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# Paper DI – Part 1

This paper (Part 1) comprises:

Question 1: 10 marks

Question 2: 8 marks

Question 3: 7 marks

## QUESTION 1

(10 MARKS)

Today is 2 March 2021.

A European patent application EP-L was filed in English on 4 March 2017 by Ms Lava, a national and resident of Iceland. The mention of the grant of a European patent EP-L will be published on 3 March 2021. EP-L claims a soap scrub composition comprising ash in a certain weight percentage. The soap scrub according to the claims, produced by Ms Lava's company having manufacturing sites in Iceland has turned out to be a best seller in Romania and Ireland while such a product does not sell in Iceland at all due to an old elves prophecy providing for a lifelong of bad luck if ash should be used for personal hygiene.

Main competitor of Ms Lava, Mr Basalt, has his manufacturing facilities and major part of his business in Iceland. At first, Mr Basalt was quite sceptical about Ms Lava's product, but recently he became quite interested.

Ms Lava additionally tells you that she is currently enlarging her manufacturing plant in Iceland, so her budget is tight.

- a) Advise Ms Lava in which contracting states at minimum she should validate her European patent and why?
- b) What are the periods for submitting the translation of the patent to the national patent offices advised to Ms Lava under a) and in what languages?
- c) Ms Lava would like to know whether it would be possible to pay the renewal fee in respect of the fifth year for EP-L to the EPO, as that would be much simpler. Please advise.

**QUESTION 2****(8 MARKS)**

European patent application EP1 and international application PCT2 were both filed with the EPO on 23 December 2020. The applicant for both EP1 and PCT2 is a US entity having its place of business in the US.

The EPO forwarded PCT2 to the International Bureau where it was received on 7 January 2021.

- a) For each application, what is the last day for paying the filing fee without using any remedies?

The EPO was selected to act as International Searching Authority for PCT2. The applicant receives a communication from the EPO inviting him to pay an additional search fee in respect of PCT2. The applicant also receives a communication from the EPO inviting him to pay a further search fee in respect of EP1. Both communications are dated 17 March 2021 and received by the applicant on 26 March 2021.

- b) For each application, what is the last day for paying the search fee?

**QUESTION 3****(7 MARKS)**

On 21 November 2019, a Canadian outdoor wear company Canada Moose filed a Canadian patent application CA-CM describing their new jackets. The new jackets are breathable, water-repellent and windproof. The inner layer of the jacket is formed of a membrane of a known polymer Pore-Tex, which has pores of sufficient size to allow water vapour (such as sweat) to go through, but too small for water droplets (such as rain) to enter. The sole claim of CA-CM claims a jacket with a Pore-Tex layer with a thickness of 0.01-0.05 mm.

The researchers of Canada Moose continued their experiments and discovered that a layer of 0.005 mm was sufficient for achieving the technical effect. On 23 November 2020, Canada Moose filed a European Patent Application EP-CM, claiming priority of CA-CM, incorporating all of its subject matter, and claiming a jacket with a Pore-Tex layer with a thickness of 0.005-0.05 mm.

On 10 December 2019, Canada Moose's competitor Jack Wolfhide released their newest product, a jacket with a Pore-Tex layer with a thickness layer of 0.008 mm.

- a) What is the current patentability situation of EP-CM?
- b) What is the broadest scope of protection that Canada Moose can obtain based on EP-CM?