

Report on the conference on modernising the EQE to better test “fitness-to-practise” by Julia Gwilt, with Emilie Blanche and Graham Murnane

Moving to a digital testing environment means adapting the EQE but also presents an opportunity to review whether the EQE properly tests the skills and knowledge required by today’s European patent attorney. As previously reported in **epi** Information, a discussion paper presenting a possible option for an updated EQE which better tests whether a candidate is ready to practise as an EPA has been prepared. Following discussion of the paper at Council in May 2021, a video conference was held on 21 June 2021 to explore the option presented in the paper and more generally to discuss how the EQE can be modernised.

In this article for **epi** Information we report on some of the discussions from the conference which covered four topics:

- Exploring the motivations for changing the EQE
- Defining the essential skills and knowledge of an EPA
- Modernising the structure and timeline of the examination
- Exploring the impact of changing the EQE on national examination and other national considerations

Each topic was introduced with a brief presentation and the discussion was then opened to all participants in the conference. The presentations, together with the discussion paper, are available in the section entitled “e:EQE discussion paper” on the **epi** learning website.

An email was sent to all **epi** members (approximately 12,000) inviting them to attend the conference. Additionally other non-**epi** members such as those are involved in training EPAs, and those with an interest in maintaining EPA training standards, including the EPO, were invited by email. There were 127 registrants and over 100 attendees.

Exploring the motivations for changing the EQE

Xavier Seuba, Director, Patent Academy and EQE, EPO presented a summary of the context and feedback from the candidates on the digitalisation of the EQEs. Some of the headline statistics included:

- 2021 saw 3800 candidates, including 2000 candidates from the cancelled 2020 EQE.
- 97% of the candidates welcomed the possibility to sit a digital EQE, but 77% had no experience of online exams, which meant added stress for many.
- February mock exams were sat by an average of 87% of the candidates.

Xavier reported that feedback from candidates was generally positive and that time pressure was not worse than in previous in-person EQEs. Candidates also identified the following advantages:

- The comfort of being at one’s own office or home
- Typing on a keyboard
- Avoiding travel and saving time.

Candidates suggested possible improvements:

- The possibility to divide the screen
- Improving the text editor
- Improved navigation through documents and comparing documents
- Improving the search function in documents

There was also a presentation from Petra Pecharová, who has been an EQE bench marker on several occasions including in 2021. Her comments included:

- There should be no going back to a paper based EQE. It was good to have a typed exam, with the ability to copy and paste, and to have legal texts in electronic form, all of which more closely reflects daily practice.
- There should be no going back to exam centres. There was real cost saving and the hassle of carrying many books was avoided.
- However sitting an exam is still not like real attorney work because you cannot “get up and go get coffee”. We need to make papers shorter to test the same thing, so that continuous screen time is limited.

Comments from the subsequent discussion included the following:

- The EPO realized after the 2021 e:EQE that it was an opportunity to modernize the exam, as it had remained unchanged for more than 20 years.
- There are plans to carry out further surveys, through the **epi** and other channels.
- The pandemic has only accelerated the move to digital examination – it would have happened anyway, but perhaps more slowly.
- There appear to have been few complaints about the time spent sitting behind the computer but, in some exams the candidates had flexibility on breaks, at the cost of lower security.
- The IT risk lies mainly with the candidate (PC problems, internet problems, working in an unusual software environment).
- We need to find better solutions for breaks (particularly to relax eyes from the screen).
- Is there scope to mix handwriting and typing? Could we have a digital option in a multi-candidate exam centre, with each candidate bringing their own materials?
- It is important that the EQE keeps its high quality, to provide fit-to-practise patent attorneys who can serve the public safely, with all the necessary insights and experience that requires.

Defining the essential skills and knowledge of an EPA

Tiem Reijns and Pia Stahr, both members of the EPO-**epi** joint working group on the digitalisation of the EQE gave a presentation to introduce this topic. They began with a discussion of what “fit to practise” means. For example, should it include advising a client before the EPO, before WIPO, before national IPOs? Should it include being capable of advising the client on IP strategy or litigation?

They also noted that the current EQE is limited to the mainstream activities defined in 1979 - drafting, amendment, opposition and complex legal advice. This still works but there could be room for improvement.

They discussed the concepts of the practical track and the legal track which are introduced in the discussion paper and highlighted some of the skills and knowledge which could be tested. These included topics such as preparing grounds of appeal and other amendments which are not currently tested.

