



Response to consultation on the proposals for a new EQE

Introduction

This submission is made on behalf of the Chartered Institute of Patent Attorneys (CIPA). CIPA is the UK's largest intellectual property organisation. It is the professional and examining body for patent attorneys in the UK, representing virtually all the 2,400 registered patent attorneys in the UK, whether employed in industry or private practice. Total membership is over 4,000 and includes trainee patent attorneys, judges, barristers and other professionals with an interest in protecting innovation through the use of intellectual property rights (patents, trade marks, designs and copyright).

Information about the consultation and the proposals for a new EQE were sent to all CIPA members by email and members were invited to send any comments that they may have to CIPA. This submission is a collation of the comments received from CIPA members.

General

Most of the responses received by CIPA did not provide comments in direct response to the specific questions set out in the online questionnaire on the EPO website as the questionnaire contained relatively few open questions and they found the format too restrictive. Many respondents made it clear that they had registered with WISEflow and had tried the model exam papers in that environment. Their responses are therefore directly relevant to some of the questions in the online questionnaire, particularly those in the sections of the questionnaire relating to "Assessment methodologies" and "Design & Modularity". Other respondents raised more general concerns and questions about the proposals that are outside the scope of the online questionnaire. We have therefore attempted to divide the comments that we have received into two categories, one relating to specific topics included in the online questionnaire and the other relating to more general concerns and questions about the proposals.

1. Specific topics included in the online questionnaire

We have grouped these comments under the headings used in the online questionnaire.

(I) Competences

No specific objections were received to the use of a competence-based approach to the design of the new EQE and some respondents positively approved this approach. However, most respondents raised a number of concerns around the testing of what they considered to be key competences and the stated intention to test competences that go beyond representation before the EPO. The change in approach and the specific skills that are examined in the new EQE also affects the ability of national examining bodies to grant exemptions from national exams, and this will be discussed further below.

(i) Testing of key competences

It was appreciated that the proposal removes repetition of competences in the main examinations, thereby reducing the burden on candidates to sit lengthy examinations and



providing increased flexibility. It is understood that M1-M4 include elements of current papers A, B, C and D and these elements may appear in more than one module as well as additional procedures before the EPO, such as filing an appeal, dealing with a summons to oral proceedings and responding to a notice of opposition. However, it is clear from the proposed structure of the new EQE exams that not all of these procedures can or will be tested in one set of exams. Respondents were therefore concerned that it may be possible for candidates to pass the new EQE without being tested on certain key competences.

With regard to key competences, it was generally considered that patent drafting, in particular drafting claims from scratch, responding to office actions (including amendment) and filing oppositions are core skills for a patent attorney, and ought to be examined in every set of exams. According to the proposed structure of the new EQE exams, candidates may be able to pass without being tested on all core competences for these skills and this is a major concern. The possible failure to test skills in drafting a new patent application was a particular concern for many.

One respondent acknowledged that, under the existing system, multiple papers include some level of assessing a claim against the prior art. However, they considered that this is so fundamental to the role of a patent attorney that testing this multiple times from different angles provides a more reliable and robust measure of competence.

It was noted that present Paper C is one of the few tests of a candidate's ability to use the problem-solution approach to attack the validity of a claim. Being able to draft an effective notice of opposition is an important part of an European patent attorney's skillset. They therefore considered that it is essential that this is tested in every set of exams.

In summary, although it was appreciated that the proposal removes repetition of competences in the main examinations, there was considerable concern that this was at the expense of testing key competencies, such as drafting patent applications, responding to office actions (including amendment) and filing oppositions. The overwhelming view was that these key competences should be tested in every set of exams to ensure that candidates are indeed "fit-to-practise", which is the stated aim of the new EQE.

(ii) Testing competences that go beyond representation before the EPO

It is apparent from some of the questions in the online questionnaire and other published material that it is envisaged that the new EQE may test competences that extend beyond representation at the EPO. It was noted in this respect that the summary of the content of module M4 included the following:

- advising a client with respect to IP protection in other jurisdictions (US, JP, CN, KR)
- advising a client regarding infringement and remedies in certain jurisdictions, e.g. the UK
- advising on freedom to operate and negotiation/licensing strategies

It was also noted that the model M4 paper included a question about protection in China.



Although some respondents could see a benefit in extending the syllabus to cover at least some of these topics, the vast majority were not in favour of this and felt that the EQE should be limited to testing a candidate's knowledge and ability to represent applicants in EPO proceedings. Indeed, there was a general concern that extending competences beyond representation before the EPO would divert attention away from the core day-to-day work of a European patent attorney acting before the EPO.

It was also pointed out that the role of the patent attorney is very varied, and the competencies required of attorneys outside those central to representing clients before the EPO will vary depending on their employer, role and jurisdiction. For instance, there are significant differences in the day-to-day work of attorneys working in industry when compared with those working in private practice. The new EQE therefore needs to reflect the working experience of all patent attorneys, whether in industry or in private practice. If a selection of these additional competencies are made mandatory to be considered to be "fit-to-practise", certain parts of the profession where some of these skills are not routinely required could be disadvantaged.

One respondent also questioned if the EPO would have the authority or competence to examine skills outside those required to represent applicants before the EPO when none of these additional topics are dealt with directly in the EPC.

In summary, the view of the majority of respondents was that the purpose of the EQE is to test a candidate's knowledge and ability to represent applicants in EPO proceedings. The exams should therefore only test a candidate's knowledge of the EPC and appropriate parts of the PCT. To attempt to test these additional skills is inappropriate and could be prejudicial to certain candidates. Indeed, it could result in a dramatic drop in EQE pass rates. If these additional competences are to be tested, they must be tested fairly. It is therefore vital that the syllabus is clear as to the extent of the knowledge that will be required for each topic.

(iii) Exemptions from national exams

At present, if a candidate passes Papers A and B of the EQE, or passes the EQE as a whole, may apply for an exemption from two (FD2 and FD3) of the four UK qualifying patent exams. However, this is only possible because the same competences are tested in Paper A/ FD2 and Paper B/FD3. If the core skills of drafting and amendment are no longer tested in each set of European exams, it is hard to see how exemptions from national exams can continue to be granted on the basis of passing the new EQE. This will be discussed in more detail below.

