

# Learning path for patent administrators

## European examination: EPAC – entry level

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## Introduction

This publication, "European 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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## 1. Learning objectives

Participants in this course will learn:

- what an examination request is
- which fees are due in the examination phase
- which amendments are needed before substantive examination
- about the different EPO actions and possible responses
- what a third-party observation is
- the consequences of a withdrawal and the corresponding refunds
- the different types of consultations with the examining division

## 2. Examination request, maintenance of the application

The date of publication of the search report starts a six-month period within which the applicant must pay the designation, extension and validation fees, pay the examination fee, and file a response to the written opinion. Any comments or corrections addressing deficiencies identified by the search division must also be submitted within this period.

For certain applications, the EPO will invite the applicant to confirm an early request for examination. This applies when the examination fee is paid before the dispatch of the search report, and where, in response to EPO Form 1224/1082, a declaration to maintain the application is required.

If any of the required fees are not paid on time, or the response is not filed within the deadline, the EPO will issue a loss of rights communication under Rule 112(1) EPC. This loss of rights can be remedied by filing a request for further processing within two months of notification of this communication.

### Legal references:

Art. 94 EPC; Art. 121 EPC; Art. 122(4) EPC

Rule 70 EPC; Rule 136(3) EPC

## 3. Fees due during the examination phase

### Examination fee

The examination fee is payable when filing the request for examination (EPO Form 1001). The deadline for payment is six months from the date of the mention of the publication of the European search report in the European Patent Bulletin.

### Designation, extension and validation fees

Designation, extension and validation fees are due within six months of the publication of the European search report (ESR). These fees may also be paid at the time of filing.

### Grant and publication fees

The fees for grant and publication must be paid within four months from the date of notification of the communication under Rule 71(3) EPC.

## Claims fee for EP applications

When responding to a communication under Rule 69 EPC (EPO Form 1081\*), if the number of claims has increased beyond the number of those originally filed and exceeds 15, the fees for the additional claims are only payable, if still outstanding, upon the communication of the intention to grant.

\*Note: EPO Form 1081 also serves as a reminder for payment of the designation fees ([Art. 79\(2\) EPC](#)) and examination fee ([Art. 94\(1\) EPC](#)), and includes the invitation under [Rule 70a\(1\) EPC](#).

## Claims fee for Euro-PCT applications

For Euro-PCT applications, the fee for claims exceeding 15 is due within the six-month period specified in the communication under [Rule 161 EPC](#) and [Rule 162 EPC](#).

If the applicant fails to pay the claims fee on time, the EPO will invite the applicant to pay the fees with a 50% surcharge within two months of notification of the communication (EPO Form 1066).

## Renewal fees

Renewal fees are payable from the 3rd to the 20th year, calculated from the date of filing of the application. They are due on the last day of the month containing the anniversary of the date of filing of the application.

### Example:

If an EP application was filed on 27 March 2023, the renewal fee for the third year was due on 31 March 2025, and subsequent renewal fees are due on 31 March each year thereafter.

Renewal fees for a European patent application are payable for the upcoming year on the last day of the month containing the anniversary of the date of filing of the European patent application.

These fees can only be validly paid up to three months before the due date. If a renewal fee is not paid on time, an additional six-month period is allowed for payment, during which a 50% surcharge is applied. Renewal fees are no longer payable to the EPO as from publication of the granted patent.

Under [Rule 51\(1\)](#), as amended with effect from 1 April 2018 ([OJ EPO 2018, A2](#)), the renewal fee for the third year may be paid up to six months before it falls due.

### Legal references:

Art. 11(a) RFees; Art. 11(b) RFees

Art. 86 EPC

Rule 51(1) EPC; Rule 69 EPC; Rule 71a(6) EPC

GL A-X, 5.2

## 4. Filing amendments before substantive examination

### Response to the search opinion

If the search opinion raises no deficiencies, the applicant may file amendments voluntarily within six months of the publication of the European search report.

If the search opinion identifies deficiencies affecting patentability, the applicant is invited to submit corrections, amendments or comments within six months of the publication of the European search report.

**Legal references:**

Rule 70a(1) EPC; Rule 70a(2) EPC; Rule 137(2) EPC; Rule 137(4) EPC; Rule 161 EPC; Rule 162 EPC

## 5. Prior search results

Prior search results must be submitted when the applicant claims priority from an earlier application.

