

Question 1: B

For the purpose of obtaining a date of filing it is not necessary for the European application to contain any claims. The presence of at least one claim is nonetheless a requirement for a European application according to Art. 78(1)(c), but a set of claims can be provided after the date of filing according to the procedure described below. The EPO will check whether at least one claim is present in the application. If this is not the case, the EPO will issue an invitation under Rule 58 inviting the applicant to file one or more claims within a period of two months.

In the case of a European patent application filed directly at the EPO, it is not possible for the applicant to amend the application before receiving the European search report (Rule 137(1)).

After receiving the European search report and the search opinion, applicants must respond to the search opinion (see B-XI, 8) and may amend the description, claims and drawings of their own volition, provided that the amendment and their reply are filed within the time limit for responding to the search opinion.

It is possible in reply to the communication under Rule 71(3) to file a request for amendments of the claims within the period specified in Rule 71(6).

Question 2: B

Art. 121 (4) Further processing shall be ruled out in respect of the time limits in Article 87, paragraph 1, **Article 108 (Notice of Appeal)** and Article 112a, paragraph 4, as well as the **time limits for requesting further processing** or re-establishment of rights. The Implementing Regulations may rule out further processing for other time limits.

Rule 135 (2) Further processing shall be ruled out in respect of the periods referred to in Article 121, paragraph 4, and of the periods under Rule 6, paragraph 1, Rule 16, paragraph 1(a), Rule 31, paragraph 2, Rule 36, paragraph 2, Rule 40, paragraph 3, Rule 51, paragraphs 2 to 5, Rule 52, paragraphs 2 and 3, Rules 55, 56, Rule 56a, paragraphs 1 and 3 to 7, **Rules 58, 59 (Deficiencies in claiming priority)**, 62a, 63, 64, Rule 112, paragraph 2, and Rule 164, paragraphs 1 and 2.

Question 3: B

Article 99 (1) Within nine months of the publication of the mention of grant of the European patent in the European patent bulletin, any person may give notice to the European patent office of opposition to that patent, in accordance with the implementing regulations.

26 February + 9 months +1 day since 26 November is a Sunday => 27 November

Question 4: C

Art. 11 EPC

The examination fee provided for in Article 94, paragraph 1, of the Convention shall be refunded:

(a) in full if the European patent application is withdrawn, refused or deemed to be withdrawn before the substantive examination has begun;

(b) at a rate of 50% if the European patent application is withdrawn after substantive examination has begun and

- before expiry of the time limit for replying to the first invitation under Article 94, paragraph 3, of the Convention issued by the Examining Division proper or,

- if no such invitation has been issued by the Examining Division, before the date of the communication under Rule 71, paragraph 3, of the Convention.

Question 5: D

Statement I is incorrect: comments to the Search opinion are only mandatory if the search opinion is negative (R.70a). Furthermore, it might be possible that examination is already requested. In that case you have to indicate that you wish to proceed further (R.70(2))

Statement II is incorrect: this period becomes effective after the A1 or A2 publication. An A3 publication always follows after an A2 publication, which means that the period has already begun.

Question 6: B

Any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. (Art. 65(1) EPC).

National Law, Chapter IV: Netherlands

(2) A translation of the claims into Dutch must be supplied under the conditions provided for in Art. 65(1) EPC. No further requirements if the European patent has been granted in English.

(4): Period for filing the translation: 3 months after the date on which the mention of the grant, maintenance in amended form or limitation of the European patent is published in the European Patent Bulletin.

(5): a Special Fee of EUR 25 is payable within the period pursuant to section 4.

National Law, Chapter IV: Belgium

- (2) No translation required under Art. 65(1) EPC.
- (4) Period for filing the translation: n/a
- (5) Special fee payable? n/a

(9) Special features: For European patents granted in English in respect of which the mention of grant, maintenance in amended form or limitation is published in the European Patent Bulletin before 1 January 2017, a translation of the specification into Dutch, French or German must still be supplied in accordance with Article 65(1) EPC.

National Law, Chapter IV: Germany

- (2) No translation required under Art. 65(1) EPC.
- (4) Period for filing the translation: n/a
- (5) Special fee payable? n/a

Question 7: D

A European patent application shall be subject to the payment of the filing fee and the search fee. If the filing fee or the search fee is not paid in due time, the application shall be deemed to be withdrawn (Art. 78(2) EPC).