(II) Assessment methodologies

It was appreciated that trying to run the existing EQE in an online environment from 2021 had not been straightforward. There was therefore no fundamental opposition to re-designing the EQE for an online platform. Indeed, many felt that re-designing the format of the examination is an excellent opportunity to utilise the benefits of technology and improve the experience for all candidates. However, having tried the model papers in WISEflow, many concerns were raised about the proposed format of the new EQE. These concerns are grouped under specific headings below. Some question formats presented particular difficulties for disabled candidates, and these are also mentioned briefly below.



Question 17 in the online questionnaire suggests that the re-design of the EQE takes into account the real-life working conditions of future patent attorneys. Although several respondents agreed that the new EQE should be matched to real-life situations, it was generally felt that the new EQE did not achieve this. In particular, it was considered that the focus on increasing the ways in which knowledge can be tested diverges from the conditions of today's profession in which the vast majority of an attorney's work involves drafting a set of claims, an examination response or an opposition, and preparing letters or emails, or some other form of extended writing. Questions that are to be answered with true/false or by selecting one from a range of answers from a drop-down menu is not representative of the professional working environment. No patent attorney in real life produces a multiple-choice output!

In view of the above, some respondents expressed a preference for retention of the existing EQE in a form which is better adapted to an online environment on the basis that this represented a better test of real-life work. However, others felt that simply converting the existing paper-based exams to be written on an electronic medium is not the answer due to health and safety issues.

(i) Nature of exams

It is not currently clear if the new EQE will be open book exams. If they will be open book, it needs to be made clear which "books" or online resources can be consulted during the exams. Allowing candidates to refer to online resources on the EPO website would mirror the everyday practice of today's patent attorneys. If the new EQE is to test competences that go beyond representation before the EPO, then it may be necessary to permit access to a wider range of resources.

(ii) Question formats

The model papers use a variety of different mechanisms for answering the questions, e.g. multiple choice, drop down menus, drag and drop, rating choice/rank order, multi-point scale matrices, true/false questions and fill-in answers, as well as free text. It was generally felt that this introduced an unnecessary degree of complexity to the exams and increased the potential to confuse candidates. Indeed, several respondents commented that the proposed new format appears to focus on the style of question at the expense of testing the core competencies of the candidate. In many instances it was felt that different styles of question were being used not because they added value in terms of testing the competence of the attorney, but just because they could be used. Just because WISEflow can handle these different types of question does not mean that they should all be used. Most respondents favoured the use of simple free text answers on the basis that these are easily understood by everyone, more equivalent to normal working conditions and less susceptible to technical issues. If different question formats are to be used, it was considered that these should be kept to a minimum to avoid confusion.

The expanded use of multiple-choice questions was a concern to some. The pre-examination has proved how difficult it is to draft multiple choice style questions without ambiguity. It was generally believed that argumentation is crucial, and the widespread use of multiple-choice questions is completely at odds with this. Indeed, candidates have been told for years that the final answer is not the most important thing to get marks, but rather the way you defend or argue your position.



One respondent commented on the use of what they termed “time-penalty” questions where the candidate is only required to answer sub-question B if they select a particular answer in sub-question A. An example of such a question is where sub-question A requires a “True” or “False” answer and sub-question B only needs to be answered if the candidate selected “False” in sub-question A. If the correct answer is “True”, the candidate has wasted time in answering sub-question B if they selected “False” in sub-question A.

In addition, the way in which a number of the questions were presented resulted in multiple scrollbars being on screen at once. This was a particular problem in M1 and M3. This makes it very difficult to navigate through the question to locate the necessary text or answer field.

It was also noted that the Main exam legal papers break down the required answers into a series of sub-answers or steps, thus forcing an answer structure onto the candidate. This also leads the candidate through the necessary thought process to arrive at an answer. Although this may be helpful to some candidates, it does not replicate real life. In practice, attorneys need to process all of the information available to them and determine their own “answer” structure (be that in response to an examination report, verbally during a hearing or in oral or written form to a client). Such question formats are therefore not a test of real-life situations.

It was generally considered that increasing the range of ways in which questions are being asked will not increase the quality of the exams. It is therefore not clear how increasing the variety of ways in which questions are asked adds value to the examination of whether a candidate is competent to practise before the EPO. Rather, it was generally considered that this is an unnecessary distraction that adds a level of unpredictability for candidates who will not know the format for each question in advance. It was felt that this would be unsettling for candidates who must expend significant time and mental energy simply ensuring that the questions are answered in the correct manner rather than considering the content of the question itself.

It was also suggested that further consideration needs to be given as to how best to optimise the format of the examination to suit the diverse needs of disabled candidates. In particular, further consideration is needed to determine whether the new format is suitable for visually impaired candidates or candidates who have mobility or dexterity issues and who may utilise an assistive software as some disabled candidates may have particular difficulties with certain types of question. For instance, blind and visually impaired students using screen readers are likely to have issues with drag and drop formats. Also, candidates with dyslexia or related conditions may struggle to deal with multiple question formats.

(iii) Clarity of instructions

There is a general lack of guidance on how to answer questions. Clearer instructions are therefore required for the new question formats of the online examinations. For example, the question needs to state clearly if the candidate should select one answer, select multiple answers or, if drag and drop, whether all the answers should be used and whether answers can be re-used or multiple answers can be selected. On many occasions, in particular in F1, F2, M1 and M3, it was not immediately apparent what was required to answer a specific question (see, for example, Q16 of F1). If more than one answer is right in a multiple-choice question, then the instructions should state this explicitly. Indeed, it seems that some questions are missing fundamental statements such as “select all that apply”. There was therefore a concern that a candidate may lose marks, not because they do not understand the



knowledge being tested by a question, but because they have misunderstood the way in which a question should be answered.

In addition, there was lack of clarity in all model papers on the number of questions to answer. In this respect there were a number of pages that had to be scrolled through to display additional questions (e.g. from A to N!). The chance of missing a question is therefore very high, given that the overview feature does not allow a candidate to check if all fields have been completed.

(iv) Word limits

A number of the questions have maximum word or character limits. Whilst this may encourage brevity in answers, candidates should not be prevented from answering questions to the level of detail that they see fit. If candidates have to observe a word/character limit, this will place an additional burden on candidates during the exam to provide succinct answers that cover all elements of the question. This is a challenge under time pressure and will cause additional stress. Moreover, the number of words used will differ between languages creating a disparity between candidates. Candidates may also resort to using abbreviations that will not be clear to markers, particularly markers who are not marking in their native language. It was therefore generally considered that there should be no word or character limits in questions.

