

# Free EQE Webinar Series

## Paper B

20 January 2021

Tutored by Guy Warner (Unilever) & Iain Russell (Russell IP)



Coordinated by Iain Russell (Russell IP) and Guy Warner (Unilever) | Hosted by Russell IP

# INTRODUCTIONS

- Iain Russell, Russell IP & Guy Warner, Unilever

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[guy.warner@unilever.com](mailto:guy.warner@unilever.com)

- Q&A
  - Please ask Questions using the Q&A box

# Tokyo 2020 Olympics officially postponed until 2021



Kelly Cohen  
ESPN

24 Mar, 2020



Never before had the Olympic Games been postponed or canceled for something other than war, but rarely has the world come to a grinding halt the way it has over the novel coronavirus.

# 2020

DELTA PATENTS

HOME PATENTS TRAINING WEBSHOP

EQE A B C D Pre-exam Case Law Unitary Patent Patent Procedure

THURSDAY, 5 MARCH 2020

**BREAKING NEWS - Cancellation of EQE planned 16-19 March 2020 (possibly postponed)**

We have been informed by an EQE candidate that he just received the email below (emphasis added): EQE 2020 is cancelled, or possibly postponed to later this year - to be continued.

From: HelpDesk <[helpdesk@eqe.org](mailto:helpdesk@eqe.org)>  
Sent: donderdag 5 maart 2020 09:10  
To:  
Subject: cancellation of EQE planned 16-19 March 2020

Dear candidate,

In response to the latest developments about the spread of the novel Coronavirus (Covid-19), the Supervisory Board of the European qualifying examination has **decided in line with the EPO's precautionary measures to cancel the EQE planned to take place 16-19 March 2020.**

The Supervisory Board is **currently assessing the feasibility of organising the examination at a later stage during the current year.** We would kindly ask for your understanding that due to the complex logistic arrangements related to the organisation of the EQE, this assessment will require some time. **The Examination Secretariat will revert back to you as soon as there is a decision taken by the Supervisory Board.** Also, please understand that due to the high number of enquiries received, answering individual questions will take more time than usual.

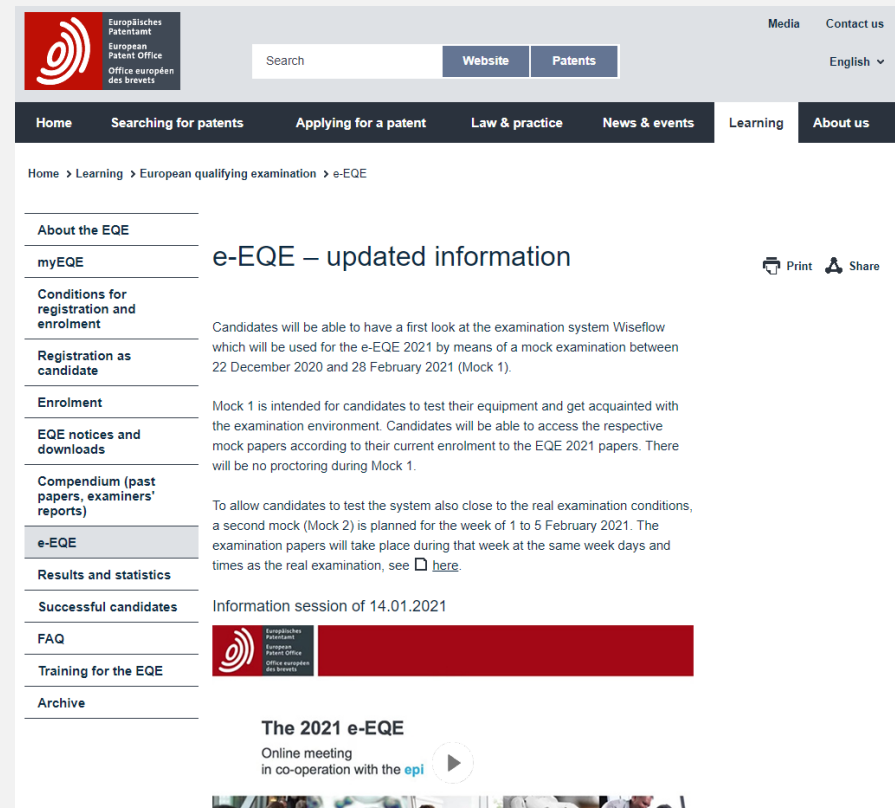
We sincerely regret this highly unsatisfactory situation for all concerned. Further information will follow in due course, in particular related to the reimbursement of the fees.

