

### **Question 1 : D**

The Netherlands Patent Office will send an invitation to restore the deficiency within a fixed term.  
Art 30.1 ROW

### **Question 2 : B**

31 August 2018

The first payment is due at the start of the 4th year after the application has been filed. The last day upon which the annual fee (without increase) can be paid is the last day of the month in which the patent application has been filed.

Art 61 ROW

### **Question 3 : D**

A Court of Justice (“ Arrondissementsrechtbank)

### **Question 4 : C**

File the English translation of the description and the Dutch translation of the claims.

For validation of the European Patent in the Netherlands, it is required to supply the translation of claims into Dutch within three months from the date of publication of the European Patent. However, if the patent was filed in the French or the German language, an English or Dutch translation of the description must also be filed.

### **Question 5 : B**

You can still enter the national phase in China and India and regional phase in Europe and EurAsia. China is only possible upon payment of an additional fee for late entry.

Today is 31 May 2018

27 November 2015 + 30 months = 27 May 2018

27 November 2015 + 31 months = 27 June 2018

China = 30 months or 32 months with payment of additional fee

India = 31 months

EP = 31 months

EA = 31 months

### **Question 6 : A**

Payment of any fee is not required to obtain a filing date

<http://www.wipo.int/pct/en/appguide/text.jsp?page=ip06.html>

### **Question 7 : C**

4 June 2018

The opportunity to make amendments under Article 19 is available after the applicant has received the international search report and the written opinion of the International Search Authority, and remains available until the end of 16 months from the priority date or two months after the transmittal (that is, the date of mailing) of that report and opinion, whichever expires later.

### **Question 8 : C**

Only statement II is correct.

AR is a member of Paris Convention but not a member of PCT

### **Question 9 : D**

Statement I and II are both correct.

The patent application may be written and filed in any language at the Netherlands Patent Office.

Languages accepted for international search: English, French, German and, where the international application is filed with the Netherlands Patent Office, Dutch

### **Question 10 : C**

Both applications will be registered / granted even when the appearance / technical invention is already known.

Dutch Patents Act, Chapter I, Article 2 and Chapter II, Article 31 + website Dutch Patent Office: Inventions that are new, that involve inventive step and that are susceptible of industrial application shall be patentable. Under the Patent Act 1995, patents are, after all granted in advance without an examination (only formal examination applicable), and this is therefore the case even if one can deduct from the report that the nature of the patent is neither new nor inventive.

+ Implementing Regulations under the Benelux Convention on Intellectual Property (trademarks and designs) Chapter 3, article 3.11, website BOIP: BOIP does not investigate whether your design is new and has individual character or whether it meets the other requirements to qualify as a design.

### **Question 11 : A**

All signs can be registered as a trademark. I, II and III concern actual Benelux/EU trademark registrations. Shape marks, colour marks and device marks can be registered as a trademark. The deletion of the requirement of graphic representation from EU trademark law, has made it possible to register sounds (which can't be graphically represented, can't be grasped on a staff)

### **Question 12 : B**

A domain name registration in the Netherlands (.nl) needs to be renewed every year.

### **Question 13 : D**

Both statements are wrong.

Website EUIPO

I.

When the language of the trademark application is not one of EUIPO's five official languages (English, French, German, Italian and Spanish), the applicant must accept the translation provided by the EUIPO in a second language selected from one of the accepted five official languages

II.

Although some applications may comply with the conditions of Fast Track at the time of filing, they could be lost later. For example, there could be a deficiency, in that the trade mark you would like to register is not distinctive enough. If your application loses any Fast Track conditions, you will be informed in writing.

### **Question 14 : B**

Statement I is incorrect: A third party filing observations concerning the patentability of an application or patent is not a party to the proceedings (Art 115 EPC); applicant or proprietor may respond to third party observations but is not obliged (Rule 114(2) EPC)

Statement II is correct: Third party observations can be filed anonymously (OJ 2011, 420 and Guidelines for Examination E-VI, 3); they shall be filed in writing and must include a statement of the grounds on which they are based (Rule 114(1) EPC)

### **Question 15 : D**

*Deficiencies that can be remedied after the period for filing a Notice of Opposition has expired:*

- Signature by the opponent/representative is missing (upon invitation by the EPO, Rule 86 and R.50(3) EPC)
- The opponent has not indicated the address of his residence nor the address of place of business (upon invitation by the EPO, Rule 76(2)(a), Rule 41(2)(c), Rule 77(2) EPC)
- The Notice of Opposition does not contain the nationality of the opponent (upon invitation by the EPO, Rule 76(2)(a), Rule 41(2)(c), Rule 77(2) EPC)
- The title of the opposed patent has not been indicated (upon invitation by the EPO within a period to be specified, Rule 76(2)(b), Rule 77(2) EPC)
- The Notice does not contain the name of the opponent (upon invitation by the EPO, Rule 76(2)(a), Rule 41(2)(c), Rule 77(2) EPC)
- The Notice does not contain the number of the European patent which is opposed (upon invitation by the EPO, Rule 76(2)(b), Rule 77(2) EPC)

