

SUBJECT: Amendments to the Regulation on the European qualifying examination (REE)

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: 1. Administrative Council (for decision)
2. Budget and Finance Committee (for information)

SUMMARY

This document contains the proposed new version of the Regulation on the European qualifying examination, including the conditions for registration and enrolment. The main points of the revision are measures to reverse the strongly upward trend in costs, a clear definition of the bodies responsible for conducting the examination, and their powers, and improvements in the quality of the examination. The document also comprises an outline of the new Implementing provisions to the Regulation (IPREE) agreed between the European Patent Office and the Institute of Professional Representatives before the European Patent Office.

Having regard to the European Patent Convention, and in particular Article 134, paragraph 2(c) and Article 134a, paragraph 1(b) thereof, the Administrative Council is requested to approve the draft decision amending the Regulation on the European qualifying examination for professional representatives.

The document has been revised in the light of the discussions in the Budget and Finance Committee, including slight amendments of an editorial nature.

This document replaces CA/139/08 dated 19.09.2008. The amendments are indicated by grey hatching.

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PART I

I. INTRODUCTION

This proposed new version of the Regulation on the European qualifying examination, including the conditions for registration and enrolment, is the result of a process which has been under way for over two years and has involved multifarious discussions and consultations between the European Patent Office (hereinafter "the EPO") and the Institute of Professional Representatives before the European Patent Office (hereinafter "the Institute"). The Institute has expressly welcomed this proposal, as can be seen from a letter written by its President on 19 September 2008 (Annex 2).

In the view of the EPO and the Institute, these new provisions governing access to a career as a professional representative constitute a well balanced proposal which takes into account the interests of the different users of the European patent system.

The new provisions concentrate on obvious areas in which improvements can be made. Once they have entered into force, the EPO and the Institute have agreed that a second phase of the reform will be initiated. This will cover further areas and take account of experience gathered with the present proposal.

The principles of the new IPREE which have been agreed with the Institute are also included. These will be developed into a legal text and submitted to the December 2008 meeting of the Administrative Council.

The last major revision of the European qualifying examination goes back to 1993. In the meantime, the number of candidates has more than quadrupled, and 2 310 have applied to sit the examination in 2008. The pass rate is relatively low: in 2007, 20% of those admitted eventually passed. In previous years, the rate was also well below 30%.

The EPO is concentrating on improving quality in all areas of its operations, which is likewise the main objective of the domain concerned with "raising the bar" within the EPO's strategic renewal process.

High standards of professionalism among Institute members play a crucial role when it comes to the quality of patent filings and the conduct of the patent grant and appeals procedure.

The EPO therefore regards the European qualifying examination and the high standards it requires as an indispensable part of the process of gaining access to the profession.

Given that the job of setting the questions has become more complex, the EPO and the Institute have agreed on a new apportionment of tasks among the organisers of the examination.

In future, the conduct of the European qualifying examination is to be in the hands of a Supervisory Board, an Examination Board, several Examination Committees and an Examination Secretariat. The Supervisory Board has been newly created.

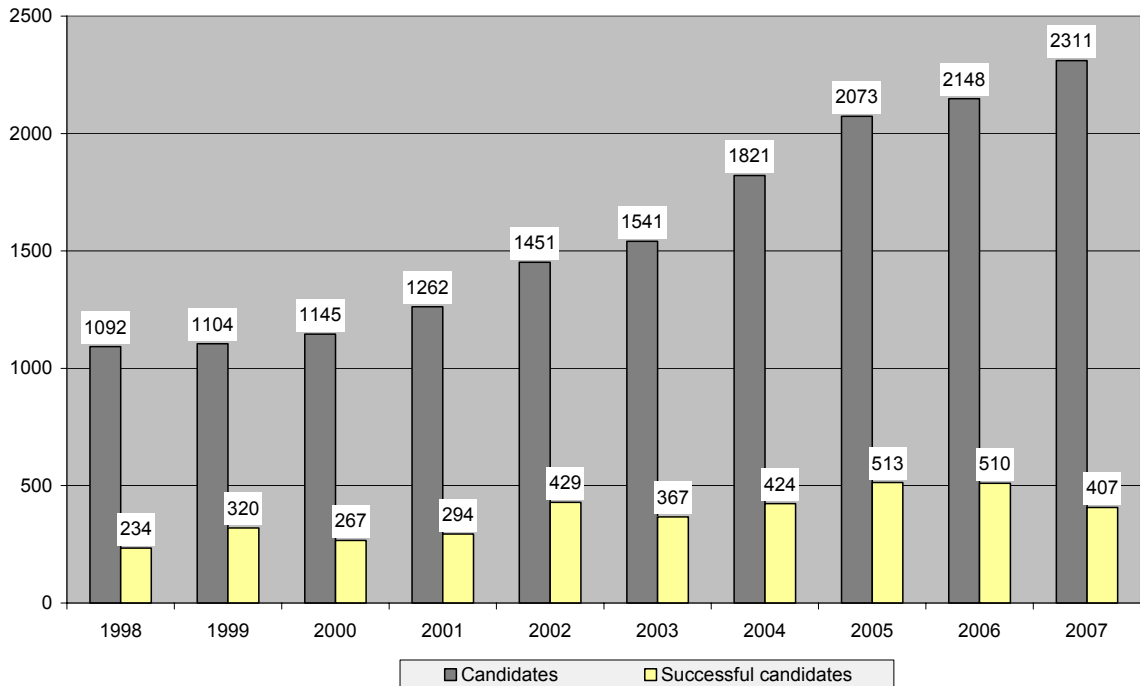
The main job of the Supervisory Board is to concern itself with political matters and fundamental issues regarding access to the profession of European patent attorney. The intention is that the Board should be composed of high-ranking representatives of the EPO and the Institute, thus constituting an effective forum for constructive debate. One of the Board's tasks will also be to adopt the Implementing Provisions.

The setting up of a Supervisory Board will reduce the workload confronting the Examination Board, which will then be able to concentrate fully on the examination, the papers and the marking exercise. As a result, it will develop into a team of experts. The duties of the Examination Committees and the Examination Secretariat will remain essentially unchanged.

The EPO and the Institute are to be equally represented on the Supervisory Board, the Examination Board and the Examination Committees. The chairmanship of the Supervisory Board and the Examination Board will alternate between the EPO and the Institute. When the chairman of the Supervisory Board is a member of the EPO, the Chairman of the Examination Board will be a member of the Institute and vice versa.

In recent years the number of candidates sitting the examination has increased sharply. The pass rate, regrettably, has settled down at a relatively low level.

Numbers of candidates sitting/passing the examination



The vast majority of candidates are resitting the examination and many of them do this several times. Nevertheless, over 80% ultimately pass, even if it takes several attempts.

Cost:

The cost of the examination has also risen enormously in recent years. When EPO examiners and professional representatives process the files and assess the papers of candidates who have failed, this constitutes nothing short of a loss. The high failure rate means a high loss ratio.

All in all, the cost of the 2007 examination came to EUR 7 167 000. Of this, EUR 2 681 000 (estimate based on EPO cost levels) was contributed through the working time of professional representatives made available free of charge and EUR 108 000 (estimate based on EPO cost levels) through kind support from national patent offices in the form of premises and staff. Receipts from fees amounted to EUR 652 000. The remaining costs totalling EUR 4 378 000 were borne by the EPO.

If the present rules were retained, there would be the likelihood of a further sharp rise in the number of candidates, most of them resitting the examination, and in the concomitant costs.

The proposed revision is intended to enhance the overall conditions for candidates, particularly with regard to their preparations for the examination. The resulting improvement in the level of skills will help to cut the failure rate and thereby reduce the high number of candidates resitting the examination.

The outcome would be a substantial pruning of costs for the EPO, lower overall expenditure and better career chances for candidates. At the same time, the professional representatives responsible for training the candidates would have some of the burden removed from their shoulders.