Best regards

The Examination Secretariat

# E-EQE PLATFORM – “WISEFLOW”

- Resources:
  - EPO – e-EQE – updated information
    - <https://www.epo.org/learning/eqe/e-eqe.html>



The screenshot shows the EPO website page for e-EQE updated information. The page features a navigation menu with options like Home, Searching for patents, Applying for a patent, Law & practice, News & events, Learning, and About us. The main content area is titled "e-EQE – updated information" and includes a sidebar with links to "About the EQE", "myEQE", "Conditions for registration and enrolment", "Registration as candidate", "Enrolment", "EQE notices and downloads", "Compendium (past papers, examiners' reports)", "e-EQE", "Results and statistics", "Successful candidates", "FAQ", "Training for the EQE", and "Archive". The main text describes the examination system Wiseflow and mentions a mock examination between 22 December 2020 and 28 February 2021. It also mentions a second mock (Mock 2) planned for the week of 1 to 5 February 2021. A video player is visible at the bottom of the page, titled "The 2021 e-EQE" and "Online meeting in co-operation with the epi".

# E-EQE PLATFORM – “WISEFLOW”

- WiseFlow:
  - If not already done, you MUST use the system as soon as possible
  - Get your IT support involved
  - Get the hardware you need (webcam, printer, monitor)
  - Do Mock1
  - Amend your exam materials accordingly
  - Prepare for Mock2
  - Do Mock2 (w/c 1 Feb 2021)

**THIS IS IMPERATIVE !!!!**

# E-EQE PLATFORM – “WISEFLOW”

- Resources:
  - Pete Pollard – Salted Patent Blog
    - <https://saltedpatent.blogspot.com/2021/01/e-eqe-webinar-update-14-jan-21-still.html>
    - <http://saltedpatent.blogspot.com/2021/01/eeqe-mock1-experience-tips-b-c.html>
  - Delta Patents
    - <http://eqe-deltapatents.blogspot.com/>
- Thomas Kimpfbeck: e-EQE - How to cope with the new online European Qualification Exam
  - Jan 21, 2021, 4:30 PM - 5:00 PM
  - <https://www.linkedin.com/events/e-eqe-howtocopewiththenewonline6752992674648776704/>

# E-EQE PLATFORM – “WISEFLOW”

## Paper B - 4 March 2021

Paper B will have the same syllabus and character as before. Paper B lasts 3.5 hours.

Candidates will be allowed to print the prior-art documents and the drawing(s), but none of the following: the description and claims of the application, the EPO communication, the client's letter and the amended claims. The documents allowed for printing will be made available approximately ten minutes before the start of the examination.

Part	Content	Time	CET time
Paper B	Full paper	3.5 hours	9.30-13.00 hrs

Candidates may take unscheduled breaks. Further instructions relating to taking unscheduled breaks will be communicated at a later stage. It should be noted, however, that the exam clock will continue to run during unscheduled breaks, i.e. the examination will not be stopped.

- [http://documents.epo.org/projects/babylon/eponot.nsf/0/66EB601464EC7BEC C12586320050164F/\\$FILE/ExamPapers%20EQE%202021\\_EN.pdf](http://documents.epo.org/projects/babylon/eponot.nsf/0/66EB601464EC7BEC C12586320050164F/$FILE/ExamPapers%20EQE%202021_EN.pdf)

# WHAT IS EXPECTED?

- Response to EPO that deals with **all points** raised in Official Communication
- Draft **amended set of claims**
  - Offer applicant broadest scope of protection and that will succeed before EPO
  - Amendment to description not needed
- Provide accompanying letter to EPO
  - Identify all amendments **and** all basis in application as filed
  - Provide **argumentation** re. patentability of amended claims
- Supplementary note
  - If required



# COMPARING PAPERS A & B (AGAIN)

## Paper A

- Freedom to draft
- Novelty + effect is almost enough
- V. little focus on P&S approach

## Paper B

- Restricted to existing application
- **Inventive step arguments** will be needed
- Inventive Step must be supported using **P&S**
- **A123(2)** will apply !

