

Learning path for patent administrators

Entry into the European phase: formal requirements and examination: EPAC – entry level

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Introduction

This publication, "Entry into the European phase: formal requirements and 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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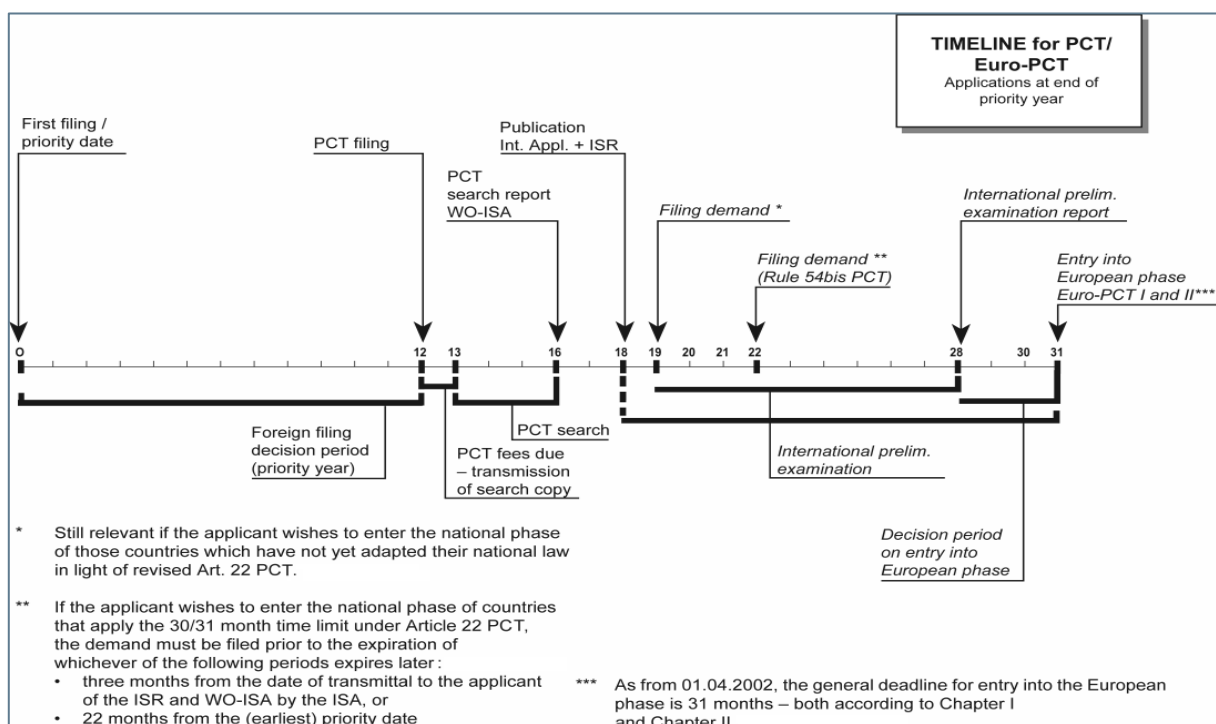
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1. Learning objectives

Participants in this course will learn about

- the timeline for the European phase
- the requirements before the 31-month time limit
- how to accelerate the examination procedure
- the requirements for early processing
- the publication of Euro-PCT applications
- the correction of Euro-PCT publications

2. Timeline for the European phase



3. Requirements before the 31-month time limit

A national or regional office before which an international application (IA) is continued is called the designated Office (DO), or, if international preliminary examination has taken place, the elected Office (EO).

Since all EPC contracting states are PCT contracting states, the EPO can act as the DO for any EPC contracting state, provided the IA was filed on or after the date on which the EPC entered into force for the state concerned. An IA entering the regional phase before the EPO is called a Euro-PCT application.

When the EPO acts as EO, the same requirements apply as when it acts as DO. In addition, however, at least one of the EPC contracting states must have been elected for a European patent in the demand for international preliminary examination. Since the filing of the demand constitutes the election of all PCT contracting states that were designated, this requirement will automatically

be met in respect of each state that was an EPC contracting state on the international filing date, unless the applicant has withdrawn such election in the meantime.

The process generally referred to as "entry into the European phase" is not an act in itself, but a bundle of requirements to be fulfilled within 31 months from the international filing date or, where applicable, the earliest priority date claimed for the international application ("31-month time limit").