Cost estimates (EPO) / +3% inflation applied

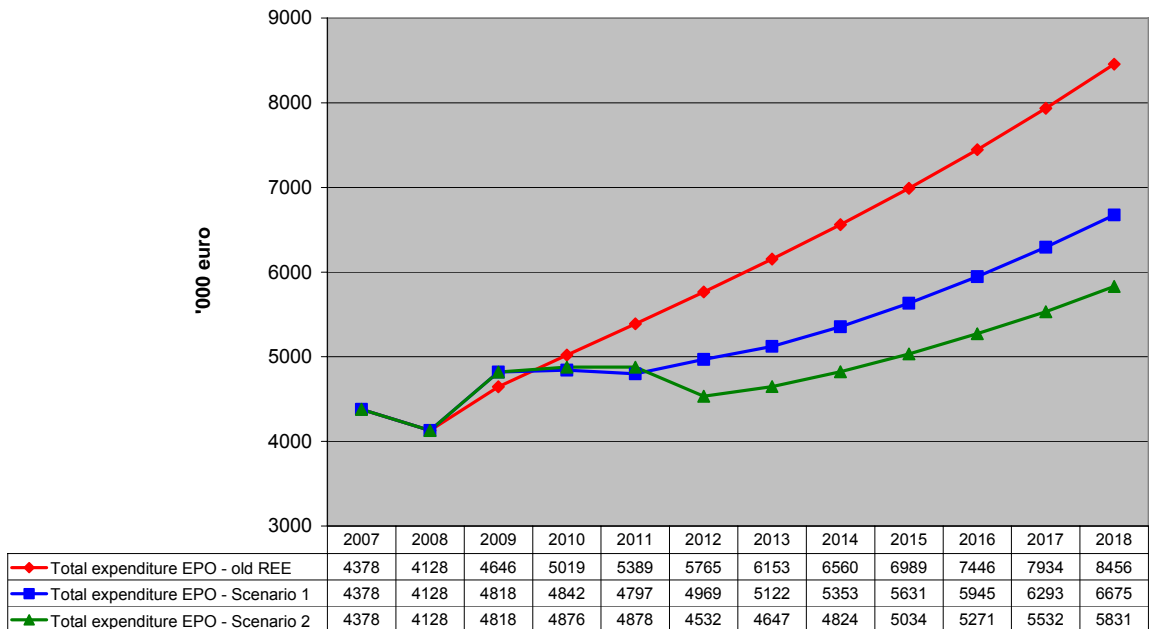


Table 1 shows an estimate of the costs which the EPO is expected to have to bear for the examination. It compares an optimistic estimate of the effects of the proposed changes (Scenario 2), a more pessimistic estimate (Scenario 1) and an estimate on the assumption that the Regulation remains unchanged (old REE). The lower cost of the 2008 examination is due to the fact that in 2007 an unexpectedly large number of candidates failed only Paper C; as a result,

numerous candidates had to re-sit only one paper in 2008, so that the average number of papers sat diminished accordingly. Provisional figures for first-time candidates for the 2009 examination point to an increase of 13%.

Both the optimistic and the pessimistic estimates (Scenarios 2 and 1 respectively) point to a major potential for savings in the longer term. Annex 1 contains further estimates of the overall cost of the examination and the trend expected in the number of successful candidates and the cost of examining each successful candidate.

The new proposal also involves corrections to the procedures for the conduct of the examination in the light of the big increase in candidates, plus some legal adjustments.

The objectives and underlying principles are as follows:

- Candidates are expected to demonstrate an advanced level of training together with a solid basis of practical and theoretical knowledge which will serve to maintain or enhance the profession's standards.
- Candidates are trained by professional representatives.
- Candidates must possess a university-level scientific or technical qualification.
- Candidates must register at the beginning of their practical training. As a result, they can have courses and other training opportunities drawn to their attention. It is also expected that candidates and trainers will be more actively committed during the learning phase if candidates are already officially registered. The intention is to introduce the registration of candidates at the beginning of their training once the operational tools have been put in place.
- The proposal for a pre-examination one year before the main examination is also intended to get candidates involved in a systematic learning process. Success in the pre-examination is a prerequisite for being admitted to the main examination.

- Lower subsidies, i.e. higher fees, for candidates who repeatedly take the same paper is designed to discourage the practice of sitting the examination on the off chance. However, even the envisaged maximum surcharge of 300% would not cover the costs.
- Candidates will be able to choose which papers they sit on a particular day. The absence of any obligation to take all four papers at the same time, or according to a schedule prescribed by the modular system, allows candidates to focus their preparation more effectively on individual papers and to defer papers for which they are unprepared to a later date.
- The time limit for allowing an appeal is to be reduced to two months, giving the Disciplinary Board of Appeal of the EPO more time to process an appeal. It is also intended that the appeal fee should be increased to ensure that costs are partially covered.

The planned second phase of the revision will focus on resolving the issue of the qualifications required for membership of the Examination Board. One option would be to make it obligatory for some members to have passed the European qualifying examination, as is the case with members of the Examination Committees.

Another possible topic for the second phase could be the involvement of only one examiner in the marking of one part of the papers. This would be considered in the context of a review of the options for appeals.

The Office believes that the proposed reform will make the examination fit for the future by

- improving the governance structure
- curbing the continual rise in costs
- improving results through better preparation of candidates.

II. PROPOSED AMENDMENTS

The amendments are set out in detail below, accompanied by explanatory notes.

The layout is double-sided, with the explanatory notes on each article set out on the left-hand page. The right-hand page is divided into two columns. The right-hand column contains the proposed new text, while the left-hand column shows the corresponding provisions from the old Regulation.

III. REQUESTED DECISION

Having regard to the European Patent Convention, and in particular Article 134, paragraph 2(c), and Article 134a, paragraph 1(b), thereof, the Administrative Council is requested to approve the draft decision amending the Regulation on the European qualifying examination for professional representatives contained in Part II.

**PROPOSED AMENDMENTS
TO THE REGULATION
ON THE EUROPEAN QUALIFYING EXAMINATION (REE)**

ARTICLE 1 – THE EUROPEAN QUALIFYING EXAMINATION

Explanatory notes

The new **Article 1** gives a general but clear outline of the examination, explaining its purpose (paragraph 1), stating that it is held once a year (paragraph 2) and what form it takes (paragraph 3), and introducing the bodies which run it (paragraph 6).

The new **Article 1** is intended to clarify the purpose of the European qualifying examination, namely to test the suitability of a candidate to act as a professional representative on behalf of natural or legal persons in proceedings under the European Patent Convention. At the suggestion of the Institute, paragraph 1 also defines the purpose of the examination.

In the proposed **paragraph 2**, the maximum period between two examinations is increased from 24 to 25 months in case the examination, exceptionally, cannot be held in a particular year. This is to ensure that it can take place in the usual week - currently the first week in March - even if as a result the 24-month period is slightly exceeded owing to the position of that week in the calendar.

Paragraph 3: editorial amendment, content unchanged (old Article 13(1)).

Paragraph 4: editorial amendment (old Article 13(3)).

In order to highlight the purpose and content of the examination, these are referred to in the first article.

Existing text**Proposed amendments****Article 1
Holding of the examination****Article 1
The European qualifying examination**

No comparable provision.

(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").

A European qualifying examination shall normally be held once a year. The period between two examinations shall not exceed twenty-four months.

(2) The examination shall normally be held once a year. The period between two examinations shall not exceed twenty-five months.

Article 13(1) The examination shall comprise written papers only.

(3) The examination shall comprise written papers only.

Article 13(3) The examination papers shall at least cover:

(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.

(a) the drafting of claims and the introductory part of a European patent application on the basis of such information as is normally available to a professional representative for the purposes of carrying out this task;

(b) the preparing of a reply to an official letter in which prior art has been cited;

(c) the drafting of a notice of opposition to a European patent;

(d) the answering of legal questions and the legal assessment of a specific situation.

Paragraph 5: It is still possible to set one or more of the papers in more than one technical field.

The proposed **paragraph 6** introduces the bodies which will be responsible for running the European qualifying examination.

