

# Learning path for patent examiners

## Selecting the best documents: Intermediate level

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## Introduction

This publication, "Selecting the best documents, Intermediate level", is part of the "Learning path for patent examiners" series edited and published by the European Patent Academy. The series is intended for patent examiners at national patent offices who are taking part in training organised by the European Patent Office (EPO). It is also freely available to the public for independent learning.

Topics covered include novelty, inventive step, clarity, unity of invention, sufficiency of disclosure, amendments and search. Also addressed are patenting issues specific to certain technical fields:

- patentability exceptions and exclusions in biotechnology
- assessment of novelty, inventive step, clarity, sufficiency of disclosure and unity of invention for chemical inventions
- the patentability of computer-implemented inventions, business methods, game rules, mathematics and its applications, presentations of information, graphical user interfaces and programs for computers
- claim formulation for computer-implemented inventions

Each publication focuses on one topic at entry, intermediate or advanced level. The explanations and examples are based on the European Patent Convention, the Guidelines for Examination in the EPO and selected decisions of the EPO's boards of appeal. References are made to the Patent Cooperation Treaty and its Regulations whenever appropriate.

The series will be revised annually to ensure it remains up to date.

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## 1. Learning objectives

Participants to this course will learn:

- How to list and sort documents
- How to analyse documents using the search table and select the most relevant documents
- How to assign categories to documents cited in the search report
- The definition of "intermediate" documents

## 2. Selecting the most relevant documents

After completing the search, the search division selects from the documents retrieved the most relevant documents to be cited in the search report. The search division does not cite more documents than necessary and therefore, when there are several documents of equal relevance, the search report will not normally cite more than one of them.

The search report is accompanied by an annex prepared electronically listing the patent documents which belong to the same patent family. When selecting from these documents for citation, the search division should cite documents in the language of the application (see the Guidelines (GL) B: X.9.1.3).

There are several alternative ways of listing and sorting the documents found during the search, for example:

- by filing, priority or publication date (this eliminates documents which are published too late and cannot form part of the prior art)
- on the basis of relevance, by counting the number of matching keywords in the title or abstract (placing a tick/cross in the appropriate box in the search table to visualise which features are disclosed in each document)
- by sorting criteria (the availability of sorting criteria varies between different search engines)
- on the basis of the search table, selecting the most relevant documents

The purpose of selecting the most pertinent documents is to choose which document represents the closest prior art. Once the most relevant publications have been selected, their relevance is indicated in terms of categories ("X", "Y", "A", "L", "T", etc.). Where a document cited in the search report is particularly relevant, it is indicated by the letter "X" or "Y" (this is discussed further in the following sections).

### Legal references:

GL B-IV, 3.1

### 3. Espacenet example: finding cited documents

Open Espacenet and look at EP2845700A1:

The screenshot shows the Espacenet patent page for EP2845700A1. The search bar contains 'pn=EP2845700A1'. The page title is 'EP2845700A1 Clippers for separating chocolate pieces'. The 'Bibliographic data' tab is selected, showing the following information:

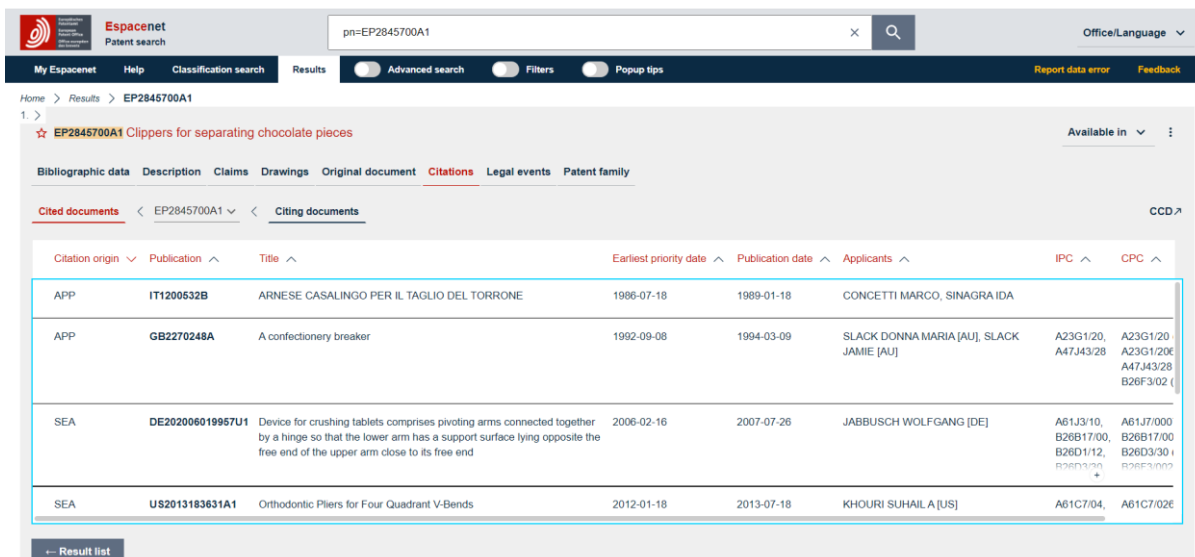
- Register:** Global Dossier
- Applicants:** RÜTJES THOMAS [DE]
- Inventors:** RÜTJES THOMAS [DE]
- Classifications:**
  - IPC:** B26B17/00; B26F3/00;
  - CPC:** A23G7/0018 (EP); A47J43/28 (EP); B26B17/006 (EP); B26D1/34 (EP); B26F3/002 (EP); B26D5/10 (EP);
- Priorities:** DE202013104051U 2013-09-06
- Application:** EP14183594A 2014-09-04
- Publication:** EP2845700A1 2015-03-11
- Published as:** DE202013104051U1; DK2845700T3; EP2845700A1; EP2845700B1

Then open the Citations tab to look at the citations:

The screenshot shows the Espacenet patent page for EP2845700A1 with the 'Citations' tab selected. The 'Cited documents' section is active, displaying a table of cited documents sorted by 'Citation origin'.

Citation origin	Publication	Title	Earliest priority date	Publication date	Applicants	IPC	CPC
SEA	DE202006019957U1	Device for crushing tablets comprises pivoting arms connected together by a hinge so that the lower arm has a support surface lying opposite the free end of the upper arm close to its free end	2006-02-16	2007-07-26	JABBUSCH WOLFGANG [DE]	A61J3/10; B26B17/00; B26D1/12; B26D3/30; B26D3/32; B26F3/00	A61J7/00; B26B17/00; B26D3/30; B26F3/00
SEA	US2013183631A1	Orthodontic Pliers for Four Quadrant V-Bends	2012-01-18	2013-07-18	KHOURI SUHAILA [US]	A61C7/04; A61C7/02; B25B7/00	A61C7/02; A61C7/04; B25B7/00
SEA	US2011289784A1	SPRING BIASED LIGHTWEIGHT ERGONOMIC NIPPER WITH REPLACEABLE BLADES TO ACCOMMODATE SMALLER HANDS AND ONE-HANDED USE	2010-05-31	2011-12-01	JONES DAVID THOMAS [US]	B26B17/00	B26B17/00; B26B17/00

Sorting the list by "Citation origin" shows that there are citations from both the applicant (documents cited in the description, APP) and the search report (SEA).



#### 4. Analysing retrieved documents using the search table

As mentioned, the standard way of assessing the relevance of documents found during the search is to count the number of matching keywords in the title or abstract and then place a cross in the appropriate box in the search table. This is shown graphically in the following completed search table:

Claims	Search concepts	D1	D2	D3
	Publication date	In time	In time	Intermediate
1	Microwave oven	+	+	+
1	Microwave Transparent vessel Vessel is a tube			
6		+	+	+
1-3	Foam material	+	(wire mesh)	+
	with catalytic activity	+	+	+
6	in the tube	+		+
1-7	Device suitable for performing chemical reaction	+	+	+
8	Continuous reaction	+	+	+
9	Monomode irradiation	+	(silent)	+

The above table shows that only documents D1 and D3 have all the technical features of all the claims. However, document D3 is an intermediate, non-pre-published document that is only part of the state of the art for novelty as per Article 54(3) EPC (see the discussion below). Therefore, D1 would be cited as an "X" document in the first instance in the search report. Document D3 would be cited as a "P, X" or "E" document depending on a comparison between its priority and publication dates and those of the application (this will be discussed in the next section). Document D2 would be cited as "state of the art" as an "A" document.