We note that the online system allowed an answer to exceed the word limit. Further clarity is therefore required regarding the consequences of exceeding a word limit. For example, will answers exceeding the word limit receive a mark of zero, or will these be assessed on a case-by-case basis to determine whether a candidate has copied and pasted sections of the guidelines or merely required additional words to convey their reasoning. If there is to be a word limit, we consider that there should at least be a counter for the answer boxes so that candidates can easily keep track of the number of words. This would allow candidates to edit their answers to reduce the number of words if there is time. In our view, the answer box should not be limited so that, once the word count has been reached, no more words can be typed. This would interrupt the candidates' flow of writing, requiring them to either leave an incomplete answer, or edit their answer before they can complete it.

(v) Marking

Several respondents indicated that further clarity is needed on how questions will be marked in the new online format. This is especially important in view of the proposed increase in the use of automated marking. It is not always clear in the model papers how many marks are associated with a given question. For example, for questions where it is necessary to drag and drop 5 statements into 2 boxes, will 5 marks be awarded or only 1 mark? If multiple answers can be selected, will candidates be required to match all answers to score the marks? If only a subset of correct answers are selected will a proportion of the marks be awarded accordingly, or will no marks be awarded? When highlighting a passage of a text, is a candidate more likely to lose a mark by highlighting too much, or too little? Will there be a pre-EQE-style system of unequal mark allocation depending on how many answers are right or wrong? If different question styles are to be included, it must be made clear how they will be marked and guidance should be provided prior to each exam. This is crucial as, if the number of marks is not clearly shown, it is hard for candidates to know how long to spend on each question to maximise marks.



The potential advantages of being able to provide answers to questions in a way that they can be marked by computer, such as reducing the time taken to receive the results, were appreciated. This could be beneficial in alerting candidates to the potential to move on to the next module or the need to re-sit at an earlier stage. However, any paper that included free text portions would still need to be marked by a human examiner capable of assessing such answers. Thus, by mixing question formats in a single paper, some of the potential benefits of automated marking would be immediately lost.

(vi) Errors in papers

In recent years there have been a number of significant errors in several papers. These have included incomplete instructions in a question, multiple possible interpretations of a question, recurrent translation errors and, on one occasion, parts of one paper were only available in German initially. Although compensation is often awarded for such errors, these errors are unsettling and can cause candidates to waste a lot of time trying to work out what the question is asking, resulting in less time to spend on the rest of the paper. This can often have far-reaching consequences. Given that candidates spend months and even years preparing for these exams, the presence of such errors in the exam papers is not acceptable.

It was felt by some that the number of errors in the exam papers has been increasing recently. The drafting of exam papers therefore requires increased diligence and exam papers need to be checked more thoroughly to make sure that such mistakes are not present. This issue has not been fixed in the proposed new EQE since several respondents noted that there were errors in the online platform, for example where instructions suggested multiple answers could be selected and only one answer could in fact be selected.

One respondent commented that these errors are fundamental in the sense that the marking scheme had to be changed to accommodate the errors. They felt that such changes were not necessarily wrong in the circumstances, but the outcome was that the level needed in practice to pass the exam was different from the level originally intended by the Examiners. Although the new EQE could help in this respect, it was noted that, in general, transitioning to a new scheme tends to lead to an increase in errors. This respondent therefore suggested deferring the new exam until the smooth running of the EQE is re-established.

There was some concern that the use of so many different question formats was likely to result in further errors. Clearly, these issues must be addressed before the new EQE is introduced.

(vii) Ability to print exam papers

Several respondents commented on the difficulty of being able to fit the question and answer on a single screen. If this cannot be achieved, it was felt that candidates should be permitted to print the paper, or parts thereof, prior to entering the lockdown browser. This is a particular issue for M1, M2 and M4.

It was recognised that attorneys are increasingly working digitally and requiring candidates to type, rather than hand-write, answers is therefore appropriate. However, many attorneys still use hard copies of documents to supplement digital working. Forcing a candidate to work only digitally is not representative of the working conditions of a significant proportion of the patent attorney profession. Moreover, those candidates who normally work in a paperless environment usually have at least two screens so that documents can be easily compared.



It was also pointed out that use of a computer can induce migraines in some candidates. Such candidates need to have the option to download and print the exam paper.

(viii) Different versions of M1

There is a suggestion that there could be chemistry and non-chemistry versions for M1. Some concern was expressed as to whether this means that the non-chemistry paper will require an increased level of mechanical knowledge which may make it less accessible to people with non-mechanical backgrounds, such as candidates in the life sciences or computing fields. This is important since such candidates do not have the necessary knowledge to sit a chemistry version of the paper. Further clarity is also needed around how different versions of the exam papers will be implemented. For instance, will it be possible for candidates to choose which of a non-chemistry or chemistry version of certain papers (e.g. M1) they sit? If so, will that restrict them only to that choice if they have to re-sit? This must be clarified before the new EQE is implemented as it affects how candidates prepare for the exams.

(ix) Ease of use of WISEflow platform

As noted above, several respondents commented on the difficulty of being able to fit the question and answer on a single screen. To allow candidates to progress through the questions in a paper (F1, F2, M1, M3), the question and answer must fit onto a single screen as candidates need to continuously refer between parts of the question and their answer. It is also not clear if split screens will be possible.

One respondent commented that they found the lockdown version of WISEflow not easy to use. In particular, they found it challenging trying to copy from the question paper and put it into their answer and, in fact, they eventually gave up trying to show an amendment! Candidates will therefore need to become familiar with what they can and cannot do in WISEflow and opportunities will need to be provided for candidates to gain this familiarity.

(x) Particular issues with specific papers

Many respondents had registered with WISEflow and had tried the model exam papers in that environment. Their comments with regard to their experience in testing the model papers is set out below.

Foundation 1 (F1) and Foundation 2 (F2)

It was noted that these exams have a greater complexity than the current pre-exam due to the increased number of question types that have been used and the corresponding increase in the answer options available to candidates. The question was therefore raised as to whether or not there will be changes to the pass mark (currently 70% for the pre-exam) to allow for the increased complexity.

More specifically, as noted above, it was not immediately apparent to a candidate what was required to answer a specific question (see, for example, Q16 of F1).

