

Guidelines for Examination in the European Patent Office

November 2014

List of Contents

General Part

Contents	a
1. Preliminary remarks	1
2. Explanatory notes	1
2.1 Overview	1
2.2 Abbreviations	3
3. General remarks	4
4. Work at the EPO	5
5. Survey of the processing of applications and patents at the EPO	6
6. Contracting States to the EPC	8
7. Extension to states not party to the EPC	9

Part A – Guidelines for Formalities Examination

Contents	a
Chapter I Introduction	I-1
Chapter II Filing of applications and examination on filing	II-1
Chapter III Examination of formal requirements	III-1
Chapter IV Special provisions	IV-1
Chapter V Communicating the formalities report; amendment of application; correction of errors	V-1
Chapter VI Publication of application; request for examination and transmission of the dossier to Examining Division	VI-1
Chapter VII Languages	VII-1
Chapter VIII Common provisions	VIII-1

Chapter IX	Drawings	IX-1
Chapter X	Fees	X-1
Chapter XI	Inspection of files; communication of information contained in files; consultation of the Register of European Patents; issuance of certified copies	XI-1

Part B – Guidelines for Search

Contents		a
Chapter I	Introduction	I-1
Chapter II	General	II-1
Chapter III	Characteristics of the search	III-1
Chapter IV	Search procedure and strategy	IV-1
Chapter V	Preclassification (routing) and official classification of European patent applications	V-1
Chapter VI	The state of the art at the search stage	VI-1
Chapter VII	Unity of invention	VII-1
Chapter VIII	Subject-matter to be excluded from the search	VIII-1
Chapter IX	Search documentation	IX-1
Chapter X	Search report	X-1
Chapter XI	The search opinion	XI-1

Part C – Guidelines for Procedural Aspects of Substantive Examination

Contents		a
Chapter I	Introduction	I-1
Chapter II	Formal requirements to be met before the Division starts substantive examination	II-1
Chapter III	The first stage of examination	III-1

Chapter IV	Examination of replies and further stages of examination	IV-1
Chapter V	The final stage of examination	V-1
Annex	Standard marks for indicating amendments or corrections by the Divisions	V-17
Chapter VI	Time limits and acceleration of examination	VI-1
Chapter VII	Other procedures in examination	VII-1
Chapter VIII	Work within the Examining Division	VIII-1
Chapter IX	Special applications	IX-1

Part D – Guidelines for Opposition and Limitation/Revocation Procedures

Contents		a
Chapter I	General remarks	I-1
Chapter II	The Opposition Division	II-1
Chapter III	Opposition	III-1
Chapter IV	Procedure up to substantive examination	IV-1
Chapter V	Substantive examination of opposition	V-1
Chapter VI	Procedure for the examination of the opposition	VI-1
Chapter VII	Details and special features of the proceedings	VII-1
Chapter VIII	Decisions of the Opposition Division	VIII-1
Chapter IX	Costs	IX-1
Chapter X	Limitation and revocation procedure	X-1

Part E – Guidelines on General Procedural Matters

Contents	a
Introduction	1

Chapter I	Communications and notifications	I-1
Chapter II	Oral proceedings	II-1
Chapter III	Taking and conservation of evidence	III-1
Chapter IV	Derogations from the language of the proceedings in oral proceedings	IV-1
Chapter V	Examination by the EPO of its own motion; facts, evidence or grounds not submitted in due time; observations by third parties	V-1
Chapter VI	Interruption and stay of the proceedings	VI-1
Chapter VII	Time limits, loss of rights, further and accelerated processing and re-establishment of rights	VII-1
Chapter VIII	Applications under the Patent Cooperation Treaty (PCT)	VIII-1
Chapter IX	Decisions	IX-1
Chapter X	Appeals	X-1
Chapter XI	Request from a national court for a technical opinion concerning a European patent	XI-1
Chapter XII	Registration of changes of name, transfers, licences and other rights	XII-1



Part F – The European Patent Application

Contents	a
Chapter I	Introduction
Chapter II	Content of a European patent application (other than claims)
Annex 1	Checklist for considering the abstract (see F-II, 2.5)
Annex 2	Units recognised in international practice and complying with Rule 49(10) (see F-II, 4.13)
Chapter III	Sufficiency of disclosure

Chapter IV	Claims (Art. 84 and formal requirements)	IV-1
-------------------	---	-------------

Annex	Examples concerning essential features	IV-27
-------	--	-------

Chapter V	Unity of invention	V-1
------------------	---------------------------	------------

Chapter VI	Priority	VI-1
-------------------	-----------------	-------------

Part G – Patentability

Contents	a
-----------------	----------

Chapter I	Patentability	I-1
------------------	----------------------	------------