## THE ESSENCE OF PAPER B

This is a very, very formulaic paper.

You have to give the Examiner exactly what they want and need to include **every single step** they are looking for.

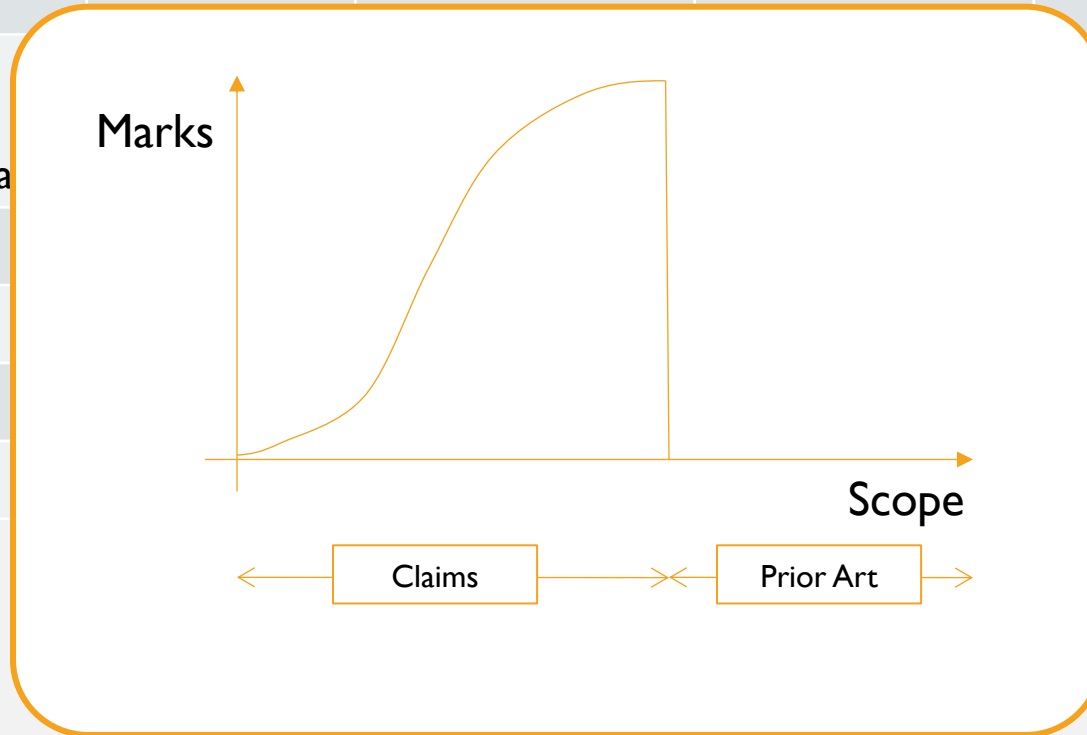
It's not a hard paper.

# ALLOCATION OF MARKS, RECENTLY

	2017	2018	2019	2020
Amended claims	30	30	30	/
Letter to EPO (arguments) Total Marks	70	70	70	/
- Amendments	24	22	18	/
- Clarity	8	6	2	/
- Novelty	6	6	10	/
- Inventive Step	32	36	40	/

# ALLOCATION OF MARKS, RECENTLY

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- Amendments				/
- Clarity				/
- Novelty				/
- Inventive Step				/



## KEY FEATURES OF PAPER B

- Paper B is a much more complex paper than Paper A
  - Not in terms of *analysis* but...
  - ...in terms of **the amount of information that needs to be taken from the paper and restated in the answer in order to demonstrate understanding** and “**turn the handle**”.
- It's actually much more demanding than Paper A
  - It's more like Paper C in that...
  - ...you have to clearly show “**I understand** what you've given me **AND** here it is **on my answer paper**”.
- The analysis techniques are shared between the 2 papers,
  - ...however Paper B demands that candidates clearly demonstrate that they:
    - **understand the information in the Paper; AND**
    - **are using that information in their answers**