In the F2 (Applied Procedural Patent Law) paper, selecting dates from a list is time consuming and it is easy to select the wrong option from the list. It would be preferable to provide a



preferred/expected format (e.g. DD/MM/YYYY) to candidates and allow the candidates to type their answer in a text box.

In the F2 (Applied Procedural Patent Law) paper, one respondent noted that Question 19 is ambiguous. In order to decide whether statements (a) to (d) are true, the candidate has to know whether the sequence of the 105 nucleotide molecule is disclosed in Example 5 or, alternatively, whether Example 5 simply states that the sensor has a 105 nucleotide sequence attached to it, without the sequence being disclosed.

The F2 (Claim Analysis) paper requires a lot of scrolling and it is hard for candidates to keep track. In particular, the fact that a lot of scrolling is required can make it difficult for candidates to hold information in their head. This problem could be mitigated if split screens are possible. Alternatively, splitting the questions into 1 question per page could reduce the amount of scrolling that is required. This is a particular problem if questions are going to be present in all three languages at once as in the current exams.

In the F2 (Claim Analysis) paper, Questions 21-28 ask the question “Is the amendment allowable?” One respondent considered that this is ambiguous. For example, in Question 27, the amendment to Claim 1 introduces an aesthetic feature which will not serve any purpose even if it does not add subject matter, and the amendment to Claim 2 introduces a feature that is objectionable under Art. 84 for a lack of clarity, even if it does not add subject matter. The question should therefore read “Is the amendment allowable under Art. 123(2)?”.

More generally, as noted above, disabled candidates are likely to have difficulty with certain question formats, such as drag and drop, and dyslexic candidates may struggle to deal with multiple question formats.

Main 1 to 4 (M1 to M4)

As noted above, on many occasions, in particular in M1 and M3, it was not immediately apparent to a candidate what was required to answer a specific question.

The way in which a number of the questions were presented (e.g. in M1) resulted in multiple scrollbars being on screen at once. This makes it very difficult to navigate through the question to locate the necessary text or answer field.

In M1, the figures provided below the written text are easy to miss if the candidate does not scroll all the way down. Upon opening the figures, it will not be immediately apparent to all candidates that the figures can be moved around the screen and away from the text and questions. The Figures also pop up over the answer box so that the answer box is obscured.

It is also not clear if candidates will be able to print the exam paper or parts thereof, such as the description, prior art, etc.

Both the M1 and M3 papers require a lot of scrolling, making it hard for candidates to keep track of their thoughts and answers, as previously discussed.

In the M3 paper, the textboxes for long answers which allow for 500 or up to 1000 words are too small. This makes it difficult for candidates to review their typed answers. Further clarity is also required on how to answer the questions in this paper. The advice to “Answer the M3



paper as you would answer a D1 question in 2022” is not clear as most candidates preparing for M3 will not have taken the current exams previously. It is therefore essential that a range of examples of questions in the style of the new EQE are provided at least one year before the transition period begins.

With regard to both parts of M4, candidates need to know in advance if these can be printed, either in full or in part. Ideally, printing should be allowed for the reasons set out in section (vii) above.

In relation to M2, one respondent commented that they did not find the lockdown version of WISEflow easy to use. Candidates will therefore need to become familiar with what they can and cannot do in WISEflow for M2 and M4 where they are effectively using a word processing package which may operate differently from the packages used day-to-day.

(III) Adaptability

It was recognised that the format of the new EQE is more adaptable than the current EQE and makes it potentially easier to target different topics from the syllabus each year. However, the uncertainty of the types of work that will be tested in M2 or M4 may cause unnecessary stress to candidates. Whilst some agreed that the EQE should be less formulaic and allow for adaptability of the exam and for various types of work to be tested, this option needs to be carefully implemented. In particular, clear guidance should be provided to candidates on what is expected of them to gain marks in the examination to aid their preparation for the exams.

(IV) Design & modularity

We understand that, in the new EQE, F1 and F2 are similar to the current pre-exam with the level of F1 being lower than that of the current exam, and the level of F2 being a bit higher. F2 contains two parts. M1 and M2 bear some resemblance to current Papers A, B and C, with M1 having more in common with Paper B and M2 covering many aspects from Papers A and C. Each of M1 and M2 contains two papers. M3 and M4 are similar to current Papers D1 and D2 respectively, with M4 also having two parts.

It was appreciated that parts of the new syllabus appear to be comparable with the current EQE. However, there was some concern that the new EQE does not appear to test some aspects of the current EQE. For instance, drafting a patent specification, in particular the claims, and preparing an opposition (previously tested in Papers A and C respectively) will no longer necessarily be tested in each sitting of the new EQE. These are considered to be key skills for a patent attorney. Thus, the fact that these skills will not be routinely tested was considered to be a major weakness in the new EQE.

It was noted that the new EQE places a greater emphasis on the law and advising clients. There were no objections to this, provided that it is tested fairly. However, the fundamental skills of a patent attorney early in their career, such as drafting, responding to office actions and filing oppositions, must still be tested.

One respondent also raised the possibility that trainee patent attorneys working in industry may be disadvantaged in comparison to those working in private practice due to the type of work that they are exposed to. For example, since attorneys working in industry have only one client (i.e. the company that they work for), the scope of the advice that they may be asked



to provide is likely to be very different and less diverse. Clearly, it would be wrong for any particular type of candidate to be disadvantaged in this way. It is therefore important that input is sought from patent attorneys from all backgrounds (i.e. both in industry and in private practice) to ensure that the new EQE does not favour candidates with a particular background.

Some respondents thought it likely that the M1 – M4 exams would be very difficult for many students, given that the range of situations and topics that candidates could be faced with, even in M1, could be highly diverse and challenging. The uncertainty surrounding the type of document that the candidate will be required to draft in M2 is problematic. Inevitably, this will result in candidates preparing a multitude of templates for every eventuality that could arise. The proposal for the new EQE suggests that this paper could be taken after 24 months of training. However, it is very unlikely that candidates will have been exposed in their day-to-day work to all of the documents which may need to be drafted. For example, M2 could require a candidate to draft a Notice of Opposition or Grounds of Appeal or responses thereto. Unless a candidate has had the opportunity to work on both the offensive and defensive side of Oppositions **and** Appeals, they will not have the necessary real-life experience to handle these tasks effectively (especially after just 24 months). In contrast, Papers A, B and C of the current EQE give clarity to trainers across the profession that they need to ensure their trainees get drafting, prosecution and offensive opposition experience.

