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## PREFACE TO THE 2021 EDITION

In the framework of European patent law, information is scattered around over many legal references. This makes it complicated to study a certain topic, for example when handling a complicated case for a client or in preparation for the European Qualifying Examination (EQE).

The book *Topic-Related Index to the EPC and PCT – Quick Reference for Daily Practice, EQE Paper D and Pre-Exam* is aimed at practicing European patent attorneys as well as at trainees. This book enables to quickly identify and locate a relevant Article or Rule in the EPC and/or the PCT when looking for information on a particular topic. At the same time the book provides reference to the relevant finding place in the EPO Guidelines or PCT Applicant's Guide.

In this book, twelve main topics have been selected around which a detailed reference guide has been built. For each topic, the important issues are grouped in tables allowing a structured access to the topic. Comprehensive keyword indexes provide an easy access to the relevant topics.

This book has been kept compact by only referring to the legal texts and other reference material.

An earlier version of this book (first issued in 2017) was aimed at trainee patent attorneys preparing for (the Legal Questions of) the Pre-Exam only. However, we received many comments that it is also a very suitable tool for answering the legal questions in EQE Paper D. With respect to this earlier version, the current book has been largely expanded covering more topics.

European patent attorneys may find the book helpful as a quick reference guide, in particular for topics they are not so often confronted with in their daily practice.

The second edition of the *Topic-Related Index* book has been updated taking account of the latest developments in the law. The author appreciates receiving suggestions for improving the content of the book as well as information on mistakes. Please send any such comments to the publisher.

*Eindhoven, May 2021.*

Prof. dr C.A.M. Mulder



## CHAPTER 1 INTRODUCTION

### 1.1 Structure of the book

If a practicing patent attorney or a trainee has to gather information in relation to a certain topic of the European Patent Convention (EPC) or the Patent Cooperation Treaty (PCT), the tables in this book allow them to quickly identify and locate the relevant Article or Rule in the EPC and/or in the PCT. At the same time reference is provided to the relevant parts in the EPO Guidelines or PCT Applicant's Guide.

Indexes to the Articles and Rules of the EPC and the PCT as well as comprehensive keyword indexes (separate ones for EPC- and PCT-related topics) with in total more than 3,600 entries, provide easy access to the relevant topics.

The references in the tables help to find out what the EPO will do and what the EPO expects the patent attorney to do in a given situation. This information can often (only) be found in the EPO Guidelines and PCT Applicant's Guide. As these reference documents are not easily accessible, help is needed to find the relevant passages.

In addition, this book presents a reference guide to successfully answer the legal questions of the Pre-Exam and Paper D of the European Qualifying Examination (EQE). In particular, all relevant topics relating to the EPC, the PCT and the Paris Convention (PC) are listed in this book in self-contained tables (Part C) with reference to the EPO Guidelines and/or the PCT Applicant's Guide as well as to other reference material as published by the European Patent Office and the International Bureau (IB) of WIPO. Last but not least, the relevant decisions/opinions of the Enlarged Board of Appeal are indicated in the tables.

Candidates preparing for the legal and claim-analysis questions of the Pre-Exam or for the legal questions in Paper D of the EQE have to study and internalise the topics. The time schedule provided in Part B of this book allows a structured study of the topics in regular time intervals.

#### 1.1.1 Tables with key topics

Part B provides an overview of the twelve main topics.

For each of these key topics, Part C gives structured tables detailing all the relevant issues. In the first column of each table the topic at hand is listed. In the second column, the relevant Article and/or Rule is indicated. In the third column, the most relevant references to the *Guidelines for Examination in the EPO* (GL/EPO) are given for the EPC-related subjects, whereas references to the *Guidelines for Search and Examination at the EPO as PCT Authority* (GL/PCT-EPO) and the *PCT Applicant's Guide – International Phase* (AG-IP) and *National Phase* (AG-NP) are given for the PCT-related subjects.

In the last column of the tables in Part C, reference is given to other relevant entries, such as *e.g.*, to the *Rules relating to Fees* and the *Euro-PCT Guide*. If the last column refers to a decision or an opinion of the Enlarged Board of Appeal, we recommend reading at least the headnote of the decision/opinion. It may be wise to read some of the decisions/opinions of the Enlarged Board entirely, to become familiar with the manner of reasoning.

For example, the topic of § 6.1.4 in Part C is "*Filing of a European patent application*" followed by a main reference: "*Art. 75 and Rule 35 EPC*". Read the text of Art. 75 and Rule 35 EPC and the indicated portions of the *Guidelines for Examination in the EPO* (GL/EPO) and, if desired, the related commentary in one of the reference books.

