacity to participate in the examination as set up for all other candidates.

2) Any such candidate shall provide appropriate evidence issued by the competent national health service.

(3) Depending on the severity and degree of the disability, the Secretariat may allow the candidate to participate in the examination under conditions which compensate as far as possible for the consequences of his disability in respect of the examination.

Additional time for writing the papers, personal assistance or other logistical or technical support may be accorded as appropriate depending on the circumstances of a particular case.

### **Rule 18**

#### **Invigilation**

1) Subject to paragraph 3 below, invigilators shall normally be members of the Examination Board or the Examination Committees.

2) For the conduct of the examination at an examination centre, the Secretariat shall appoint a chief invigilator and a deputy invigilator from among the members of the Examination Board, the Examination Committees, or the Secretariat.

3) The Secretariat may nominate other invigilators.

### **Rule 19**

#### **Conduct of the examination**

1) If a candidate fails to comply with the instructions to candidates concerning the conduct of the examination or with instructions given on the basis thereof by the invigilators, the following measures may be taken by the Examination Board in respect of that candidate:

- (a) deduction of marks
- (b) instructions to the competent Examination Committee to mark the answer paper concerned only in part
- (c) instructions to the competent Examination Commit-

tee not to mark the answer paper concerned and not to award any marks, and/or

(d) disqualification from the examination for a given year.

The Examination Board shall take a decision on the matter as soon as possible after the examination.

2) If a candidate disturbs other candidates during the examination, the chief invigilator shall be empowered to suspend him at once from the paper during which this occurs. The chief invigilator shall then send to the Examination Board a comprehensive report including any evidence. The Examination Board shall take a decision on the matter as soon as possible.

3) Complaints concerning the conduct of the examination shall not be entertained by the Examination Board unless a written statement of the facts is submitted to the chief invigilator at the latest 30 minutes after the closing signal has been given on the final day of the examination.

4) Any decision taken by the Examination Board pursuant to this rule shall be based upon all the available evidence, reasoned and issued in writing.

#### **Rule 20**

##### **Fraudulent behaviour**

1) Fraudulent behaviour is any behaviour by a candidate with the aim of obtaining an undue advantage during registration/enrolment or during/after the examination. Such behaviour may consist, inter alia, in presenting false documents, making false or incomplete statements and/or using equipment during the examination which is not allowed.

(2) The following measures may be taken by the Examination Board if fraudulent behaviour has been discovered:

(a) refusal of registration and/or enrolment for the forthcoming and subsequent examinations

(b) deduction of marks

(c) instructions to the competent Examination Committee to mark the answer paper concerned only in part

(d) instructions to the competent Examination Committee not to mark the answer paper concerned and not to award any marks, and/or

(e) disqualification from the examination for a given year.

3) The Examination Board shall take a decision on the matter as soon as possible after the fraudulent behaviour has been discovered.

4) Any decision taken by the Examination Board pursuant to this rule shall be based upon all the available evidence, reasoned and issued in writing.

#### **Rule 21**

##### **Examination papers**

The examination shall consist of four papers: Paper A, Paper B, Paper C and Paper D as defined in Rules 23 to 26 respectively.

#### **Rule 22**

##### **General instructions for preparing answer papers**

1) Candidates are expected to be familiar with:

(a) The Guidelines for Examination in the EPO in force on 31 December of the year prior to the examination.

(b) The content of the Official Journal of the EPO as published on or before 31 December of the year prior to the examination.

2) It will be assumed that candidates have read the examination paper in the language in which they give their answer. Candidates who give their answer in a language other than English, French or German, and have filed a corresponding request when enrolling for the examination, shall indicate on the front page of their answer papers which language they used in answering the examination papers.

3) Candidates shall accept the facts given in the examination paper and limit themselves to those facts. Whether and to what extent those facts are used shall be the responsibility of each candidate. Candidates shall not use any special knowledge they may have of the technical field of the invention.

#### **Rule 23**

##### **Content of the examination - Drafting paper (Paper A)**

1) The purpose of this paper shall be to assess candidates' ability to draft claims and the introductory part of a European patent application as defined in Article 1(4) REE. The duration of this paper shall be three and a half hours.

