

EUROPEAN QUALIFYING EXAMINATION 2004

PAPER D - PART II

This paper comprises:

- * Client's letter followed by two (2) questions 2004/DII/e/1 - 4

- * Annex : Calendars for 2003 and 2004 with 2004/DII/e/5 - 6
indication of the days on which at least one
of the EPO filing offices is not open for the
receipt of documents

45% of the marks available for paper D are awarded for part I,
55% for part II.

Your client is *Electra Optic*, a Finnish company making optical and electronic devices such as cameras. They write to you as follows:

“We have just acquired a small company, Oedipus Electric (which shall continue to exist as a separate legal entity), a Greek company which has developed image enhancement software for digital cameras. We found that on 30th April 2003 Oedipus Electric filed as a first filing a European patent application Oedipus-EP describing and claiming a method of image enhancement using this software and a digital camera having the software stored on it. The inventor, Miss Myopia, remains with Oedipus Electric and is keen to develop this technology further.

Their software is in fact identical to software invented by Dr. Panopticon (our employee) in 1997 (the “basic software”). At that time we filed a Finnish patent application Electra-FI. Electra-FI describes and claims not only the basic software but also a particularly effective circuit for performing the basic software. This circuit is not obvious from the basic software and is not disclosed in Oedipus-EP. In 1997 we filed a European patent application Electra-EP claiming priority from Electra-FI. In Electra-EP we additionally describe and claim some further novel and inventive improvements to the basic software that in fact Oedipus Electric have not thought of (the “improved software”). The size and cost of the electronics made use of the invention possible only on a desk top computer and this was the only embodiment disclosed in Electra-FI and Electra-EP.

In the absence of a market we withdrew both Electra-FI and Electra-EP before publication. Our intention was to keep the idea secret until the economics were favourable. We are sure that Miss Myopia developed the basic software independently of Dr. Panopticon. They agree on this and intend to publish a joint paper discussing the history of the software after Oedipus-EP is published.

Modern electronics make it feasible to incorporate the basic software, the circuit, and the improved software in a pocket digital camera.

At a public conference last month Oedipus Electric disclosed in writing the basic software and the use of the basic software in a camera. Oedipus Electric has received many enquiries since then. We are very excited by this and wish to obtain patents for the basic software, the circuit, the improved software, and anything else you think inventive relating to digital cameras.

We have an assignment document signed by Oedipus Electric transferring Oedipus-EP to us. We ask that you record the transfer at the European Patent Office, and protect our inventions in USA, Europe, Japan, South Korea, Taiwan and the Czech Republic. The Czech Republic is important to us, since that is where our main competitor Zeus Cameras is situated and has its only factory.

We are convinced that these technologies are important and we would like to ensure the maximum duration of protection for each invention.

Please advise whether valid patent protection is obtainable for our inventions, and as to what applications and actions are necessary for us to get such protection in the name of Electra Optic ensuring the maximum duration of protection.

Zeus Cameras is being difficult with us in a different matter. Our subsidiary, Leda Optical, based in Slovakia, developed a new and inventive chip for digital cameras. Leda Optical first filed a European patent application Leda-EP in December 2001 after intensive prior art searching. Leda-EP describes and claims the chip. Leda Optical filed a PCT application, Leda-PCT, in December 2002 designating Europe, Japan and USA. Leda-PCT has an identical description and claims to, and validly claims priority from, Leda-EP. Leda-EP has been withdrawn.

Leda made their first sales of their chips in April 2002, to Klondyke Kompakt Kameras in the USA which used them in a camera sold only in America. No sales by Leda Optical have been made since, but Klondyke intended to use the chip in their next generation of digital cameras, and Leda Optical expected an order in the next few months. However, Klondyke has now written to Leda Optical about a letter they have received from Zeus, complaining that Klondyke's digital cameras incorporating Leda Optical's chip infringe their patent Zeus-EP and threatening Klondyke with infringement action if they sell into Europe. Zeus has also asked Klondyke to reveal the source of the chips. Zeus made it clear in their letter that they do not have a US application corresponding to Zeus-EP. Klondyke have asked why they should not buy the chips from Zeus rather than from Leda Optical.

Zeus-EP designates all EPC states and was filed November 2001, published May 2002, granted January 2004 with claims as filed, and has claims infringed by Leda's chip. The chips described in Zeus-EP and Leda-PCT are identical.

Zeus-EP validly claims priority of, and is identical in content to, a Czech application Zeus-CZ, which was filed in November 2000. A search has shown that Zeus-EP has no equivalent applications or patents other than Zeus-CZ. We have asked our Czech associate to check whether Zeus-CZ is in force.

