

Learning path for patent administrators

International preliminary examination: EPAC – entry level

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Introduction

This publication, "International preliminary examination, 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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All references to natural persons are to be understood as applying to all genders.

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1. Learning objectives

Participants in this course will learn about:

- the IPEA's competence
- IPEA-related fees, reductions and refunds
- filing a demand for international preliminary examination
- IPEA-related time limits
- amendments to the IA
- lack of unity of invention including payment under protest
- the content of written opinions and IPER
- communications from the IPEA

2. Abbreviations

DO	designated Office
EO	elected Office
EPO	European Patent Office
IA	international application
IB	International Bureau of WIPO
IFD	international filing date
IPEA	International Preliminary Examining Authority
IPER	international preliminary examination report
IPRP1	international preliminary report on patentability, converted WO/ISA
IPRP2	international preliminary report on patentability, converted IPER
ISA	International Searching Authority
ISR	international search report
PCT	Patent Cooperation Treaty
SEQL	sequence listing
SISA	Authority specified for the supplementary international search
SISR	supplementary international search report
WIPO	World Intellectual Property Organization
WO/ISA	written opinion of the International Searching Authority

3. Form numbers and their common names

Form number	Common name used in this course
PCT/IPEA/408	written opinion
PCT/IPEA/429	written opinion

PCT/IPEA/409

international preliminary report on patentability (IPRP2) **or**
international preliminary examination report (IPER)

4. General background

Applicants may opt to request international preliminary examination (IPE) under Chapter II of the PCT by filing a demand for IPE (Demand) within 22 months from the priority date or 3 months from the date of mailing of the ISR, whichever expires later. The applicant has the right to amend the description, claims, drawings and SEQ. L.

The IPEA assesses the patentability of the IA and issues a written opinion called IPER or IPRP2, which is, like the WO/ISA, non-binding.

The IPEA merely issues an opinion. It does not grant or refuse a patent for the IA.

Legal references:

Art. 19 PCT; Art. 31 PCT; Art. 32 PCT; Art. 34 PCT

5. The competent IPEA

The Demand should be filed directly with the competent IPEA.

In the case that it is filed with an RO, ISA or IPEA which is not competent, the authority in question will transmit the Demand to the IB. The date of receipt at the non-competent authority is considered the date the Demand was filed.

Which IPEA is competent depends on the language in which the IA was filed and on which ISA carried out the international search. For detailed information, please see the [PCT Applicant's Guide, Annexes C and E](#).

If the IA is not in a language that is both a language of publication and a language accepted by the IPEA, a translation is required.

Legal references:

Art. 31 PCT; Art. 32 PCT

Rule 59 PCT

6. Competence of the EPO as IPEA (IPEA/EP)

The EPO is competent to act as IPEA only if the international search was carried out by any of the following ISAs:

- the EPO (ISA/EP)
- Austrian Patent Office (ISA/AT)
- Finnish Patent and Registration Office (ISA/FI)

- Spanish Patent and Trademark Office (ISA/ES)
- Swedish Patent and Registration Office (ISA/SE)
- Turkish Patent and Trademark Office (ISA/TR)
- Nordic Patent Institute (ISA/XN)
- Visegrad Patent Institute (ISA/XV)

IPEA/EP accepts the languages English, French and German. If the international search took place in a different language, a translation into one of these three languages must be filed.

Legal references:

Art. 31 PCT; Art. 32 PCT

Rule 59 PCT

7. How to file a Demand

A Demand should be filed using the appropriate Form [PCT/IPEA/401](#). The indications in it are very similar to those in the PCT request form.

Downloadable and editable PDF versions of Form [PCT/IPEA/401](#) can be found on the WIPO website. The form may also be printed out and filled in using a typewriter.

The form and instructions on how to fill it in are available in the [ten languages of publication](#). The Demand may also be filled in online using WIPO's [ePCT service](#).

If more than one IPEA is competent, the applicant should indicate the chosen IPEA in the Demand.

Filing a Demand by letter is possible. However, the IPEA would invite the applicant to also submit Form [PCT/IPEA/401](#).

Legal references:

Art. 31 PCT

Rule 53 PCT; Rule 55.1 PCT

8. Formal requirements for the Demand

The Demand must indicate:

- applicants' names and addresses
- the IA number
- the title of the invention
- the international filing date
- the earliest priority date
- the basis on which the IPE is to be carried out

The Demand must be signed.

