

Learning path for patent administrators

European search: EPAC – entry level

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Introduction

This publication, "European search, 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 extended European search report
- when the European search takes place
- the search fee schedule
- the conditions for refunds of search fees
- the different search reports issued by the EPO
- special situations during the European search
- options for accelerating the procedure
- possible next steps following receipt of the European search report

2. The European search

The purpose of the European search is to establish whether the subject matter of the EP application is novel and involves an inventive step in view of the state of the art. The search report provides the applicant, the examining division and, after its publication, the public with information on the relevant prior art.

The search division prepares the European search report on the basis of the claims, taking into account the description and any drawings. The report lists the prior-art documents considered in assessing novelty and inventive step and that were available to the EPO at the time of the search.

The search report is accompanied by a written opinion on whether the application and the invention to which it relates meet the requirements of the European Patent Convention (EPC). This non-binding opinion is not published together with the search report, but is made publicly available by way of file inspection after publication of the application.

No such opinion is issued where the applicant has filed a request for examination, paid the examination fee and waived the right to receive the communication under Rule 70(2) EPC before the search report is communicated. In such cases, the applicant instead receives a first communication directly from the examining division.

Legal references:

Rule 61(1) EPC; Rule 70(2) EPC

3. How are search results communicated?

For Euro-direct applications, including divisional applications, the EPO issues a European search report together with a European search opinion, commonly referred to as the "extended European search report" (EESR).

For international applications in the regional phase before the EPO (Euro-PCT applications), the EPO issues a supplementary European search report together with a European search opinion. This communication is likewise referred to as an EESR.

4. When does the European search take place?

Euro-direct applications

Under its Early Certainty initiative, the EPO aims to issue the EESR within six months of filing. On average, EESRs are issued within five months of the filing date.

Euro-PCT applications

Where the EPO is *not* the International Searching Authority (ISA) or the Authority specified for supplementary search (SISA), the EESR is issued within six months after the application enters the European phase. Entry occurs once the applicant has completed those acts required for entry into the European phase within 31 months of the priority date. The search report is typically issued shortly after these formalities are completed and the application has officially entered the European phase under the EPC.

Where the EPO *is* the ISA or SISA, no supplementary European search is carried out.

Divisional applications

For divisional applications, the EESR is issued within six months of the date of receipt of the divisional application.

Legal references:

Art. 54 EPC; Art. 56 EPC; Art. 57 EPC

Rule 61 EPC

GL B-II, 2

5. Fees payable for the European search

The applicant must pay the filing fee and any additional fees (charged for European patent applications exceeding 35 pages). These fees, together with the search fee and any claims fees for claims filed with the application, are due within one month of the date of filing.

The EPO does not issue invoices or reminders to ensure those fees are paid in a timely manner. If the filing and search fees are not paid in time, the European patent application is deemed withdrawn.

For divisional applications, the filing fee, any additional fees, the search fee and any claims fees must likewise be paid within one month of the date of filing of the divisional application.

If the applicant fails to pay the filing fee, additional fee(s), search fee, designation fee or examination fee within the above-mentioned time limits, they may request further processing within two months of the notification of a communication of loss of rights under Rule 112(1) EPC. To ensure further processing, the applicant must pay both the outstanding fee(s) and the further-processing fee.

Fee amounts, payment methods and the rules governing effective payment dates are set out in the Rules relating to Fees (RFees) and in the decisions of the President of the EPO implementing those provisions. Guidance on fee payment is published in every issue of the EPO's Official Journal and on the EPO website.

Refund of fees

As a rule, validly paid fees are not refundable unless expressly provided for.

A fee payment is considered fully valid only if:

1. the payment concerns proceedings that are still pending, and
2. the payment is made on or after the relevant due date

The search fee for a European search is refunded in full if the European patent application is withdrawn, refused or deemed withdrawn before the EPO has started the European search.

The European search fee is refunded in full or in part if the European search report can rely on an earlier search report previously prepared by the EPO for a national, European or international application whose priority is claimed. For divisional applications, a refund is granted where the search report can be based on an earlier search report for the parent application.

A refund of the search fee may be requested by selecting the relevant option in the **Fee** tab of Online Filing 2.0, or by selecting the checkbox in section 40 of the paper request-for-grant form.

If the applicant has provided instructions, refunds will be credited directly to an EPO deposit account. Otherwise, the applicant will be invited to request the refund via the EPO website (fee-payment.epo.org) and provide details of the bank account to be credited.

Search fees for a supplementary European search

If a supplementary European search is required, the European search fee must be paid within 31 months from the date of filing or, where priority is claimed, from the earliest priority date.