## KEY FEATURES OF PAPER B

- In fact, an approach that actually “**crosses out**” the words/information on the exam paper as they are used in the answer as it is written is valuable.
- In Paper A, the examiner can give you LOADS of marks for your Indep Claims, and you’re all set.
- However, in Paper B you get **loads of marks** for
  - **Amendments**, and for
  - **Inventive Step**, but
  - you **HAVE TO SHOW YOU’RE USING THE INFORMATION FROM THE PAPER IN SUPPORT OF YOUR ARGUMENTS**

# METHODOLOGY - PAPER A VS. PAPER B

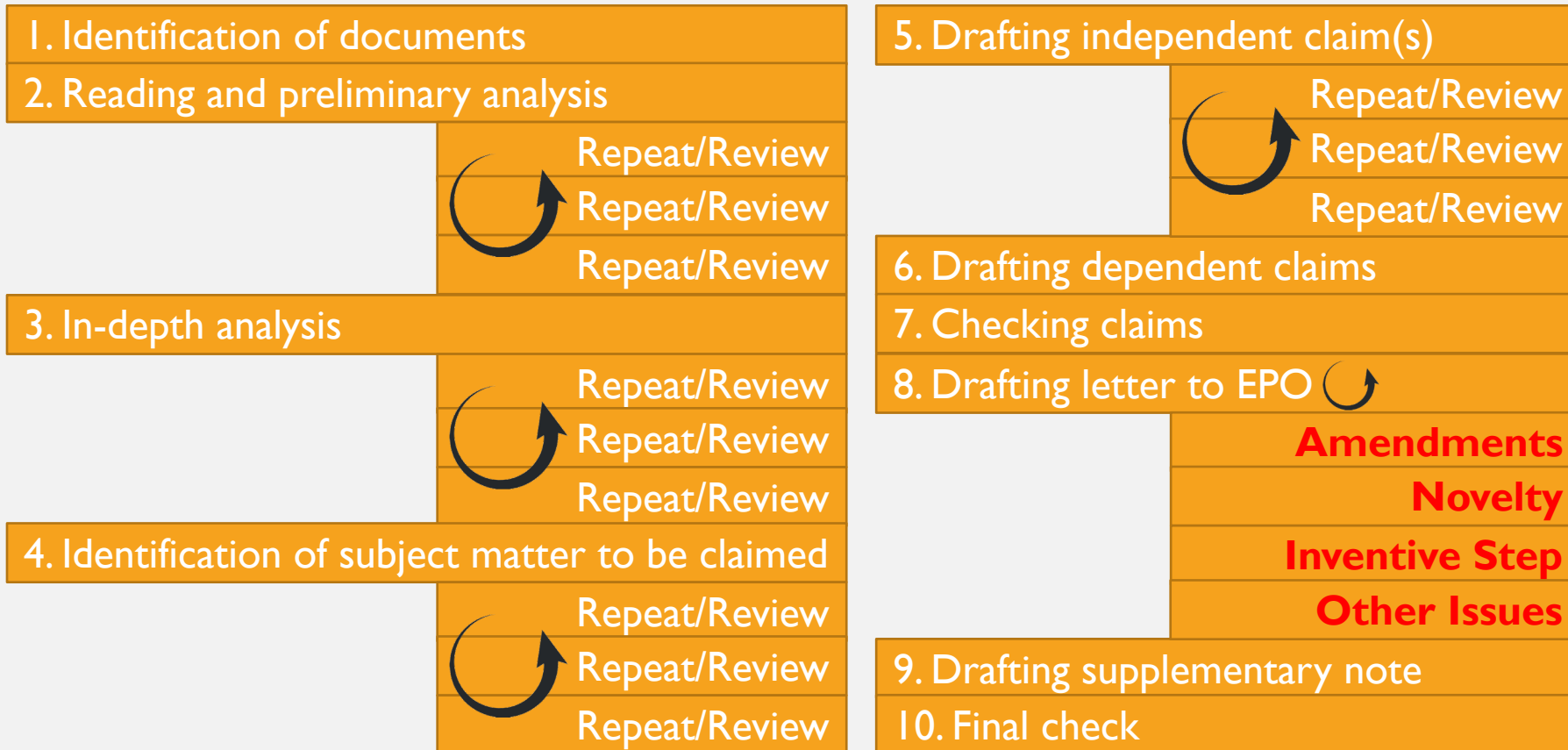
1. Identification of documents
2. Reading and preliminary analysis
3. In-depth analysis
4. Identification of subject matter to be claimed
5. Drafting independent claim(s)
6. Drafting dependent claims
7. Checking claims
8. Drafting introduction
9. Drafting supplementary note (if needed)
10. Final check

