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Dear Mr. President, dear Francis,

Vienna, 15 July 2022

New EQE – Proposal and Consultation

The **Austrian Chamber of Patent Attorneys** (Österreichische Patentanwaltskammer) thanks for the presentation of the proposal for the new e:EQE (the “new e:EQE-Proposal”) on the webpage of the EPO (<https://www.epo.org/learning/eqe/new-eqe.html>) and provides feedback on this new e:EQE-Proposal with the present letter:

Summary:

The Austrian Chamber of Patent Attorneys is **clearly against the new e:EQE-Proposal**, because of the following main arguments:

- The proposed concept **starts too early** in the career of the candidates.
- The proposed concept **overloads the education and professional work** of the candidates and punishes good candidate who take appropriate preparation steps for each of these module examinations.
- The proposed concept **stands in opposition to established national legal training, education and examination schemes for patent attorney trainees**, including the Austrian legal education of Austrian patent attorney candidates.
- The **electronic format is not (yet) “fit for purpose”** to give the necessary quality control for assessing whether a candidate is “fit-to-practice”, at least not as “fit” as the pre-pandemic concept of the “three days *in presence* examination format”.
- The proposed concept is too ambitious as far as non-EPC/non-PCT issues are concerned.

The Austrian Chamber of Patent Attorneys therefore **urges the EPO and the epi** to refrain from the proposed concept and **to keep the present pre-pandemic concept of the three-day examination with personal attendance**, except the proposals for modernizing the exams by including the concept and ideas of modules M3 and M4 of the proposed concept into the EQE.

Reasons:

The proposed concept starts too early in the career of the candidates.

According to the new e:EQE-Proposal, modules F1+F2 ("foundation") are to be completed after only 1 year - this is much too early. First, candidates do not know for the first few months at the beginning of their training whether they will continue the training at all. Second, they must first gain practical experience on the job (both with regard to specific work processes in the law firm or company, as well as with regard to the general process from filing a patent application to grant, etc.). Most candidates do not have any background knowledge on this. Legal texts (Rules and Articles of the EPC, etc.) cannot be understood without practical experience, but understanding increases with the duration of the training, and one year is definitely not enough. The subject areas asked for in module F1 are by no means restrictive, but basically cover the entire material of the current D-part (PCT, EPC, Decisions of the Enlarged Boards of Appeal, Guidelines for Examination, ...!). In particular, the PCT is already asked, which is much too early after 1 year, as candidates usually deal with the EPC Articles and its Rules first.

The design of the new e:EQE-Proposal is – at least in the first phase - NOT based on declarative knowledge, its application and its strategic component and therefore does NOT even allow the exam to be adapted to future content and situations (in contrast of the opinion of the authors of the new e:EQE-Proposal). Accordingly, if a new specific competence needs to be assessed, its elements (declarative, application, strategic) canNOT be readily incorporated into the proposed modules, because the six-module concept is ill-based.

A significant problem also associated with the extended modular system of six exams is that obviously each module exam is offered only once a year. This is too few for the planned examination format. With these short intervals, at least two dates/year are necessary for all module exams. This would also make it possible to choose the time of entry more flexibly - this is especially important for modules F1 and F2, because if a candidate does not pass these parts, this candidate is not allowed to take the other modules and loses a whole year.

The new e:EQE-Proposal puts unacceptable pressure on the candidates throughout the entire three year training period, which runs counter to an appropriate legal training.

Apart from this "steady exam mode" the new e:EQE-Proposal imposes on the candidates, also illnesses, family commitments or workload (depending on the respective order situation in the law firm) could easily lead to a delay in the entire process due to the short duration between the exams in this school-based system, if there is no time for appropriate training and studying. The new planned format is thus completely out of touch with real life and work-life-balance of the candidates.

The proposed concept overloads the education and professional work of the candidates and punishes good candidate who take appropriate preparation steps for each of these module examinations.

Already the "innovation" of a pre-exam has – in the end – only punished the good and able candidates, who now have to appropriately prepare for the EQE not only once, but twice. Since this preparation is done seriously by good candidates in both cases, they are pushed into two learning phases for the EQE instead of only one.

This is specifically disappointing if passing rates for the pre-exam are in the range of 80 % or more (and ridiculous if the passing rates are 98,7 % (2012), 99,6 % (2013), or 96,2 % (2022!!)), because this evidences that the pre-exam is a completely undue burden for good candidates. Although it may be acknowledged that preventing the pre-exam non-passers from sitting the EQE has its merits, these merits have a high price for the good candidates who are losing two years of their lifetime for preparing for the EQE and not just one year (as for the EQE before the introduction of the mandatory pre-exam).

