

Learning path for patent administrators

European publications: EPAC – entry level

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Introduction

This publication, "European publications, 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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1. Learning objectives

Participants in this course will learn:

- the background of publication
- the content and form of a publication
- the kinds of publications for EP applications
- about the European Patent Register
- how to prevent publication

2. Background of publication

A European patent application is published as soon as possible after the expiry of a period of 18 months from the date of filing or, if priority has been claimed, from the date of priority.

The publication takes place with the issuance of the A document and a corresponding announcement in the European Patent Bulletin.

The publication triggers important periods and events for the applicant, such as provisional protection in the respective contracting states designated in the application as published.

National law may require a translation of claims for provisional protection to take effect (Art. 67(3) EPC).

Legal references:

Art. 67(3) EPC; Art. 70 EPC; Art. 73 EPC

Rule 68 EPC

3. Date of publication and technical preparations

A European patent application is published as soon as possible after expiry of a period of 18 months from the earliest priority date or from the date of filing if no priority is claimed (Art. 93(1)(a) EPC).

If the earliest priority date is withdrawn or lost under Article 90(5) EPC before termination of technical preparations for publication, the time limit of 18 months for publication is recalculated from the new relevant date.

Upon written request, an application may be published before 18 months from the earliest priority date or filing date provided the filing and search fees are paid. Such a request must be explicit and refer to Article 93(1)(b) EPC.

Legal references:

Art. 90(5) EPC; Art. 93(1)(a) EPC; Art. 93(1)(b)

OJ 2006 406

4. Content and form of a publication

The EPO automatically notifies applicants about the forthcoming publication of their application. EPO Form 1133 is generated upon completion of all technical preparations for publication.

A notification of the EPO publication number, publication date and an indication as to whether the application is published with or without a European search report (A1 or A2) is contained in EPO Form 1133.

The publication contains the description, the claims and any drawings as filed plus the abstract. If the European search report is available in time, it is annexed (A1 publication); if not, it is published separately (A3 publication).

If the European patent application was not filed in English, French or German, its translation will be published.

All European patent applications, European search reports and European patent specifications are published in electronic form only, on the EPO's publication server. The publication server is accessible via the EPO website (www.epo.org).

Legal references:

Art. 93(1) EPC

Rule 68(1) EPC

5. Types of publications for EP applications

The different types of A documents are:

- publication of an application with a European search report: A1
- publication of an application without a European search report: A2
- separate publication of the European search report: A3

Legal references:

Art. 93 EPC

Rule 137 EPC

6. The EPO's publication server

After the termination of the technical preparations for publication, a weekly publication run takes place on Thursday night. As a consequence, the generation of the date on which the European Patent Bulletin mentions the publication of the search report will be triggered, as well as the publication of the bibliographic data in the European Patent Bulletin. This will produce an update of the European Patent Register and the despatch of EPO Form 1133 to the applicant.

Legal references:

Rule 69 EPC

GL A-VI, 2.1

EPO publication server

7. The European Patent Register

Once the European patent application has been published, all documents relating to it are available for public inspection through the European Patent Register, which can be accessed via the EPO website (www.epo.org).

From that point on, the public also has access to the application's bibliographic data and to information about the state of the proceedings through the European Patent Register.

The European Patent Register also allows you to monitor patent applications for updates using the Register Alert service.

Legal references:

Art. 127 EPC; Art. 128(1) EPC; Art. 128(4) EPC

Rule 143 EPC

GL A-XI

8. Time limits triggered by publication

Upon publication of the European search report, a communication (EPO Forms 1081/1082/1083) is despatched to the representative informing the applicant about the date of publication of the search report and the time limit for the payment of the examination fee or confirming the applicant's wish to proceed further with the application (as applicable), for the payment of the designation (+ extension/validation) fee(s) and for filing a mandatory response to the European Search Opinion (ESOP) (if applicable) or any voluntary amendments.

Each of EPO Forms 1081/1082/1083 is available in different versions depending on whether the search opinion is positive or negative.

EPO Form 1081 is used if the examination fee has yet to be paid (communication pursuant to R. 69, 70a EPC).

EPO Form 1082 is used if the wish to proceed further has yet to be confirmed (communication pursuant to Rule 70(2), 70a EPC).

EPO Form 1083 is used if the request for examination is already complete (communication pursuant to Rule 69, 70a EPC), but the designation fee and extension/validation fee (if applicable) have yet to be paid.

Legal references:

Art. 16 EPC

Rule 67(2) EPC; Rule 69 EPC; Rule 70(2) EPC; Rule 70a EPC

9. Preventing publication, withdrawal of an application

A European patent application is not published if it has been finally refused or deemed to be withdrawn or withdrawn before termination of all technical preparations for publication.

It may be possible to prevent publication of a patent application if the notice of withdrawal is filed at least two weeks before the scheduled date of publication. However, the publication of the bibliographic data in the EP Bulletin will still take place.

If the applicant withdraws an application on the condition that publication can be avoided, stopping publication is still possible two weeks before the publication date of the A publication at the latest. Publication of the bibliographic data in the European Patent Bulletin will take place but will be revoked in the next European Patent Bulletin.

Legal references:

Art. 16 EPC

Rule 67(2) EPC

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