If the European patent application has been accorded a date of filing, the European Patent Office shall examine whether the filing fee and the search fee have been paid in accordance with Rule 38 (R.57(e) EPC. If not complied with the requirements of R.57(e) EPC the application is deemed to be withdrawn. There will be no invitation to correct the deficiencies. Hence, statement I is incorrect.

A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. If a required translation is not filed in due time, the application shall be deemed to be withdrawn (Art. 14(2) EPC).

If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with the Implementing Regulations, whether the requirements in Art. 14(2) have been satisfied (Art. 90(3) EPC). Where the European Patent Office in carrying out the examination under Art. 90(3) EPC notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them.

The European Patent Office shall examine whether a translation of the application required under Art. 14(2) has been filed in due time (R.57(a) EPC). If the European patent application does not comply with the requirements of R.57(a), the European Patent Office shall inform the applicant accordingly and invite him to correct the deficiencies noted within two months (R.58). Hence, statement II is incorrect.

Question 8: B

Anyone can file an application for a European Union trademark (EUTM). However, once the EU trademark application has been filed, any applicant who does not have their domicile or principal place of business or a real and effective industrial or commercial establishment within the EEA (European Economic Area) will have to appoint a representative before or after receiving a formal deficiency letter concerning the lack of representation before the Office.

Art. 119 Lid 2 General principles of representation - REGULATION (EU) 2017/1001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32017R1001&from=EN#d1e4841-1-1>

Question 9: A

There is no substantive examination for a Benelux design application, once all formal requirements are met, the design will be registered

There is no opposition procedure available for designs in the Benelux

Title II Designs Article 3.11 Registration, Benelux Convention on intellectual property

Question 10: B

A design can be renewed after 5 years for period of 5 year, up to a maximum of 25 years, trademarks can be renewed after 10 years for an unlimited period of time

Design registrations can be renewed every 5 years up to a maximum of 25 years, trademark registrations can be renewed for periods of 10 years undefinably

Chapter II Filing, registration and renewal Art. 2.9 Lid 3 and Title III s Design Art. 3.14 Lid 2 Benelux Convention on Intellectual Property

Question 11: D

At Benelux Office for Intellectual Property, you can apply for protection of trademarks, designs and ideas (i-DEPOT) but not domains.

ICANN is the Internet Corporation for Assigned Names and Numbers, and is a non-profit organization responsible for coordinating the maintenance and procedures of several databases related to namespaces and numerical spaces of the internet.

SIDN is an organization who defines the quality and security criteria to be applied to a .NL domain. SIDN could act as registrar for a top-level domain, which is not the case in this question.

A registrar is a company that manages the reservation of an internet domain.

Question 12: B

If an error has been made in publishing the information in a trademark application, as a result of which incorrect information could have been provided to interested parties which would affect their decision whether or not to file an opposition against the relevant trademark, the Office will correct the published information. This means that the period for filing an opposition against the trademark application will recommence.

Rule 1.5 Lid 2 BOIP Implementing regulations

Question 13: B

Rule 17.1 PCT

Where the priority of one or more earlier applications is claimed in the international application, the applicant must provide certified copies of each earlier national application (the “priority document”)

As Ireland is not a WIPO DAS Depositing Office, only an Accessing Office, it will not be able to make priority documents available to the System. Therefore it is not possible to furnish the priority document in the international application using a WIPO Digital Access Service code [WIPO DAS Participating Offices]

Question 14: C

Rule 80.6 PCT

Where a period starts on the day of the date of a document or letter emanating from a national Office or intergovernmental organization, any interested party may prove that the said document or letter was mailed on a day later than the date it bears, in which case the date of actual mailing shall, for the purposes of computing the period, be considered to be the date on which the period starts. Irrespective of the date on which such a document or letter was mailed, if the applicant offers to the national Office or intergovernmental organization evidence which satisfies the national Office or intergovernmental organization that the document or letter was received more than seven days after the date it bears, the national Office or intergovernmental organization shall treat the period starting from the date of the document or letter as expiring later by an additional number of days which is equal to the number of days which the document or letter was received later than seven days after the date it bears.