Further "modularisation" reinforces this trend of penalising good candidates who appropriately prepare for all exams to pass in their first sit.

The proposed concept stands in opposition to established national legal training, education and examination schemes for patent attorney trainees, including the Austrian legal education of Austrian patent attorney candidates.

Many EPC Member States have long-established national systems for professional training, education and qualification of IP attorneys (patent attorneys). These national systems are usually built around the EQE in an appropriate way so as to allow candidates to prepare and sit national examinations and the EQE in a convenient manner.

The one-sided extension of the new e:EQE-Proposal to the complete first three years of the training and education of patent attorney trainees destroys this diligent concept of side-by-side national/EP education, training and qualification. It is a "march-in of the EQE" into the national qualification system with an attitude that nothing else counts in the professional qualification of a patent attorney than the EQE. This is a wrong, ill-founded and centralistic approach which has to be rejected alone due to this ignorant mindset.

National training, education and qualification systems for patent or IP attorneys are important and highly beneficial for controlling the ability of candidates to practically apply their legal knowledge in the (complex) legal environment of the individual EPC Member State. This includes far more than the EPC and the PCT or patents in general. This includes the whole legal set-up of this EPC Member State both, with respect to other IP rights than patents and with respect to all legal fields which are important to establish and use IP rights. This is far more than any new e:EQE-Proposal could ever cover (at least as long as not all laws and practices are the same in all EPC Member States, including civil law, procedural laws of the court, private law, administrative laws, insolvency laws, etc.).

The new exam format according to the new e:EQE-Proposal leaves no room for other training apart from the new EQE exams that take place every few months. As soon as one exam is over, a candidate has to prepare for the next one.

However, as mentioned above, many candidates do other courses, including courses which are attended for national qualifications, such as a law course at the Johannes Kepler University in Linz (AT) for the Austrian patent attorney trainees or

the courses at the FernUniversität Hagen in Hagen (DE) for German patent attorney trainees.

The electronic format is not (yet) “fit for purpose” to give the necessary quality control for assessing whether a candidate is “fit-to-practice”, at least not as “fit” as the current (pre-pandemic) concept of the “three days *in presence* examination format”.

The Austrian Chamber of Patent Attorneys agrees with the initial analysis in the epi position paper concerning the EQE of 2021, according to which the "fit to practice" criterion is not always given in the EQE. This is due, on the one hand, to the high number of participants and, on the other hand, also to the (in our opinion not absolutely necessary) objective of the current examination to find the most uniform possible solution to the examination questions.

However, it is not true that the quality assurance achieved with the EQE is "too remote from reality". In fact, a large number of those candidates who successfully passed the examination also fulfil the criteria required in practice with regard to knowledge of the EPC and PCT, whereby a certain time pressure during the examination can certainly serve as a surrogate for the general knowledge of the basics in practice (well-prepared candidates should generally be able to call up the skills expected of them within a shorter period of time).

The EQE so far is a big but manageable hurdle.

What can be said in any case is that the modular proposal in the present new EQE proposal is **significantly further away from a practical approach than the present format.**

In particular, the deletion of the C-part (opposition) or the provision of a "multiple choice questions exam" ("MCQ exam") would be downright absurd and in any case retrogressive for a professional activity in which the drafting of legally and technically correct written statements on complex issues is central. The professional qualification of a "European Patent Attorney" **can certainly not** be assured in terms of quality by ticking the right boxes in an MCQ exam or by completing many small ("incremental") partial examinations. Moreover, it can also be expected that the answer options in such a set-up are then further developed in the direction of a

uniform solution, since it cannot be assumed that candidates can particularly demonstrate their legal knowledge of complex legal issues and its transformation into written legal arguments in such a “ticking boxes exercise”; not to mention the development of legally original, but nevertheless correct solutions.

The duration and structure of the exams in the new e:EQE-Proposal are adapted to the electronic format and mainly determined by the factual consequences of this format: each exam is quite short compared to the duration of the EQE parts in pre-pandemic times. Furthermore, each exam is subdivided into sections. This means that it is no longer possible to deal comprehensively with a single topic, as in parts A-C of the EQE, but there is hardly any time left for the candidates to think about the individual tasks (e.g. 2-2.5 hours for an objection in the exam according to module M2; unless the information is considerably simplified and shortened compared to the current EQE information, in which case it no longer has anything to do with practical examples). This planned examination structure is therefore completely out of touch with reality, since in practice one will have to deal intensively with complex and legally sensitive topics. It seems to be rather adapted to today's fast-moving world, in which long texts are mostly no longer read (and understood). However, a representative before the EPO (and accordingly in the EQE) must be required to be able to deal with and understand more complex topics (and comparatively long statements) - this represents a fundamental and essential competence, the testing of which the new examination format completely fails to test. It is, however, appreciated that the proposals for modernizing the exams by including the concept and ideas of modules M3 and M4 of the proposed concept into the EQE may be beneficial in the future.