Paragraph 7 introduces the pre-examination as a means of improving training and encouraging candidates to start preparing for the examination at an earlier stage. Currently, candidates start with intensified preparation for the examination six months or less beforehand (confirmed by surveys conducted in 2006, 2007 and 2008). For the pre-examination, this intensive training period would have to begin at least eighteen months before the examination. The pre-examination would filter out candidates whose preparation does not cover the minimum knowledge required to sit the main examination. The EPO and the Institute agree that the pre-examination should not impose any additional burden on candidates. Thus, the duration of the main examination will be reduced by the duration of the pre-examination. Sitting the pre-examination a year before the main examination, candidates would benefit from a learning and training process spread over the years and would be better able to assess their capabilities before the end of their training period.

Existing text**Proposed amendments**

Article 13(4) The Board may allow candidates to choose, in certain papers, one of two or three technical specialisations.

No comparable provision.

No comparable provision.

(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

Explanatory notes

It is proposed that, in addition to the existing bodies charged with running the European qualifying examination, a Supervisory Board consisting of four members be established.

The Supervisory Board will be concerned primarily with political matters and fundamental issues regarding access to the profession of European patent attorney. The intention is that the Board should be composed of high-ranking representatives of the EPO and the Institute, thus constituting an effective forum for constructive debate.

The setting up of a Supervisory Board will reduce the workload confronting the Examination Board, which will then be able to concentrate fully on the content of the examination.

Paragraph 1: As a new basis for the co-operation between the EPO and the Institute, it is proposed that the two be represented equally on the Supervisory Board.

The members of the Supervisory Board are to be appointed by the President of the EPO. Members from the Institute will be appointed on a proposal from the Institute's President. This procedure is similar to the present appointment procedure for the Examination Board.

A member of the EPO or the Institute will chair the Supervisory Board for two years at a time on an alternating basis.

Existing text**Proposed amendments**

Article 2
The Supervisory Board

No comparable provision.

(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").

No comparable provision.

(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.

No comparable provision.

(b) One deputy for the two EPO members and one for the two Institute members shall be appointed in accordance with (a) above.

No comparable provision.

(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.

No comparable provision.

(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.

No comparable provision.

(iii) For subsequent terms the chairmanship shall alternate as provided in (i) and (ii) above.

Paragraph 2: A two-year term of office is proposed to ensure that each chairman has sufficient time to deal with matters properly.

Paragraphs 3 and 4: If an EPO member of the Supervisory Board leaves the Office, he will also cease to be a member of the Board. The same applies to members from the Institute.

Paragraph 5: The current practice for appointing members of the Examination Board has proved itself over the course of several years. It is therefore being adopted for the Supervisory Board as well.

Existing text**Proposed amendments**

No comparable provision.

(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.

No comparable provision.

(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.

No comparable provision.

(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.

No comparable provision.

(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.

No comparable provision

(6) The Supervisory Board shall be convened by its Chairman. Three members shall constitute a quorum.

Paragraph 7 enables experts or advisers to be invited to meetings of the Supervisory Board. Since close co-operation is called for between the Examination Board and the Supervisory Board, the Chairman of the Examination Board is mentioned categorically.

Paragraph 8 provides for a simplified written procedure for taking decisions. The Chairman can set the time limit for replying according to the urgency of the decision.

Paragraph 9 accords a casting vote to the Chairman of the Supervisory Board in the event of a tied vote. This provision guarantees that the Board can always function. However, it needs to be considered in conjunction with Article 2 paragraph 1(c), which governs the two-year alternation of the chairmanship between EPO and Institute.

Existing text**Proposed amendments**

No comparable provision.

(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.

No comparable provision.

(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.

No comparable provision.

(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

Explanatory notes

Paragraph 1 stipulates that the Supervisory Board sets the date of the examination. In view of the large numbers of candidates, these dates have to be fixed well in advance. This is necessary both for the organisation of the examination itself and for the time-consuming marking procedure. Another factor is that the various institutions involved in training have to be able to arrange the best possible timetables for their courses. The current practice of holding the examination in the first week of March has proved a good compromise since it enables the candidates to receive their results at the beginning of the summer break (early August).

Paragraph 2: Up to now, this was the job of the Examination Board.

Paragraph 3: The Supervisory Board is responsible for monitoring the conduct of the examination and its results. Its duties do not include getting involved in the operational activities of the other bodies concerned with the examination. Its role is to take corrective action where necessary by amending the Implementing Provisions (see also paragraph 7) or submitting proposals for modifying the Regulation.

Paragraph 4: At the Institute's request, the Supervisory Board is afforded an opportunity to give its opinion on the appropriations for the examination. This also enables the Institute to express its views, before the budget is adopted, on the funds to be made available by the EPO.

Existing text**Proposed amendments**

No comparable provision.

No comparable provision.

No comparable provision.

No comparable provision.

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.

Paragraph 5: In line with the overall nature of its duties, the Supervisory Board will take over responsibility for deciding on the type of statistics that should be published. The Examination Secretariat will continue to be in charge of drawing up and publishing statistics.

Paragraph 6: This is a new feature. Rules for inappropriate conduct on the part of candidates will make it easier to handle such cases, which occur only rarely. The need to introduce provisions governing the conditions which should apply to disabled candidates had become clear from past practice and general social trends in the member states.

Paragraph 7: It is proposed that the Supervisory Board, which will be composed of an equal number of high-ranking members from the EPO and the Institute, should be entrusted with the task of drafting and updating the Implementing Provisions. In the past, this was done by the Examination Board. The new apportionment of duties between the Supervisory Board and the Examination Board allows the latter to concentrate on the substance of the examination. ~~In the light of Article 48 EPC, the President of the EPO~~ Since the Supervisory Board is a joint body and pursuant to Article 48 EPC the President of the EPO is responsible for implementing the budget as approved by the Administrative Council, the President can object to, and thus block, provisions which result in an increased financial liability for the EPO.

Existing text**Proposed amendments**

Article 25(3) The Secretariat shall be responsible for compiling and disseminating statistical information concerning the results of the examination. The Board shall decide what information shall be disseminated and to whom.

Article 7(2) The Board shall in particular also decide on the list of books and documents which may be used by candidates and shall instruct the Examination Secretariat concerning the measures to be taken in respect of candidates found to be cheating or attempting to cheat.

Article 7(6) The Board shall draw up implementing provisions to this Regulation.

(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

Explanatory notes

Paragraph 1: It is proposed that the number of Examination Board members be reduced from the current nine (five from the EPO and four from the Institute) to eight. The Board's composition, too, will thus reflect the equal partnership between the EPO and the Institute, and money will be saved.

The procedure for appointing the Examination Board's members and chairman will remain unchanged and is the same *mutatis mutandis* as that for appointing the members of the Supervisory Board.

Given that the duties of the Supervisory Board and the Examination Board are fundamentally different, it is proposed that members of one should not at the same time be members of the other.

Existing text**Proposed amendments****Article 2
The Examination Board****Article 4
The Examination Board**

(1) The examination shall be organised and conducted by a Board of nine members consisting of:

(1) The Examination Board shall consist of eight members.

(b) four members of the Institute appointed by the President of the EPO acting on a proposal from the President of the Council of the Institute, and

(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.

(c) four employees of the EPO appointed by its President.

(a) a Chairman appointed by the President of the European Patent Office (hereinafter called "the EPO") from among employees or retired employees of the EPO, after consulting the Council of the Institute of Professional Representatives before the EPO (hereinafter called "the Institute"),

(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.

No comparable provision.

(c) No member of the Supervisory Board shall be a member of the Examination Board.

Paragraphs 2-8: These provisions are the same *mutatis mutandis* as those for the Supervisory Board.

Paragraph 2: The members of the Examination Board are appointed for a term of two years which can be extended. The reduction from four to two years facilitates the rotation of members.

Paragraphs 3 and 4 ensure that members of the Examination Board who leave the EPO or the Institute also leave the Examination Board.

Paragraph 5: The current practice for appointing members of the Examination Board has proved itself over the years and is consequently being retained.

Paragraph 6: This is the current practice.

Existing text**Proposed amendments**

Article 3(1) The members of the Board shall be appointed for a period of four years, subject to paragraph 2. Upon expiry of this period they may be re-appointed.

(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.

No comparable provision.

(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.

No comparable provision.

(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.

No comparable provision.

