

# Learning path for patent administrators

## European examination: EPAC – intermediate level

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## Introduction

This publication, "European examination, 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 concept and mechanisms of accelerating the examination procedure
- the procedural steps that follow a disapproval of a communication under [Rule 71\(3\) EPC](#)
- the legal and procedural effects of a refusal under [Art. 97\(2\) EPC](#)
- which types of correction may be requested and up to what point in the procedure
- which corrections can be submitted after grant, with particular focus on publication errors
- the legal principles governing the interruption or stay of proceedings and their resumption

## 2. Acceleration of the examination procedure

By filing a request for accelerated examination under the programme for accelerated prosecution of European patent applications (PACE), the applicant can speed up proceedings at the examination stage (see notice from the EPO dated 30 November 2015, [OJ EPO 2015, A93](#)).

Accelerated examination may, in principle, be requested at any time after the examining division has assumed responsibility for the application ([Rule 10\(2\), \(3\) EPC](#)).

For PCT applications entering the European phase where the EPO also acted as (S)ISA, accelerated examination may also be requested at any time, for example:

- upon entry into the European phase before the EPO, or
- together with a response to the WOISA, IPER or SISR required under [Rule 161\(1\) EPC](#)

When accelerated examination is requested, the EPO will make every effort to issue the next office action within three months of receipt of the request by the examining division, receipt of the applicant's response under [Rule 70a EPC](#), expiry of the period under [Rule 161\(1\) EPC](#), or receipt of the request for accelerated examination (whichever occurs last).

### Different ways to accelerate the examination procedure

1. In particular for PCT applications entering the European phase where the EPO acted as (S)ISA, accelerated examination cannot begin until the six-month period under [Rule 161\(1\) EPC](#) has expired, even if acceleration has been requested under the PACE programme. To enable examination to start immediately, upon entry into the European phase, the applicant must explicitly waive the right to receive the communication under [Rule 161\(1\) EPC](#) and [Rule 162\(2\) EPC](#) and must fulfil all associated requirements (see notice from the EPO dated 30 November 2015, [OJ EPO 2015, A94](#)).
- Applicants may also accelerate the processing of Euro-PCT applications by filing an explicit request for early processing of the international application by the EPO as designated/elected Office.
2. Before receiving the search report, the applicant may waive the invitation under [Rule 70\(2\) EPC](#) and request examination unconditionally, irrespective of the results of the search. In such cases, under [Rule 62 EPC](#), the European search report is issued together with the first examination communication under [Art. 94\(3\) EPC](#) and [Rule 71\(1\) EPC](#), instead of an opinion on patentability

(ESOP) under Rule 62 EPC. A prompt and complete response from the applicant then enables the proceedings to advance swiftly.

The PACE programme allows applicants to have their applications processed more quickly, with the EPO aiming to issue communications within three months (OJ EPO 2010, 352).

A PACE request:

- must be filed online using EPO Form 1005,
- must be signed by an authorised person, and

must be filed separately for each application. A PACE request may only be filed once. It is deemed withdrawn if the applicant fails to meet a deadline for responding to an office action or requests (and is granted) an extension of the time limit to respond to an office action.

**Legal references:**

Rule 10(2) EPC; Rule 10 (3) EPC

### **3. Disapproval and late amendments**

If the applicant submits reasoned amendments or corrections after receiving a communication under Rule 71(3) EPC, two outcomes are possible.

- If the examining division agrees, a new communication under Rule 71(3) EPC will be issued.
- If the examining division does *not* agree, the examination proceedings resume under Rule 71(6) EPC.

In the latter situation, the requirement to file claims translations and pay the prescribed fees is deferred until agreement on the text intended for grant has been reached.

Once agreement has been reached and all other formal requirements are fulfilled, the decision to grant the European patent is issued.

**Legal references:**

Rule 71(3) EPC; Rule 71(6) EPC

### **4. Refusal**

A decision to refuse a European patent application is issued when the application fails to meet the requirements of the EPC, including those under Art. 52(1) EPC and Art. 52(2) EPC (lack of inventive step and novelty). A refusal may only be based on grounds on which the applicant has had an opportunity to comment.

Once refused, any rights conferred by the application are deemed never to have existed (Article 67(4) EPC).

A refusal may also be pronounced during oral proceedings.