It is important that we have freedom to use Leda Optical's chip worldwide, since if we get Klondyke's order the sales volume will be huge. In addition, we have found that when Leda Optical's chip is modified to incorporate our image enhancement circuit, a major improvement in performance is achieved.

Please advise as to the status of Leda-PCT, whether we are free to use Leda Optical's chip, what Zeus can do about the chips that have already been sold, and what answer we should give to Klondyke."

Answer your client's questions and advise how the client can improve their position.

2003

INFORMATION FROM THE EUROPEAN PATENT OFFICE

Notice from the President of the European Patent Office dated 10 October 2002 concerning the days on which EPO filing offices are closed in 2003

1. Under Rule 85(1) EPC time limits expiring on a day on which at least **one** of the filing offices of the EPO is not open for receipt of documents (closing days) are extended until the first day thereafter on which **all** the filing offices are open for receipt of documents and on which ordinary mail is delivered.

2. The EPO's filing offices in Munich, The Hague and Berlin will be closed for the receipt of documents on every Saturday and Sunday. The other closing days in 2003 are listed below.

<p>JANUARY</p> <p>S M T W T F S</p> <p>1 2 3 4</p> <p>5 6 7 8 9 10 11</p> <p>12 13 14 15 16 17 18</p> <p>19 20 21 22 23 24 25</p> <p>26 27 28 29 30 31</p>	<p>FEBRUARY</p> <p>S M T W T F S</p> <p>1</p> <p>2 3 4 5 6 7 8</p> <p>9 10 11 12 13 14 15</p> <p>16 17 18 19 20 21 22</p> <p>23 24 25 26 27 28</p>	<p>MARCH</p> <p>S M T W T F S</p> <p>1</p> <p>2 3 4 5 6 7 8</p> <p>9 10 11 12 13 14 15</p> <p>16 17 18 19 20 21 22</p> <p>23 24 25 26 27 28 29</p> <p>30 31</p>
<p>APRIL</p> <p>S M T W T F S</p> <p>1 2 3 4 5</p> <p>6 7 8 9 10 11 12</p> <p>13 14 15 16 17 18 19</p> <p>20 21 22 23 24 25 26</p> <p>27 28 29 30</p>	<p>MAY</p> <p>S M T W T F S</p> <p>1 2 3</p> <p>4 5 6 7 8 9 10</p> <p>11 12 13 14 15 16 17</p> <p>18 19 20 21 22 23 24</p> <p>25 26 27 28 29 30 31</p>	<p>JUNE</p> <p>S M T W T F S</p> <p>1 2 3 4 5 6 7</p> <p>8 9 10 11 12 13 14</p> <p>15 16 17 18 19 20 21</p> <p>22 23 24 25 26 27 28</p> <p>29 30</p>
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Tage/Days/Jours 2003		München Munich	Den Haag The Hague La Haye	Berlin
Neujahr - New Year's Day - Nouvel An	01.01.03	x	x	x
Heilige Drei Könige - Epiphany - Epiphanie	06.01.03	x		
Karfreitag - Good Friday - Vendredi Saint	18.04.03	x	x	x
Ostermontag - Easter Monday - Lundi de Pâques	21.04.03	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.03		x	
Maifeiertag - May Day - Fête du travail	01.05.03	x	x	x
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.03		x	
Christi Himmelfahrt - Ascension Day - Ascension	29.05.03	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	09.06.03	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	19.06.03	x		
Mariä Himmelfahrt - Assumption Day - Assomption	15.08.03	x		
Tag der Deutschen Einheit - Day of German Unity - Fête Nationale	03.10.03	x		x
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.03	x	x	x
1. Weihnachtstag - Christmas Day - Noël	25.12.03	x	x	x
2. Weihnachtstag - Boxing Day - Lendemain de Noël	26.12.03	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.03	x	x	x

2004

INFORMATION FROM THE EUROPEAN PATENT OFFICE

Notice from the President of the European Patent Office dated 03 November 2003 concerning the days on which EPO filing offices are closed in 2004

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Ostermontag - Easter Monday - Lundi de Pâques	12.04.04	x	x	x
Nationalfeiertag - National Holiday - Fête nationale	30.04.04		x	
Tag der Befreiung - Liberation Day - Journée de la Libération	05.05.04		x	
Christi Himmelfahrt - Ascension Day - Ascension	20.05.04	x	x	x
Pfingstmontag - Whit Monday - Lundi de Pentecôte	31.05.04	x	x	x
Fronleichnam - Corpus Christi - Fête-Dieu	10.06.04	x		
Allerheiligen - All Saints' Day - Toussaint	01.11.04	x		
Heiliger Abend - Christmas Eve - Veille de Noël	24.12.04	x	x	x
Silvester - New Year's Eve - Saint-Sylvestre	31.12.04	x	x	x