# METHODOLOGY - PAPER A VS. PAPER B

1. Identification of documents
2. Reading and preliminary analysis
3. In-depth analysis
4. Identification of subject matter to be claimed
5. Drafting **amended** independent claim(s)
6. Drafting “new” **dependent claims**
7. **Checking claims**
8. Drafting ~~introduction~~ **Letter to EPO**
9. Drafting supplementary note (if needed)
10. Final check



# METHODOLOGY – ACTUALLY...



# METHODOLOGY

	2017	2018	2019
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1. Identification of documents
2. Reading and preliminary analysis
3. In-depth analysis
4. Identification of subject matter to be claimed in amended claims
5. Drafting amended independent claim(s)
6. Drafting amended dependent claims
7. Checking claims
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9. Drafting supplementary note (if needed)
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## 2. READING AND PRELIMINARY ANALYSIS (SAME AS PAPER A)

- Read and simultaneously extract, classify, annotate the information given
  - Identify key words & phrases
  - If it looks strange, it probably is
  - The first read-through is VITAL
  - “the invention concerns”, “the problem is solved by”, “the advantage is”, “the problem with that other device is that”
  - “alternatively”, “sometimes”, “or”, “instead”
  - Watch out for “contractions”:
    - e.g. “It is essential that the product has <list of things> or it can have <list of other things>”. Are all the features essential?

## 2. READING AND PRELIMINARY ANALYSIS (SAME AS PAPER A)

- ***Read the paper 3 times***
- just read – absorb the invention
  - mark key words and phrases
  - annotate in the margin AS YOU GO ALONG
  - mark on:
    - problems (P)
    - solutions (S)
    - disadvantages (D)
    - advantages (A)
    - objects to claim (O)
    - essential elements (E)
- *use a pencil to underline points of interest*
- Ring sentences/words that mean features are **essential**
  - must / has to be / should be / is / are / provided that / is necessary / have / only / is required
- Mark features described as **advantageous**
  - preferred / preferably / typically / usually / for example / normally / optimal / suitable / advantageous / good / better / best results / especially / particularly / special mention / may be
- Draw out the described invention (on A3)
  - Exhaustively list all raw materials (objects) on the left hand side
  - Exhaustively identify all links (operations) between objects disclosed in the letter
  - Cross out all objects and all operations disclosed in PA
  - What remains is your independent claims!

## 2. READING AND PRELIMINARY ANALYSIS

- Key points to address
  - What is the CPA
  - Does the application disclose distinguishing features over prior art (& CPA)
  - Are any technical effects achieved by these differences
  - What can the client still get protected
  - What other issues are raised by the EPO
  - Date of filing

## 3. IN-DEPTH ANALYSIS

Steps:

- How can newly claimed invention be formed in view of:
  - Objections in official communication
  - Wishes of the client
    - The claims begin to take shape
- What are the arguments for the N & IS of the amended claims:
  - The response letter takes shape
- What particular embodiments can still be claimed:
  - Dependent claims take shape

Analytical methods...

## 3.1. IN-DEPTH ANALYSIS, ANALYTICAL METHODS

A few words on Analytical Methods:

- Useful for complexity of Paper B, but relevant for Paper A too
- Various Analytical Methods can be used
  - **Matrix based (Feature Table)**
  - “Flow Chart” Visualisation
  - Ad hoc note-making, recording information, post-it notes
  - NEVER rely on your memory
  - A combination of all the above
- Very subjective, personal preference, depends on the paper too
- Practice with each of them and work out what works for you