As a further example, the topic of § 11.9 in Part C is “*The EPO acting as International Preliminary Examining Authority*” followed by a main reference: “*Art. 152 EPC*”. Read the text of Art. 152 EPC and the indicated portions of the *Guidelines for Search and Examination at the EPO as PCT Authority* (GL/PCT-EPO). In the last column the corresponding references to the PCT Rules are indicated as well as finding places in the *Euro-PCT Guide* (EPG/EPO).

Many cross-references are included in the tables in Part C, labelled as “see § x” or “also see § x”. If in a table, an Article or Rule is placed between [...], it means that the issue is mentioned here, because it fits in the structure of the current topic, but that the item is treated elsewhere in more detail.

References to T- and J-decisions have not been included in the tables (occasionally, a landmark decision is indicated between parentheses). In the Guidelines, the relevant decisions of the boards of appeal are indicated. In addition, references to *Decisions of the Administrative Council* and *Decisions of the President of the EPO* are only included in the tables if the decision was recently issued and has not yet been included in the Guidelines.

## **1.2 European Qualifying Examination**

### **1.2.1 Pre-Examination**

The Pre-examination is the entrance exam of the European Qualifying Examination (EQE). Only after passing the Pre-Exam, a candidate is allowed to enrol for the Main Examination: EQE Papers A, B, C and D.

In the Pre-Exam, a candidate is required to answer legal questions and to answer questions relating to an invention and patent claims which have been drafted for that invention. The candidate must show his/her ability to assess the influence of relevant prior-art documents on the claims.

### **1.2.2 EQE Paper D**

The purpose of EQE Paper D is to assess the ability of a candidate to answer legal questions and to respond to a legal inquiry of a client.

Part I of Paper D comprises a set of five to seven questions relating to different areas of the legal knowledge of the candidates. Part II of Paper D comprises an enquiry from a client requiring an answer in the form of a legal opinion.

### **1.2.3 Preparation for sitting the EQE**

Candidates intending to enrol for the European qualifying examination for the first time must register shortly after they have commenced their professional activity.

Candidates preparing for the EQE must familiarize themselves with the study material listed in Rule 22(1) of the Implementing Provisions to the Regulation on the European Qualifying Examination for professional representatives (IPREE).

To successfully pass the Pre-Exam and Paper D at least 350 hours of personal study is needed. Therefore, candidates need to start to prepare in good time: approximately six to ten months before the examination.

Candidates preparing for the legal questions of the Pre-Exam and for Paper D should, among others:

- read/study the EPC and the PCT;
- study the *Official Journal of the EPO* (last two years);
- read/study the relevant decisions/opinion of the Enlarged Board of Appeal, in particular the ones relating to the interpretation of the European Patent Convention;
- study the *Guidelines for Examination in the EPO* and the *Guidelines for Search and Examination at the EPO as PCT Authority*;
- familiarize themselves with the *Ancillary Regulations to the EPC* and with the booklet *National Law relating to the EPC*;
- study the *PCT Applicant's Guide – International Phase* and *PCT Applicant's Guide – National Phase*, and the *Practical Advices* in recent *PCT Newsletters*;
- choose study books and other reference material to be used during the examination (see § 2.5 and 2.6);
- be familiar with the EPO forms (what they contain and what information is required to complete them);
- learn or create a personal strategy for tackling the legal questions (also see § 2.5 and 2.6).

#### 1.2.4 Questions and answers

After having studied a topic, the acquired knowledge has to be practiced by making questions. A number of books with questions and answers for the Pre-Exam and for EQE Paper D are listed in § 2.5.3 and 2.6.3, respectively.

While answering question, the goal should be to use the structured topics in this book combined with the EPO Guidelines and PCT Applicant's Guide: each having their own keyword index. By practicing many questions, the candidates learn how to find things in the relevant texts. If problems are encountered in answering questions, the topic should be re-studied.

Yet another indispensable part of the preparation for the Pre-Exam and Paper D is practicing the legal questions of previous examinations, which can be downloaded on the EQE website (see § 2.5.3 and 2.6.3, respectively).

Please be aware, that the *Implementing Regulations to the EPC* (EPC Rules) and the *Regulations under the PCT* (PCT Rules) are regularly amended. In addition, the *Guidelines for Examination in the EPO* are updated annually. When practicing legal questions of older editions of the examinations, a question and/or an answer may no longer be correct and/or the finding place in the EPO Guidelines may have moved to another location.