(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.

Article 5 The Board shall be convened by its Chairman. Five members shall constitute a quorum. Decision of the Board may be taken by written procedure, provided no member objects.

(6) The Examination Board shall be convened by its Chairman. Five members shall constitute a quorum.

Paragraph 7 allows the Chairman to set the time limit for voting on a proposal by written procedure. To make that procedure effective, and in contrast to the previous arrangement, it can no longer be stopped by a member's objection.

Paragraph 8 has to be seen in the context of paragraph 6. It guarantees the Examination Board's ability to function.

Paragraph 9: Candidates regularly find minor errors in the papers while sitting the examination. Under the current procedure, all the members of the Examination Board then have to be contacted so that they can decide what to do. As a rule, too, contact with the members is preceded by an approach to the author of the paper to ask his opinion about the error and its potential effects on the candidates' answers. If the Board then decides that the error is to be corrected and all candidates are to be informed through an announcement, every examination centre is put in the picture and the announcement can be made by the invigilators. This procedure causes substantial delays which are a serious problem, particularly if an error is only discovered at an advanced stage of the examination.

It is therefore proposed that, in the exceptional situation described above, the Chairman should be able to take a decision without involving the other members of the Examination Board.

Existing text**Proposed amendments**

No comparable provision.

(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.

No comparable provision.

(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.

No comparable provision.

(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

Explanatory notes

The purpose of this article is to ensure that the Chairman of the Supervisory Board and the Chairman of the Examination Board are not both from either the EPO or the Institute at the same time. It also helps to guarantee the desired equilibrium between the EPO and the Institute in the context of the examination.

Existing text

Proposed amendments

No comparable provision.

**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

Explanatory notes

Paragraph 1: The Supervisory Board depends upon the Examination Board's advice in the performance of its duties.

Paragraphs 2 and 3: The Examination Board has overall responsibility for the examination papers and the marking of the answers. In these respects the Examination Committees are answerable to it.

In the past, the Examination Board was not informed about the marking sheets used by the Examination Committees. Nor did it know, at the time when the examination papers were finally approved, what answer was expected from the candidates (model solution).

The proposed paragraphs 2 and 3 are intended to strengthen the position of the Examination Board with a view to make the papers and their marking more consistent and enhance the standard of quality assurance.

The appointment of the Examination Committees' Chairmen by the Examination Board is already current practice.

Existing text**Proposed amendments****Article 7
Powers of the Board****Article 6
Duties of the Examination Board**

No comparable provision.

(1) The Examination Board shall advise the Supervisory Board on the conduct and results of the examination.

Article 7(1) The Board shall give the members of the examination committees the necessary instructions for preparing the examination papers, examine the drafts and make the final selection of the texts.

(2) Subject to the IPREE, the Examination Board shall give the members of the Examination Committees instructions for:

No comparable provision.

(a) preparing the examination papers

No comparable provision.

(b) preparing the marking sheets

Article 16 The Board shall give the members of the examination committees the necessary instructions to ensure that candidates' answers are marked in a uniform manner

(c) marking candidates' answers consistently.

No comparable provision.

(3) The Examination Board shall

No comparable provision.

(a) appoint the Chairman of each Examination Committee from among the members of the respective Committee

No comparable provision.

(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.

Paragraph 4: At the moment, the Examination Board allows candidates to bring any books and documents into the examination. The case law is also listed, as it has become increasingly important in recent years.

Paragraph 5: The proposal takes account of current practice whereby, in view of the large number of papers to be marked, the Examination Board does not mark each paper individually. Instead, its job is to ensure that the marking procedure is carried out correctly.

In doing this, it can take corrective action either across the board or in respect of the marking of individual papers by adjusting the candidates' marks or instructing the Examination Committees to re-mark the papers. In view of the resulting delay, it will not as a rule be possible to adopt the latter course. Consequently, the most helpful option is that of having the marks adjusted by the Examination Board itself. This was done in 2007, when the Examination Board awarded all candidates ten additional marks for the answers to Paper C.

Paragraph 6: Both the training institutions and candidates have requested that a model solution be published for every examination paper in addition to the compendium published at the moment.

Existing text**Proposed amendments**

Article 7(2) The Board shall in particular also decide on the list of books and documents which may be used by candidates and shall instruct the Examination Secretariat concerning the measures to be taken in respect of candidates found to be cheating or attempting to cheat.

Article 7(3) The Board shall take note of the grades proposed to it by the examination committees, determine the grades for each paper and decide whether a candidate has passed or failed. No member of the Board who was a member of the committee which marked the papers of the candidate in question shall take part in this decision.

Article 7(5) Each year the Board shall transmit to the Examination Secretariat a report on each examination paper (examiners' report) prepared by the relevant examination committee for inclusion in an annual compendium.

No comparable provision.

(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 ~~by the Supervisory Board~~ in the IPREE.

ARTICLE 7 – EXAMINATION COMMITTEES

Explanatory notes

Paragraph 1: As at present, the members of the Examination Committees are selected by the Examination Board and then appointed by the President of the EPO. Up to now, it was the Examination Board which appointed them. Appointment by the President highlights the official status of the Committees' members. At the same time, the Examination Board retains its expert role of selecting the members according to their individual suitability.

Paragraph 2: After being appointed, the members of the Examination Committees can remain on a waiting list for a time with non-active status. They can then, if needed, be called upon to perform active service by the Chairman of the Committee, who will inform the Examination Board accordingly. This arrangement makes it simpler to call upon the services of Committee members and enables this to be done at longish intervals, such as once a year.

Paragraph 3: It is intended that, as at present, the Examination Committees should have equal numbers of members from the EPO and the Institute. The current arrangement whereby the number of EPO members has to be between one quarter and one half of the total if the total is more than four is being dropped in the interests of greater flexibility. This could prove especially useful in years when a large number of candidates are sitting a particular paper.

Paragraph 4 is in line with current practice and is the same *mutatis mutandis* as the corresponding provisions for the Supervisory Board and the Examination Board.

Existing text**Proposed amendments**

Article 4
Examination committees

(1) For the purpose of conducting the examination the Board shall appoint one or more examination committees.

No comparable provision.

(2) Each committee shall be set up on the basis of equal numbers of employees of the EPO and of members of the Institute. However, if the members of a committee exceed four in number, the proportion of employees of the EPO shall be between one quarter and one half of the total number of members of that committee.

No comparable provision.

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.

Paragraph 5: After 30 years of the European qualifying examination, a large number of professional representatives and EPO employees are available who have successfully sat all the examination papers. The distinction between all the papers and passing the examination is necessary because EPO employees admitted to the examination under Article 11(2)(b) REE have as a rule not yet provided evidence of the two years' practical experience in accordance with Article 14(2) REE (draft).

Exceptions can be made to this rule in order to retain the possibility of appointing lawyers as Committee members.

Paragraphs 6 and 7 are the same *mutatis mutandis* as the corresponding provisions for the Supervisory Board and the Examination Board. They are in line with current practice and ensure that all members of the Committees are either members of the Institute or employees of the EPO.

Paragraph 8 allows Committee members who retire to remain on the Committee for a limited period. This option has already proved itself in practice. But a new feature is that this possibility is now also available to members of the Institute.

Paragraph 9 is in line with current practice. It ensures that a Committee can continue to function when members leave.

Existing text**Proposed amendments**

(5) Article 2(3) shall apply mutatis mutandis to members of the examination committees.

(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.

No comparable provision.

(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.

(4) A member of a committee who retires from the EPO shall be eligible to continue and be reappointed as a member and shall for the purposes of this Regulation be considered an employee of the EPO.

(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.

No comparable provision.

(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.

No comparable provision.

(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

Explanatory notes

Paragraph 1: The Examination Committees are responsible for preparing the examination papers, the marking sheets and the grading proposals. This is the current arrangement. In future, greater transparency will be achieved by making all the relevant documents, including the Committees' internal grading criteria, available to the Examination Board.

Paragraph 2: At the moment, candidates are free to decide which books or documents they take to the examination. Technical expertise is concentrated in the Committees, so it is their job to advise the Examination Board about the books and documents allowed into the examination. The explicit reference to the case law takes account of its increased importance.