The EPO will invite the applicant to file a copy of any prior search results or, if unavailable, a statement confirming their non-availability for searches carried out by or on behalf of the office of first filing (OFF). The deadline for filing these prior search results is two months and cannot be extended. Prior search results can also be submitted voluntarily before the EPO issues such an invitation.

Mention of exemptions for prior search results can be found in the decision of the President of the EPO ([OJ EPO 11/2010, 600](#), with last updated in [OJ EPO 2019, A55](#) and [OJ EPO 2019, A56](#)).

**Legal references:**

Rule 70b EPC; Rule 141(1) EPC; Rule 141(2) EPC  
OJ EPO 12/2009, 585; OJ EPO 8-9/2010, 410; OJ EPO 2013, 216; OJ EPO 2015, A3; OJ EPO 2019, A55; OJ EPO 2019, A56

## 6. Additional search fees in cases of PCT non-unity

An invitation to pay additional search fees is issued when the EPO acted as ISA or SISA and, upon entry into the examination phase, the application claims an invention that was not searched by the EPO, or when the reply to the communication under [Rule 161](#) or [162 EPC](#) relates to non-searched inventions.

This invites the applicant to pay a search fee for each non-searched invention identified in the application ([Rule 164\(2\)\(a\) EPC](#)). The time limit for replying to this invitation is two months and is non-extendable. If the applicant does not reply in time, further processing is excluded under amended [Rule 135\(2\) EPC](#).

The applicant may decide to pay search fees for all, some or none of the non-searched inventions found, and may indicate which invention should be searched.

- If *all* additional search fees are paid, a search report will be issued for all non-searched inventions.
- If only *some* of the additional search fees are paid, a search report will be issued only for the selected inventions.

If no additional search fees are paid, the examining division will issue a communication under [Art. 94\(3\) EPC](#) and [Rule 71\(1\) EPC](#), and [Rule 71\(2\) EPC](#) or [Rule 71\(3\) EPC](#), requiring the deletion of any non-searched subject matter either by the applicant or by the examining division itself.

Search fees (invalidly) paid late are refunded under Art. 7(3) RFees.

Applicants may file amended application documents regardless of whether they pay the additional search fees, and they may also request an additional set of copies of the documents cited.

**Legal references:**

Art. 94(3) EPC,

Rule 71(3) EPC; Rule 135(2) EPC; Rule 164(2)(a) EPC

OJ EPO 2014, A70

## **7. Substantive examination: EPO actions**

A communication under Art. 94(3) EPC is issued when the examining division finds that the application does not meet one or more EPC requirements. This communication essentially invites the applicant to file observations and/or submit amendments within a set time limit, which is normally four months but not less than two months (Rule 132(2) EPC). This period may be extended upon request up to a maximum of six months. Extensions beyond six months are granted only in well-substantiated exceptional circumstances.

A telephone consultation may also be held. The minutes of such a consultation must list the participants and summarise the main results of the consultation. Any documents submitted by email during the consultation – such as new claims or amended descriptions – must be attached to the minutes. When dispatched to the applicant, these minutes may serve various purposes: providing information only, extending a pending time limit, setting a new time limit for response, cancelling an existing time limit, or documenting the decision to cancel scheduled oral proceedings.

If a telephone consultation constitutes the first communication in examination, the minutes will present the issues discussed with the same level of detail and structure as an Art. 94(3) EPC communication.

An interview with the applicant or their representative may also take place. The outcome of the interview is documented in the same way as for a telephone consultation.

The representative must be entitled to act on behalf of the applicant before the EPO. If the applicant is a natural or legal person having either residence or place of business in a contracting state, consultations may be conducted only with the applicant, a professional representative or duly authorised employee of the applicant or a legal practitioner as set out in Art. 134(8) EPC.

**Legal references:**

Art. 94(3) EPC; Art. 113 EPC; Art. 134(8) EPC

Rule 71(1) EPC; Rule 71(2) EPC; Rule 115(1) EPC; Rule 116 EPC; Rule 132(2) EPC

## **8. Substantive examination: response to EPO actions**

The reply must contain at least one concrete substantive observation addressing at least one concrete objection raised in the communication. An oral response given by telephone or in person may also be sufficient if it adequately addresses the issues.

