

Learning path for patent administrators

**National validation:
EPAC - entry level**

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Introduction

This publication, "National validation, EPAC - entry level", is part of the "Learning path for patent administrators" series is edited and published by the European Patent Academy. The series is intended for patent administrators who are taking part in training and certifications organised by the European Patent Office (EPO). It is also freely available to the public for independent learning.

Topics covered include: general aspects of the patent system; the European patent system and the European patent granting procedure; the International Patent System (PCT) and the PCT procedure; European and international publications; filing a European patent application and filing an international application; the formalities during the European and during the international search; the formalities during the European examination and during the international preliminary examination; the formalities during the appeal procedure after refusal (EPC), during the opposition procedure (EPC); national validation (EPC); entry into national/regional phases and entry into the European phase (PCT).

Each chapter focuses on one topic at entry, intermediate or advanced level, as appropriate. The series will be revised annually to ensure it remains up to date.

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1. Learning objectives

Participants in this course will learn:

- about the definition of extension states and validation states
- about the differences between national, regional and international patent systems
- when to validate a patent
- about the requirements for patent validation
- how to pay renewal fees
- how to request revocation/limitation

2. National and regional patent systems

As a patent is an IP right with a validity limited to the territory covered by the granting authority, it can be valid for one country (national patent system) or for a region (regional patent system). Applicants may also use the international patent system (PCT) to file an application.

The European procedure has not superseded the national grant procedures. So, when seeking patent protection in one or more EPC contracting states an applicant can choose between following the national procedure in each state for which they want protection and taking the European route, which in a single procedure confers protection in all the contracting states designated by the applicant.

Under Article 2(2) EPC, a European patent shall, in each of the contracting states for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that state, unless provided otherwise in the EPC.

Legal references:

Art. 2(2) EPC

3. Extension and validation states

Between 1993 and 2009, the European Patent Organisation signed extension agreements with ten non-member states. Currently, one such agreement with Bosnia-Herzegovina is still in force.

Since 2010, the European Patent Organisation has signed validation agreements with seven non-member states. Validation agreements with six of these countries entered into force:

- Kingdom of Morocco
- Republic of Moldova
- Republic of Tunisia
- Kingdom of Cambodia
- Georgia
- Laos People's Democratic Republic

Remark: the validation agreement signed with Costa Rica has not yet entered into force.

At the applicant's request and on payment of the prescribed fee, European patent applications (direct or Euro-PCT) and thus patents can be extended to states for which an extension agreement with the

EPO has become effective (extension states). The same applies to requests for validation in states for which a validation agreement has entered into force (validation states).

Under the national law of the extension and validation states, a European patent extended to or validated in those states has the effect of a national patent granted by the relevant state and is subject to the same conditions.

Extension and validation systems are based solely on the relevant national law modelled on the EPC. Hence, they are subject to the national extension/validation rules of the country concerned and the EPC does not apply.

Any European patent application is deemed to be a request to extend/validate the effects of the European patent application and the European patent granted in respect of it to all states not party to the EPC with which extension or validation agreements are in force on the date on which the application is filed. However, the request is deemed withdrawn if the extension fee or validation fee, whichever is applicable, is not paid within the prescribed time limit.

The time limits for paying extension and validation fees are governed by the national laws of the extension/validation states, according to which extension and validation fees are to be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report or, for Euro-PCT applications, within the period for performing the acts required for entry of an international application into the European phase, or within six months of the date of publication of the international search report, whichever is the later.

The period for payment of the extension/validation fee is specified in GL A-III, 12.2

If the extension or validation fee for a state is not paid within the basic period, the applicant can still pay it, together with a 50% surcharge:

- a. within two months of expiry of the basic period or
- b. along with further processing in respect of the designation fee: within two months of notification of a communication of loss of rights under Rule 112(1) EPC following non-payment of the designation fee.

Re-establishment of rights under Article 122 and Rule 136 EPC is not available in respect of payment of the extension or validation fee.

Legal references:

Art. 122 EPC

Rule 112(1) EPC; Rule 136 EPC

GL A-III, 12.1, GL A-III, 12.2, GL A-III, 12.4

OJ EPO 2009, 603, OJ EPO 2015, A19

4. When to validate a granted patent?

Once the mention of the grant is published, the patent has to be validated in each of the designated states within a specific time limit to retain its protective effect and be enforceable against infringers. In a number of contracting states, the patent proprietor may have to file a translation of the specification in an official language of the national patent office. Depending on the relevant national law, the applicant may also have to pay fees by a certain date.