Chapter II	Inventions	II-1
-------------------	-------------------	-------------

Chapter III	Industrial application	III-1
--------------------	-------------------------------	--------------

Chapter IV	State of the art	IV-1
-------------------	-------------------------	-------------

Chapter V	Non-prejudicial disclosures	V-1
------------------	------------------------------------	------------

Chapter VI	Novelty	VI-1
-------------------	----------------	-------------

Chapter VII	Inventive Step	VII-1
--------------------	-----------------------	--------------

Annex	Examples relating to the requirement of inventive step – indicators	VII-14
-------	---	--------

Part H – Amendments and Corrections

Contents	a
-----------------	----------

Chapter I	The right to amend	I-1
------------------	---------------------------	------------

Chapter II	Admissibility of amendments – general rules	II-1
-------------------	--	-------------

Chapter III	Admissibility of amendments – other procedural matters	III-1
--------------------	---	--------------

Chapter IV	Allowability of amendments – Art. 123(2) and (3)	IV-1
-------------------	---	-------------

Chapter V	Allowability of amendments – examples	V-1
------------------	--	------------

Chapter VI	Correction of errors	VI-1
-------------------	-----------------------------	-------------

General Part

Contents

1.	Preliminary remarks	1
2.	Explanatory notes	1
2.1	Overview	1
2.2	Abbreviations	3
3.	General remarks	4
4.	Work at the EPO	5
5.	Survey of the processing of applications and patents at the EPO	6
6.	Contracting States to the EPC	8
7.	Extension to states not party to the EPC	9

1. Preliminary remarks

In accordance with Art. 10(2)(a) of the European Patent Convention (EPC), the President of the European Patent Office (EPO) had adopted, effective as at 1 June 1978, the Guidelines for Examination in the European Patent Office.

These Guidelines have been and will be updated at regular intervals to take account of developments in European patent law and practice. Usually, updates only involve amendments to specific sentences or passages on individual pages, in order to bring at least part of the text more closely into line with patent law and EPO practice as these continue to evolve. It follows that no update can ever claim to be complete. Any indication from readers drawing attention to errors as well as suggestions for improvement are highly appreciated and may be sent by e-mail to: patentlaw@epo.org

The **most recent** and binding version of the Guidelines for Examination in the European Patent Office is published by the EPO in an electronic, searchable form on the internet via the EPO website:

<http://www.epo.org>

The Guidelines are also issued in printed paper format.

In the PDF and print versions, insertions and deletions compared with the previous version are indicated in the margins by vertical and dual horizontal lines, respectively.

In the HTML publication, modifications can be viewed by ticking the "Show modifications" box in the upper right corner, which displays inserted text with a green background and deleted text in red strikethrough font. For sections in which no changes have been made, the tick box is greyed out.

2. Explanatory notes

2.1 Overview

The main body of these Guidelines comprises the following eight parts:

Part A:	Guidelines for Formalities Examination;
Part B:	Guidelines for Search;
Part C:	Guidelines for Procedural Aspects of Substantive Examination;
Part D:	Guidelines for Opposition and Limitation/Revocation Procedures;
Part E:	Guidelines on General Procedural Matters;
Part F:	The European Patent Application;
Part G:	Patentability; and
Part H:	Amendments and Corrections

Part A deals with the procedures for formalities examination in grant and opposition proceedings. Part B deals with search matters. Parts C and D relate to procedures to be followed in examination and opposition proceedings respectively. Substantive requirements are dealt with in Parts F, G and H (see below).



Part E deals with procedural matters relevant to several or all of the stages in procedure at the EPO. Part F deals with the requirements which the application must fulfil other than patentability, in particular unity of invention (Art. 82), sufficiency of disclosure (Art. 83), clarity (Art. 84) and the right to priority (Art. 87 to Art. 89). Part G deals with the requirements of patentability provided for in Art. 52 to Art. 57, in particular exclusions from patentability (Art. 52(2) and Art. 53), novelty (Art. 54), inventive step (Art. 56) and industrial application (Art. 57). Part H deals with the requirements relating to amendments and corrections. It relates in particular to questions of admissibility (Rule 80 and Rule 137) and compliance with Art. 123(2) and (3), Rule 139 and Rule 140.

The following notices relating to this and other recent updates have been published in the Official Journal of the European Patent Office:

Re November 2014 update:	OJ EPO 2014, A88
Re September 2013 update:	OJ EPO 2013, 447;
Re June 2012 update:	OJ EPO 2012, 420;
Re April 2010 update:	OJ EPO 2010, 230;
Re April 2009 update:	OJ EPO 2009, 336;
Re December 2007 update:	OJ EPO 2007, 589;
Re June 2005 update:	OJ EPO 2005, 440;
Re December 2003 update:	OJ EPO 2003, 582;
Re October 2001 update:	OJ EPO 2001, 464;
Re February 2001 update:	OJ EPO 2001, 115;
Re June 2000 update:	OJ EPO 2000, 228;
Re July 1999 update:	OJ EPO 1999, 510.



