

Dear epi Council members,

Please, find below some comments on the epi's e:EQE – Discussion Paper from an EQE candidate from Bulgaria /professional with more than 13 years' experience in patent field/ consulted and supported by another EQE candidate from the CEE region.

European qualifying examination (EQE) is established in 1979. Since then we have more or less same EQE structure, now a big retailoring is proposed with a new progressive modular structure/format of the EQE.

Hasty changes, made under the burden of current pandemic situation, made without also the candidate's point of view (students consultation), could be extremely detrimental for predictability, efficiency and legal certainty.

EQE as a digital exam is highly welcome from all, tutors and students, more frequent than once per year exams are also welcome.

The EPO's wish for a new normal, and in particular for cheaper exams should not be against the principals of quality, fairness, predictability, efficiency and legal certainty.

Problems of current papers

Document is saying: *"There is a strong feeling among the tutors and some qualified European patent attorneys that some Exam Papers are too remote from reality, even considering the fact that the Exam Papers have necessarily been adapted to the specific exam needs."*

It is not only a tutors but also a candidates feeling.

Papers A and B are negatively marked - candidates start with 100 marks, but lose marks for each deviation from the expected answer; alternatives are almost never accepted. The problem with both papers is that by misreading or misunderstanding a couple of things, one can easily fail. In real life professional representative may convince the examiner in his/hers opinion, may discuss some issues from examiner's report with the inventor and experts; in real-life a mistake would be correctable; alternative solutions are very often accepted – this is not the case in paper A and B.

In plus a big constraint for all papers is the time pressure especially for non-native speakers. Exams are much too long so very difficult to do in the time available, especially for non-native speakers. This year's B and C papers are examples of too long exams not adequately drafted for all candidates' technical and language skills and not adequately tailored to the on-line format.

Usually there are a lot of well-prepared candidates who fail because they do not know how to show their working properly within the time available or because had a bad day or were sick - it is certainly not always lack of preparation. That is why raising the pass rate for resitters or enforcing minimum periods between exams after failing contradicts the legal requirement of equal treatment of the candidates and could be extremely detrimental for efficiency and legal certainty.

The solution of the "fit to practice" criterion is to make Examination committees with the inclusion of renowned European Patent Attorneys (EPAs in the text below) with a wide practice, who can write papers close to real-life cases, not too remote from reality, even using real-life

cases from their practice. The proper selection of Exam Committees members is an easier solution and does not require retailoring of the system. As we saw this year, old style papers could be done online/exams could be digital, but some grinding/tailoring to the on-line format is needed.

Methodology courses

“The current setup of the Exam Papers allows candidates to prepare for the EQE through methodology courses, where they learn how to prepare the answer expected by the Exam Committee. The Exam papers normally have a certain structure, and the candidates learn where and how the (easy) points can be scored”

There are no easy points as nowhere Exam committee has stated which the easy points are. Methodology courses do not help candidates to learn how to prepare the answer expected by the Exam Committee because even the tutors/coaches do not know Exam Committee expectations, answer reasoning and mark distribution. Exam Committee never provided a marking scheme on the tutor's meetings; there exist no transparent marking. There is no official info in advance about what is to be tested, how the papers should be made, or how they should be marked. so It's a common practice in contemporary life that every student/candidate need a course/methodology course in order to summarize its knowledge and to prepare to sit an exam **a progressive modular exam would not reduce reliance on methodology courses.**

Training, support and supervision of candidates

Training, support and supervision of candidates must be considered alongside the development of a new examination structure.

It is not true that updating the EQE to a new model would give the possibility to make the exam fit for the future and more effective for both students and the profession. Proposed Practical track would be a big burden for candidates coming from “small countries” i.e. countries with less people who passed the EQE as for example Albania (AL), Bulgaria (BG), Croatia (HR), Cyprus (CY), Czech Republic (CZ), Estonia (EE), North Macedonia (MK), Greece (GR), Hungary (HU), Iceland (IS), Latvia (LV), Lithuania (LT), Malta (MT), Poland (PL), Portugal (PT), Romania (RO), Serbia (RS), Slovak Republic (SK), Slovenia (SI) and Turkey (TR).

In countries with less people who passed EQE, the majority of training is done in-house or by grandfathers who cannot provide adequate support on EQE learning/sitting/passing. In countries with less EPO practice – with less than 50 European patent applications per year, some EPAs have few European patent applications filed and not at all opposition/appeal cases to train the EQE candidates. In-house patent specialists are more often neglected in their study and preparation because companies use external EPAs; supervision is also skipped. In such countries not everyone gets days off to prepare and all the materials and courses they need. Not all candidates follow national training and exams. Not all candidates also have mentors with time to spare. On-the-job training, support and supervision by a qualified professional representative is not the case for many candidates for various reasons. Many in house patent counsels/specialists do not have access to opposition/appeal cases as companies

outsource such cases; many such candidates only perform patent searches and freedom-to-operate, do not draft or prosecute patent applications. In such countries invalidation procedures are also very few. So how can future candidates from those countries have equal access to EQE Practical track; how can all those candidates have equal access to exams without proper external training as methodology courses and EPO support as for example current CSP Program?!