2) Candidates are to assume that they have received a letter from their client which includes a description of an invention for which the client wishes to obtain a European patent, together with references to the most pertinent prior art known to him.

3) Candidates are expected to draft an independent claim (or claims) which offer(s) the patent applicant the broadest possible protection in accordance with the EPC. When drafting the claim(s), candidates shall bear in mind the requirements of the EPC, including the need for novelty and inventive step, and the recommendations made in the Guidelines for Examination in the EPO. Dependent claims, which shall be limited to a reasonable number, shall be drafted in order to provide a fall-back position in case the independent claim(s) fail(s).

4) Candidates are also expected to draft an introduction, i.e. that part of the description which precedes the examples or the explanation of the drawings. The introduction shall provide support for the claim(s).

In particular, candidates shall give consideration to the advisability of mentioning the advantages of the invention in the introduction.

5) Candidates are expected to draft claims and an introduction for one European patent application only. The

application shall meet the requirements of the EPC as to unity. If, however, candidates seek to protect further inventions by filing one or more separate patent applications, they shall, in a note, clearly identify the features of the independent claim in such separate application(s), for example by referring to selected portions of the claims, or, alternatively, they shall draft the claim itself.

6) In addition to their answer, candidates may set out the reasons for their choice of answer in a supplementary note: for example, why they have selected a particular form of claim, a particular feature for an independent claim or a particular piece of prior art as a starting point, or why they have rejected or preferred a particular item of prior art. Supplementary notes to examiners cannot, however, replace essential parts of candidates' answers.

#### Rule 24

##### Content of the examination - Reply paper (Paper B)

1) The purpose of this paper shall be to assess candidates' ability to reply to an official communication in which prior art has been cited as defined in Article 1(4) REE. The duration of this paper shall be four hours.

2) In this paper, candidates shall assume that a European patent application has been filed designating all the contracting states, and that the EPO has issued an official communication. The paper may include a client's letter containing instructions about the way the client wishes to proceed with the European patent application.

3) Candidates are expected to respond to all points raised in the official communication. The response shall be in the form of a letter to the EPO accompanied, where appropriate, by an amended set of claims. The description shall not, however, be amended. The claims shall afford the broadest possible protection while meeting the requirements of the EPC. In their reply, candidates shall identify clearly all amendments made in the claims and their basis in the application as filed, and provide additional explanations where necessary. They shall also set out their arguments in support of the patentability of the independent claim(s).

4) Candidates may give the reasons for their choice of answer in a supplementary note. If they consider that any part of the application ought to be made the subject of one or more divisional applications, they shall, in the note, clearly set out the independent claim(s) for such divisional application(s). The note shall also present the arguments in support of the patentability of the independent claim(s) in such divisional application(s). Supplementary notes to examiners cannot, however, replace essential parts of candidates' replies to the EPO.

5) To assist candidates wishing to cut and paste passages from the claims into their answer, an additional copy of the claims belonging to the European patent application shall be provided in all the official languages ("working copy").

#### Rule 25

##### Content of the examination - Opposition paper (Paper C)

1) The purpose of this paper shall be to assess candidates' ability to draft a notice of opposition to a European patent as defined in Article 1(4) REE. The duration of this paper shall be six hours.

2) The paper shall be presented in the form of a letter from a client to a professional representative accompanied by the European patent to be opposed (Annex 1) and prior art documents. The annexed prior art shall comprise at least three documents.

3) Candidates are expected to put themselves in the position of the representative and, using only the information provided by the client, prepare a notice of opposition which when typed would be ready for filing. The pre-printed opposition form provided may be used, but it is not obligatory and marks will not be lost if it is not used.

4) The notice of opposition prepared by candidates shall comply with Articles 99 and 100 and Rule 76 EPC, bearing in mind the relevant recommendations in the Guidelines for Examination in the EPO, Part D. In order to maintain anonymity, candidates shall not give their real name, but should instead use the name of the representative to whom the client's letter is addressed.