The Demand must be accompanied by a letter indicating the basis on which the IPE should be carried out. If amendments are filed, the letter should elaborate on the differences between what was filed originally and what was filed for the IPE.

Legal references:

Art. 19 PCT; Art. 34 PCT
Rule 53 PCT

9. Fees for IPE

Two different fees are due when filing a Demand:

- The preliminary examination fee is for the benefit of the IPEA, for carrying out the IPE and establishing the IPER. The IPEA determines the amount of that fee, so it may differ depending on the IPEA chosen.
- The handling fee is for the benefit of the IB, e.g. for translating the IPER into English, if applicable. The IB determines the amount of that fee.

Both fees have to be paid to the IPEA, which keeps the preliminary examination fee and transfers the handling fee to the IB. The currency depends on the IPEA. Details can be found in the [PCT Applicant's Guide](#).

Legal references:

Art. 31 PCT
Rule 58 PCT

10. Fees for IPE: time limit and refunds

Fees have to be duly paid 1 month from the date the Demand was filed or 22 months from the priority date, whichever expires later.

If the Demand needs to be transmitted to the competent IPEA, the handling fee must be paid within 1 month of the date of receipt by that IPEA or 22 months from the priority date, whichever expires later.

The IPEA will refund the handling fee if the Demand is withdrawn before being transmitted to the IB or if it is considered not to have been submitted because none of the applicants had the right to file a Demand.

In any other situation, it is left to the discretion of each IPEA whether it will fully or partially refund fees relating to the IPE.

Legal references:

Art. 31 PCT
Rule 58 PCT

11. Handling fee: reductions

The IB grants a reduction of 90% of the handling fee to certain applicants. For details, please consult the [list of states](#) whose nationals and residents are eligible for the fee reduction, as well as the conditions under which the reduction applies.

If there is more than one applicant, all applicants should meet the criteria in order to benefit from the fee reduction.

Legal references:

Art. 31 PCT

Rule 58 PCT

OJ EPO 01/1996, 114; OJ EPO 10/2000, 446

12. IPE fee: reductions

Some IPEAs offer [reductions of the IPE fee](#).

IPEA/EP grants a 75% reduction for applicants from countries with [low-income and lower-middle-income economies](#), subject to conditions, which have to be fulfilled by all applicants:

- The applicant is a natural person.
- The applicant is both a national and a resident of one of the listed countries. Nationality and residence can be in different countries.
- The countries in question are not EPC member states.

Legal references:

OJ EPO 2021, A58

13. Amendments under [Art. 19 PCT](#) and [Art. 34 PCT](#)

The applicant has the right to amend the description, the claims, the drawings and SEQL before the start of and also during the IPE, until the start of the preparation of the IPER, if time permits.

If the applicant files a Demand, but files neither amendments nor a statement before the IPEA starts drawing up the IPER, it will, essentially, have the same content as the WO/ISA.

Amendments or a statement received by the IPEA after it has begun to draw up a written opinion or IPER need not be taken into account.

The responsibility for the IA lies entirely with the applicant. The IPEA must not change the IA. The applicant may, however, disregard any opinion of the IPEA, either wholly or in part.

Amendments may not go beyond the disclosure in the IA as filed. If the IPEA finds that amendments do go beyond, it will communicate this to the applicant in the written opinion and/or the IPER, which will be established as if such amendments had not been made.

Amendments must be filed together with an accompanying letter which indicates the basis for the amendment(s) and must always point out and explain the differences between the replacement sheets and the corresponding sheets in the IA as originally filed, even if multiple amendments were made during the international phase.

If such an accompanying letter is not filed, the IPEA will invite the applicant to do so using Form [PCT/IPEA/431](#).

Legal references:

Art. 19 PCT; Art. 34 PCT

Rule 11.14 PCT; Rule 66 PCT

14. Amended sheets

The applicant must submit a replacement sheet for every description or drawing sheet which differs from the one previously filed. For the claims, the applicant must submit a complete set. A marked-up set of replacement sheets may be helpful for illustrating the amendment.

No replacement sheet is required where the amendment results in the cancellation of an entire sheet. Such an amendment may be communicated in the accompanying letter.

Legal references:

Art. 19 PCT; Art. 34 PCT

Rule 11.14 PCT; Rule 66 PCT

15. Amendments to translated IAs

Where the IPE is carried out on the basis of a translation of the IA, any amendments under Art. 34 PCT and Art. 19 PCT which are to be taken into account and any accompanying letter must be in the language of that translation.