Applicants may request a decision "on the file as it stands" or "according to the state of the file", for example when all arguments have already been presented and the applicant desires a rapid, appealable decision. The procedure for such requests is outlined in GL C-V, 14 and its subsections.

The decision is open to appeal.

**Legal references:**

Art. 52(1) EPC; Art. 52(2) EPC; Art. 67(4) EPC; Art. 97(2) EPC; Art. 113(2) EPC  
Rule 111(1) EPC; Rule 111(2) EPC; Rule 113 EPC

## **5. Corrections after grant: general**

Once a European patent is granted, the EPO is bound by its decision. As a result, any corrections or changes to bibliographic data or the patent specification can only be made under clearly defined conditions.

EPO *formalities officers* are responsible for:

- correcting or updating bibliographic data (except IPC classifications)
- correcting spelling mistakes in titles
- correcting publication errors in patent documents
- correcting bibliographic data included in the decision to grant

EPO *examiners* handle corrections to the description, claims or drawings, provided these are not publication errors.

Errors that can be corrected at any time include:

- bibliographic errors introduced by the EPO
- publication (printing) errors introduced during the publication process
- formatting or editing errors in patent documents

Changes or corrections to bibliographic data may be made up to the last day before publication. The EPO will update the European Patent Register, inform national offices, and republish if necessary (B8 publication).

According to decision G 1/10 (OJ EPO 2013, 194), corrections to the description, claims or drawings in the decision to grant are not admissible.

**Legal references:**

Rule 21 EPC; Rule 22 EPC; Rule 85 EPC; Rule 137 EPC; Rule 139 EPC; Rule 140 EPC  
GL H-V, 8; GL H-VI, 3  
Decision J 16/99  
OJ EPO 2013, 194 (G 1/10)

## 6. Correction and change of bibliographic data after grant

Requests to correct or change bibliographic data received after the publication run require special handling. How a request is dealt with differs depending on whether it concerns a correction or a change.

A **correction** is considered only if the correct data was already on file *before* the publication run – for example, where a previously submitted request was not yet processed or was processed incorrectly.

A **change** applies when a change to bibliographic data is received *on or after* the publication run, meaning that the information was not previously on file.

After publication/mention of the publication, the EPO may correct or change the following bibliographic data:

- correction or change to applicant details
- correction or change to representative details
- correction or change to inventor information
- rectification of the (original) designation of inventor
- correction to extension/validation states
- correction to titles (spelling mistakes only)
- correction of errors made by the EPO or by WIPO
- the priority claims
- the date of filing
- the designated states (excluding withdrawal of designations)
- change to extension/validation states
- correction to bibliographic data under Rule 139/140 EPC
- IPC classifications
- substantive errors in titles

The legal bases for correcting bibliographic data are as follows.

- Rule 21 EPC (rectification of the designation of an inventor)
- Rule 22 EPC (registration of transfers)
- Rule 85 EPC (transfer of the European patent)
- Rule 73 EPC (patent specification)
- Rule 74 EPC (European patent certificate)
- Rule 137(3) EPC (amendment of the European patent application)
- Rule 139 EPC (correction of errors in documents filed with the EPO)
- Rule 140 EPC (correction of errors in decisions)

**Requests for correction** to bibliographic data may be processed by the EPO without any time limit. The same applies to requests for rectification of the *original* designation of the inventor under Rule 21 EPC.

**Requests for changes** to bibliographic data may be processed by the EPO only up to the day *before* the publication date, as the application becomes a bundle of national patents on the publication date and thus falls outside the EPO's responsibility.

However, **requests to change applicant data** may still be processed by the EPO until the end of the opposition period or while opposition proceedings are pending (Rule 22 EPC and Rule 85 EPC). By analogy, changes to representative and inventor information are also recorded during this period.

**Legal references:**

Rule 21 EPC; Rule 22 EPC; Rule 73 EPC; Rule 74 EPC; Rule 85 EPC

## **7. Substantive correction after grant and correction of publication errors**

If the patent proprietor requires a corrected specification for validation of the patent in the designated contracting states, a request for correction of the description, claims or drawings may be filed after the publication run.

Once the publication run has taken place, the EPO is bound by the decision to grant, and any corrections to the description, claims or drawings must follow special procedures.

The examining division will determine – regardless of the rule cited by the applicant or patent proprietor – whether the request falls under Rule 137(3) EPC, Rule 139 EPC, Rule 140 EPC, or concerns a printing error, and whether it is allowable.