Paragraph 3: Same provision as for the Examination Board.

Existing text**Proposed amendments**

Article 8
Duties of the committees

The examination committees shall be responsible for:

(a) preparing the examination papers in accordance with the instructions given by the Board and, where relevant, indicating the relative importance of the individual questions;

No comparable provision.

(c) submitting the above-mentioned answers to the Board with proposals for the grades to be awarded;

No comparable provision.

(b) marking the answers to the examination papers, each answer being marked separately by two committee members;

(d) drawing up a list of references to landmark decisions in EPO case law as referred to in Article 12, and submitting it to the Board for annual publication.

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

Explanatory notes

Paragraph 1: Given the specialised nature of the work involved in conducting the examination, there would be no point in employing non-EPO staff (e.g. temps) in the Examination Secretariat. This provision ensures that the Examination Secretariat is provided with suitable personnel, funding and technical equipment.

Paragraph 2: The Secretariat's duties are essentially unchanged and the provisions have merely undergone some editorial amendments.

Existing text**Proposed amendments**

Article 6
The Examination Secretariat

The EPO shall provide the Board and its committees with the necessary administrative facilities in the form of an Examination Secretariat.

Article 9(1) The Examination Secretariat shall assist the Board and its committees in their duties.

Article 9(2) It shall be responsible for publication of

- (a) the implementing provisions mentioned in Article 7(6),
- (b) the instructions mentioned in Article 7(4),
- (c) the compendium mentioned in Article 7(5),
- (d) the list mentioned in Article 8(d), and
- (e) the notice mentioned in Article 20.

Article 9(3) The Secretariat shall also be responsible for supplying other information concerning the examination.

Article 9(4) In accordance with instructions drawn up by the Board, the Secretariat shall decide on the enrolment of candidates. It shall arrange for the holding of the examinations and take the necessary measures for their supervision.
No comparable provision.

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

Explanatory notes

The Board, Committees and Secretariat are bound by no instructions in the performance of their core duties. The present Regulation does not contain any such provision.

Existing text**Proposed amendments**

No comparable provision.

No comparable provision.

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

Explanatory notes

Paragraph 1 contains one of the main features of the proposed reform: the registration of candidates on commencement of their practical training. It is expected that, for both candidates and trainers, registration will increase personal awareness regarding the forthcoming examination, and that they will prepare themselves for the examination more enthusiastically as a result. Registration will also make it possible to inform candidates and trainers personally about courses and other training facilities and opportunities. This possibility of direct contact in connection with the courses offered by the European Patent Academy, the Institute, CEIPI and national authorities is likely to bring about a markedly higher pass rate. The intention is to introduce the registration of candidates at the beginning of their training once the operational tools have been put in place.

In the light of the differences in the university educational systems in Europe, the adoption of a uniform approach regarding the conditions for enrolment is considered necessary. Therefore, enrolment should be open equally to all candidates who have completed a total of seven years of education consisting of either four years at university and three years of practical training or three years at university and four years of practical training.

Existing text**Proposed amendments****Article 10
Conditions for enrolment**

(1) Candidates shall be enrolled for the examination on request provided 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, and fulfil the conditions specified in paragraph 2.

(2) Candidates who apply for enrolment 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 under the supervision of one or more persons entered on the list referred to in Article 134(1) of the European Patent Convention (hereinafter called "the EPC"), as an assistant to that person or those persons, in which period they have taken part in a wide range of activities pertaining to European patent applications or European patents, or

**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

In **Paragraph 2 (a)**, sub-division iii has been deleted on a proposal from the Institute. This simplifies the conditions under which training is recognised. In accordance with existing practice, paragraph 2(b) makes it clear that the period of work as an EPO patent examiner has to be full-time.

Paragraph 3 has been brought into line with current practice.

Paragraph 4: unchanged.

Existing text**Proposed amendments**

(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 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

(iii) worked full-time during a period of at least three years as an assistant to, and under the direct supervision of, one or more persons as defined in sub-paragraph (ii) 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 the duties of 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 of three years.

(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.

(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

~~(iii) worked full time for a period of at least three years as an assistant to, and under the direct supervision of, one or more persons as defined in sub-paragraph (ii) 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.

Paragraph 5: unchanged.

Paragraph 6: editorial amendment, substance unchanged.

Paragraph 7 introduces the new option of conducting a pre-examination, which candidates will be able to sit one year before being admitted to the main examination.

Existing text**Proposed amendments**

Article 11 Under the conditions laid down in the instructions referred to in Article 7(4), the Secretariat may grant a reduction of up to one year in the duration of the periods of professional activity defined in Article 10(2).

(5) An application for enrolment shall not be deemed to have been filed until the prescribed fee has been paid.

No comparable provision.

(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.

Paragraph 8 now also includes the members of the Supervisory Board and the Examination Secretariat.

Existing text**Proposed amendments**

Article 2(3) Members of the Examination Board who satisfy the requirements of Article 10(2) shall not be entitled to enrol for the examination. Former members of the Examination Board shall be entitled to enrol, at the earliest, for the third examination subsequent to the expiry of their term of office.

(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

Explanatory notes

Paragraph 1: substance unchanged.

The separate language arrangement for Paper C has been dropped. Under the previous provisions the documents on the state of the art for Paper C were supplied in two of the official languages, which meant that candidates had to be able to understand at least two of those languages. The EPO and the Institute agree that there is no need to require candidates to know at least two of the official languages. All parts of the paper are therefore to be provided in all the EPO's official languages. The proposed new arrangement is expected to benefit candidates from states which do not have any of the EPO's official languages as their official languages.

Paragraph 2 confirms the current practice (see existing Article 15(3), first sentence). It was agreed with the Institute that candidates should be encouraged to write their answers in one of the EPO official languages, although the IPREE would retain the option of using non-official languages. Indeed, the examination aims to establish whether a candidate is qualified to practise as a professional representative before the EPO (see Article 1(1) of this Regulation), thus ensuring the proper functioning of the European patent system and safeguarding certain aspects of the public interest relating in particular to the quality of representation. Moreover, patent activity in contracting states having a non-EPO official language might be improved with representatives able to work in one of the EPO languages. The EQE training courses are given in the EPO official languages and only a few candidates use a non-EPO official language in their answer papers. Besides, imperfect command of a language is not held against candidates.

Paragraph 2 and 3: It will continue to be possible to write the answer in one of a contracting state's official languages which is not an EPO official language. The Institute has said it is prepared to maintain the current practice and to make the necessary translations into one of the official languages of the EPO.

Existing text**Proposed amendments****Article 15
Languages****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.

(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) At least three separate and different documents on the state of the art shall be supplied with the examination paper mentioned in Article 13(3)(c). Such documents shall each be drawn up in one of the official languages and be accompanied by a translation into at least one of the other official languages. The three official languages shall always be equally represented. The aforementioned examination paper shall be accompanied by a glossary of the specialist terminology contained in the prior art documents in all the languages requested under paragraph 3.

(3) The candidates' answers should be given in one of the three official languages. Nevertheless, candidates may, if they so request when enrolling for the examination, submit their answers in another language being an official language of a Contracting State. In such cases, the Secretariat shall have a translation made in one of the official languages of the EPO and shall submit the translation together with the original answers to the appropriate examination committee.

(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

Explanatory notes

Editorial amendment, substance unchanged except for paragraph 1(d): instead of a list of pioneering decisions published annually, an overall arrangement will be set out in the Implementing Provisions.

Existing text**Proposed amendments****Article 12
Examination syllabus****Article 13
Examination syllabus**

The examination shall establish whether a candidate has:

The examination shall establish whether a candidate has:

(a) a thorough knowledge of:

(1) a thorough knowledge of:

(i) European patent law as laid down in the EPC and the Agreement relating to Community Patents;

(a) European patent law as laid down in the EPC and any legislation relating to Community patents

(ii) the Paris Convention (Articles 1 - 5^{quater} and Article 11);

(b) the Paris Convention (Articles 1 - 5^{quater} and Article 11)

(iii) the Patent Cooperation Treaty;

(c) the Patent Cooperation Treaty

(iv) all decisions of the Enlarged Board of Appeal and landmark decisions of EPO case law as specified in the list referred to in Article 8(d), and

(d) all decisions of the Enlarged Board of Appeal and EPO case law as specified in the IPREE, and

(b) a general knowledge of the national laws of:

(2) a general knowledge of the national laws of:

(i) the contracting states to the extent that they apply to European patent applications and European patents;

(a) the contracting states to the extent that they apply to European patent applications and European patents

(ii) the United States of America and Japan to the extent that they are of importance in connection with proceedings before the EPO.