Comments from the subsequent discussion included the following:

- Litigation is not the same everywhere in Europe, so it would be difficult to have litigation aspects in the EQE. If too many new aspects are added, it would overlap with national law.
- The current system has a single EQE exam very early in the professional life of the EPA. This limits the number of aspects being tested. Could further tests or continued professional development (CPD) requirements be provided afterwards, to show the EPA has maintained (or improved) their skills after some years?
- It was generally agreed that the four papers A, B, C and D, define the skills to be tested well.

Modernising the structure and timeline of the examination

Tiem Reijns and Petra Pecharová together with Cees Mulder, Chair of the PEC Digitalisation Support Group gave a presentation to introduce this topic. The presentation outlined the constraints of the “old style” examination and the constraints of “online testing”. One of the main constraints of working in an electronic way is the need for short modules. It is generally accepted that after 1.5 to 2 hours of screen time, one cannot read effectively anymore. We should respect health and safety norms. Supervision brings its own pressures, but flexible breaks should be limited, to limit cheating. For this reason we should aim for 2-hour sessions with no breaks.

The presentation also introduced some of the opportunities from changing to online testing including making use of automatic marking, use of AI, progressive testing, testing related subjects in different ways and spreading the exam over multiple days.

The timeline suggested in the discussion paper was also shown. The overall aim of carrying out in depth testing at the same level as today was stressed. It was noted that some parts could be tested earlier than others. It was acknowledged that it is difficult to make a current paper A, B or C fit into a short modular exam, so we should move to a concept-based exam. Examples of concepts are inventive step which features in papers A, B and C and priority which features in papers C and D.

Comments from the subsequent discussion included the following:

- It is difficult to test complex issues in less than 4 hours
- Some were in favour of having a syllabus from day 1 up to the final exam, to fully utilise the three-year training period. This does not have to be through many exams, which introduce burdens for the people preparing the exams and for the employers, as this also means freeing more time for the trainee.
- A conceptual way of testing requires a different mindset of testing. Multiple choice could be suitable if set up in the right way.

- If you limit exams to 1.5 hours duration, it is impossible to examine a complex task like drafting claims or drafting a notice of opposition. This may automatically reduce the quality of the candidates.
- The major difficulty is that nobody has an impression of what a conceptual test would or could look like
- Multiple choice type questions as in the pre-EQE should not be part of the EQE
- Digital examination in a physical test centre could help invigilation and allow breaks for the eyes.
- The test material should not be cut into pieces, because, for example, novelty and inventive step go together. Spreading testing over the years disadvantages the candidate. We should look at different ways to structure the papers. In paper B or C, after one claim, you can already have a good idea of what the candidate is worth.
- An important part of our job is that a client may give you lots of information, and you as an EPA need to identify the important information. It is not possible to test this skill in a short module.

Exploring the impact of changing the EQE on national examination and other national considerations

Julia Gwilt, chair of PEC, gave a presentation highlighting the national considerations which are relevant when considering changes to the EQE.

She noted that there are 11799 EPAs, 40% in DE, 20% in UK and 10% in FR and where a candidate is based impacts their training and access to EP work. This is reflected in the number of candidates from each member state. The presentation also included information on the pass rates based on residency with the candidates based in GB having the highest pass rates. There was also information on which member states do not have a national exam, e.g., Greece, Luxembourg, Iceland and Monaco. It was also noted that some countries replace some of the national exams by EQE papers, e.g., Switzerland.

The subsequent discussion was relatively brief but it was particularly noted that the German national examination is completely different from the EQE.

Summary

Tiem Reijns thanked all the attendees for their input and presented a wrap-up of the comments from the attendees. He noted:

- There is general agreement that the current EQE is a good exam.
- There are concerns about
 - The level (complexity) of a future exam
 - The burden on the candidates
 - Modules versus full A/B/C papers
- The majority accept that a digital exam is the way forward in the future, though nothing is carved in stone. Whether we use exam halls or allow sitting the exam from home or office, there is still a need for breaks.

- Digital examination requires a different kind of preparation. We need to look at simplifying and automating the marking.
- We need to look at the relationship with and effect on national examinations, particularly where the EQE is a partial or full replacement of national examination.
- We need a discussion on limiting the re-sitting or increasing the costs of re-sitting. However we should recognise that this could give an advantage to the high filing countries who have more experience in filing.

The next steps:

- Those involved in developing the EQE will continue to work with **epi** members to build an exam for the future.
- It is important that we maintain the same level of quality.
- The current working group is looking into conceptualizing the current exams.
- All options are being considered and nothing has been agreed yet.
- Updates on the status of the project will be given to **epi** members on a regular basis, and the modernization of the EQE will be discussed at the next **epi** Council meeting.