

Learning path for patent administrators

Entering national/regional phases: EPAC – entry level

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Introduction

This publication, "Entering national/regional phases, 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 end of the international phase of the PCT
- the time limits for entry into the national or regional phase
- the procedure for entry into the European phase
- the supplementary European search

2. Entry into national or regional phase

When the international phase of the PCT has ended, the national or regional phase begins 30 months from the earliest priority date or the international filing date (whichever expires later). A national or regional office before which an international application (IA) is continued is called the designated Office (DO), or, if an international preliminary examination took place, elected Office (EO). The time limits for entry into the various national and regional phases differ from office to office. An [alphabetical list on the WIPO website](#) contains more detailed information. The 30-month period is incompatible with the national law of two PCT contracting states, Luxembourg (LU) and the United Republic of Tanzania (TZ). For these contracting states, national processing will therefore begin at 20 months (LU) or 21 months (TZ) from priority.

Legal references:

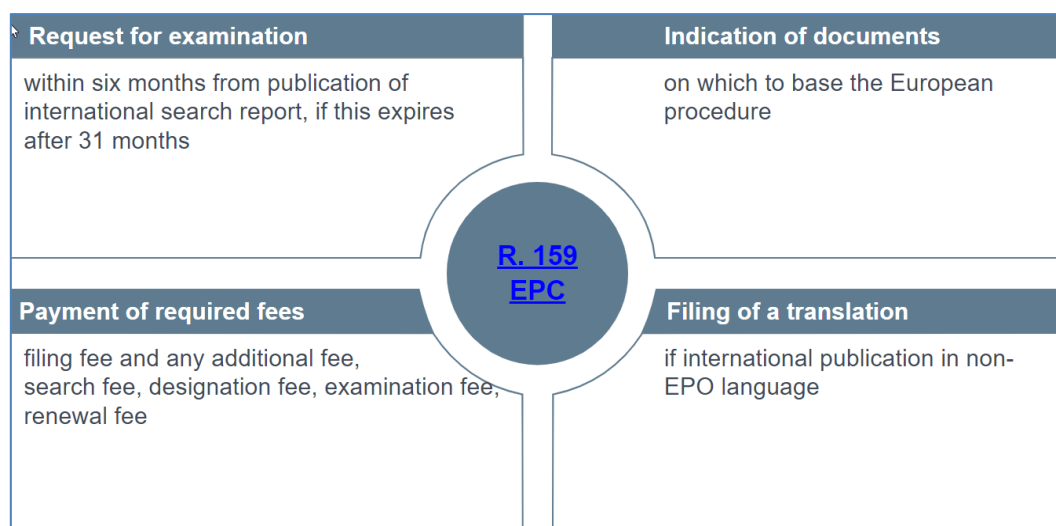
Art. 22 PCT; Art. 23 PCT; Art. 40 PCT

3. Entry into the European phase

The regional phase before the EPO is called the European phase. An IA in the European phase is called a Euro-PCT application. Like any other office under the PCT, the EPO may not take up processing of the IA before expiry of the 30-month period. The EPO has extended that period to 31 months. Only if the applicant expressly requests early processing may the EPO process procedural acts and communications before 31 months from priority have expired.

On entry into the European phase, applicants must take the following procedural steps:

- filing a request for examination within six months from publication of the international search report (ISR), where this term expires after 31 months
- indicating the documents on which to base the procedure in the European phase
 - any amendments made to the claims under Article 19 PCT
 - or amendment under Article 34 PCT
 - or amendments before entry into the regional phase
- paying the required fees: filing fee and any additional fee, search fee, designation fee, examination fee, renewal fee
- filing a translation, if the international publication was in a language other than English (EN), French (FR) or German (DE) (Form 1200, Section 7).
 - If the international application has been published in (English, French or German)., this language is the language of proceedings
 - The language of proceedings cannot be changed subsequently



Please find below an overview of the time limits for fees due on entry into the European phase.

Fee	Basic time limit	Legal basis
Filing fee	Date of filing or earliest date of priority+ 31 months	<u>Rule 159(1)(c) EPC</u>
Additional fee	Date of filing or earliest date of priority+ 31 months	<u>Rule 159(1)(c) EPC</u>
Search fee	Date of filing or earliest date of priority+ 31 months	<u>Rule 159(1)(e) EPC</u>
Designation fees	Date of publication of the international search report + six months or date of filing or earliest date of priority+ 31 months whichever expires later	<u>Art. 79(2) EPC</u> <u>Rule 159(1) EPC</u>
Extension fees	Date of publication of the international search report + six months or date of filing or earliest date of priority + 31 months whichever expires later	Provisions under the Extension Ordinance (EO)
Examination fee	Date of publication of the international search report + six months or date of filing or earliest date of priority + 31 months whichever expires later	<u>Art. 94 EPC</u>
Claims fee	Date of filing or earliest date of priority + 31 months	<u>Rule 152 (1) EPC</u>
Renewal fees	Date of filing or earliest date of priority + 31 months provided the time limit under <u>Article 86 (1) EPC</u> for the third renewal fee has already expired	<u>Art. 86 (1) EPC</u> <u>Rule 51 (1) EPC</u>