5) The notice of opposition shall contain all those grounds (and no others) - where possible against all the claims - which candidates consider in this particular case to be prejudicial to the maintenance of the patent. The omission of good grounds for opposition will lead to a loss of marks commensurate with the importance of the grounds in question. Article 100(b) EPC shall not be cited. Candidates shall also

briefly set out on a separate sheet the reasons why they did or did not take up the client's suggestions. In addition, any questions the client may have asked shall be answered.

6) All claims shall be treated separately, taking due note of their dependences.

7) Prior-art documents shall be referred to by their annex number only.

8) It is to be assumed that, for all annexes which claim a priority, the disclosures in the annexes are identical with those in the corresponding priority documents unless there is evidence to suggest otherwise. If, however, any facts presented need to be confirmed, e.g. in the case of an alleged prior public disclosure, candidates are expected to state that such confirmation will be filed later. Regardless of the date of the client's letter, candidates are to assume that there is no possibility of conferring with him.

9) Candidates should be aware that Annex 1 is fictitious and is not necessarily in a form that would have led to the grant of a patent by the EPO.

#### **Rule 26**

##### **Content of the examination - Legal paper (Paper D)**

- 1) The purpose of this paper shall be to assess candidates' ability to answer legal questions and to draft legal assessments as defined in Article 1(4) REE.
- 2) This paper shall consist of parts I and II lasting three and four hours respectively.
  - (a) It shall comprise questions relating to different areas of the candidate's legal knowledge. Answers should be brief and to the point. Candidates shall always cite any article, rule or other legal basis relevant to their answer.
  - (b) It shall also include an enquiry from a client requiring an answer in the form of a legal opinion.
- 3) With regard to paragraph 2(b) above, candidates shall use the opinion they draft to explain the legal consequences of the situation as described. They shall be expected to demonstrate their ability to deal with a complex industrial property law case involving fundamental issues of patentability, rights of inventors, inventions as property and third party rights, as defined in particular, but not solely, in Articles 52 to 89 EPC, the corresponding articles of the PCT, any legislation relating to Community patents, the Paris Convention, and the relevant laws of the contracting states.

#### **Rule 27**

##### **Composition and number of Examination Committees**

- 1) The proportion of Examination Committee members from the EPO and from the Institute as specified in Article 7(3) REE may vary, but at least 50% of the members of any Examination Committee shall be from the Institute.
- 2) Pursuant to Articles 3(1) and 8 REE, three Examination Committees shall be established for the examination: Examination Committee I shall be in charge of Papers A and B, Examination Committee II shall be in charge of Paper C and Examination Committee III shall be in charge of Paper D.

#### **Rule 28**

##### **Registration**

- 1) In accordance with Article 11(1) REE, candidates intending to enrol for the European qualifying examination for the first time shall register within the first six months of commencing their professional activities or employment as defined in Article 11(2) REE.
- 2) Pursuant to Article 11(6) REE, the fee for registration according to paragraph (1) above shall be the basic fee.
- 3) For the purposes of Article 11(2) REE, only such periods of professional activity shall be taken into account as have accrued after registration pursuant to paragraph (1) above. The maximum period of previous professional activity as defined in Article 11(2) REE which can be taken into account is limited to six months on condition that such period occurred immediately before registration and was completed under the supervision of the same person or persons entered on the list of professional representatives before the EPO or with the same employer.
- 4) This rule shall enter into force on a date to be determined by the Supervisory Board.

#### **Rule 29**

##### **Entry into force**

These implementing provisions

- 1) shall enter into force on 1 April 2009,
- 2) shall replace the implementing provisions as adopted on 28 April 1998 and last amended on 18 April 2002, and shall apply to European qualifying examinations held as from 2010, and (3) shall not apply to the European qualifying examination taking place in 2009, to which the Implementing Provisions as adopted on 28 April 1998 and last amended on 18 April 2002 shall continue to apply.

Done at Munich, 18 March 2009

For the Supervisory Board  
The Chairman  
*Peter Vermeij*