CALCULATION

- | | |
|----------------------------|---|
| 1= date 2 month deadline: | Date of communication 29 March 2023 + 2 months = Mon 29 May 2023 |
| 2= date deemed notified: | Date of communication 29 March 2023 + 7 days = Wed 05 April 2023 |
| 3= date actual receipt: | Date of communication 29 March 2023 + actual receipt date --> 12 days = Mon 10 April 2023 |
| 4= No of days difference: | [Outcome 3] — [Outcome 2] = 5 days |
| 5= date extended deadline: | [Outcome 1] + [Outcome 4] = Sat 03 June 2023 --> to next working day = Mon 05 June 2023 |

Question 15: C

Article 11(1) PCT

Filing date requirements

- (1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:
 - (i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,
 - (ii) the international application is in the prescribed language,
 - (iii) the international application contains at least the following elements:
 - (a) an indication that it is intended as an international application,
 - (b) the designation of at least one Contracting State,
 - (c) name of the applicant(s), as prescribed (contact details alone are not sufficient (different from EP!))
 - (d) a part which on the face of it appears to be a description,
 - (e) a part which on the face of it appears to be a claim or claims.

Question 16: A

1. Transmittal fee [R. 14 PCT]
2. Search fee [R. 16 PCT]
3. International filing fee [R. 15 PCT] incl. page fee [R. 15.2(a) PCT] & Schedule of Fees including a page fee from 31st page onwards (different from EPC = 36th)
 - description, claims, any drawings
 - one page for the abstract
 - in the language of filing
 - also count request form (with declarations) [Form PCT/IB/101, Box IX]

Fees as applicable from 01-04-2023

Transmittal fee	EUR 145
Search fee ISA/EP	EUR 1.775
International filing fee	EUR 1.378 fixed amount for first 30 pages
Page fee 10 pages x EUR 16	EUR 160
Request + Declarations	4
Description	22
Claims	6
Abstract	1
Drawings	7
	--- +
Total # pages	40
Electronic filing reduction	EUR -207
	----- +
Total fees payable	EUR 3.251

Question 17: B

AG-NP US

Mandatory acts before expiry 30-month period:

- File a translation of the International application into English (may be filed on invitation if basic national fee/copy IA were paid/received $\leq 30m$)
- File a copy of the International application if it is not yet published
- Payment of the basic national fee (time limit may not be extended)
- Payment of the search fee (may be paid on invitation if basic national fee/copy IA were paid/received $\leq 30m$ provided a surcharge fee is paid)

- Payment of the examination fee (may be paid on invitation if basic national fee/copy IA were paid/received $\leq 30m$ provided a surcharge fee is paid)
- File an Oath or declaration of inventorship from the inventor(s) (if not filed during international phase or at entry, may be postponed until issue fee payment if an Application Data Sheet (ADS) is filed at entry)

Question 18: D

Regulation (EC) No 469/2009, Article 7.1 & 7.2

1. The application for a certificate shall be lodged within six months of the date on which the authorisation referred to in Article 3(b) to place the product on the market as a medicinal product was granted
2. Notwithstanding paragraph 1, where the authorisation to place the product on the market is granted before the basic patent is granted, the application for a certificate shall be lodged within six months of the date on which the patent is granted

19 May 2023 (= date of grant + 6 months = Thu 18 May 2023 on which the Netherlands Patent Office is closed so therefore to the next working day = Fri 19 May 2023)

Question 19: B

ROW. 32

- 1 The applicant shall request the Office within 13 months at the latest after:
 - a. the date of filing referred to in Article 29, paragraph 1, or,
 - b. in the case of an application for which one or more rights of priority have been claimed, the earliest date of priority, prior to the grant of the patent, to conduct an examination into the state of the art relating to the subject matter of the patent application [...]

With the request, an amount is paid to the Office [...]. The request will not be processed until this amount has been received by the Office.

- 2 In the case of a divisional application [...], the request [...] shall be made within 13 months of the date of filing or earliest priority of the original application referred to in paragraph 1 or, if that is later, within 2 months. after the filing of the divisional application.
- 3 If the applicant has not requested the examination [...] in time or the amount referred to in paragraph 1 has not been received by the Office, the Office shall decide not to process the application. The Office shall notify the applicant of its decision as soon as possible.

If no request is filed letter L258 is sent by OCNL.

30 May 2023 (= priority date + 13 months = Mon 29 May 2023 (closed) => to next working day = Tue 30 May 2023)

Question 20: A

National Law table, Chapter IV: NL - Translation requirements after grant

2. Translation requirements

A translation of the claims into Dutch must be supplied under the conditions provided for in Art. 65(1) EPC.