In order to provide equal access from practical point of view for the candidates from countries with less people who passed EQE, candidates need to have access to legal and practical trainings on every point from future syllabus but the new model would not be more effective for those students as at the same time they are working; i.e. by introducing a progressive learning roadmap the workload would not be redistributed better.

The workload would not be redistributed to better fit the candidates' development by introducing a progressive learning roadmap which builds in complexity towards the final exams and subsequent qualification when having 7 / 9 instead of 5 exams. This increase also the load on psychological level as not all candidates are psychologically good in passing exams in spite their knowledge.

“There is a strong desire amongst different stakeholders to move towards a multi-level modular approach instead of the current pre-exam followed by a 20-hour main examination condensed in one week”

This modular system will increase the burden for candidates who cannot take days-off for studying and sitting the exams; who work from home and look for children (as in current pandemic times). **Sitting the exams is about candidates not about different stakeholders. A lot of candidate would prefer one or two weeks with exams instead of one exam every 3 or 4 months. Hence it is better to ask candidates what they prefer, not people who already passed the exam.**

Proposal for a modular e:EQE setup

“The e:EQE is a sit-anywhere exam (like the 2021 EQE). It is noted that the burden of creating the exam conditions is on the candidates. However, the flexibility and the avoidance of travel appear to balance this burden.”

In 2021 the burden was too much put on the candidates with the crashing unreliable on-line system which was tested in development phase on the candidates as guinea pigs.

New structure/format of the EQE

The proposed new e:EQE is split into two main examination modular tracks, the Practical track and the Legal track.

Proposed Module P1, P2 and P3 correspond to current Pre-exam claim analysis, paper A and B; the Final Practical Exam correspond more or less to current paper C extended to include aspects that are not tested in the pre-2020 EQE.

Aspects that are not tested in the pre-2020 EQE

“The difficulty of the Final Practical Exam should be aimed at the level of a trainee with three years of experience and should test the fit-to-practise criterion (taking into account the two-hour time limit for each part).”

Concerning aspects that are not tested in the pre-2020 EQE; topics for the Final Practical Exam as listed below are not manageable by a lot grandfathers and EPAs many years after passing the EQEs because of low workload / less practice with EPO, not to mention EQE candidates:

- Prepare written submissions in response to a summons to oral proceedings in examination.
- Prepare amendments after receiving a Rule 71(3) communication and the client changing their mind on claim scope.
- File Art. 115 observations against a competitor's patent application (or patent).
- Write a written submission in opposition as a proprietor (response to a notice of opposition or against Art. 115 observations in opposition)
- Prepare an argument responding to the proprietor's response to a notice of opposition, based on client input and/or new technical evidence and/or new prima facie relevant prior art.
- Reply to a preliminary opinion of the opposition division
- Prepare grounds of appeal against a decision of the ED or OD, based on client input and/or technical evidence and/or new prima facie relevant prior art.
- Prepare a response to an opposition appeal filed by the "other party" (proprietor or opponent, as appropriate).
- Prepare a reply to a preliminary opinion of a board of appeal (examination or opposition, as appropriate).
- Entitlement disputes.

Such changes in the syllabus put a burden on the efficiency and fairness in the system.

Technology specific testing is welcome as more close to real life as for example a chemical engineer do not draft patent applications and do not oppose patents in the electrical field.

Proposed Module L1 – Basic legal concepts and Module L2 – Advanced legal questions correspond to current legal questions in Pre-examination and DI; Final Legal Exam – Advanced practical advice correspond more or less to current DII.

Article 1(4) REE and Rule 26 IPREE specify that the purpose of current Paper D is "to assess candidates' ability to answer legal questions and to draft legal assessments". Examination Board introduced in 2019 redistribution of points in order to increase uncertainty in point's distribution and to indirectly increase legal preparation and legal knowledge of candidates in DI. Using multichoice questions (MCQ) do not reply to this Examination Board purpose and is some sort of decreasing the level of examining process with respect to such fields as law/innovations/patents.

