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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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Learning objectives

Participants in this course will learn :

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

1. Background of publication

A European patent application is published as soon as possible after 18 months have elapsed from the date of filing or, if a priority claim exists, from the date of priority.

Publication occurs through the issuance of the A document and the corresponding notice in the European Patent Bulletin.

This publication triggers several important time periods and events for the applicant, including obtaining provisional protection in the contracting states designated in the application as published.

In some states, national law requires a translation of the 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

2. 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 Art. 90(5) EPC before completion of the technical preparations for publication, the 18-month period is recalculated from the new relevant date.

Upon written request, the application may be published earlier than 18 months from the earliest priority date or filing date, provided that the filing and search fees have been paid. Such a request must be explicit and must refer to Art. 93(1)(b) EPC.

Legal references:
Art. 90(5) EPC; Art. 93(1)(a) EPC; Art. 93(1)(b) EPC
OJ 2006 406

3. Content and form of a publication

The EPO automatically notifies applicants of the upcoming publication of their application. EPO Form 1133 is issued once all technical preparations for publication have been completed.

This form provides the EPO publication number, the publication date and an indication as to whether the application will be published with or without a European search report (A1 or A2).

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

If the European patent application was not filed in English, French or German, its translation into one of these languages is also published.

All European patent applications, European search reports and European patent specifications are published exclusively in electronic form on the EPO's Publication Server, accessible via the EPO website (epo.org).

Legal references:
Art. 93(1) EPC
Rule 68(1) EPC

4. Types of publications for EP applications

The different types of A documents are:

- A1 – publication of the application together with the European search report
- A2 – publication of the application without the European search report
- A3 – separate publication of the European search report
- A8 – corrected title page of an A document
- A9 – Full reprint of a corrected A document

Legal references:
Art. 93 EPC
Rule 137 EPC

5. 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

6. The European Patent Register

Once the European patent application has been published, all related documents become available for public inspection via the European Patent Register, accessible from the EPO website (epo.org).

From that moment, the public can also view the application's bibliographic data and follow the progress of the proceedings through the Register.

The European Patent Register also allows users 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

7. Time limits triggered by publication

Upon publication of the European search report, the EPO sends a communication (EPO Forms 1081/1082/1083) to the representative confirming the publication date.

This communication sets the deadlines for paying the examination fee, the designation fee (and any extension or validation fees) and, when applicable, for confirming the applicant's intention to proceed with the application.

It also specifies the time limit for filing a mandatory response to the European search opinion (if applicable) or for filing any voluntary amendments.

Each of EPO Forms 1081, 1082 and 1083 is available in different versions depending on whether the search opinion is positive or negative. The forms are used as follows.

- EPO Form 1081 is used when the examination fee has not yet been paid (communication under Rule 69 and 70a EPC).
- EPO Form 1082 is used when the applicant must still confirm their intention to proceed (communication under Rule 70(2) and 70a EPC).
- EPO Form 1083 is used when the request for examination is already complete (communication under Rule 69 EPC and Rule 70a EPC), but the designation fee and any extension or validation fees remain unpaid.

Legal references:
Art. 16 EPC
Rule 67(2) EPC; Rule 69 EPC; Rule 70(2) EPC; Rule 70a EPC

8. Preventing publication, withdrawal of an application

A European patent application will not be published if it has been refused, deemed withdrawn, or withdrawn before the completion of all technical preparations for publication.

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

If the applicant withdraws the application on the condition that publication is avoided, the EPO can still stop the publication of the A document up to two weeks before the scheduled publication date. In such cases, the bibliographic data will appear once in the European Patent Bulletin but not in subsequent issues.

Legal references:
Art. 16 EPC
Rule 67(2) EPC

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