(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

Explanatory notes

Paragraph 1 is to be amended to reflect the fact that a distinction is no longer made between a candidate sitting the examination for the first time and one who is re-sitting all or parts of it. The EPO and the Institute intend to offer all candidates the possibility of compensating their results which is already available to those sitting the examination for the first time.

Paragraph 2: editorial amendment, substance unchanged.

Existing text**Proposed amendments****Article 17**
Passing the examination**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, the first time he sits the examination, he obtains the minimum grades required under the implementing provisions.

(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 performed the duties of examiner at the EPO for at least four years shall be declared to have passed the examination provided they fulfil the requirements of 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 10(2)(a).

(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

Explanatory notes

It is proposed that candidates should be free to choose which papers they wish to sit. This is meant to encourage better preparation for a particular paper and enable candidates to choose a suitable combination of papers. Modular sitting is being dropped.

Existing text**Proposed amendments****Article 14
Modular sitting of the examination**

(1) The first time a candidate sits the examination it may be sat in two modules. Candidates who have availed themselves of this possibility shall sit at least the second module within the next three subsequent examinations. If a candidate chooses to sit the first module again, together with the second module, it shall count as a first sitting and any result previously obtained shall no longer be valid.

(2) The Board may lay down further details in its implementing provisions.

**Article 15
Choice of papers**

When enrolling, candidates shall indicate which paper or papers they intend to sit.

ARTICLE 16 –RESITTING THE EXAMINATION

Explanatory notes

Paragraph 1: substance unchanged.

Paragraph 2 allows the Implementing Provisions to contain special measures in respect of candidates who have prompted major doubts about their preparation. Consideration has been given to an radical increase in the fees for such candidates. A further option for extreme cases might be to exclude a candidate from the following year's examination as well. However, it is intended that an increase should only apply from the second re-sitting (50%, see Annex 3, point 2), candidates being enabled to sit a paper twice without any fee increase. Furthermore, candidates remain heavily subsidised by the EPO.

Existing text**Proposed amendments****Article 18****Re-sitting the examination in full or in part**

A candidate who fails the examination may only re-sit a paper or papers he did not pass.

No comparable provision.

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

Explanatory notes

As in the past, the President of the EPO fixes the amounts of the fees after consulting the Institute. The option of modular sitting of the examination has been replaced by an unrestricted choice of papers (Article 15). The fee structure for those re-sitting the examination is laid down in the Implementing Provisions. This makes it possible to react flexibly to candidates' performance and the Institute is directly involved in the decision-making process. The fee structure is intended to motivate candidates to apply to sit a paper only if they expect to achieve a good result after proper preparation. It is thought that this will raise the pass rate for the individual papers, with the overall consequence that results will improve and costs will be reduced. Candidates are given the choice of sitting any paper (see Article 15 of this Regulation) and should be encouraged to make that choice carefully, i.e. according to their individual level of preparation for the examination. This will improve their chance of passing a paper at the first attempt, and a fee increase could be avoided. As a result, the overall fee burden for candidates would remain unchanged and costs would be reduced for the EPO.

Existing text**Proposed amendments****Article 19
Fees**

(1) The President of the EPO shall specify the fees referred to in Articles 10(5) and 27(2) after the Institute has been consulted. The fee for a modular sitting or a resit in part shall always constitute at least 50% of the enrolment fee for an examination in full. When a candidate enrolls for the second time for the examination in full a surcharge of 50% of the basic fee shall be levied on enrolment and a surcharge of 100% on enrolments for examinations in full thereafter.

(2) The translations referred to in Article 15(3) shall not require any additional fee and may be prepared by the Institute.

**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

Explanatory notes

This article is unchanged.

Existing text**Proposed amendments****Article 20
Notice of the examination**

A notice of 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 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

Explanatory notes

Paragraph 1 is designed to ensure that communications concerning the examination are sent to the Secretariat. Up to now, only enrolment for the examination was covered by a provision of this kind, which frequently led to problems in the case of communications regarding other matters.

Paragraph 2 has undergone editorial amendments. In the interests of efficiency, candidates will no longer be informed individually. Instead, they could be contacted, also anonymously, through the internet using lists with their registration numbers and the relevant information. In the interests of efficiency, refusals will in future be supported by reasons.

Paragraph 3, like paragraph 2, dispenses with the requirement to inform candidates individually. Since the Regulation, the Implementing Provisions and other relevant information are all published on the EPO's internet pages, it was decided that, in the interests of economy, the Regulation and other provisions would no longer be sent to the candidates.

Existing text**Proposed amendments****Article 22
Enrolment****Article 19
Communications**

No comparable provision.

(1) Any communication concerning the examination shall be addressed to the Secretariat.

(1) The Secretariat shall inform candidates individually in writing whether or not their application for enrolment has been accepted. In cases of refusal a statement of grounds shall be given and candidates may request a reasoned decision.

(2) The Secretariat shall inform candidates in writing whether their registration or enrolment has been accepted. In cases of refusal ~~a statement of grounds and a~~ reasoned decision shall be given.

(2) Candidates enrolled shall also be individually informed in writing of the date, time and place of the examination. They shall furthermore be sent a notice setting forth both this Regulation and other provisions laid down by the Board which are of relevance to the candidates.

(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

Explanatory notes

This article is unchanged.

Existing text**Proposed amendments****Article 23**
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 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

Explanatory notes

Editorial amendment, substance unchanged.

Existing text**Proposed amendments****Article 24
Anonymity**

- (1) Candidates' anonymity shall be respected when their answers are marked.
- (2) Candidates' answers may be published and used at any time for research, statistical or training purposes provided anonymity is respected.

**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

Explanatory notes

Paragraph 1 has been brought into line with current practice. The list of candidates who have passed the examination is published by the Examination Secretariat. An official act by the President is not required.

Paragraph 2 has been amended to enable candidates to have their answers made available to them also electronically via the internet.

Paragraph 3: editorial amendment, substance unchanged.

Existing text**Proposed amendments****Article 25
Results**

- (1) The President of the EPO shall publish in the Official Journal of the EPO an alphabetical list of candidates who have been successful in the examination.
- (2) The Secretariat shall send each candidate a copy of his or her own answers.
- (3) The Secretariat shall be responsible for compiling and disseminating statistical information concerning the results of the examination. The Board shall decide what information shall be disseminated and to whom.

**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

Explanatory notes

This article has been amended to ensure that the secrecy obligation also covers future examination papers.

Existing text**Proposed amendments****Article 26
Professional secrecy**

Subject to Articles 24(2) and 25, the members of the Board, the members of its committees and the EPO staff members working in the Secretariat shall be bound to secrecy both during and after their term of office with regard to all matters concerning the candidates and any deliberations held thereon.

**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

Explanatory notes

Paragraph 1: editorial amendment, substance unchanged.

Paragraphs 2 and 3 stipulate that an appeal which is not allowed must be remitted to the Disciplinary Board of Appeal of the EPO within two months from notification of the contested decision. This greatly reduces the length of the proceedings and thus increases the time available to the board.

Moreover, even an appeal for which no grounds have been filed has to be submitted to the Disciplinary Board of Appeal of the EPO. This is already the case now, in order to ensure that the department of first instance cannot dismiss an appeal on formal grounds with the result that the appellant can no longer file for redress.

Existing text**Proposed amendments****Article 27
Appeals****Article 24
Appeals**

(1) An appeal shall lie from decisions of the Board and the Secretariat only on grounds of infringement of this Regulation or of any provision relating to its application.