The "diversity of evaluation techniques" praised in the new e:EQE-Proposal (which is more a political paper full of verbiage and implicitness than a scientific or technical document based on facts) predominantly means "ticking boxes". However, no competence or quality of education evaluation for the profession is possible by “ticking boxes”.

The past two EQEs during the pandemic have already shown that the electronic examination format is not practicable: During the pandemic, the compact three-day in person examination week has been extended to a two-week virtual examination (mainly reasoned by otherwise unacceptable screenwork times) which itself is

already a “no-go”. Apart from many individual problems the candidate suffered from compatibility problems of the computer systems or handling problems during the virtual EQE, including breaks for toilet visits, the deficiencies in the electronic format caused a systemic disaster in the D-part of the 2021 EQE and the Pre-Exam in 2022 as well as an inappropriate and unrealistic answer expected for the A-part of the 2022 EQE. Whereas errors also occurred in the established EQE format, the cumulation of individual and systemic problems seen in the last two years have clearly proven that the electronic format of the EQE is still far away from “fit-to-practice”.

These deficiencies – which have been clearly made visible in the last two years – may be acceptable in a pandemic crisis to enable an emergency programme but they are not acceptable to substitute for an established and proven system in a non-pandemic situation.

Since the format for the quality assessment of patent attorney candidates according to the new e:EQE-Proposal is mainly determined by the limitations of the format itself, namely the need of ticking boxes for preformulated answers, maximum screenwork times, toilet pauses and cyber deception rather than intellectual problem-solving skills and the ability to individually transform legal concepts into patent language, it is evident that this electronic format which mainly drives the new concept is not (yet) “fit-for-practice” or “fit-for-purpose” (according to the main motto of the political documents presenting this new e:EQE-Proposal).

It is not acceptable that the deficiencies and shortcomings of the electronic examination format determines the set-up for the patent attorney quality assessment.

The proposed concept is too ambitious as far as non-EPC/non-PCT issues are concerned.

In module M4 it is planned that national law from different countries is examined. US, JP, CN, KR are mentioned as examples, besides UK as the single EPC Member State.

First, such basic knowledge of national law of other countries is part of many national education and qualification systems established in the EPC Member States. It does

not make sense if the EQE extends into such fields. The EQE should be limited to EPC/PCT issues. First, there is no limit for such an extension of scope (where does it begin, where does it end (patenting issues or more general IP issues or even issues concerning litigation, licensing, etc.??)). Second, the final choice of national law is inappropriate for EPO/epi (specifically with respect to EPC Member States) because for some candidates/Member States it may be more important to know DE national law (or the national law of other neighbouring Member States) than UK national law; moreover, national peculiarities in AU, CA, IN, MX, BR, etc. may be important as well for the practice of a patent attorney. Third, it remains to be proven whether the EPO (or even epi) has competence in such national law of non-EPC countries (and even, if so, to what extent). In many national education/training systems, professional advice for such topics may be (or already is) provided in a more appropriate setting.

This cannot and should not be part of the EQE.

Accordingly, the new e:EQE-Proposal now made for a "modular e:EQE" is therefore **unacceptable**, not least because of the proposed "passing" regime, with the excessive compensation possibilities which have a detrimental effect on the intended professional quality assessment.

The setting of the new e:EQE-Proposal is not successful in bringing the examination closer to the conditions of today's profession.

A more practical examination (to achieve the "fit-for-purpose" aim), however, would have to target complex questions in greater detail, for which **several possible solutions** would be acceptable, and would in any case have to include an **oral part** (by the way, all this is addressed in the national patent attorney examination in Austria, which is also possible due to the low number of participants and the diligent examination set-up).

Due to the large number of candidates to be dealt with, this does not seem to be practically feasible in the EQE without significantly increased effort. However, it should be reconsidered whether the number of repetitions should remain unlimited or whether it should be based on a certain number of re-sits or possibly larger time intervals (e.g. if the EQE has not been passed three times in a row, a minimum break for the next repetition of 3-5 years could be set (incl. significantly increased examination fee)).

Moreover, all exams of the EQE should be taken as one, i.e. within a few consecutive days in an "EQE week".

Therefore, as long as there is no "more practical" proposal, the examination should in principle be retained in its pre-pandemic form, although care must be taken to ensure that the questions in the individual parts of the exam are clear.

With best regards



Österreichische Patentanwaltskammer
(Austrian Chamber of Patent Attorneys)

Mag. Dr. Daniel Alge,
President