Feature	Embodiments				Prior Art		Notes		
	E1	E2	E3	E4	D1	D2	All embodiments?	Distinguish?	Analysis
1. Device	Y	Y	Y	Y	Y	Y	Y	N	OK for claim 1 → ess. feat. Does not distinguish wrt. D1 & D2
2. Device has feat. A	Y	Y	Y	Y	Y	Y	Y	N	OK for claim 1 → ess. feat. Does not distinguish wrt. D1 & D2
2.1 Feat. A has property A'	Y	Y	N	Y	Y	Y	N	N	Probably not OK for claim 1 → excludes E3  Possible dependent claim
3. Device has feat. B	N	N	Y	Y	Y	N	N	Y (D2)	Probably not OK for claim 1 → excludes E1 & E2  Possible dependent claim, but check dependency wrt 2.1 (E3)
4. Device has feat. C	Y	Y	Y	Y	N	Y	Y	Y (D1)	3 + 4 novel. Inventive?  Excludes E1 and E2 (via 3)
4.1 Feat C has property C'	Y	Y	Y	Y	N	N	Y	Y (D1 & D2)	Novel and in all embodiments. Inventive?
5. Device has feat. D	Y	Y	Y	Y	Y	N	Y	Y (D2)	4 + 5 novel and in all embodiments. Inventive? Better than 4.1?



# 4. IDENTIFICATION OF SUBJECT MATTER TO BE CLAIMED IN AMENDED CLAIMS

Paper A  
approaches &  
techniques still  
apply here !

## 4. IDENTIFICATION OF SUBJECT MATTER TO BE CLAIMED

- Assess whether technical problem you've identified:
  - Is sufficiently broad
  - Has basis in facts given in the paper
  - Is solved by the distinguishing feature c.f. CPA
  - Is something the client actually wants to solve

## 4. IDENTIFICATION OF SUBJECT MATTER TO BE CLAIMED

- Deciding on subject matter of the claims
  - Client says they want to protect what? c.f.
  - ...what they actually can protect in light of prior art
  - Claim categories needed to gain protection
  - Other claim categories needed to gain broadest protection
  - Check for unity

## 4. IDENTIFICATION OF SUBJECT MATTER TO BE CLAIMED

- DO NOT claim things the client tells you not to or says are not of interest
- DO NOT claim things which have a *negligible effect*
- Think about all possible independent claims – ESPECIALLY PRODUCT CLAIMS
- Draw a spider diagram on A3

**ALWAYS PLAN CLAIMS PROPERLY IN ROUGH!**

**Independent claims**

**Dependent claims**

**& number them**

**THIS WILL SAVE TIME IN THE LONG RUN!**

# 5. DRAFTING AMENDED INDEPENDENT CLAIM(S)

- Typical wording:
  - original claim + ((dependent claim) and/or (statement from description))
  - Additional features essential for defining new subject matter
  - Use terminology of the application...
  - ...but as broadly as possible while adhering to A123(2)
  - 2-part form usually appropriate
  - Use reference signs for drawings (R43(7))
- **THESE ARE YOUR AMENDMENTS**
  - **Make sure you track your basis during this stage**
  - **Make a note of where the amendments are coming from (whether from other claims or from the description OR BOTH!)**

# 5. DRAFTING AMENDED INDEPENDENT CLAIM(S)

- Claims must be:
  - Clear
  - Free from added matter
  - Novel
  - Inventive
  - Broad as possible
  - Cover all **novel** embodiments
  - Unified\*
  - In line with client's instructions

\*A82: The European patent application shall relate to one invention only or to a group of inventions so linked as to form a ***single general inventive concept***.

R44(1): Unity 'when there is a technical relationship among those inventions involving one or more of the same or corresponding ***special technical features***'

NOTE: "...same **OR** corresponding..."