No further requirements if the European patent has been granted in English.

If the European patent has been granted in French or German, a translation into English must be supplied under the conditions provided for in Art. 65(1) EPC. The translation may also be supplied in Dutch.

Case 1 (13 points)

a.

BOIP, countries covered BE, LU, NL

EUIPO, countries covered EU member states

b.

BOIP only accepts applications that are filed using the BOIP webportal

BOIP web portal: Afschaffing aanvragen op papier | Benelux-Bureau voor de Intellectuele Eigendom (boip.int)

Beleid | Benelux-Bureau voor de Intellectuele Eigendom (boip.int)

a. What requirements have to be fulfilled for the application to obtain a filing date?

c.

R 1.3(1) BCIP requirements for a filing date: payment of fee and requirements of R 1.1 (1)(a) name, address, (b) representation of mark, (c) indication of goods and services, (d) indication of type of mark

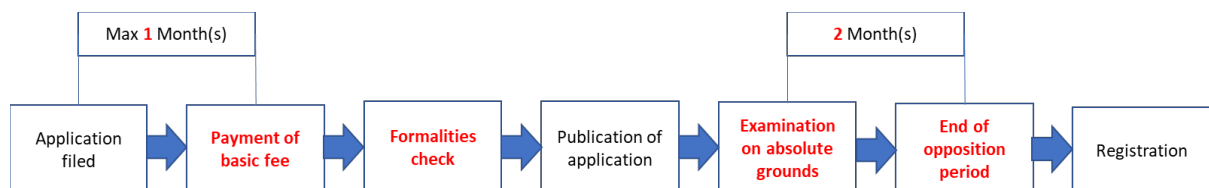
https://wetten.overheid.nl/BWBV0001716/2020-01-01#Verdrag_Verdragtekst_1_TiteldeelIII_Hoofdstuk2_Artikel2.5

https://wetten.overheid.nl/BWBV0001716/2020-01-01#Verdrag_Verdragtekst_3_TiteldeelI_Hoofdstuk1_Artikel1.1

5 requirements

1. Name and address of applicant, in case applicant is a legal entity including its legal form
2. Representation of the mark
3. Indication of goods and services for which the mark is intended
4. Indication whether the mark is a word mark, a figurative mark, a combined word-figurative, a shape mark or another type of mark. (In the latter case, it must also be indicated which type of mark it concerns)
5. Payment of basic fee for filing within 1 month after requirements 1 – 4 have been fulfilled

d.



See Merk: van aanvraag tot registratie | Benelux-Bureau voor de Intellectuele Eigendom (boip.int)

e.

1. National trademark registrations in all countries concerned
 2. EU trademark registration, national registrations in all other countries
 3. EU trademark registration, International Registration designating US and IN, national registration AR
 4. IR trademark registration designating EU, US, IN, national registration AR
- f.

These should be filed within 6 months from the date of filing of the BX registration. It should concern the same applicant, the same sign, and the same goods and services.

https://wetten.overheid.nl/BWBV0006163/1948-08-05#Verdrag_2_Verdragtekst_Artikel4

Art. 4 (C)(1) UvP: 6 same applicant, the same sign, and the same goods and services

g.

BOIP

IR needs to be based on earlier filed application, IR should be filed at IP Office where earlier filed application was filed (Office of Origin). Earlier filed application is BX registration, BOIP is Office of Origin, IR should be filed at BOIP

https://wetten.overheid.nl/BWBV0001716/2020-01-01#Verdrag_Verdragtekst_3_Titeldeell_Hoofdstuk2_Artikel1.10

Publications: Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol (wipo.int); Section 153: Madrid Guide

h.

No, refusal by USPTO has only effect for US.

section 392 Madrid Guide, Art. 4(1)(a) M Prot (“(...) effect shall be the same as if the mark had been deposited direct with the Office of that Contracting Party (...).” As it has the same effect as a trademark application filed directly at the USPTO, also a refusal by the USPTO will have the same effect as the refusal of a trademark application filed directly at the USPTO, i.e. only effect for US.

Case 2 (14 points)

a.

Yes

Application was filed within 12 months. Declaration of priority within 16 months from priority date (Rule 52 EPC)

b.