Which requirements are to be fulfilled within the 31-month time limit depends to a certain extent on the particular case, but they can be summarised in general as follows:

- supplying a translation, if the Euro-PCT application was not published in one of the EPO's official languages
- specifying the application documents on which the European grant procedure is to be based
- paying the filing fee provided for in [Article 78\(2\) EPC](#), including an additional fee for applications of more than 35 pages
- paying the designation fee (and any extension or validation fees) if the period under [Rule 39 EPC](#) has expired earlier and
- paying the search fee if a supplementary European search report is to be drawn up

In order to enter the European phase, the applicant must at the very least take the following steps within 31 months from the filing date or, if priority has been claimed, from the earliest priority date:

- file the request for examination and pay the examination fee if the period under [Rule 70\(1\) EPC](#) has expired earlier
- pay the renewal fee due in respect of the third year under [Article 86\(1\) EPC](#) (if the fee has fallen due earlier under [Rule 51\(1\) EPC](#)) and
- where applicable (in rare cases) file the certificate of exhibition mentioned in [Article 55\(2\) EPC](#)

Legal references:

Article 153(1) EPC; Art. 153(4) EPC; Art. 153(7) EPC

Rule 159(1) EPC

Article 2(xiii) and (xiv) PCT

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4. Foreign agents and their role in the national procedure

Applicants without a residence or principal place of business in an EPC contracting state must be represented in proceedings before the EPO ([Article 133\(2\) EPC](#)). However, until expiry of the 31-month time limit under [Article 22\(3\)/Art. 39\(1\) PCT](#) in conjunction with [Rule 159\(1\) EPC](#), non-resident applicants may complete the acts for entry into the European phase themselves by filing EPO [Form 1200](#) (and a translation of the IA, where required).

The agent acting in the international phase may continue to act before the EPO only if they are a recognised professional representative under the EPC and have been duly authorised for the European phase.

See also [Guide for applicants: Chapter 5 – Euro-PCT procedure before the EPO as a designated \(PCT Chapter I\) or elected \(PCT Chapter II\) Office](#).

Legal references:

Article 133(2) EPC

Rule 159(1) EPC

5. Acceleration of the examination procedure

Applicants who want to request accelerated prosecution of their Euro-PCT application must submit a separate online request under the PACE programme using EPO [Form 1005](#).

Acceleration options at entry into the European phase

If the [Rule 70\(1\) EPC](#) period for requesting examination has not yet expired when an application enters the European phase early, prosecution can be accelerated if the **request for examination is filed together with the request for early entry**.

If a supplementary European search report has to be drafted, prosecution can be accelerated by **waiving the [Rule 70\(2\) EPC](#) communication** in EPO [Form 1200](#).

Even if a PACE request has been filed, the EPO will have to respect the **six-month time limit** under [Rules 161](#) and [162 EPC](#), and will therefore not start supplementary European search or examination before expiry of that time limit.

Applicants interested in accelerating the proceedings may therefore consider **waiving their right to the [Rule 161/ 162](#) communication**, (check box in Section 12.2 of EPO [Form 1200](#)).

To ensure the waiver is effective, they must **not pay any claims fees by automatic debit order**, since debiting occurs only on the last day of the six-month period under Rule 162(2) EPC. Instead, claims fees must be paid immediately on early entry.

Practical ways to speed up the procedure

Applicants can also speed up their procedure if they:

- Ensure that all requirements for early processing are met. These are basically the same as for a “regular” entry into the European phase
- If required: draft amendments in reply to the WOISA

Potential time savings

Requesting acceleration can save:

- **12 months** on entry, by choosing the EPO as ISA
- **up to 15 months** with early entry
- **6 months** by waiving Rules 161/162 EPC
- **3 months** between examination actions with PACE

Applicant behaviour to maintain acceleration

To ensure continued accelerated prosecution, the applicant:

- should not request time extensions
- should reply to EPO communications within the set time limits

- should pay renewal fees within the **standard** time limit (not using the 6-month grace period)

Legal references:

Rule 10(4) EPC; Rule 70(1) EPC; Rule 70(2) EPC; Rule 161 EPC; Rule 162 EPC; Rule 162(2) EPC

OJ EPO 2013 156, 15; OJ EPO 2015, A93; OJ EPO 2015, A94

6. Early processing

A valid request for early processing allows the EPO to begin handling the Euro-PCT application before expiry of the 31-month period.

However, early processing **does not** accelerate the procedure, it only shifts the start of processing.