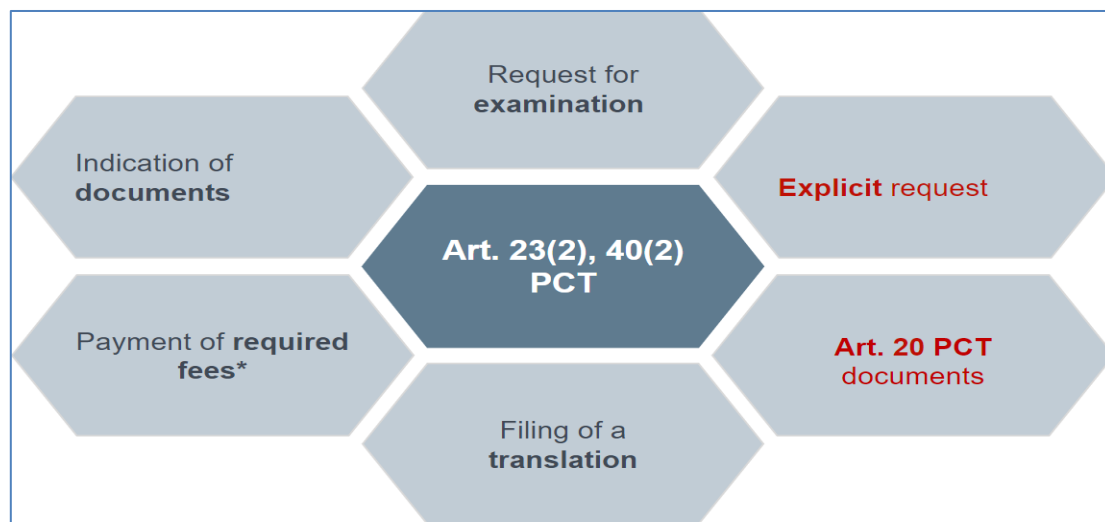
Legal references:

Art. 52(2) EPC; Art. 54(3) EPC; Art. 82 EPC

Rule 43 EPC; Rule 128 EPC; Rule 159(1) EPC

4. Early entry into the European phase

As mentioned before, a valid entry into the European phase can also take place before 31 months from priority upon the applicant's explicit request. Such an entry is referred to as a "request for early processing".



* The applicable time limits for payment are the same as for the regular entry into the European phase.

Legal references:

Art. 20 PCT; Art. 23(2) PCT; Art. 40(2) PCT

5. Supplementary European search or not?

If the ISR or supplementary international search report (SISR) was drawn up by the EPO, there will be no supplementary European search. The examining division issues a combined communication under Rules 161 and 162 EPC (Rule 161/162 communication). Depending on the situation, EPO Form 1226AA or 1226BB is used. The wording of the forms clearly states what is expected from the applicant. This may include requiring applicants to file amendments to or comments on the IA.

If the ISR or SISR was **not** drawn up by the EPO, the EPO will issue a supplementary European search report. Applicants may file amendments to the IA within the 31-month time limit and, if desired, file (further) amendments within the time limit set in the Rule 161/162 communication, which is issued using EPO Form 1226CC.

The amended application will serve as the basis for the supplementary European search. Only amendments filed up to the end of the time limit set in said form are taken into account for the supplementary search.

If the application does not comply with the requirement of unity of invention, a partial supplementary European search report is issued, covering the invention first mentioned in the claims. In this case,

the EPO informs the applicant that if the supplementary search report is to cover the other invention(s) a further search fee must be paid for each invention found.

Examples

- EPO Form 1226AA:
Form 1226 AA requires a mandatory response under Rule 161(1) EPC, and the penalty for not responding within the six-month time period is withdrawal of the European patent application.
- EPO Form 1226BB:
Form 1226 BB has a voluntary response under Rule 161(2) EPC, and the application is not withdrawn if no response is filed.
- EPO Form 1226CC:
Form 1226 CC issued when the International Search Authority is not the European Patent Office and has a voluntary response under Rule 161(2) EPC and the application is not withdrawn and continues through to examination if no response is filed.

Legal references:

Art. 28 PCT; Art. 41 PCT

Art. 153(7) EPC

Rule 62 EPC; Rule 159(1) EPC; Rule 161(1) EPC

6. Beyond the course

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

- [Guide for applicants \(Chapter 5 – Euro-PCT procedure before the EPO as a designated \(PCT Chapter I\) or elected \(PCT Chapter II\) Office, EPO website](#)
- [PCT Applicant's Guide, National Phase: EP, WIPO website](#)
- "The annotated European Patent Convention", Derk Visser

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