A request for a decision "according to the state of the file" qualifies as a valid reply to a communication under Art. 94(3) EPC.

A mere request for oral proceedings does *not* constitute a valid reply.

**Legal references:**

Art. 94(3) EPC

Rule 71(1) EPC; Rule 71(2) EPC

## **9. Substantive examination: amendments**

In general, any amendment must comply with Rule 137(4) EPC. If an amendment is found to be deficient, the EPO will issue an invitation to the applicant to indicate the basis for the amendment. The applicant must then identify the amendments made and specify their basis in the application as originally filed. This invitation carries a non-extendable time limit of one month.

**Legal references:**

Art. 123(2) EPC

Rule 137(4) EPC

## **10. Third-party observations**

After publication of a European patent application, any third party may submit observations regarding the patentability of the invention. The third party does not become a party to the proceedings; they may file additional observations but have no further procedural rights.

Third-party observations must be submitted in writing, are free of charge and may be filed anonymously. They can be considered only while proceedings before the EPO are pending, must relate to the patentability of the application, and must include the grounds on which they are based.

Third-party observations may be filed only after the international or European publication of the application and must be submitted in one of the EPO's official languages.

Third-party observations are forwarded to the applicant or representative, who may comment on them. The examining division addresses the observations in its next communication.

**Legal references:**

Art. 115 EPC

Rule 114 EPC

## **11. Withdrawals**

When a European patent application is withdrawn, deemed withdrawn, or finally refused, it is regarded as never having had the effects provided for in paragraph 1 and paragraph 2 of Art. 67 EPC. Any provisional protection previously conferred to the application as an object of property under Art. 67 EPC ceases to apply retroactively.

The withdrawal date is published in the European Patent Register on the Friday or Monday following the weekly publication run ([Rule 143\(1\)\(n\) EPC](#)), and in the European Patent Bulletin five weeks later ([Art. 129\(a\) EPC](#)).

An applicant may withdraw their application at any time while it is still pending before the EPO. The withdrawal must be made by means of a signed declaration that is unqualified (i.e. without limitations), unconditional and unambiguous (i.e. not open to interpretation). Once such a declaration is received and meets all formal requirements, the withdrawal takes immediate effect.

**Legal references:**

Art. 67(4) EPC

[Rule 15 EPC](#); [Rule 67\(2\) EPC](#); [Rule 129\(1\) EPC](#); [Rule 143\(1\)\(n\) EPC](#)

GL A-IV, 1.1.1; GL A-VI, 1.2; GL C-V, 11

OJ EPO 2013, 153

## 12. Refund of fees in case of withdrawal

### Refund of examination fees

[Art. 11\(a\) RFees](#) provides that, as of 1 July 2016, the examination fee is refunded in full if the application is withdrawn before examination has begun.

[Art. 11\(b\) RFees](#) provides that, as of 1 November 2016, the examination fee is refunded at a rate of 50% if the application is withdrawn after examination has started but before expiry of the time limit for replying to the first communication issued by the examining division. This first communication may be:

- a communication under [Art. 94\(3\) EPC](#),
- an invitation under [Rule 137\(4\) EPC](#) to indicate the basis for amendments,
- minutes of an interview or telephone consultation accompanied by an invitation to correct deficiencies within a time limit (under [Art. 94\(4\) EPC](#)), or
- a summons to oral proceedings issued as first action.

If *no* communication under [Art. 94\(3\) EPC](#) is issued, but instead a communication under [Rule 71\(3\) EPC](#), [Art. 11 RFees](#) provides that the examination fee will be refunded at 50% if the application is actively withdrawn before the date on which the communication under [Rule 71\(3\) EPC](#) is issued.

If the application is withdrawn prior to notification of the decision on the grant of a European patent or is deemed withdrawn at that time, the grant and publishing fee is refunded in full.

### Refund of additional claims fees

As a rule, additional claims fees are not refunded, except where they were paid although not actually due (e.g. when filing a disapproval to a communication under [Rule 71\(3\) EPC](#)).