Under Article 64(1) EPC (or the relevant national legislation in the extension and validation states), a European patent automatically confers on its proprietor from the date on which the mention of the grant is published in the European Patent Bulletin, in each contracting state in respect of which it is granted, the same rights as would be conferred by a national patent granted in that state.

Legal references:

Art. 64(1) EPC

5. Validation requirements (London Agreement)

Under Article 65(1) EPC, any contracting state may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent supply to its central industrial property office a translation of the patent as granted, amended or limited in one of that state's official languages at their option or, where that state has prescribed the use of one specific official language, in that language.

All EPC contracting states have prescribed, in accordance with Article 65(3) EPC, that in the event of failure to observe the relevant national provisions, the European patent will be deemed to be void *ab initio*. The circumstances in which such a loss of rights occurs are determined by the national law of the contracting states concerned. In most contracting states the time limit for filing the translation is nonextendable.

The Agreement on the application of Article 65 EPC – the London Agreement – is an optional agreement aimed at reducing the costs relating to the translation of European patents. It is the fruit of longstanding efforts to provide for a cost attractive post-grant translation regime, which began in the 1990s in the framework of the European Patent Organisation and gained momentum at the Intergovernmental Conference held in Paris on 24 and 25 June 1999. It was concluded at the Intergovernmental Conference held in London on 17 October 2000.

The London Agreement distinguishes between:

1. states having an official language in common with one of the official languages of the EPO (English, French and German) and
2. states having no official language in common with one of the official languages of the EPO.

The EPC contracting states which have ratified or acceded to the Agreement undertake to waive, entirely or largely, the requirement for translations of European patents. Under Article 1(1), (2) and (3) of the London Agreement, a state which has an official language in common with one of the official languages of the EPO shall dispense entirely with the translation requirements provided for in Article 65(1) EPC.

A state which does not have an official language in common with one of the official languages of the EPO shall dispense with the translation requirements provided for in Article 65(1) EPC if the European patent has been granted in the official language of the EPO prescribed by that state or translated into that language and supplied under the conditions provided for in Article 65(1) EPC. These states may however require that a translation of the claims into one of their official languages be supplied.

Legal references:

Art. 65 EPC

6. Annuities

Under Article 141 EPC, national renewal fees in respect of a European patent may be imposed for the years which follow that in which the mention of the grant of the European patent is published in the European Patent Bulletin. If a renewal fee becomes due shortly before such publication, it is still to be paid to the EPO. The mention of grant will in this case not be published until the renewal fee has been paid.

Renewal fees falling due between the date of grant of the European patent and the expiry of its term are payable to the central industrial property offices of the designated states in which the patent has been validated.

The EPO brochure entitled "National law relating to the EPC" contains detailed information on the regulations and requirements governing European patent applications and patents in the contracting, extension and validation states. See Table VI regarding payment of national renewal fees to the central industrial property offices.

Legal references:

Art. 86(2) EPC; Art. 141 EPC

7. Central limitation and revocation

The main purpose of these proceedings is to allow proprietors to limit or revoke an existing European patent even after proceedings have been terminated, hence without pending proceedings.

There is no *ex officio* examination of the grounds for such a request.

Proprietors will probably select this route if they either expect to be or are already involved in national litigation (court) actions about the validity of the patent. In this way they can delimit their patent (scope of protection) with respect to subsequent prior art and avoid or put an end to extensive (long-lasting) and costly national proceedings.

At any time after the grant of a patent, the patent proprietor may request the revocation or limitation of the patent.

The request can be filed at any time after grant, after opposition proceedings or even after expiry of the patent. However, a request for revocation or limitation filed while opposition proceedings in respect of the European patent are pending is deemed not to have been filed, since the opposition proceedings have precedence.

Limitation or revocation requests must be filed directly with the EPO. Furthermore, the request is deemed to be filed only when the limitation or revocation fee is paid.

The subject of limitation or revocation proceedings is the European patent as granted or as amended in opposition or (earlier) limitation proceedings.

The decision to limit or to revoke the European patent takes effect on the date on which it is published in the European Patent Bulletin and applies *ab initio* to all contracting states in respect of which the patent was granted. It is not possible for the patent to be revoked for some contracting states and not for others.

Legal references:

Art. 64 EPC; Art. 68 EPC; Art. 105a EPC; Art. 105b EPC; Art. 105c EPC

Rule 90 EPC; Rule 92 EPC; Rule 93 EPC

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