- **Printing errors** can always be corrected.
- **Formatting or editing errors** in the electronic Druckexemplar (eDREX), if not indicated by standard marks or mentioned on EPO Form 2004C, may also always be corrected.
- **Other errors** affecting the text of the patent may be corrected by the examiner only in exceptional cases under Rule 140 EPC.

According to decision G 1/10 (OJ EPO 2013, 194), a patent proprietor's request to correct the text of a granted patent under Rule 140 EPC is inadmissible at any time, including after the initiation of opposition proceedings.

**Legal references:**

Rule 137(3) EPC; Rule 139 EPC; Rule 140 EPC

## **8. Stay of proceedings**

A third party who believes that the applicant is not entitled to the grant of a patent (Rule 14 EPC) or that the patent proprietor is not entitled to the grant (Rule 78 EPC) may request a stay of proceedings under the relevant rule.

The third party must provide the EPO with evidence that they have initiated proceedings against the applicant or patent proprietor seeking a decision under Article 61(1) EPC.

The EPO will then stay the proceedings for grant, but only after the publication of the application.

A stay may be applied at any stage of prosecution, including:

- the Receiving Section phase
- entry into the European phase

- the grant procedure
- the opposition procedure
- the appeal procedure
- the limitation procedure

The effective date of the stay is either the date on which the third party submitted the evidence to the EPO, or, if the proceedings against the applicant began while the application was still in the PCT phase, the date of entry into the European phase.

The last day for requesting a stay of proceedings is:

- the day before publication of the mention of the grant, if the application is granted
- the date of the examining division's decision, if the application is refused
- the date of the opposition division's decision, if the patent is under opposition
- the date of the board of appeal's decision, if the patent is under appeal

A stay of proceedings has various legal consequences.

- The European patent application or the designation of any contracting state cannot be withdrawn.
- A divisional application cannot be filed during the stay of proceedings of the parent application. The applicant will be informed via a communication noting the loss of rights that the divisional application cannot be processed.
- Transfers of rights cannot be recorded; such requests are immediately forwarded to the EPO's Legal Division for decision.
- No procedural steps will be taken by the EPO, except for reminders regarding late payment of renewal fees.

As a result, all time limits in force are interrupted during the stay of proceedings, except those for renewal fee payments.

The publication of the search report is not affected by the stay of proceedings.

When the proceedings are resumed, interrupted time limits restart from the date of resumption for the remaining portion of the period, with a minimum of two months.

Proceedings may be resumed:

- with the irrevocable written consent of the third party
- with the consent of the third party or of the applicant/proprietor, depending on the decision, upon receipt by the EPO of a copy of the national decision
- with the consent of the applicant/proprietor if no final decision has been taken

**Legal references:**

Art. 61(1) EPC

Rule 14(1) EPC; Rule 14(2) EPC; Rule 14(3) EPC and Rule 14(4) EPC; Rule 15 EPC; Rule 16 EPC

Decision J 0013/12

## 9. Interruption of proceedings

Proceedings before the EPO are interrupted in the event of:

- the death of the applicant, proprietor or representative
- incapacity, meaning the applicant, proprietor or representative is unable to take reasonable decisions due to mental disturbance or illness
- legal impediments affecting the applicant, proprietor or representative, such as bankruptcy, insolvency, receivership or liquidation

The interruption of proceedings has the following consequences.

- All ongoing time limits are interrupted, including those under Rule 36(1)(a) and Rule 36(1)(b) EPC.
- Non-observance of time limits is deemed not to have occurred.
- If the interruption is retroactive, any communications issued during the interruption period must be cancelled.
- All legal actions are stayed; neither the EPO nor the parties may validly perform any legal acts (e.g. a transfer of rights).
- If a divisional application is filed during the interruption, its date of filing is postponed to the date of resumption.

When proceedings resume, all interrupted time limits start anew from the date of resumption, with two exceptions.

- The time limit to request examination resumes for the remaining period, with a minimum of two months.
- Payment of renewal fees is deferred until the date proceedings are resumed.

### **Legal references:**

Rule 36(1)(a) EPC; Rule 36(1)(b) EPC; Rule 142(1)(a) EPC; Rule 142(1)(b) EPC; Rule 142(1)(c) EPC; Rule 142(4) EPC

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