### Refund of renewal fees

If the renewal fee is paid on or after the withdrawal date, or if it was paid earlier but was not yet due as of the withdrawal date, it is refunded in full.

**Legal references:**

Art. 11(a) RFees; Art. 11(b) RFees

### 13. Oral proceedings

Oral proceedings may be scheduled at the initiative of the examining division if no agreement can be reached in writing (Rule 115(1) EPC and Rule 116 EPC) or at the request of the applicant or their representative under the "right to be heard" (Art. 113 EPC) before a negative decision is taken.

The summons must indicate the date and time of the oral proceedings, provide a summary of the issues to be discussed, and specify the last day for filing written submissions or amendments.

In exceptional cases, the examining division may issue a summons to oral proceedings as the first action in examination. This may occur either when, despite the applicant's reply to the search opinion, no possibility of a grant can be foreseen, or when the claims on file are substantively unchanged from those searched, or when one or more of the objections raised in the search opinion which are crucial to the outcome of the examination procedure still apply.

Before oral proceedings, applicants may file various types of submissions. The most common are:

- submissions accompanied by a conditional request to cancel oral proceedings if the newly filed documents are accepted
- submissions containing only comments and/or amended pages
- a letter indicating that the applicant and/or representative will not attend the oral proceedings (no-show)
- withdrawal of the request for oral proceedings
- a request for a decision "according to the state of the file"
- a request to allow oral submissions by accompanying persons
- withdrawal of the application
- provision of an email address for videoconference connection details

During the oral proceedings, minutes must be taken. These minutes – drawn up by the second member of the division – must record the essential points discussed and are communicated to the applicant as soon as possible after the oral proceedings.

Oral proceedings may conclude with an oral announcement of a decision (in the case of a refusal). Otherwise, the applicant will be informed of the next steps in the procedure, such as the issuance of a further communication or an intention to grant.

**Legal references:**

Art. 94(3) EPC; Art. 113 EPC; Art. 134(8) EPC

Rule 115(1) EPC; Rule 116(1) EPC; Rule 124(1) EPC

### 14. Intention to grant

Before a European patent is granted, the EPO issues a communication under Rule 71(3) EPC informing the applicant of the text intended for grant, together with the bibliographic data to be published.

The communication invites the applicant, within a non-extendable four-month period, either to approve the text and bibliographic data by filing the required claim translations and paying the prescribed fees, or to request amendments or corrections. Translations of the claims must be filed in the two official languages of the EPO other than the language of the proceedings.

If the applicant does not reply to this communication, or replies late, the application is deemed withdrawn.

If the applicant pays the fees for grant and publishing and files the translations of the claims within the four-month period without filing a request for correction or amendments, they are deemed to have approved the text intended for grant (Rule 71(5) EPC).

Note: for European patent applications filed before 1 April 2009, or international applications entering the regional phase before that date, the fee for grant and publishing may include a separate component relating to the number of pages. For applications filed or entering the regional phase on or after that date, this component is payable as part of the filing fee.

**Legal references:**

Rule 71(3) EPC; Rule 71a(4) EPC; Rule 71a(5) EPC

## 15. Decision to grant and publication

The decision to grant a European patent under Art. 97(1) EPC (EPO Form 2006A) is dispatched to the applicant.

The decision takes effect on the date the mention of the grant is published in the European Patent Bulletin (Art. 97(3) EPC).

The date of grant has the following effects.

- The patent acquires the legal effect of a national patent in each designated contracting state.
- The patent acquires full patent protection against infringement.
- The patentee has the right to request limitation or revocation of the patent.

**Legal references:**

Art. 97(1) EPC; Art. 97(3) EPC

Rule 71(3) EPC; Rule 71a(4) EPC

OJ EPO 3/1997, 115; OJ EPO 2013, 418

## 16. Types of publications for granted European patents

Following the decision to grant, the EPO issues a certificate of grant to the applicant and publishes the patent specification (B1).

Any errors introduced during the production of the patent specification do not affect the legal content of the granted patent. Once such an error is identified, the correction is made public through a note in the European Patent Bulletin and the publication of a corrigendum – B8 for corrections to bibliographical data and B9 for corrections to the specification.

**Legal references:**

Art. 14(6) EPC; Art. 98 EPC

Rule 73 EPC

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