

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

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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

A handwritten signature in black ink, appearing to read 'Roland GROSSENBACHER', with a stylized, flowing script.

Roland GROSSENBACHER

**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 non-active 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 re-appointment 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 quater 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 place in 2011 at the earliest.

**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.