IPEA/EP will also accept accompanying letters in a language other than the language of filing, as long as the language used is English, French or German.

Legal references:

Art. 19 PCT; Art. 34 PCT

Rule 11.14 PCT

16. Communicating receipt of Demand

The IPEA communicates the date of receipt of the Demand to the applicant and the IB using Form PCT/IPEA/402.

The IPEA carries out a formal check of the Demand. If it does not meet the requirements, the IPEA invites the applicant to comply, using Form PCT/IPEA/404.

The IPEA transmits a copy of the Demand to the IB, which notifies:

- the elected Offices of their election, using Form PCT/IB/331
- the applicant that it has done so, using Form PCT/IB/332

Legal references:

Art. 31 PCT

Rule 61 PCT

17. Basic considerations for the IPE

The IPEA will always consider whether the objections raised in the WO/ISA or a written opinion by the IPEA have been overcome by the arguments and/or amendments submitted in response to it.

The IPEA will carry out a top-up search to discover any documents that were not available on the date the ISR was established.

If all objections are overcome and the top-up search does not reveal any further relevant documents, a Form [PCT/IPEA/409](#) will be issued.

If not all objections have been overcome or the top-up search revealed further relevant documents, a written opinion, i.e. Form [PCT/IPEA/408](#) or Form [PCT/IPEA/429](#) will be issued.

IPE will only be carried out for claims that were searched by the ISA.

Amended claims directed to subject-matter not searched by the ISA or considered unsearchable will not be examined. This will be indicated under Box No. III of the written opinion or IPER.

If the IA does not comply with the requirement of unity of invention, an invitation to restrict or pay additional fees using Form [PCT/IPEA/405](#) will be issued.

The nature of the IPE is confidential.

Legal references:

Art. 38 PCT

Rule 66 PCT

18. Content of written opinion and/or IPER

Among other items, the written opinion or IPER contains:

- a standardised statement indicating "yes" or "no" for each examined claim on whether it appears to satisfy the criteria of novelty, inventive step and industrial applicability
- the citation of documents explaining and pointing out their relevance to the inventive concept in the IA, if applicable
- an indication as to which amendments under [Art. 19 PCT](#) or [Art. 34 PCT](#) and/or rectified sheets under [Rule 91 PCT](#) (if issued by the IPEA) have been taken into account
- remarks relating to an objection of lack of unity of invention, if applicable

It must not contain any statement on the question of whether the claimed invention is, or seems to be, patentable according to any national law.

Legal references:

Art. 19 PCT; Art. 34 PCT; Art. 35 PCT

Rule 70 PCT; Rule 91 PCT

19. Form PCT/IPEA/408

- This form constitutes the first written opinion by the IPEA.
- It contains the IPEA's comments and supporting arguments.
- The applicant's response must be written and filed within the set time period. An extension may be granted using Form [PCT/IPEA/427](#).
- The IPEA may issue one or more additional written opinions, if time permits.
- Usually, IPEA/EP will:
 - not issue more than one written opinion before drawing up the IPER
 - set a time period for response of two months

Legal references:

Rule 66 PCT

20. Forms PCT/IPEA/428 and 429

The IPEA may, at any time, communicate informally with the applicant:

- over the telephone **and/or**
- in writing (e.g. e-mail) **and/or**
- through personal interviews

One personal interview must be granted. Further interviews may be granted at the IPEA's discretion.

Summaries of informal communication between the applicant and the IPEA will be communicated using Forms [PCT/IPEA/428](#) and [PCT/IPEA/429](#).

Form [PCT/IPEA/429](#) also sets a time limit for a written response, which should also take possible time restraints into account.

Legal references:

Rule 66 PCT

Art. 38 PCT

21. Form PCT/IPEA/405

An IA should cover one general invention or inventive concept only. If the IA contains more than one invention or inventive concept, IPEAs may invite applicants to pay additional fees.

Form [PCT/IPEA/405](#) informs applicants of the IPEA's finding of lack of unity of invention and invites them to pay additional fees, possibly under protest, within a period of one month. It indicates the number of additional fees, the corresponding amounts, as well as the currency. It contains a reasoning for the findings and identifies the inventions found. For payments under protest, IPEA/EP charges one protest fee.

The form must specify at least one possible restriction which would overcome the objection of lack of unity of invention.

Legal references:

Art. 17 PCT

22. Responses to Form PCT/IPEA/405

If the applicant duly responds to Form [PCT/IPEA/405](#), the IPEA will carry out the IPE on the inventions for which additional fees have been paid or to which the claims have been restricted.