*Deficiencies that cannot be remedied after the period for filing a Notice of Opposition has expired:*

- Payment of the Opposition fee was not made (Art. 99(1) EPC)

- The indication of facts and evidence in support of the grounds is missing (Rule 76(2)(c) EPC)
- The Notice of Opposition contains no statement of the grounds on which the opposition is based (Rule 76(2)(c) EPC)
- Opposed patent was not sufficiently identified (Rule 77 (1) EPC)

### **Question 16 : B**

Answer A: false, the 10-day notification period is applicable

Answer B: correct, 15 Dec 2017+10 days+4months=25 Apr 2018 (Wednesday)

Answer C: false, 25th and 26th December are not extended as the non-working day extension is not applicable to the 10-day notification period

Answer D: false, 25th and 26th December are not extended as the non-working day extension is not applicable to the 10-day notification period

### **Question 17 : C**

Answer A: false, filing of application claiming priority within 12 months from the earlier application is not the only criterion , a time limit for filing a declaration of priority of 16 months from earliest priority date is applicable (Rule 52(2) EPC)

Answer B: false, it is not required to claim priority within 12 months

Answer C: correct, time limit is 16 months from earliest priority, 15 August 2016 →15 December 2017

Answer D: false, addition of priority claim is possible within 16 months from the earliest priority date claimed, thus possible until 15 December 2017

### **Question 18 : C**

Statement A: false, correct date is 5 July 2018 (10-day notification period is applicable)

Statement B: false, notice of appeal should be filed within two months from the notification of the decision, statement of ground within four months (Art. 108 EPC)

Statement B: correct, R. 101(1) EPC

Statement D: false, omission of address of opponent can be corrected upon invitation by the EPO (Rule 101(2) EPC)

### **Question 19 : D**

Answer A: false, further processing fee for payment of examination fee and for filing the request are missing

Answer B: false, further processing fee for payment of examination fee missing

Answer C: false, incorrect amount for further processing fee for payment of examination fee

Answer D: correct, examination fee (€ 1635) + further processing fee for payment of examination fee (€ 817,50) + further processing fee for filing the request (€ 255)

## Question 20 : A

I is correct: both statements are correct, renewal fee for the coming year is due on the last day of the month containing the anniversary of the date of filing, i.e. on 31 August 2018 (Art. 86(1) + Rule 51(1) EPC); renewal fees already due for an earlier application at the date of filing a divisional application are due on its filing, i.e. on 26 September 2018 (Rule 51(3) EPC)

II is incorrect: 1<sup>st</sup> statement is correct but 2<sup>nd</sup> statement is false, the renewal fee with an additional fee may still be paid within six months of the due date, i.e. until 28 February 2019 (Rule 51(2) EPC); Renewal fees due for the earlier application are due on the filing date of divisional and may be paid within four months from the due date without additional fee, i.e. until 26 January 2019 (Rule 51(3) EPC)

## CASE 1

- A. No. Language of the specification is not important. Applicant and inventors are IT national residents. PCT annex B  
Competent receiving Office for nationals and residents of the Netherlands: Netherlands Patent Office, European Patent Office (EPO) or International Bureau of WIPO (IB), at the choice of the applicant (see Annex C)
- B. Yes. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union. The right to claim priority must be possessed by the applicant of the Later application at the time of filing in order to enable the grant of a patent with a valid priority claim. The priority right cannot typically be acquired retroactively to allow a valid patent to be granted in respect of a Later application with its priority claim intact.
- C. 1 month after invitation. The translation of the international application must be furnished to the receiving Office within one month from the date on which the international application was received by that Office. Where, by the time the receiving Office notifies the applicant of the international application number and international filing date, the applicant has not furnished the required translation, the receiving Office will, preferably together with that notification, invite the applicant to furnish the required translation either within the time limit of one month from the date on which the international application was received by the receiving Office.
- D. Yes. Any person who can act as an agent before the Office which acts as receiving Office (Annex C) may be appointed as an agent for any international application filed with that Office.
- E. International Bureau (IB) and Netherlands Patent Office (NL).  
The applicant may withdraw a priority claim at any time prior to the expiration of 30 months from the priority date. Withdrawal shall be effective on receipt of a notice to the International Bureau or to the receiving Office. (Rule 90bis3)
- F. International application was filed 30 November 2016 and priority has been withdrawn  
EPO 1 July 2019  
China 30 May 2019  
USA 30 May 2019  
Japan 30 May 2019
- G. USA (English), China (Chinese) and Japan (Japanese)



## CASE 2

A.