As noted above, each of the new modules aims to test skills from multiple previous papers with M1 and M2 covering some aspects of Papers A, B and C. Given the flexibility of these modules, it is difficult to see how consistency can be ensured from year to year. Inevitably, some years will focus more on skills that were previously tested in paper C whereas other years will focus more on skills that were previously tested in Paper A. It therefore has to be questioned if such a system is fair to all candidates.

In the current EQE, the papers are not taken sequentially, although candidates must pass the pre-exam before they can progress to Papers A to D, which comprise the main exam. Currently, it is not possible to sit the pre-exam until a candidate has been in full-time training for at least 2 years and it is not possible to sit Papers A to D until a candidate has been in full-time training for at least 3 years. Candidates can choose whether they sit one or more papers in a given year and are free to select the papers they sit and the order in which they sit them. However, the majority of candidates choose to sit all of Papers A to D in one sitting after 3 years.

We are told that the proposed new EQE “builds on a modular evaluation scheme of cumulative knowledge and increasing complexity”. A specific sequencing and timing is proposed for the different modules with a minimum number of months of full-time training specified before the exam for any particular module can be taken. It is recommended that F1 and F2 are taken after 12 months full-time training. The period of full-time training that is required before M1 to M4 can be taken is 18 months for M1, 24 months for M2, 30 months for M3 and 36 months for M4. Whether candidates follow the proposed sequential path or decide to take all the exams at the same time at the end of the qualification period is a matter of choice for the candidate, although passing the foundation modules (F1 and F2) is again a pre-requisite for taking the main exams (M1 to M4).

There were no specific objections to the gradual increase in the complexity of the exams in the new proposal. One respondent was of the view that the sequence of taking the exams



should be compulsory so that there is a clear progression both for the candidates and their tutors. Another respondent felt that taking the exams for all the Main modules at the same time defeats the purpose of having a gradual increase in complexity. However, the vast majority of respondents felt that candidates should be allowed maximum flexibility as to when they choose to sit the exams. This could be sequentially every six months, in groups at the end of the minimum periods or something in between, depending on when a candidate feels ready. Those who want to sit all the Main exams in a single sitting could do so after 36 months.

If this degree of flexibility is to work, it is essential that candidates are not disadvantaged by choosing not to sit exams every 6 months. The papers should therefore not be preferentially designed to be taken in that way. Taking exams every 6 months is a significant change from the current system and has a significant and ongoing impact on a candidate's life (and potentially their mental health) as it would mean taking exams for many years without any break from exams and exam preparation in contrast to the current system. Some candidates may prefer the "every 6 months" approach, but others will prefer or need to delay and space the exams out over the same total period so that multiple papers can be taken together. This may often be needed due to external factors, such as religious holidays or carer responsibilities during school holidays. There is also the need for many candidates to sit exams for national qualifications which may coincide with the EQE. Flexibility to delay or group different EQE papers is therefore essential. However, this will only work if all EQE examinations are offered at every available sitting, i.e. twice a year.

Further clarification is also needed on the timing of exam results. Currently, EQE results for the main examination are released around three to four months after the exams. If the exams are held every six months, this timescale would not provide candidates with sufficient time to decide if they should repeat an exam they had failed or sit the subsequent examination in the next sitting and to study for the chosen examination.

As noted above, F2, M1, M2 and M4 each contain two parts. It has not yet been specified if both parts of an exam will be taken on the same day, although CIPA understands that this is intended. If this is the case, this needs to be confirmed so that candidates know what to expect. We understand that taking both parts of an exam on the same day is the preference of candidates to avoid the exams being spread over a longer period with the associated increase in stress.

It is also not clear if a candidate can pass one part of a two-part exam and fail the other part. If that is possible, it needs to be made clear if candidates will need to retake and pass both parts of the exam, or if it is possible to re-sit only one part of the exam.

With regard to the specific papers, Annex 2 to the Concept Paper indicates that F1 and F2 can be taken interchangeably, but it is suggested that F1 is taken before F2. However, it is not clear if F1 and F2 can be taken in the same sitting. If this is possible, then this should be taken into account when setting the timetable for the exams.

One respondent based in industry questioned if the content of F1 and F2 is suitable for taking after 12 months of full-time training when the current pre-exam can only be taken after 24 months of full-time training. They considered that this timeline would require training to be arranged in a different manner to ensure that trainees receive suitable training on all aspects tested (for example, quite detailed aspects of PCT). They believe that this timeline is



particularly challenging for candidates working in industry whose early training is not only focused on studying the law, but also understanding the business.

Regarding M2, the syllabus indicates that candidates could be asked to prepare documents which could relate to any of 8 different topics. The list of tasks includes drafting claims and a description, replying to Office actions, amending claims and drafting a notice of opposition, which are all currently tested in Papers A to C. However, these specific tasks will not all be tested in each set of exams. As noted above, these are considered to be key skills for a patent attorney which should be tested in every set of exams.

It was also noted that one of the possible skills that could be tested is preparing a draft reply to a WO-ISA. It was observed that, in real-life, this often involves reducing the overall number of claims from 100s to 15 or thereabouts. However, it is not clear whether this aspect will be tested. If it is, then candidates may focus on reducing the overall number of claims rather than addressing the objections raised in the WO-ISA, as was probably intended. Clarification in this respect is therefore needed.

As has already been discussed, the syllabus of M4 indicates that candidates could be tested on 7 different topics. It is clear from the list of topics that candidates may be examined on subjects such as overseas IP protection (US, JP, CN, KR), infringement, freedom-to-operate and negotiation/licensing. These topics are not related to practice before the EPO and, as such, would appear to fall outside the remit of an examination established to test the competence of an attorney to practice before the EPO.

More generally, the approach of selecting one or more topics from a set of different options leaves open the possibility of a candidate passing the EQE and being deemed “fit to practise” before the EPO without ever having been tested on one or many key aspects of practising before the EPO. For example, from the material provided, it appears possible that a candidate may be able to qualify as a European Patent Attorney without having been tested on drafting, amendment or oppositions, for example. This comment relates equally to M2 and M4.

