

Learning path for patent administrators

Filing a European patent application: EPAC – intermediate level

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Introduction

This publication, "Filing a European patent application, EPAC – intermediate 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:

- the procedure for adding or correcting a priority claim
- how to file missing parts
- the definition of divisional applications
- how to file a divisional application at the EPO
- which initial fees are due
- what the content of the divisional application is

2. Adding or correcting a priority claim

Under Rule 52(2) EPC and Rule 52(3) EPC the applicant may add or correct the declaration of priority.

Adding a new priority claim under Rule 52(2) EPC

The declaration of priority should preferably be made at the time of filing, but may be made up to 16 months from the earliest priority date claimed. If the priority claim is added after the filing date and alters the earliest priority date, the 16-month period is calculated from the revised earliest priority date.

Correcting an existing priority claim under Rule 52(3) EPC

A declaration of priority may be corrected within 16 months from the earliest priority date. However, this time limit cannot expire earlier than four months after the filing date.

If the applicant files a request for correction after the periods specified in Rule 52(2) EPC and Rule 52(3) EPC the request must be made early enough to allow a warning to be included in the publication of the application. <https://www.epo.org/en/legal/epc/2020/r139.html>

A priority claim cannot be added once a request for early publication under Art. 93(1)(b) EPC has been filed (Rule 52(4) EPC). The applicant is not entitled to request further processing in respect of the time limit for introducing a new priority claim under Rule 52(2) EPC, as this is excluded by Rule 135(2) EPC.

Legal references:

Rule 52(2) EPC; Rule 52(3) EPC; Rule 135(2) EPC

3. Missing parts, change of date

Rule 56 EPC allows for late filing of parts of the description and/or drawings that were missing on the date of filing of the patent application. The EPO may invite the applicant to file the missing parts using EPO Form 1114N, or the applicant may voluntarily file them within two months of the date of filing.

Note: late filing of missing parts may affect the filing date of the application.

Certain conditions must be met to avoid re-dating under Rule 56(3) EPC.

- The missing parts must be filed within the applicable time limit.
- The application claims a priority.
- The applicant requests that late-filed parts be based on the priority.
- Late-filed parts of the description and/or drawings are fully contained in the claimed priority application.
- The applicant files a copy of the priority application, unless a copy is already available to the EPO.
- If the priority application is not in an EPO official language, the applicant files a translation.
- The applicant indicates where in the priority document (or its translation) late-filed parts of the description and/or drawings can be found.

If all these conditions are satisfied, the original date of filing is maintained. Otherwise, the date of receipt of the late-filed documents becomes the new date of filing.

Legal references:

Rule 56 EPC

GL A-II, 5

4. Specific requirements for sequence listings and biological materials

Filing a sequence listing is mandatory for patent applications disclosing sequences of at least ten nucleotides or at least four amino acids. These sequences need not be the subject matter of any claim.

Pursuant to Rule 30(1) EPC and the decision of the President of the European Patent Office dated 9 December 2021 on the filing of sequence listings, and for applications filed on or after 1 July 2022, the sequence listing must:

- comply with WIPO Standard ST.26
- be submitted in XML format

For a sequence listing filed after the date of filing, the applicant must submit a statement confirming that the sequence listing as filed does not include any subject matter extending beyond the content of the application as filed.

The applicant may also choose to file the sequence listing on paper, although this is no longer mandatory. During the rest of the procedure, however, any sequence listing filed on paper (or in PDF format) will be disregarded. In such cases, the applicant must provide a statement that the electronically filed sequence listing is identical to the paper version.

A sequence listing filed on the date of filing of the European patent application is published together with the application documents and the patent specification as part of the description (see [Article 6 of the above-mentioned President's decision](#)). If a sequence listing is filed after the date of filing, it does not form part of the description (Rule 30(2) EPC) and will not be published with the application documents or the patent specification.

If an invention involves the use of, or concerns, biological material that is not publicly available and cannot be described in the European patent application in a manner sufficient for a person skilled in the art to carry out the invention, the invention is considered to be disclosed under Art. 83 EPC only if the biological material has been deposited with a recognised depository institution and the requirements of Rule 31(1) EPC are met.

A sample of the biological material must be deposited with a recognised depository institution no later than the date of filing of the application. The application as filed must provide all relevant information available to the applicant regarding the characteristics of the biological material. The application must also specify the depository institution and the accession number of the deposited biological material.

If the biological material was deposited by a person other than the applicant, the application must include the name and address of the depositor and a document satisfying the EPO that the depositor has authorised the applicant to refer to the deposited biological material in the application and has given their unreserved and irrevocable consent for the deposited material to be made available to the public in accordance with Rule 33 EPC.

Legal references:

Rule 30 EPC; Rule 67 EPC; Rule 68 EPC; Rule 73 EPC
OJ EPO 6/2011, 372; OJ EPO 11/2013, 542

5. What is a divisional application?

A divisional application is an independent European patent application derived from a pending earlier European patent application (the "parent application") and must not contain any subject matter extending beyond the scope of the parent application as filed.

A divisional application may be one of a sequence of divisional applications originating from the same parent application. The decision to divide a European patent application is voluntary.