Reduction of the search fee

Where the ISR or SISR was drawn up by a European ISA, the fee for the supplementary European search is reduced by a fixed amount (EUR 1 300 as of April 2024 and until 31.03.2028).

The following ISAs qualify:

- Austrian Patent Office (ISA/AT)
- Spanish Patent and Trademark Office (ISA/ES)
- Finnish Patent and Registration Office (ISA/FI)
- Swedish Intellectual Property Office (ISA/SE)
- Turkish Patent and Trademark Office (ISA/TR)
- Nordic Patent Institute (ISA/XN)
- Visegrad Patent Institute (ISA/XV)

The reduction applies only to the search fee payable under Rule 159(1)(e) EPC. Additional search fees payable under Rule 164(1) EPC are not reduced and must always be paid in full.

If an ISA or SISA other than those listed above was selected, no reduction of the supplementary European search fee is applicable.

Refund of the supplementary European search fee

If the supplementary European search report is based on an earlier search report drawn up by the EPO, or if the application claims the priority of a previous application for which a search was carried out by the EPO, all or part of the supplementary European search fee may be refunded.

The amount of the refund depends on the type of earlier search and the extent to which the EPO relied on the earlier search report when performing the supplementary European search.

If the search fee is not paid in time, the Euro-PCT application is deemed withdrawn, and the EPO will notify the applicant of this under Rule 112(1) EPC and Rule 60(2) EPC.

To restore this loss of rights, the applicant may request further processing within two months of this notification. This requires payment of the outstanding supplementary European search fee together with a further processing fee equal to 50% of the search fee.

Legal references:

Art. 9 RFees

Art. 153(7) EPC

OJ EPO 2009, 99; OJ EPO 2019, A82; OJ EPO 2023, A4; OJ EPO 2024, A23; OJ EPO 2023, A25

OJ EPO 2023, A28

6. Special situations during the European search

Clarification request

During the European search, if the claims are found to contain multiple independent claims and/or subject matter that is unsearchable or unclear, the EPO will issue a communication under Rule 62a EPC (multiple independent claims) and/or Rule 63 EPC (complex application). The communication invites the applicant to remedy the deficiency by submitting a statement specifying the claims or subject matter on which the search should be conducted.

Such deficiencies may include the following.

- The subject matter is not disclosed in a sufficiently clear and complete manner.
- The claims:
 - do not define the matter for which protection is sought;
 - are not clear, concise or supported by the description.

EPO Form 1056a is used for this purpose. The applicant must respond within a non-extendable period of two months. If this deadline is missed, the applicant may seek re-establishment of rights.

In exceptional cases, a telephone consultation with the examiner may occur after issuance of EPO Form 1056a. This consultation is generally limited to formal issues regarding the content of the invitation and the course of action to be taken by the applicant. It is not intended as a forum for the applicant for detailed discussion of substantive matters.

If the applicant fails to respond to EPO Form 1056a, or if the applicant's statement is insufficient to overcome the deficiency, the EPO will issue a partial European search report indicating which claims

could only partially be searched or not searched at all. In extreme cases, the EPO may issue a declaration that no meaningful search could be performed.

Amendments to the application are not permitted at this stage.

Later, when the examining division takes over, it may invite the applicant to delete the unsearched subject matter from the application, unless it determines that the search division's objection was unjustified.

Subject matter excluded from the European search

Under Art. 52 EPC, the following are not considered inventions:

- discoveries, scientific theories and mathematical methods
- aesthetic creations
- schemes, rules and methods for performing mental acts, playing games or conducting business, as well as computer programs
- presentations of information

In accordance with Art. 53(c) EPC, European patents are not granted for:

- methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practiced on the human or animal body

Declaration under Rule 63 EPC

If the search division determines that the application does not comply with the EPC to such an extent that a meaningful search cannot be carried out, it will issue a declaration under Rule 63 EPC.

The declaration indicates that no search report will be established and provides a clear explanation of why a meaningful search is not possible. The applicant may file a response to the European search opinion issued with the declaration. If the response overcomes the objections raised in the declaration, the examining division will carry out an additional search (GL C-IV, 7.3 (ii)). The declaration itself does not set a time limit, as no immediate action is required from the applicant.

Lack of unity of invention

If the search division finds that the application does not meet the requirement of unity of invention, it draws up a partial European search report covering those parts which relate to the invention first mentioned in the claims. The EPO then issues an invitation to pay additional search fees. This invitation contains:

- the number of additional inventions identified
- the amount payable for each additional invention
- a reasoned statement explaining why the EPO considers there to be lack of unity of invention
- a provisional opinion on the patentability of the invention first mentioned in the claims

To have the European search report cover the other inventions, the applicant must pay an additional search fee for each within a non-extendable period of two months.