If the applicant does not respond to the invitation, the IPE will be carried out on the main or first invention.

In the case of a payment under protest, IPEA/EP will check the admissibility of the protest and put together a review panel that will issue a decision on the protest. That decision may give rise to refunds of the additional fee(s) and the protest fee.

Legal references:

Art. 17 PCT

Rule 66 PCT; Rule 68 PCT

23. Protest

Admissibility

The admissibility of protests filed with IPEA/EP is determined by verifying the due receipt of:

- payment of at least one additional fee
- payment of the protest fee
- a reasoned statement discussing the arguments in the invitation

"Due receipt" means:

- within the time limit of one month from the date of mailing of the invitation plus a period of grace of seven days, and
- fees paid in full

The applicant may choose to pay all additional fees or only selected ones. It is also possible to pay certain fees under protest and others without protest.

Review procedure

Once the protest was found admissible, it will be looked at by a review body within IPEA/EP. The examiner who issued the invitation to pay additional fees may be a member of that review body.

The issue that is discussed during the review is whether the reasoning in the invitation was sufficient. The decision has to be unanimous and is communicated to the applicant by means of Form [PCT/IPEA/420](#).

A copy of the form is transmitted to the IB. The applicant may request that the IB transmit the protest and the decision to the EOs at the end of the international phase.

Refunds

If the review body finds the protest entirely justified, all paid additional fees plus the protest fee will be refunded.

If the review body finds the protest partly justified, the additional fees in question will be refunded, but not the protest fee.

If the review body finds the protest unjustified, there will be no refund.

Legal references:

Rule 68 PCT

24. Time limit for establishing the IPER

The time limit for establishment of the IPER is:

- 28 months from the earliest priority date¹ **or**
- 6 months after the IPEA has received¹
 - the Demand
 - due payment of the handling fee and the IPE fee **and**
 - the ISR or the declaration of non-establishment of ISR **or**
- 6 months from the date on which the IPEA received the translation.¹

Applicants should receive the IPER, at the latest, 2 months before the earliest possible start of the national/regional phase, so that they have sufficient time to consider if they should request national/regional processing and before which EOs.

Legal references:

Art. 35 PCT

Rule 55 PCT; Rule 69 PCT

25. Form PCT/IPEA/409 (IPER or IPRP2)

The IPER forms the basis for national/regional processing by the EOs.

In some EOs, no further examination of the IA will take place. If the IPER does not mention any objections, a patent may be granted directly. For more information, please see the [PCT Applicant's Guide](#).

The IPER may indicate that the IA lacks unity of invention. For full patent protection in those cases, the IA might have to be split in the national/regional phase. For the EPO, for example, the applicant must file divisional applications.

Legal references:

Rule 66 PCT

¹ whichever expires later

26. Annexes to Form PCT/IPEA/409

The following documents are annexed to the IPER, if applicable:

- amended sheets under [Art. 19 PCT](#)
- amended sheets under [Art. 34 PCT](#)
- superseded replacement sheets under [Rule 70.16\(b\) PCT](#)
- rectified sheets under [Rule 91 PCT](#), if issued by the IPEA
- accompanying letters pertaining to the basis of the IPER

Legal references:

Rule 70 PCT

27. Third-party observations

Third parties may, anonymously, if so desired, file observations on an IA, indicating prior art which they believe to be relevant for the assessment of patentability of the IA.

The observations have to be submitted electronically to the IB using the [ePCT service](#) between international publication and 28 months from priority. They should be filed in a [PCT publication language](#). The indicated prior art may be in any language.

The IB notifies applicants of any such observations. They may file comments on the observations within 30 months from priority.

At the end of the international phase, any third-party observations and applicant's comments are transmitted to the DOs and EOs.

28. Third-party observations during IPE

The IB will communicate any third-party observations and any comments by the applicant to the IPEA, unless the IPER has already been received by the IB.

IPEA/EP will take the third-party observations and the applicant's comments into account for IPE and refer to the indicated documents in the written opinion or IPER, where appropriate.

IPEA/EP will also issue a second written opinion if the observation has an impact on a written opinion that has already been issued.

Some DOs/EOs, such as the EPO, will consider third-party observations filed with the IB, in the national or regional phase.

Legal references:

Art. 33(6) PCT

29. Beyond the course

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

- [PCT Applicant's Guide, Chapter 10: international preliminary examination procedure](#)

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