A divisional application must be filed in the language of the earlier application and may be filed by reference to that application, in which case a related certified copy must be filed. It must have the same applicant(s) as the earlier application and must claim the same priority or priorities, unless any remaining priorities have been explicitly withdrawn. It must also be filed in the language of the parent application and comply with all formal requirements under Art. 90(3) EPC.

Legal references:

Art. 63 EPC; Art. 76 EPC; Art. 90(3) EPC
Rule 36 EPC
GL A-IV, 1.3; GL C-IX, 1

6. Who can file a divisional application?

On the date of receipt of a divisional application, the applicant must be identical to the applicant of the parent application.

The right to divide an application may be exercised only by the person or persons with the right to the patent as a whole, namely the applicant(s) of the earlier application.

The requirements concerning representation are the same as for any other non-divisional European patent application. The representative appointed for a divisional application does not need to be the same as the representative for the parent application.

Legal references:

Art. 58 EPC

Rule 36(1) EPC

7. Where can you file a divisional patent application?

A European divisional application may be filed electronically. Where filed on paper, it must be filed directly with the EPO in Munich, The Hague or Berlin.

A divisional application must be filed directly with the EPO. If it is filed with a national authority and forwarded to the EPO as a courtesy, the date of receipt at the EPO is regarded as the date of receipt of the divisional application.

A divisional application that satisfies all filing requirements is accorded the same date of filing as the earlier application from which it is derived.

Legal references:

Art. 76 EPC

Rule 36 EPC

8. The content of a divisional patent application

The technical application documents must include a description of the invention, one or more claims, any drawings referred to in the description and an abstract.

A divisional application must clearly and completely disclose the invention and must meet the same formal requirements as any new European patent application.

An applicant may subsequently file parts of the description or drawings that were missing on the date of receipt of the divisional application.

Legal references:

Rule 40(3) EPC

9. Time limit for filing a divisional patent application

A divisional application may only be filed while the parent application is pending; it cannot be validly filed if the parent application is deemed withdrawn.

If a legal remedy in respect of the deemed withdrawal is filed and granted, the parent application becomes pending again, and a divisional application may then be filed.

The parent application may be divided up to and including the date on which it is unconditionally and unambiguously withdrawn by the applicant.

Division is also possible until the expiry of the period for filing an appeal, namely two months from notification of the written decision. Where an appeal is validly filed, it has suspensive effect, and a divisional application may be filed until termination of appeal proceedings.

Legal references:

Rule 36 EPC; Rule 38 EPC

OJ EPO 11/2013, 501; OJ EPO 2014, A19

10. Fees due when filing a divisional application

A basic filing fee (fee code 001) is payable and amounts to EUR 135 when the application is filed online, or EUR 285 when filed by other means.

Additional fees are payable for filing divisional applications of the second and subsequent generations (fee codes 552, 553, 554, etc.).

The following additional fees also apply.

- EUR 17 for the 36th and each subsequent page (fee code 501)
- EUR 1 595 search fee (fee code 002)
- EUR 290 claims fees (with a fee of EUR 720 for the 51st and each subsequent claim)

All fees must be paid in full within one month of the date of receipt of the divisional application.

For a divisional application, as for any other European patent application, renewal fees are payable to the EPO up to the grant of the patent. These renewal fees may be paid within four months of the date of receipt of the application without incurring an additional fee.

Because a divisional application is accorded the same date of filing as the parent application, any renewal fees that fell due for the parent application up to the date of receipt of the divisional application must also be paid in respect of the divisional application.

Example:

A divisional application is received on 1 February 2026, with the parent application having been filed on 30 March 2019.

Since, under Art. 76 EPC, the divisional application has the same filing date of 30 March 2019, the renewal fees that had fallen due for the parent application – namely the renewal fees for years 3, 4, 5, 6 and 7 – must be paid within one month.

In a sequence of divisional applications, a first-generation divisional application is one that is derived from an application that is not itself a divisional application. No additional fee is payable for first-generation divisional applications. A second-generation divisional application is derived from a first-generation divisional application, and so on. From the second to the fifth generation, the additional fee increases progressively, while a flat fee applies from the fifth generation onwards.

The basic time limit for paying the designation fee and the examination fee in a divisional application is calculated in the same manner as for any standard European patent application, namely six months from the date on which the European Patent Bulletin mentions the publication of the European search report.

Legal references:

Art. 14 EPC

Rule 6 EPC; Rule 36(3) EPC; Rule 38(4) EPC

Art. 2 Rules relating to Fees

11. Designation of states, extension states and validation states for divisional applications

A divisional application may designate only those contracting states that were designated in the parent application. The contracting states must still be designated in the parent application when the divisional application is filed. The same principle applies, by analogy, to extension and validation states.

Where a divisional application is filed in the name of multiple applicants, each applicant may designate different contracting states from among those designated in the parent application, provided that the combined designations do not exceed the territorial scope of the earlier application.

Legal references:

Art. 76(2) EPC

12. Language requirements for divisional applications

A divisional application must be filed in the procedural language of the parent application.

Where the parent application was filed in a non-EPO language, the divisional application may likewise be filed in that same language.

Legal references:

Art. 14 EPC

Rule 6 EPC; Rule 36 EPC

GL A-IV, 1.3.3

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