(V) General questions on the online examination platform

There was a general view that WISEflow is a suboptimal platform. Feedback from candidates who took the 2021 and 2022 online EQE exams raised a number of concerns and issues regarding the WISEflow platform, including the interface crashing, poor formatting issues, difficulty highlighting and/or making notes. It is therefore a concern that the new EQE proposals appear to be committed to the use of the WISEflow platform.

If the new EQE is aiming to be more “practical”, it would be helpful if this is also reflected in the platform used to conduct the exam. For example, a basic text editor is not what most people would use during day-to-day practice. In addition, not being able to have multiple windows open simultaneously in the WISEflow platform took a lot of getting used to and made navigating between multiple documents very time-consuming.

Those respondents who tried the model papers for F1, F2, M1 and M3 utilising the WISEflow platform experienced a number of problems. One common complaint was that the way in which a number of the questions were presented (e.g. in M1 and M3) resulted in multiple scroll-bars being on screen at once. This makes it very difficult to navigate through the question to locate the necessary text or answer field. This was a significant problem for those



working on a laptop screen, but was still a problem for those who tested the paper using a laptop with 2 standalone 22 inch monitors.

Another issue was that candidates were not allowed to open two or more windows in parallel and were unable to fit sufficient information onto a single screen. This made it very difficult to read, draft and compare information and therefore be able to answer questions efficiently. The comment was made that, to allow candidates to progress through the questions in the paper, the question and answer should fit onto a single screen as candidates need to continuously refer between parts of the question and their answer.

Some respondents commented on the huge degree of technical requirements to be able to sit the exams (e.g. a specific camera, microphone, no windows, neutral walls, no earplugs, a laptop which has no use restrictions, no antivirus software, no update in place, no automatic stand by in case of inactivity for too long a period, the need for a laser printer to be able to show highlighting etc.). It is specifically mentioned that the use of a professional laptop is not recommended (because of the restriction of use). This means that candidates need to have an additional personal laptop which may mean significant additional expense for a candidate. One respondent commented that, generally, they think that candidates are finding preparing all the technical requirements almost more stressful than taking the exam itself. At the very least, guidance should be provided as to the recommended screen size, and candidates should be notified if a standard laptop screen is not suitable.

2. General concerns and questions about the proposals

(a) Issues for disabled people and carers

CIPA has read the submission made for and on behalf of IP Inclusive and fully endorses the points made in that submission.

Some specific issues for disabled and dyslexic candidates and those prone to migraines with regard to the proposed assessment methodologies are highlighted above. However, it is important that the diverse needs of disabled candidates are considered when designing the exams rather than trying to adapt the exams to suit disabled candidates as and when such candidates request adjustments. We therefore fully support the recommendation of IP Inclusive that the services of a specialist accessibility consultant, particularly one with expertise in online examinations, should be employed to help those designing the exams to determine which features may help (or hinder) a diverse range of disabled candidates.

It was also noted by some respondents that disabled candidates for the current EQE have often experienced difficulties in satisfying the Secretariat that they qualify for compensation, and this causes unnecessary stress for those candidates. There also seems to be ongoing discrimination against those with dyslexia. The advent of the new EQE therefore provides an ideal opportunity to revise the Regulation on the European qualifying examination for professional representatives (REE) to resolve these issues.

(b) Start date for new EQE and transitional arrangements

No guidance has been provided as to when the new EQE will commence, other than it will not be in 2023. Similarly, no guidance has been provided regarding how the transitional provisions will work, particularly in terms of how long the current EQE papers will run in parallel (assuming



that will be the case for those that have already started preparing for the current EQE). This is causing a considerable amount of stress amongst recent entrants to the profession. Therefore, the sooner this can be settled, the better.

It is important that the transition from the old to the new formats should not disadvantage candidates, especially those candidates who began training for the old format of the EQE or those candidates who failed one or more papers of the current EQEs. If the transitional arrangements are only available for 2-3 years, this may place unnecessary pressure on candidates to take all four main exams when eligible and to pass the first time. Clear guidance must be provided if candidates who have passed one or more of papers A, B, C and D will gain exemptions from the new exams during the transition period.

(c) Proposed timing and frequency of exams

Exams for the current EQE take place in March each year. However, it has been suggested in the Concept paper that the exams for the new EQE may take place in January and June each year. This could be problematical due to potential clashes with national qualifying exams and overlap with training and study periods. It could also create problems for those with childcare responsibilities.

In the UK, the national qualifying exams comprise two sets of exams which are provided by the Patent Examination Board (PEB). The PEB is a committee of CIPA that is accredited by the Intellectual Property Regulation Board (IPReg), which is the regulator of the UK profession. Candidates must first pass, or be exempted from, the Foundation Certificate (FC) exams and then pass, the Final Diploma (FD) exams. The FC and FD exams currently take place in October each year. Indeed, the predecessors of these exams were moved from February/March to October many years ago to avoid clashing with the EQE.

It is possible to obtain an exemption from the FC exams by completing one of the IPReg-accredited FC courses at Bournemouth University, Brunel University or Queen Mary University of London.

The course provided by Bournemouth University (Postgraduate Certificate in Intellectual Property) is part-time and is delivered over 5 months, starting in January with exams in June.

The course provided by Brunel University (Intellectual Property Law Postgraduate Certificate) is part-time and takes 8 months to complete. The programme runs from the end of September to the end of March, but it is also possible to start the course in January and complete it over 1 year.

The course provided by Queen Mary University of London (Intellectual Property Law Postgraduate Certificate) is a full-time course. It runs from mid-September to mid-December each year with exams in January.

It will be clear from the above that the proposal to hold the exams for the new EQE in January and June will result in direct clashes with the exams for the Queen Mary and Bournemouth courses. Also, the January date will fall in the middle of the shorter programme for the Brunel course and make it difficult to prepare for the EQE at the same time. Candidates may therefore be forced to choose between taking exams to advance their qualification in the UK or taking an EQE exam.



We also understand that the national qualifying exams in Belgium and Italy also take place in June.

We appreciate that it will be difficult to identify times of the year that completely avoid clashes with national qualifying exams and training for these exams. However, the university courses mentioned above have been scheduled to fit around the current EQE in March and the UK national exams in October. Moving the EQE to January and June would have serious knock-on effects for candidates relying on these courses to secure exemptions from the FC exams. Some respondents have therefore suggested that March should be retained as one of the dates for the exams for the new EQE.