The provisional opinion is informational only. No response addressing the points raised in the provisional opinion is required, and any response is not considered when the EESR is issued.

If the applicant does not respond to the invitation and the examining division upholds the search division's objection, the application proceeds only with respect to the invention covered by the partial European search report. If the applicant pays the additional search fees, the European search report is drawn up for those inventions for which search fees have been paid.

The applicant may also choose to file divisional applications for the unsearched subject matter.

Any further search fees paid will be refunded, upon request, if the examining division later determines that the search division's lack-of-unity objection was unjustified.

Legal references:

Art. 52 EPC; Art. 53(c) EPC

Rule 62a EPC; Rule 63 EPC

[GL C-IV, 7.3 \(ii\)](#)

7. Positive or negative opinion in the EESR

If the application appears to meet all the requirements of the EPC, the EESR will contain a standard clause giving a positive opinion, indicating that the application complies with the EPC and is likely to proceed to grant ([Rule 62 EPC](#)).

If the application does *not* appear to meet EPC requirements, the EPO will issue a negative opinion. This opinion forms the basis for the later communication under [Art. 94\(3\) EPC](#) and [Rule 71\(1\) EPC](#).

For applicants who pay the examination fee before the search and submit a waiver requesting *not* to receive a communication under [Rule 70a EPC](#), the European search opinion will be issued separately as the first communication from the examining division, typically very soon after the European search report.

Legal references:

Art. 94(3) EPC

Rule 62 EPC; Rule 70a EPC

Acceleration can also be achieved by waiving the right to the invitation under [Rule 70\(2\) EPC](#) by confirming the request for examination in the request for grant form. In such cases, once the applicant receives the EESR, the application proceeds directly to examination.

A PACE request must be filed online using EPO Form 1005, and it may only be submitted once. The request must be signed by an authorised person and may only be filed for one application at a time.

Legal references:

Rule 10 EPC; [Rule 70\(2\) EPC](#)

GL E-VIII, 4

OJ EPO 2010, 352; OJ EPO 2015, A93

8. Invitation to respond to a search opinion

Applicants are invited to comment on the EESR and/or remedy any deficiencies identified in the accompanying opinion within the same six-month period applicable for filing or confirming the request for examination (EPO Forms 1081,1082,1083,1224).

After receiving the EESR and before the examining division issues its first communication, the applicant must file substantive observations on any objections raised in the EESR. Amendments to the description, claims and drawings may also be filed. If the EESR is negative and the applicant fails to respond within the prescribed period, the application is deemed to be withdrawn.

If the EESR contains no objections, no invitation is issued. Instead, the applicant is informed that they may file comments or amendments within the same six-month period.

If the request for examination was validly filed before receipt of the EESR, the Receiving Section will invite the applicant to indicate within six months of the date of the mention of the publication of the EESR in the European Patent Bulletin whether they wish to proceed with the application (Rule 70(2) EPC). Failure to respond to this invitation in time also results in the application being deemed withdrawn. In both cases, the applicant may request further processing.

Legal references:

Rule 68 EPC; Rule 70(2) EPC; Rule 137(1) EPC; Rule 137(2) EPC

9. Amendments allowed after receiving the search report

The applicant may not amend the description, claims or drawings before the EESR is issued.

Within the period for requesting or confirming examination, i.e. when responding to the invitation to comment on the objections in the EESR, the applicant may amend the description, claims and drawings on their own initiative. In their response to such an invitation, the applicant must indicate any amendments made and identify their basis in the application as filed (Art. 123(2) EPC).

No further amendments are permitted without the examining division's consent.

Amended claims may not relate to unsearched subject matter that does not combine with the originally claimed invention to form a single general inventive concept. When deleting subject matter from an application, the applicant should avoid statements that could be interpreted as its abandonment, as abandoned subject matter cannot be reinstated.

In addition, the application may not be amended to add subject matter extending beyond the content of the application as filed. However, subsequently filed examples or statements of advantage may be considered by the EPO as evidence supporting patentability.

This technical information is generally added to the publicly accessible part of the file and, from that moment, forms part of the state of the art under Art. 54(2) EPC. The public is alerted to the fact that information submitted after the application was filed is not included in the text of the published patent specification. The "content of the application as filed" refers solely to the parts of the European patent application which determine the disclosure of the invention, namely the description, the claims and the drawings. It does *not* include any priority document, which serves only to determine to what extent the priority date is valid for the disclosure of the European patent application.

Legal references:

Art. 123(2) EPC

GL H-IV, 2.1

European Patent Academy
European Patent Office
Munich
Germany
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Responsible for the content
European Patent Academy
academy@epo.org