(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 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 19 has been paid. Within two months of the date of notification of the decision, a written statement setting out the grounds for appeal must be filed.

(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 Board or, in the case of an appeal against a decision of the Secretariat, the Secretariat considers the appeal to be admissible and wellfounded, it shall rectify its decision and shall order reimbursement of the fee for appeal. If the appeal is not allowed within two months, 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

(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

Paragraph 4 is unchanged.

Paragraph 5 is in line with current practice.

Existing text**Proposed amendments**

Appeal shall decide 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

No comparable provision.

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

Explanatory notes

Paragraph 1 is in line with current practice: examination papers which have been passed retain their validity.

~~**Paragraph 2** allows candidates who had already been admitted to the qualifying examination before the pre-examination was introduced, or who already met the conditions for admittance to the main examination at the time when the pre-examination was introduced, to take the main examination without being obliged to have passed the pre-examination. This is possible only once, when the pre-examination is introduced.~~

Paragraph 2 ensures that the passes awarded in 2009, after this Regulation has entered into force but before it applies to the examination of 2009 (see Article 26(2)), also remain valid.

Paragraph 3 enables a compensable fail to be retained only for candidates who had acquired such a right under the Regulation of 1994.

~~**Paragraph 2**~~ **4(a)** ensures that candidates who had been admitted to the examination before the pre-examination was introduced do not have to sit the pre-examination. Having been enrolled under the old examination system, these candidates can legitimately expect to continue with the main examination without being put back to a previous stage in the procedure.

When the pre-examination is held for the first time, **paragraph 4(b)** allows candidates who fulfil the requirements of Article 11(1) to (6) and can therefore legitimately expect to be able to sit the main examination, to do so for that year and subsequent years. If these candidates were obliged to sit the pre-examination, they would lose a year of their professional career, which would be an unjustifiable disadvantage and contrary to their legitimate expectations.

Existing text**Proposed amendments****Article 28
Transitional provisions****Article 25
Transitional provisions**

(1) Candidates who failed the examination held in 1993 may avail themselves of Article 18. In that case Article 17 applies. Any right to a partial re-sit applicable in 1993 may be exercised in subsequent years.

(1) Examination papers sat at the examinations held in 1993 and up to and including 2008 or thereafter and before the entry into force of the present Regulation, 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.

(2) Article 19(1), third sentence, shall apply to all candidates enrolling for the second time or more in order to sit the examination in full.

(2-4) Where a pre-examination is held for the first time in accordance with Article 1(7) of this Regulation, candidates shall be exempted from this pre-examination. Candidates shall be exempted from the pre-examination according to Article 1(7) of this Regulation provided that:

Existing text**Proposed amendments**

No comparable provision.

(a) either they have been successfully enrolled for an examination before the first pre-examination is held, or

No comparable provision.

(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.

Paragraph 3 5 ensures that anyone who gains knowledge of future examination papers before the proposed new Regulation enters into force will not be admitted to those examinations.

Paragraph 4 6 is intended to make sure that Committee members who have not sat the qualifying examination can remain members.

Paragraph 5 7 allows the pre-examination to be suitably prepared from the point of view of both the candidates and the bodies conducting it.

Existing text**Proposed amendments**

No comparable provision.

~~(3-5)~~ Article 11(8) shall apply to all previous members of the Examination Board, Examination Committees and Secretariat as defined in the Regulation of 1994 which entered into force on 1 May 1994.

No comparable provision.

~~(4 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.

No comparable provision.

~~(5 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

Explanatory notes

The examination to be held in 2009 has already been organised in its entirety, and candidates have already been enrolled for it under the Regulation which entered into force on 1 May 1994. Article 26(2) REE therefore stipulates that the said Regulation continues to apply to the whole of this examination.

Existing text**Proposed amendments**

No comparable provision.

No comparable provision.

No comparable provision.

No comparable provision.

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. ~~which shall continue to be governed by the Regulation which entered into force on 1 May 1994 and was last amended on 24 October 2002.~~

(3) shall replace the Regulation of 1994 ~~which entered into force on 1 May 1994 and was last amended on 24 October 2002,~~ and shall apply to the European qualifying examination to be held in 2010 and thereafter.

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
amending the Regulation on the European qualifying examination for
professional representatives before the European Patent Office

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, [date of decision]

For the Administrative Council
The Chairman

Roland GROSSENBACHER

Annex

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.

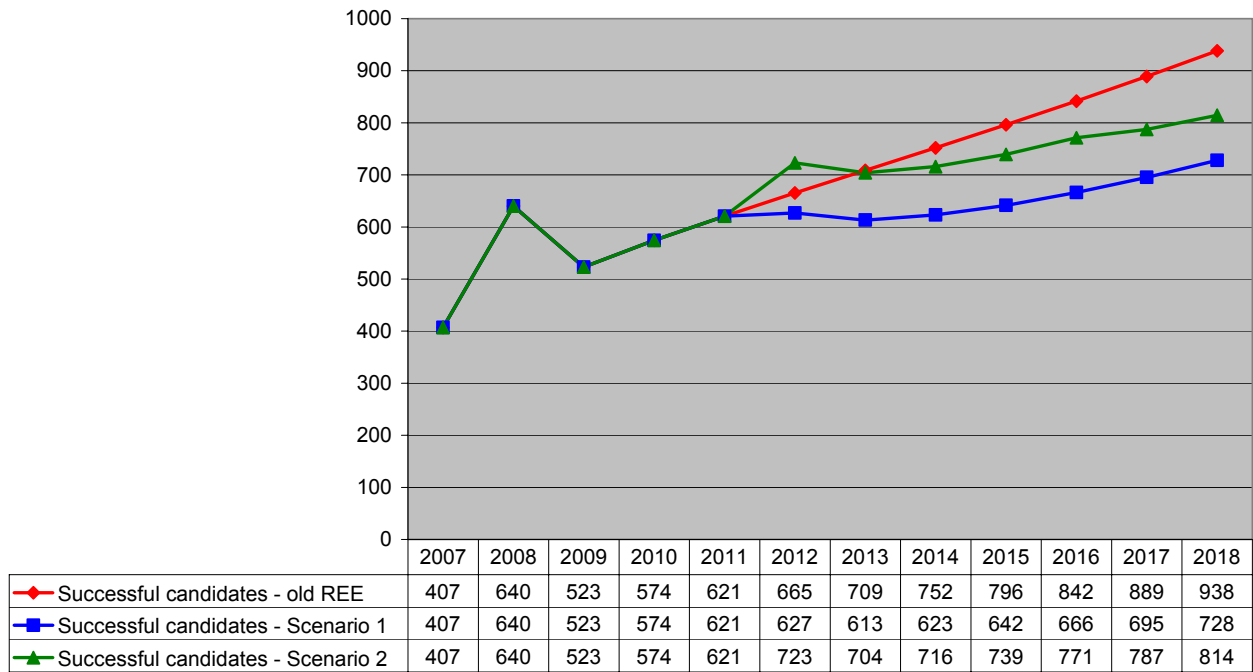
(2) shall not apply to the European qualifying examination to be held in 2009. The said examination shall be governed entirely by the Regulation of 1994; this includes all provisions relating to the bodies envisaged therein as well as to any decisions, appeals or further procedures relating to this examination.

(3) shall replace the Regulation of 1994, and shall apply to the European qualifying examination to be held in 2010 and thereafter.