Clearly, it will be necessary to consider the current timetables for the national qualifying exams of all nations. However, we believe that particular consideration should be given to those countries which provide the largest numbers of candidates for the EQE, such as Germany and the UK. We therefore ask that CIPA and the PEB be consulted to fully understand the consequences for UK candidates of moving the EQE exam dates to January and June with a view to finding a time that minimises any detrimental impact on candidates. Other national bodies should also be consulted with regard to the impact on their national qualification process.

We also note that holding the exams for the new EQE in January and June may create difficulties for those with childcare responsibilities. In most of the UK, the school year runs from early- September to early/mid-July with holidays of several weeks during the year from late-December to early-January and late-March to mid-April, depending on when Easter falls. In addition, public examinations for schools take place from mid-May to end-June. It can be very difficult (and expensive) for those with childcare responsibilities to find alternative childcare during school holidays and the end of the school year can be very busy due to public examinations and other end of year activities. Childcare responsibilities still tend to fall disproportionately on women. Thus, choosing times of the year which clash with childcare responsibilities is potentially discriminatory.

The subject of clashes with childcare responsibilities is discussed at length in the submission from IP Inclusive and CIPA endorses those submissions. If at all possible, the timing of the new EQE should avoid major school holidays and the end of the school year in the majority of EPC states.

Concerns were also expressed that setting the exam dates for the new EQE in January and June could prolong the time taken for some UK candidates to qualify.

Typically, most new graduates in the UK start their training to become a patent attorney in September/October each year. This is traditionally the time that new graduate schemes start in most professions in the UK since it aligns with the academic year.

Under the current proposal, the first opportunity for such new graduates to take F1/F2 will be the January that falls 15-17 months after they started training. This is not a problem for those candidates who take the FC exams in the UK since they will have taken those exams in the preceding October. Indeed, it will potentially shorten the training period for such candidates by 2 months. However, it is a potential problem for those employers who send their candidates on the university courses mentioned above to secure exemption from the FC papers.



It is generally felt that some in-house work experience is desirable before a candidate attends any of the dedicated university courses in order to get the most out of the course. Thus, many employers choose to send their candidates on the Queen Mary course after they have completed 12 months of in-house work experience. Since the Queen Mary exams are in January, such candidates would not be able to take the F1/F2 exams until the June that falls 20-22 months after they started training. Qualification for such candidates could therefore be potentially prolonged by 3 months.

Some employers choose to send their candidates on the Bournemouth course, which starts in January and has exams in June. If employers choose not to send their candidates on the Bournemouth course until they have completed 12 months of in-house work experience, the candidates would not be able to take the F1/F2 exams until the January that falls 27-29 months after they started training. This would result in a huge delay in qualification.

Some employers choose to send their candidates on the Brunel course after they have completed 12 months of in-house work experience. If the programme which runs from the end of September to the end of March is selected, the candidates would not be able to take the F1/F2 exams until the June that falls 20-22 months after they started training as the January exam date would fall in the middle of the course. Thus, qualification for such candidates could be potentially prolonged by 3 months. If the programme which runs for a year starting in January is selected, the candidates would not be able to sit the F1/F2 exams until the January that falls 27-29 months after they started training. Again, this would result in a huge delay in qualification.

It therefore seems likely that setting the exam dates for the new EQE in January and June would at the very least force employers to reconsider their training programmes. If candidates end up having to start university courses before they have gained sufficient in-house work experience, this is likely to be detrimental to the candidates.

Given the likelihood that some clashes are likely to occur between exam dates and training, it is clearly vital that candidates are able to take or re-take all 6 exams of the new EQE more than once a year. All papers of the EQE should therefore be offered at every sitting, i.e. twice each year, to minimise possible delays in the qualification process. If this is not possible for all EQE exams, multiple sittings for papers F1 and F2 should be prioritised as these are the first barriers to entering the profession. These papers will also be less onerous to administer and mark if they are to be presented in a format which allows at least some automated marking. As has been previously noted, the timing of exam results is also important, especially in the context of candidates who need to re-take exams.

(d) Training for new EQEs

The proposed changes to the EQE will have a major impact on how candidates are trained.

We have already discussed how the changes could affect the decisions of employers as to when, or indeed if, they decide to send their candidates on the university courses that provide exemptions from the UK FC exams. However, some organisations run their own internal training programmes for the EQE, and these will have to be completely re-designed to take account of the proposed new timings and the proposed new format and content. The same is true for those commercial organisations which provide dedicated training courses for the EQE.



The proposal does not make clear what training, if any, will be provided by the EPO to prepare candidates for the new EQE.

The provision of model papers as part of the proposal was very much appreciated. However, it is difficult to provide comprehensive feedback without seeing model solutions. It is particularly important to see the level of detail that is required of candidates and the general distribution/allocation of marks to be able to design an effective training programme.

Several respondents felt that model papers (and model answers) should be provided at least one year prior to introducing the new EQE. Most candidates currently prepare for the EQE using past papers and start their preparation around one year in advance. Candidates for the new style exams will therefore be disadvantaged if they are not able to practice a range of questions.

(e) Exemptions from national exams

The changes to the EQE will inevitably have knock-on effects for candidates in those countries, like the UK, with national qualification systems.

At present, students who have passed the EQE may apply for exemptions from two of the four UK qualifying patent exams. Specifically, IPReg recognises success in passing the EQE as equivalent to passing papers FD2 and FD3 of the UK national qualifying exams. This is only possible because the same competences are tested in Papers A and FD2 (i.e., drafting) and Papers B and FD3 (i.e. amendment). It is also possible to obtain exemptions with a compensable fail.

It is at present unclear if the new EQE can provide a basis for exemptions from any of the UK qualifying exams. If the core skills of drafting and amendment are no longer tested in each set of European exams, it is hard to see how exemptions from papers FD2 and FD3 of the UK national exams can continue to be granted on the basis of passing the new EQE. If exemptions from any of the UK qualifying exams are no longer possible, and no changes are made by the UK PEB to the UK exam format, this is likely to result in a more difficult (and longer) path to UK qualification for some candidates, with re-take opportunities available only once per year.

(f) Eligibility to sit the new EQE

At present, it is necessary to have a university-level scientific or technical qualification to be eligible to register and enrol for the EQE. The current REE and Implementing provisions to the REE (IPREE) simply require that a candidate should have a bachelor's degree or equivalent academic degree awarded at the end of a full-time course of a minimum of three years, with at least 80% of the course hours taken to obtain this degree having been devoted to scientific and/or technical subjects.