File declaration of priority (Art. 88(1), Rule 52(1) EPC), time limit is 16 months from earliest priority date, i.e. 6 July 2019 (which is a Saturday, so 8 July 2019) (Rule 52 (2) EPC)

File a certified copy of the previous application (Rule 53(1) EPC), time limit is also 16 months from earliest priority date, i.e. 6 July 2019 (which is a Saturday, so 8 July 2019) (Rule 53 (1) EPC)

DAS not possible, CA as of 1 April 2019

c.

EPO will send invitation to file the copy of the results of a search.

If search results or statement that results are not available are not filed, application is deemed withdrawn.

Further processing is possible.

Copy of search results of priority application (Rule 141(1) EPC), time limit is "without delay after such results have been made available to the applicant (Rule 141(1) EPC).

Where the EPO notes, at the time the examining division assumes responsibility, that a copy of the results of a search on the claimed priority or priorities as referred to in Rule 141(1) has not been filed by the applicant and is not deemed to be duly filed under Rule 141(2) (see A-III, 6.12), it invites applicants to file, within a period of two months, the copy or a statement that the results of the search referred to in Rule 141(1) are not available to them. Rule 70b(1)

Failure to reply to this invitation in due time results in the application being deemed to be withdrawn. Further processing is available for this loss of rights (Rule 70b(2)).

d.

Yes

last day is the last day for filing an appeal / up until expiry of the time limit for filing an appeal, which is two months after notification of the Decision, i.e. 20 April 2022.

e.

Filing fee (one month from filing; Rule 36(3) EPC),

search fee (one month from filing; Rule 36(3) EPC),

renewal fee for third year (due on filing, can be paid within 4 months; Rule 51(3) EPC),

renewal fee for fourth year (due 31 March 2022; Rule 51(3) EPC),

designation fee (six months from of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the divisional application; Rule 36(4) EPC),

examination fee (six months from of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the divisional application; Rule 70 EPC).

f.

Notice of Appeal

grounds of Appeal

Appeal fee

Art. 108 EPC: Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within two months of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid. Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed

g.

Filing translations of claims into other two languages of the EPO

payment of the fee for grant (and optionally additional claims fees)

time limit is four months (Rule 71(3) EPC)

h.

up to (but not including) the date that the European Patent Bulletin mentions the grant of the patent, i.e. 20 June 2023.

Art. 76 EPC, Rule 36 EPC. Guidelines for Examination A-IV, 1.1.1.

Case 3 (13 points)

a.

Yes, Venezuela is a member of the Paris Convention.

b.

MX (PCT annex C); IB (PCT Annex C)

c.

No, where joint applicants file an international application and claim the priority of an earlier application, it is sufficient that one of them is the applicant who filed the earlier application or that applicant's successor in title. **1 pt**

d.

No, your office right does not have the right to practice before the national Office of the Contracting State of which (any of) the applicant(s) is a resident or national (MX), and thus does not have the right to practice before the International Bureau as receiving Office (RO/IB).

PCT Annex C MX; PCT Rule 83.1bis (a); PCT guidelines Chapter VI: Article 14 C

e.

Yes.

EPO is competent ISA

Any International Searching Authority(ies) which would have been competent if the international application had been filed with any other receiving Office of, or acting for, the PCT Contracting State of which the applicant (or, if there is more than one applicant, at least one of the applicants) is a national or resident.

PCT Annex C IB; PCT Annex C MX

f.

No, any disclosure of sequences in an international application filed on or after 1 July 2022 must comply with ST.26, even if the priority application contains a ST.25 sequence listing. No conversion is possible if sequence listing is filed after the filing date of the application.

g.

Yes, late furnishing fee of EUR 255.

PCT Annex D EP, PCT Rule 13ter.1c

h.

Priority date: 17 May 2022; Publication date: + 18 months = 17 November 2023 (Friday). Publication are on Thursdays, so shifts to 23 November 2023. Technical preparations are ready 15 days before publication date (= 8 November 2023), you have to file the request for change 1 day before, so ultimately on 7 November 2023 (Tuesday). (PCT 9.014)

i.

18 March 2024

Three months from the date of transmittal to the applicant of the international search report, or 22 months from the priority date, whichever expires later

(PCT Rule 54bis)

17 May 2022 + 22 months = 17 March 2024 (Sunday) > 18 March 2024.

14 December 2023 + 3 months = 14 March 2024 (Thursday).

j.

None, only applicants who are resident or national of a PCT contracting state can file a Demand. Venezuela is no contracting state of the PCT. (Article 31(2))