Such a request does not require specific wording, but the applicant must clearly state that they wish the processing of their application before the EPO as designated/elected Office to commence early under Article 23(2) PCT or Article 40(2) PCT.

Early processing can take effect immediately where automatic debiting is used, provided that:

1. a valid automatic debit order has been filed and sufficient funds are available
2. all early-entry requirements except fee payment are fulfilled and
3. the documents under Article 20 PCT are already available to the EPO as DO/EO (usually the case via ePCT, even before publication).

For the request to be effective, the applicant must comply with Rule 159(1) EPC **as if the 31-month period expired on the date of the request**. Please note that these so-called necessary requirements to make a request effective have no basis in the EPC.

The following requirements must be complied with to make a request effective:

- payment of the filing fee, including an additional fee for applications of more than 35 pages
- filing of a translation if required
- filing of the specification of the application documents and
- payment of the search fee if a supplementary European search report has to be drawn up

Legal references:

Article 153 EPC

Rule 10 EPC; Rule 159 EPC;

Article 23(1) PCT; Article 40(1) PCT

7. Subsequent requirements

The further requirements under [Rule 159\(1\) EPC](#) that must be fulfilled depend on the date on which the request for early processing is filed. The regular time limits for payment of the

designation fee ([Rule 39\(1\) EPC](#)), the renewal fee ([Rule 51\(1\) EPC](#)) and for filing the request for examination and paying the examination fee ([Rule 70\(1\) EPC](#)) may not yet have expired on that date.

Therefore, if any of these time limits is still running on the date of the request (or, for the renewal fee, if the due date under [Rule 51\(1\) EPC](#) falls after that date), **early processing will still be effective even if the requirement in question has not yet been complied with**, in accordance with ([Article 153\(2\) EPC](#) and [Article 11\(3\) PCT](#)).

Legal references:

Rule 39(1) EPC; Rule 51(1) EPC; Rule 70(1) EPC; Rule 159(1) EPC

8. Publication of Euro-PCT applications

An international application (IA) that has been published in one of the three official languages of the EPO (DE, EN or FR) enjoys provisional protection as from the date of international publication subject to Article 67(2) and (3) EPC.

After entry into the European phase, the EPO notifies the applicant of the publication of the IA's bibliographic data in the European Patent Bulletin and confirms that the application enjoys provisional protection in EPC contracting states.

If the international publication took place in a language other than an EPO official language, the EPO will publish the translation of the Euro-PCT application filed upon entry. In that case, provisional protection becomes effective only from the date of publication of this translation.

The translation of the Euro-PCT application is published together with the bibliographic data as an A-document and includes all documents that were part of the international publication. The mandatory translation of the annexes to the IPRP and any amendments filed on or after entry into the European phase are not published.

Under Article 153(6) EPC, the international search report replaces the European search report. Where a supplementary European search report is drawn up, this is announced in the [European Patent Bulletin](#) (Part I.1(4)). The supplementary search report itself is not published but is available via public file inspection.

Legal references:

Article 67 EPC; Article 153(3) EPC; Article 153(4) EPC; Article 153(6) EPC
Article 11(3) PCT; Article 29(1) PCT; Article 29(2) PCT
Rule 48.2 PCT

9. Correction of Euro-PCT publications

If the applicant proves to the satisfaction of the EPO that the international filing date is incorrect owing to an error made by the receiving Office (RO), or that the RO or the International Bureau (IB) erroneously considered a priority claim not to have been made - and if such an error would have been corrected by the EPO under EPC law or practice - the EPO must rectify the error. The

international application will then be treated as if it had been accorded the corrected filing date or as if the priority claim had been properly recognised.

Where the RO has accorded the international filing date on the basis of incorporation by reference, the EPO as designated/elected Office will review whether the requirements of Rule 82ter.1(b)(i)–(iii) PCT were met. If the EPO does not agree, it will notify the applicant that it intends to regard the filing date as the date on which the missing element or part was furnished and invite observations.

In cases involving missing parts, applicants may alternatively request that the missing part be disregarded for the European phase. In such a case, the missing part is treated as not furnished and the EPO will not apply a corrected filing date.

Legal references:

Rule 82ter.1(a) PCT; Rule 82ter.1(b)(i)-(iii) PCT; Rule 82ter.1(c) PCT; Rule 82ter.1(d) PCT

10. Beyond the course

You can explore what you have learned during this course in greater depth by 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](#)

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