It is clear that the REE and IPREE will need to be amended to accommodate the proposed changes to the EQE. However, CIPA is aware that there is some discussion as to whether candidates should have at least a master's level degree in order to be eligible for the EQE and this may be made a requirement when the REE and IPREE are revised.

We cannot see any justification for changing the eligibility criteria to require a master's degree. Certainly, there is no evidence that candidates who only have a bachelor's degree have any



difficulty in passing the EQE. Indeed, most (if not all) candidates who have a bachelor's degree come from the UK and the UK regularly achieves the highest pass rates for the EQE of all the EPC countries.

We would also point out that some students who wish to become patent attorneys will have already started or be about to start three-year bachelor degrees. To move the goalpost now would therefore be manifestly unfair to such candidates.

The UK is one of the few (possibly only) countries in the EPC that routinely offers bachelor's degrees in scientific and/or technical subjects of three years in length. Thus, if the eligibility criteria are changed to require a master's degree, this would be clear discrimination against UK candidates.

Conclusions

As indicated above, this submission is a collation of comments received from CIPA members. Some of the comments are very detailed and we would refer you to the foregoing for a full appreciation of the points raised. However, for convenience, the main concerns are set out below:

- The approach of selecting one or more topics from a set of different options, especially in M2 and M4, leaves open the possibility of a candidate passing the EQE and being deemed “fit to practise” before the EPO without ever having been tested on one or many key aspects of practising before the EPO. Key competences, such as drafting patent applications, in particular claims, responding to office actions (including amendment) and filing oppositions should be tested in every set of the Main exams to ensure that candidates are indeed “fit-to-practice”.
- The purpose of the EQE is to test a candidate's knowledge and aptitude to represent applicants in EPO proceedings. The exams should therefore only test a candidate's knowledge of the EPC and appropriate parts of the PCT. It is not necessary to test candidates with respect to IP protection in other jurisdictions (US, JP, CN, KR), infringement, freedom-to-operate and negotiation/licensing strategies.
- It needs to be made clear if the exams will be open book and, if so, which “books” or online resources can be consulted during the exams.
- The use of a variety of different mechanisms for answering the questions introduces an unnecessary degree of complexity to the exams and increases the potential to confuse candidates.
- The proposed new format appears to focus on the style of question at the expense of testing the core competencies of the candidate. Increasing the range of ways in which questions are being asked will not increase the quality of the exams and can be distracting for candidates. Just because it is possible to set different styles or formats of question does not mean that they should all be used. Simple free text answers are often all that is required.
- Clearer instructions are required for the new question formats of the online examinations.
- A number of the questions have maximum word or character limits. These should be removed as candidates should not be prevented from answering questions to the level of detail that they see fit. If candidates have to observe a word/character limit, this will place an additional burden on candidates during the exam to provide succinct answers that cover all elements of the question.



- Further clarity is needed on how questions will be marked in the new online format. This is especially important in view of the proposed increase in the use of automated marking.
- Papers should be carefully checked to eliminate the types of error that have been present in previous papers.
- Candidates should be permitted to print the paper, or parts thereof, prior to entering the lockdown browser. This is a particular issue for M1, M2 and M4.
- It must be clarified if there will be chemistry and non-chemistry versions for M1 before the new EQE is implemented as it affects how candidates prepare for the exams.
- The uncertainty surrounding the type of document that the candidate will be required to draft in M2 is problematic as it will inevitably result in candidates preparing a multitude of templates for every eventuality that could arise.
- It is very unlikely that candidates will have been exposed in their day-to-day work to all of the documents which may need to be drafted in M2 after 24 months of training.
- Candidates should be allowed maximum flexibility as to when they choose to take the exams.
- If this degree of flexibility is to work, it is essential that candidates are not disadvantaged by choosing not to sit exams every 6 months. The papers should therefore not be preferentially designed to be taken in that way.
- Further clarification is also needed on the timing of exam results. If the exams are held every six months, the current practice of releasing results around three to four months after the exams would not provide candidates with sufficient time to decide if they should repeat an exam they had failed or take the subsequent examination in the next sitting and carry out the necessary preparation.
- WISEflow is a suboptimal platform which causes many operational difficulties for candidates. Practical issues which make it very difficult for candidates to answer questions efficiently must be resolved.
- The equipment requirements associated with use of the WISEflow platform should ideally be simplified. At the very least, guidance should be provided as to the recommended screen size.
- The diverse needs of disabled candidates, including those with dyslexia, should be considered when designing the exams. The services of a specialist accessibility consultant should be employed to help those designing the exams to determine which features may help (or hinder) a diverse range of disabled candidates.
- The date on which the new EQE will commence should be settled as soon as possible.
- Guidance is also required regarding how the transitional provisions will work in practice, particularly in terms of how long the current EQE papers will run in parallel.
- The current timetables for the national qualifying exams of all nations should be considered with a view to avoiding potential clashes. Particular consideration should be given to those countries which provide the largest numbers of candidates for the EQE, such as Germany and the UK.
- The needs of those with childcare responsibilities should also be taken into account when scheduling the dates of the new EQE.
- Care should be taken to ensure that the qualification process for candidates is not unnecessarily prolonged by the choice of exam dates which clash with national exams, university course exams etc.
- In view of possible clashes, it is vital that candidates are able to take or re-take all 6 exams of the new EQE more than once a year. All papers of the EQE should therefore be offered at every sitting, i.e. twice each year, to minimise possible delays in the qualification process.



- The proposed changes to the EQE will have a major impact on how candidates are trained. To assist with training, model papers (and model answers) should be provided at least one year prior to introducing the new EQE.
- It is at present unclear if the new EQE can provide a basis for exemptions from any of the UK qualifying exams. If the core skills of drafting and amendment are no longer tested in each set of European exams, it is hard to see how exemptions from papers FD2 and FD3 of the UK national exams can continue to be granted on the basis of passing the new EQE. This is likely to result in a more difficult (and longer) path to UK qualification for some candidates.
- There is no justification for changing the eligibility criteria to register and enrol for the EQE to require a master's degree instead of a bachelor's degree. As the UK is one of the few (possibly only) countries in the EPC that routinely offers bachelor's degrees in scientific and/or technical subjects of three years in length, this would be clear discrimination against UK candidates.

Lee Davies
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