## 6. DRAFTING AMENDED **DEPENDENT** CLAIMS

- Reasonable number:  $\leq 10$
- Keep **existing dep. claims** as far as possible
  - Rare to add new dep. claims
  - Must deal with truly advantageous alternatives
- Ensure logically structured
- Use reference signs
- **THE DEPENDENT CLAIMS ARE ALSO AMENDMENTS**
  - **Ensure that you provide basis for the dependent claims...**
  - **...i.e. the basis for the subject matter of the “old” dependent claims that now depend from the “new” amended independent claims**

## 8. DRAFTING LETTER TO THE EPO

1. Make the request:
2. **Explanation and basis of amendments made**
3. Address **clarity** objections
4. Reasoning re. patentability of amended claims
  - 4.1 **Novelty**
  - 4.2 **Inventive step**
5. Address **any objections that remain** after amendments
6. Reference to supp. note if needed

## 8. DRAFTING LETTER TO THE EPO

	2017	2018	2019
Amended claims	30	30	30
Letter to EPO (arguments) Total Marks	70	70	70
- Amendments	24	22	18
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- Inventive Step	32	36	40

## 8. DRAFTING LETTER TO THE EPO

2. Explanation and basis of amendments made
  - Deal with **each** and **every** amendment
    - **Independent** claims **AND**
    - **Dependent** claims
  - Provide **explicit** basis
  - Provide **implicit** basis
  - **Use everything** you can from the Paper to support your amendments
  - If **generalisation**, explain why Skilled Person would have derived this
  
3. Clarity
  - Either adapt claims and **provide explanation** (usually to add missing essential feature) or, much less likely...
  - Argue against objection

# 8. DRAFTING LETTER TO THE EPO

## 4. Reasoning re. patentability of amended claims

### 4.1 Novelty

- Address N **vs. all other documents** (poss. including any cited in application)
- Remember, a single difference is sufficient
- **Use everything you can from the Paper to support your N arguments**



# 8. DRAFTING LETTER TO THE EPO

## 4. Reasoning re. patentability of amended claims

### 4.2 Inventive step

- **Use the complete P&S approach**
- **Use everything you can from the Paper to support your IS arguments**

# 8. DRAFTING LETTER TO THE EPO

## 4.2 Use the **complete** P&S approach

See [G-VII](#)

- Select CPA
- Identify the technical difference
- Identify the technical effect of the technical difference
- Formulate OTP accordingly
- Demonstrate prior art contains no indicator re. solving OTP, no prompt to the skilled person to modify CPA to add distinguishing feature

## Guidelines for Examination

Table of Contents - Guidelines for Examination

Part G – Patentability

< >

Chapter VII – Inventive step

<

### Chapter VII – Inventive step

- > 1. General
- > 2. State of the art; date of filing
- > 3. Person skilled in the art
- > 4. Obviousness
- > 5. Problem-solution approach
- > 6. Combining pieces of prior art
- > 7. Combination vs. juxtaposition or aggregation
- > 8. "Ex post facto" analysis
- > 9. Origin of an invention
- > 10. Secondary indicators
- > 11. Arguments and evidence submitted by the applicant
- > 12. Selection inventions
- > 13. Dependent claims; claims in different categories
- > 14. Examples
- > Annex – Examples relating to the requirement of inventive step – indicators

### Claim X

The present invention relates to  
[list & give **references to** all problems mentioned in invention]

#### **CPA is...**

Dx is the CPA because it deals with the same technical field of [general area/problem]  
more specifically it deals with a similar purpose, that of [more specific area/problem of <what Claim X deals with>]  
Additionally, Dx describes a [prod/proc/use/etc of claim X] having (*the most*) technical features in common with the subject matter of claim X,  
namely [list common features]  
(T606/89 and GL G-VII, 5.1, 1st paragraph)

#### **CPA is not...**

Dy is not considered to be the CPA because, *although in the same general field of* [general area/problem]  
it does not deal with a similar purpose, specifically [more specific area/problem of <what Claim X deals with>].  
Dy deals a different problem, namely [the problem of Dy]

#### **DIFF**

As discussed above under novelty, the difference between the subject matter of claim X and the disclosure of Dx is [list points of **DIFF**]

#### **TECHNICAL EFFECT**

This difference leads to the technical effect that  
[ look at the examples – they should support your inventive step argument]  
Other knock-on technical effects...