"By Smart MCQ is meant an advanced MCQ level that tests more than just true/false, such as "combined lists" to choose from (e.g. one for answers and one for relevance of legal basis; or multiple correct answers from a list) or the requirement to not only give an answer, but also indicate how certain the candidate is that the answer is correct, and weigh that into the number of marks that can be obtained." **This approach do not increase legal knowledge as a lot of candidate may only play a game and guess the answers. Legal knowledge is appropriately tested with current DI.**

The reason of changing current legal/D exams is not evident – is it proposed only just for the sake of a change or cheaper exams? With what the new progressive modular exam will be different substantially of the current legal/D and A, B, C papers if not only by more often sitting, multichoice questions, extended syllabus and punishing resitters? **More often sitting and digital exams could be done without retailoring the system.**

Why should resitters be punished?!! Why enforce minimum periods between exams or after failing?!

“If a candidate is unsuccessful on the first attempt, there will be no restrictions on the timing of the first resitting. However, if the candidate fails on their second (and subsequent) attempt, the candidate must wait for a year before resitting.”

This will not improve someone's preparation - we do not know why someone has failed. Usually there are a lot of well-prepared candidates who fail because they do not know how to show their working properly within the time available or because had a bad day or were sick - it is certainly not always lack of preparation. Even if it is - one way to prepare is to just try the exams and see where one needs to improve, especially if one does not have access to a good mentor or any courses. In plus the requirement that candidate must wait for a year before resitting after the first resit would be an undue burden to the professional/career development of candidate in between the scheme of exams organized per 4 months. **Enforcing minimum periods between exams after failing contradicts the legal requirement of equal treatment of the candidates and could be extremely detrimental for efficiency and legal certainty of a democratic system.**

Passing the new e:EQE.

“Varying pass-rates may be defined for each module and for the different tracks, in particular depending on the choice of MCQ setup. To encourage candidates to adequately prepare, it may be considered to raise the pass rate for resitters (e.g. requiring 75% to pass a resit instead of 70% for the first sitting).

Practical Track – Modules P1, P2 and P3

For the Modules P1 and P2, a progressive pass rate based on the type and setup of the Modules can be chosen, e.g. 70% for P1 and 80% for P2. The Pass mark for the free text Module P3 can be between 50-70%.

Legal Track – Modules L1 and L2

For the Modules L1 and L2, a similar approach can be taken, aiming for 70% for L1 and 80% for L2.

Final Exams

To pass the Final Practical and Legal Exam a Pass mark of 50 out of 100 has to be obtained for each of the four parts: i.e. the three parts of the Final Practical Exam and the Final Legal Exam.

It is proposed to abolish the current compensation scheme.”

Not everyone gets days off to prepare and all the materials and courses they need. Not all candidates have followed national training and exams. Not all candidates have knowledgeable mentors with time to spare (see also reasoning above).

To raise the pass rate for resitters (e.g. requiring 75% to pass a resit instead of 70% for the first sitting) contradicts the legal requirement of equal treatment of candidates. This proposal also could be extremely detrimental for predictability, efficiency and legal certainty of the democratic system EQE.

Machine or AI correction of answers

Concerning machine correctable open question/auto-correctable free text exam: **Artificial-intelligence systems are nowhere near advanced enough to replace humans in many tasks involving reasoning, real-world knowledge, and social interaction. They are showing human-level competence in low-level pattern recognition skills, but at the cognitive level they are merely imitating human intelligence**, not engaging deeply and creatively, advice specialists. **Despite some developments being referred to as “AI technology,” the underlying systems do not involve high-level reasoning or thought.** The systems do not form the kinds of semantic representations and inferences that humans are capable of. They do not formulate and pursue long-term goals. **Using AI to mark the EQE looks as feasible and practical as claiming that AI can replace examiners in search or granting procedures. Auto correction of legal text is still science fiction and cannot be a solution to lower the burden of time-consuming correction work and to EPO’s wish for cheaper exams in near future!**

In summary, we see some ideas but we are afraid for the equal treatment of candidates coming from countries having less EPAs and less practice with the EPO (for example less than 50 patent applications per year). Equal treatment of the candidates coming from different countries is crucial for a democratic system. EQE as a digital exam is highly welcome from all, tutors and students; more frequent than once per year exams are also welcome. One might be tempted to think if the current EQE (functioning so many years) had not adequately tested the “fit to practice” criterion why not putting all current EPAs to try the new progressive modular exam?! From 1979 till now we have more or less same EQE, now a big retailoring is proposed. It would be good if this retailoring is not a big closing of the system concerning practical training in order to have a very few new candidates passing from now on, in order to have a relative constant number of EPAs equal to the current one. Although this position paper presents some details related to the format of the EQE, we agree that a lot of other things are presently not considered. Also it is good to hear candidates what they prefer, not only people who already passed the exam. Hasty changes, made under the burden of current pandemic situation and with the main wish for cheaper exams, made without the candidate’s point of view, could be extremely detrimental for quality, fairness, predictability, efficiency and legal certainty.

Sincerely yours,
EQE Candidates