## Legal references:

GL B-IV, 3.1, GL B-X, 9.2

## 5. Intermediate documents

Under Article 54(3) EPC, the content of European (and WO/PCT) applications that

- a. have a date of filing before the filing date of the European patent (EP) application and
- b. were published on or after the international filing date of the EP application

is part of the state of the art for novelty only (not inventive step). Documents published on dates falling between the filing date of the application being examined and the (earliest) priority date claimed and are given the letter "P" in the search report, for example "P, X" or "P, A" (see GL B-VI, 5.2, B-X, 9.2.1, B-X, 9.2.2 and B-XI, 4).

In addition, the search division notes any conflicting documents (see GL B-VI, 4), which are:

- published European applications under Article 54(3) EPC (see GL G-IV, 5.1 and 5.1.1)
- published international applications under Article 54(3) EPC and Article 153(3) and (5) EPC (see GL G-IV, 5.2)
- published national applications of EPC contracting states under Article 139(2) EPC (see GL G-IV, 6 and H-III, 4.4)
- any document published during the priority interval of the application which may be relevant under Article 54(2) EPC in the case of an invalid priority date

Any such conflicting documents are given the letter "E" in the search report.

## Legal references:

Art. 54(3) EPC, GL B-X, 9.2.4; GL B-X, 9.2.6; GL B-IV, 2.3

## 6. Assigning categories ("X", "Y", "A", etc.)

A search report is prepared containing the results of the search, identifying the documents that constitute the relevant state of the art (see GL B-X, 9). The search report provides the applicant, the examining divisions of the EPO and, by means of its publication, the public with information on the relevant state of the art. The search report is accompanied by the search opinion (see GL B-XI, 7), subject to the exceptions mentioned in GL B-XI, 7), which together with the European search report constitutes the extended European search report.

The relevance of all documents cited in the search report to the subject-matter of the application in hand is identified by placing a particular letter in the first column of the citation sheets. Where needed, combinations of various categories are possible. The following letters are used:

Category "X" is used when a document is such that when taken alone, a claimed invention cannot be considered novel or to involve an inventive step.

Category "Y" is applicable where a document is such that a claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other documents of the same category, any such combination being obvious to a person skilled in the art. However, if a document (a "primary document") explicitly refers to another document as providing more detailed

information on certain features (see [GL G-IV, 8](#)) and the combination of these documents is considered particularly relevant, the primary document is indicated by the letter "X" (not "Y"), and the document referred to (the "secondary" document) is indicated as "X" or "L" as appropriate.

Category "A" is used to designate documents illustrating the technological background of the invention (see [GL B-X, 9.2.2](#)).

Category "P" is used to designate intermediate documents, published before the filing date of the application but later than the priority date claimed for the application.

The following letters may also be used to indicate the relevance of documents in search reports:

- "E": document having an earlier priority date but published on or after the filing date of the application (see [GL B-X, 9.2.6](#))
- "L": document casting doubt on the priority claim or cited to establish the publication date of another citation (see [GL B-VI, 3](#) and [F-VI, 1.4.1](#))
- "O": document referring to an oral disclosure, prior use or exhibition
- "T": later document published after the international filing date or priority date and not conflicting with the application but cited to give theoretical background (see [GL B-X, 9.2.5](#))
- &: corresponding document from the same patent family

**Legal references:**

GL B-X, 9.2; GL B-II,4; GL B-IV, 2.3

## **7. Beyond the course**

You can deepen what you have learned during this course with the following further readings:

- Guidelines for Examination in the European Patent Office, Part B: Guidelines for Search
- WIPO, PCT International Search and Preliminary Examination Guidelines

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