It will be noted that each Part of the Guidelines is divided into Chapters, each sub-divided into numbered sections which are further sub-divided into paragraphs. Cross-references to other paragraphs include the relevant letter of that Part, followed by the Chapter number (a Roman numeral) and then the section and paragraph numbers (thus, e.g. C-V, 4.6 would be used if it were desired to refer to paragraph 4.6 of Chapter V of Part C).

Marginal references to articles and rules without further identification indicate the Articles or Rules of the European Patent Convention which provides authority for what is stated. It is believed that such references avoid the need for extensive quotation from the EPC itself.

It goes without saying that whenever "his" or "he" is used in relation to examiner, applicant, inventor, etc., this should be understood as "her or his" and "she or he", respectively.

2.2 Abbreviations

In the Guidelines, the following abbreviations are used:

EPC	European Patent Convention
EPO	European Patent Office
ESOP	European Search Opinion (Rule 62)
OJ EPO	Official Journal of the European Patent Office
Art.	Article
RFees	Rules relating to Fees
WIPO	World Intellectual Property Organization
PCT	Patent Cooperation Treaty
ISA	International Searching Authority
WO-ISA	Written Opinion of the International Searching Authority
IPEA	International Preliminary Examining Authority
IPRP	International Preliminary Report on Patentability
IPER	International Preliminary Examination Report
EESR	Extended European Search Report
ADA	Arrangements for deposit accounts
AAD	Arrangements for the automatic debiting procedure
BNS	back-file conversion numerical system
rec.	recital
Prot. Art. 69	Protocol on the Interpretation of Art. 69 EPC
Prot. Centr.	Protocol on the Centralisation of the European patent system and on its introduction (Protocol on Centralisation)
EVL	Electronic virtual library

References to the European Patent Convention (EPC) are references to the European Patent Convention as amended by the Act revising the EPC of 29 November 2000 and the decision of the Administrative Council of 28 June 2001 adopting the new text of the European Patent Convention (OJ EPO Special editions No. 4/2001, pages 56 *et seq*; No. 1/2003, pages 3 *et seq*; No. 1/2007, pages 1 to 88) and the Implementing Regulations as adopted by decision of the Administrative Council of 7 December 2006 (OJ EPO Special edition No. 1/2007, pages 89 *et seq*) and as subsequently amended by decisions of the Administrative Council of 6 March 2008 (OJ EPO 2008, 124), 21 October 2008 (OJ EPO 2008, 513), 25 March 2009 (OJ EPO 2009, 296 and OJ EPO 2009, 299), 27 October 2009 (OJ EPO 2009, 582), 28 October 2009 (OJ EPO 2009, 585), 26 October 2010 (OJ EPO 2010, 568, 634 and 637), 27 June 2012 (OJ EPO 2012, 442), 16 October 2013 (OJ EPO 2013, 501, and 503) and 13 December 2013 (OJ EPO 2014, A3, and A4).

Where necessary, reference is made to the European Patent Convention of 5 October 1973 as amended by the act revising Article 63 EPC of 17 December 1991 and by the decisions of the Administrative Council of 21 December 1978, 13 December 1994, 20 October 1995, 5 December 1996, 10 December 1998 and 27 October 2005.

The reference to Articles and Rules – and their paragraphs – of EPC 2000 will be as follows: "Article 123, paragraph 2" will be: "Art. 123(2)", "Rule 29, paragraph 7" will be: "Rule 29(7)". Articles and Rules of EPC 1973, of the PCT and Articles of the Rules relating to Fees are referred to in a similar way, e.g. "Art. 54(4) EPC 1973", "Art. 33(1) PCT" and "Art. 10(1) RFees" respectively. Only where deemed appropriate, i.e. in order to avoid confusion, will references to Articles and Rules of the EPC be provided with the extension "EPC 2000".

Decisions and opinions of the Enlarged Board of Appeal will only be referred to with their capital letter and their number, e.g. "G 2/88". Decisions of the Technical Boards of Appeal and the Legal Board of Appeal will be referred to in the same way, e.g., "T 152/82", "J 4/91" and "T 169/88". It is noted that all decisions and opinions of the Enlarged Board of Appeal and all decisions of the boards of appeal of the EPO are published on the Internet (<http://www.epo.org>) (see the Notice from the Vice-President Directorate-General 3 dated 3 July 2002, OJ EPO 2002, 442).