An application must be filed with the French Patent Office (INPI- Institut National de la Propriété Industrielle) if the applicant has his place of residence or business in France and is not claiming the priority of an earlier filing in France. In this case priority from a French application is claimed. Therefore, this EP patent application can be filed at the EPO. National law relating to EPC, Chapter II: France.

B.

No fees need to be paid to get a filing date. Guidelines for Examination-Part A, Chapter II, 4.1 Minimum requirements for according a date of filing: (a) an indication that a European patent is sought; (b) information identifying the applicant or allowing the applicant to be contacted; and (c) a description or reference to a single previous application.

C.

The fees that must be paid to let the application proceed to search so that all claims are searched, without incurring surcharges are:

- Filing (on paper): 210€
- Page fees – there are 40 pages, therefore 5 pages additional page fees are due,  $5 \times 15 = 75€$
- Search fee: 1300€
- Claims fees – there are 20 claims, therefore 5 additional claims fees are due-so all claims are searched,  $5 \times 235 = 1175€$

D.

The correct deadline to file copy of the priority document is 15 January 2019, which is counted as follows: 16 months after priority application filing date, which is 15 September 2017 (Rule 53).

E.

If the copy of the priority document has not been filed by the deadline (see point d), the European Patent Office will invite the applicant to provide it within a two-month period under Rule 59. This period can be extended under Rule 132(2), but further processing is ruled out by Rule 135(2). If the applicant fails to provide it within this period, the priority right in question is lost (Art. 90(5)).

F.

All possibilities to speed up the proceedings before the EPO until grant are as follows; see EPO Official Journal from 11 November 2015:

- PACE for Search
- Another PACE request once examination phase starts
- Waive the invitation under Rule 70(2) EPC = indicate to proceed further

## CASE 3

A.

1. ----
2. Filing of opposition
3. Cooling-off period
4. Submitting arguments by opponent
5. Requesting proof of use by defendant
6. Submitting proof of use by opponent
7. Defendant responds to proof of use and arguments
8. Decision on opposition by BOIP
9. Appeal

B.

Yes

Motivation:

A licensee may act as the opponent if the trademark proprietor authorises the licensee to act as such. In that case it should be stated on the form that the opponent is **acting in the capacity of licensee of the earlier trademark**. The licence must be entered in the register. Should this not be the case, the Office will grant a time limit of two weeks for the purpose of regularisation (see Section 5.4 et seq Provisionally admissible opposition). In addition, documents must be submitted evidencing the licensee's authority. If these documents have not been submitted together with the opposition forms, this will not affect the admissibility of the opposition. However, the Office will grant a time limit of two months for the purpose of regularisation pursuant to Rule 1.19 IR Guidelines for Opposition 4.4.4

C.

The opponent may opt to pay the opposition fees at once or in two instalments. For admissibility purposes, however, 40% of the total fees due must be paid prior to expiry of the opposition period (Rule 1.18(2) IR). The other 60% must be paid no later than before the proceedings actually commence

BOIP – Guidelines for Opposition – 8.1 –

In the event the latter payment is not made, examination of the opposition will be abandoned (Rule 1.19(3) IR, see Section 11.2 Examination abandoned)

D.

If the opposition is based on an application for a Benelux trademark that has not yet been registered, the Office will notify the parties of the commencement as well as the end of the ex officio

suspension. The parties do not need to notify the Office of the registration of the trademark applied for since the Office administers such entries in the Benelux register.

Guidelines for Opposition 9.2.1

E.

The commencement date is set at two months plus one day taking effect from the notification of admissibility

Guidelines for Opposition Article 10.6

F.

June 18, 2018

Suspension at the joint request of the parties will apply for a period of four months i.e. ...., and may be extended by the same period each time. During a suspension period requested jointly by the parties, each party may at any time request that suspension be discontinued (opting out)

Guidelines for Opposition Article 1.26.3

G.

A trademark application will be published if the requirements for determining the filing date have been met and the goods or services have been classified correctly.

Consequently, it is possible to file an opposition against a trademark application, examination of which on absolute grounds has not yet been completed. If a provisional refusal has been issued, this means that the opposition proceedings will be suspended. In the event the provisional refusal is reconsidered (overturned), the opposition proceedings will be resumed and parties will be notified thereof. If the refusal has become final, the opposition proceedings will be closed as they have come to be without cause.

9.2.3 Refusal of the contested sign on absolute grounds

H.

Final – Opposition will be closed