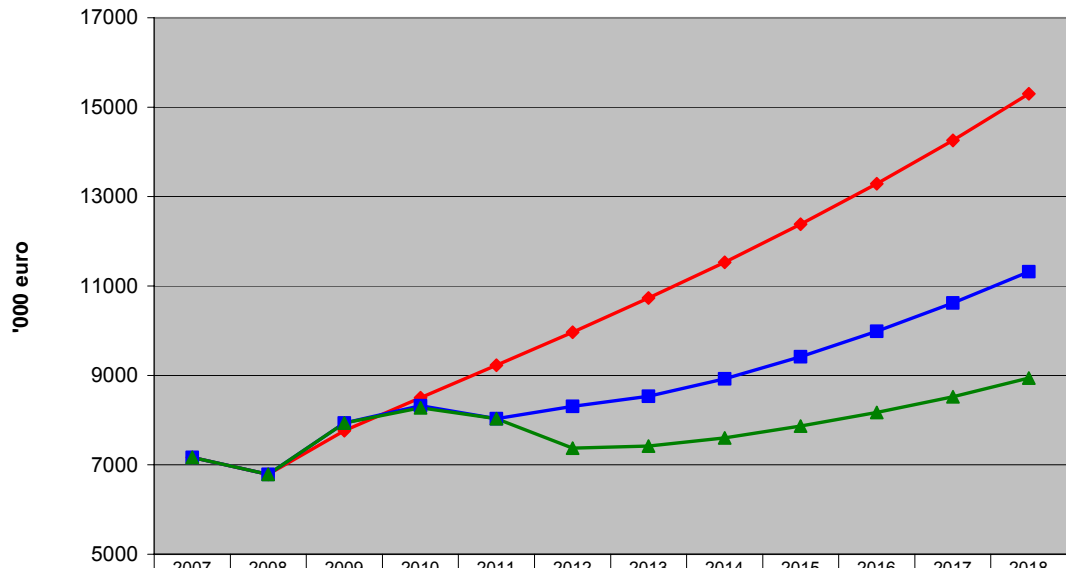
ANNEX 1

NUMBERS OF SUCCESSFUL CANDIDATES AND COST ESTIMATES

Numbers of successful candidates

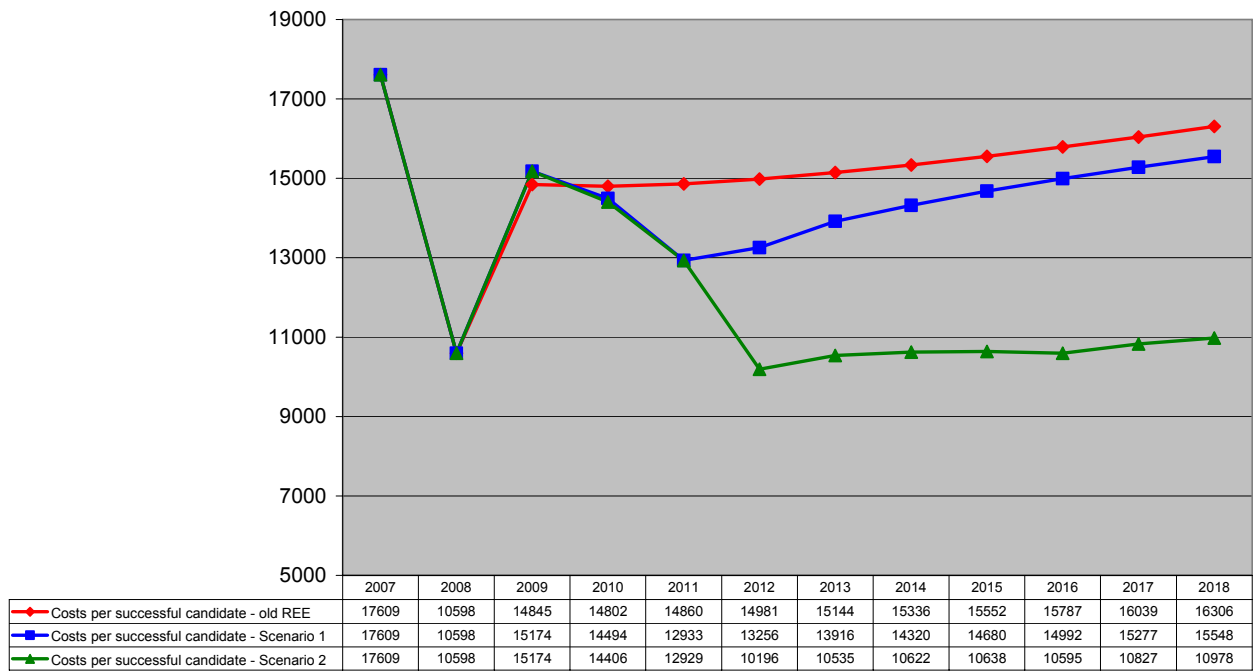


Cost estimates (EPO, *epi*, national offices) / +3% inflation applied



	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
◆ Total expenditure - old REE	7167	6784	7762	8500	9228	9967	10731	11532	12381	13287	14256	15297
■ Total expenditure - Scenario 1	7167	6784	7934	8323	8031	8310	8533	8925	9418	9984	10619	11321
▲ Total expenditure - Scenario 2	7167	6784	7934	8273	8029	7375	7419	7604	7864	8173	8523	8940

Costs per successful candidate (all papers passed) / +3% inflation applied





*Institut der beim Europäischen Patentamt
zugelassenen Vertreter*

*Institute of Professional Representatives
before the European Patent Office*

*Institut des mandataires agréés
près l'Office européen des brevets*

Mr Roland Grossenbacher
Chairman, Administrative Council
European Patent Organisation
c/o European Patent Office
80298 MUNICH
Germany

The President

19.09.2008

Amendments to the Regulation of the European qualifying examination

The revised Regulation on the European qualifying examination (REE), as given in CA 139 08, is the result of an intensive two years of work in co-operation between **epi** and the EPO. The draft (CA_139_08_dated20080917) on which the present letter is based was sent to **epi** on 17.09.2008.

epi considers that the above-mentioned draft is in very good order and we thereby endorse it. Its implementation should lead to an improvement of quality, in particular in training candidates for the examination, and to more efficient procedures of the examination system. We request the Administrative Council to adopt this draft of the amended REE.

Further, we note that this draft retains the possibility for candidates to write their answers in an official language of a Contracting State of the EPC which is not an official language of the EPO. **epi** welcomes this and undertakes to continue to provide translations of any such answers into an official language of the EPO.

Yours sincerely,

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1. Qualifications required for enrolment	<ul style="list-style-type: none"> ▪ Enrolment will be based on a minimum of a four-year full-time university course followed by a three-year full-time training period. ▪ Enrolment based on a university degree of more than three years but less than four years shall require a four-year full-time training period. <p><u>Comment:</u> In practice, only UK candidates with bachelor degrees with honours will be disadvantaged. However, UK candidates increasingly have MSc (minimum four years) or PhD degrees.</p>
2. Fees and fee increment	<ul style="list-style-type: none"> ▪ The basic fee per paper shall be laid down by the President of the EPO after the <i>epi</i> has been consulted. ▪ The fee increment is as follows: 1st sitting basic fee, 2nd sitting basic fee 3rd sitting basic fee + 50% 4th sitting basic fee + 100 % 5th and subsequent sitting basic fee + 300 % <p>The appeal fee will be increased by a percentage amount in a similar way to the appeal fee in the patent grant procedure.</p>
3. Registration	<ul style="list-style-type: none"> ▪ Candidates will be registered after the start of the training period mentioned in Article 11(2) REE. A period of grace of six months is allowed.
4. Pre-examination	<ul style="list-style-type: none"> ▪ One year before the end of their training period, candidates may sit the pre-examination. ▪ The basic fee must be paid. ▪ In order to sit the main examination, candidates must pass the pre-examination. <p>→ The form of the pre-examination is based on the current paper D1.</p>

5. Enrolment for (main) examination	<ul style="list-style-type: none"> ▪ The candidate may sit the main examination at the earliest in the year after he has passed the pre-examination. ▪ The basic fee per paper must be paid.
6. Results	Each answer paper is marked by the relevant Committee on a scale of zero to 100.
7. Compensation	All candidates benefit from the current compensation system. → The papers sat in the main examination shall be compensable (minimum pass marks 45+45+55+55 or 45+45+50+60)
8. Non-official languages	Use of non-official languages in answer papers is allowed, since the Institute has agreed to arrange for translations.
9. Compendium	The basis for the marking system, i.e. the marking sheet , shall be published in the Compendium.
10. Disabled candidates	Special conditions which may apply to disabled candidates shall be announced (in accordance with existing legislation in the member states).
11. Fraudulent behaviour	Measures to be taken in the case of fraudulent behaviour shall be laid down by the Supervisory Board and indicated in the IPREE.