[Also list all the other advantages that also follow from the **DIFF** – they will have been mentioned somewhere]

#### **OTP**

The objective technical problem can therefore be defined as  
[...to provide technical effects above] **plus** [all the other advantages that also follow from the DIFF]  
[.....always **make sure there is basis for the problem you define** in the application as filed]

#### **SOLUTION**

This problem is solved by  
[using the points of **DIFF**]

#### **EVIDENCE**

Evidence that the invention solves this problem is given in  
[refer to the application that shows the problem/problems is/are solved]

#### **CPA ALONE**

Dx does not disclose [the listed points of difference]  
Dx only discloses [say why the features of Dx are unrelated to **DIFFs**]  
There is therefore nothing in Dx to suggest use of [the listed points of difference] for [solving the **OTP**]  
We therefore submit that Claim X involves an inventive step over Dx (EPC A56)

#### **OTHER DOC**

The person seeking to solve this OTP would not turn to Dy because  
[deals with a different problem, that of...]  
Furthermore, Dy makes no mention of [**DIFF**]

#### **COMBINING**

Even if he were to turn to Dy the skilled person would find no mention at all of [**DIFF**]  
[Say what Dy does disclose and why it's not the same as **DIFF**]

#### **SUMMARY**

We therefore submit that Claim X involves an inventive step over Dx alone or in combination with Dy (EPC A56)

# EPO LETTER TEMPLATE

# 10. FINAL CHECK

## Claims

- Claims must meet A123(2) requirement
- Clarity, support
- Novel and inventive
- Broadest possible protection
- In line with client's wishes

## Letter to EPO

- Comprehensive and convincing argumentation
- All objections addressed

# SUGGESTED SCHEDULE – PAPER B

## I/2

Identify all documents in envelope

- Is everything there that should be?
- Client's letter / information from client?
- Prior art documents – how many?
  - Watch for “hidden” PA, cited in the letter or in the other PA documents

Reading and prelim. analysis of documents

- Description
  - Introduction to the description
  - Cited PA
  - Rest of description
- Filed claims
  - CLAIM OBJECTS !!!
- Client's letter, claims
- Additional PA cited by EPO
- Communication from EPO
  - List the SPECIFIC objections
    - Clarity
    - Novelty – WHAT doc's were used
    - IS – WHAT doc was used
    - IS – WHAT combination of doc's were used

In depth analysis of documents

Determine subject matter to be claimed

90m

# SUGGESTED SCHEDULE – PAPER B

## 2/2

In depth analysis of documents (see prev. slide)	
Determine subject matter to be claimed	90m
Draft independent claims	30m
Draft dependent claims	15m
Check the claims	
Draft letter to the EPO	60m
Draft supplementary note (if necessary)	
Final check	15m
	<b>3h30m</b>

# SUMMARY

- If you're rigorous, there are many "extra" marks to obtain for Paper B
- Make sure you're completely familiar with the full P&S approach
- Make sure you fully apply any tests
  - e.g. selection of new range (T2/81), removal of a non-essential feature (Houdaille test, GL: H-V, 3.1 and T331/87 ), etc), disclaimers, etc
  - P&S, obviously
- Assure yourself that you have used every piece of information from the paper



# 6 WEEK PLAN

# NEXT 6 WEEKS – A SUGGESTION

## Pre-requisites:

- Total familiarisation with eEQE systems and requirements
- Mock eEQE 1 – all papers already done

## (-6) Week 3 (w/c 18 Jan)

- These Tutorials
- If not already done, deal with pre-requisites
- Update your materials to align to the eEQE platforms and systems

## (-5) Week 4 (w/c 25 Jan)

- Do selection of past papers using your updated materials
- Fix your eEQE system and room, ready for Mock 2

## (-4) Week 5 (w/c 1 Feb) - Mock 2 is released:

- Tuesday 2 February      Mock2 Paper D
- Wednesday 3 February    Mock2 Paper A
- Thursday 4 February      Mock2 Paper B
- Friday 5 February        Mock2 Paper C

## (-3) Week 6 (w/c 8 Feb)

- Review experiences of Mock 2
- Update your materials in view of Mock 2
- Ensure all IT systems, equipment is in place
- Ensure location of exam is in place

## (-2) Week 7 (w/c 15 Feb)

- Final polishes for Papers A-D
- Know your weak spots (PCT!), and strengthen them

## (-1) Week 8 (w/c 22 Feb)

- Rest
- Administrative preparation
- Room preparation
- Materials preparation

## (Exam Week) Week 9 (w/c 1 Mar)

- Good Luck !

THANKS

Q&A session