The arrangements for deposit accounts and their annexes, including the arrangements for the automatic debiting procedure plus explanatory notes, are published from time to time as Supplements to the Official Journal of the EPO.

3. General remarks

These Guidelines give instructions about the practice and procedure to be followed in the various aspects of the examination of European applications and patents in accordance with the European Patent Convention and its Implementing Regulations (see section 5).

The search and examination practice and procedure as regards PCT applications, as far as the international phase is concerned, are not the subject of these Guidelines, but are dealt with in the **PCT International Search and Preliminary Examination Guidelines**. Whenever considered appropriate, options given in the latter Guidelines and the way they are dealt with by the European Patent Office when acting as Receiving Office, International Searching Authority or International Preliminary Examining Authority are the subject of separate notices published in the Official Journal of the EPO and on the EPO website. It is important to note that Art. 150 EPC states that in case of conflict between the PCT and the EPC, the provisions of the PCT prevail.

These Guidelines are addressed primarily to EPO staff but it is hoped that they will also be of assistance to the parties to the proceedings and patent practitioners, since the success of the European patent system depends on the good cooperation between the parties and their representatives on the one hand and the EPO on the other.

The Guidelines are intended to cover normal occurrences. They should therefore be considered only as general instructions. The application of the Guidelines to individual European patent applications or patents is the responsibility of the examining staff and they may depart from these instructions in exceptional cases. Nevertheless, as a general rule, parties can expect the EPO to act in accordance with the Guidelines until such time as they – or the relevant legal provisions – are amended. Notices concerning such amendments are published in the Official Journal of the EPO and on the EPO website.

It should be noted also that the Guidelines do not constitute legal provisions. For the ultimate authority on practice in the EPO, it is necessary to refer firstly to the European Patent Convention itself including the Implementing Regulations, the Protocol on the Interpretation of Article 69 EPC, the Protocol on Centralisation, the Protocol on Recognition, the Protocol on Privileges and Immunities and the Rules relating to Fees, and secondly to the interpretation put upon the EPC by the Boards of Appeal and the Enlarged Board of Appeal.

Where a decision or an opinion of the Enlarged Board of Appeal is referred to, this is to inform the reader that the practice described has been adopted to take account of the decision or opinion referred to. The same applies to decisions of the Legal or Technical Boards of Appeal.

As regards the search, the EPO also carries out searches for national patent applications from certain countries. The instructions in Part B apply in the main also to such searches.

These Guidelines do not deal with proceedings relating to unitary patent protection (Regulations (EU) No 1257/2012 and 1260/2012, OJ EPO 2013, 111 and 132).

4. Work at the EPO

The setting up of the EPO represented a major step forward in the history of patents. Its reputation depends on all employees, regardless of nationality, working harmoniously together and giving of their best. But it is on the search, examination and opposition, more than anything else, that the EPO will be judged by the patent world.

Employees of the EPO work with colleagues who not only speak a different language but also come from a different patent background with different training. Some may also have had experience in their national patent office. It is important therefore to remember that all employees in the EPO are working under a common system as laid down in the EPC. They should all apply the same standard and in some instances this will mean abandoning previous habits and ways of thought.

It is also important that the various departments of the EPO and various staff within the same department should not attempt to duplicate one another's efforts. For example, Examining Divisions should not attempt to check the formalities work performed by the Receiving Section or to duplicate the search work performed by the Search Division. One of the purposes of the Guidelines is to make clear where the demarcations of responsibility lie.

It should not be forgotten that the reputation of the EPO will depend not only on quality but also on the speed with which it deals with its work. The EPC imposes various time limits on the parties. Generally speaking there are no corresponding time limits imposed on the EPO, but the European patent system will be judged a success only if examiners and other employees also operate with reasonable expedition.

Finally, it should hardly need stating that all European applications and patents, regardless of their country of origin and the language in which they are written, should receive equal treatment. An international patent system can be credible only if all trace of national bias is absent.

5. Survey of the processing of applications and patents at the EPO

The processing of a European application and of a European patent is carried out in a number of distinct steps which may be summarised as follows:

- (i) the application is filed with the EPO or a competent national authority;
- (ii) the Receiving Section examines the application to determine if a date of filing can be accorded to the application;
- (iii) the formal examination of the application is undertaken by the Receiving Section;
- (iv) in parallel with the formal examination the Search Division draws up an EESR, a copy of which is forwarded to the applicant;
- (v) the application and the search report are published by the EPO either together or separately;
- (vi) on receipt of a request from the applicant, or, if the request has been filed before the search report has been transmitted to the applicant, on confirmation by the applicant that he desires to proceed further with the European patent application, the application is subjected to a substantive examination and an examination of formalities necessary for grant by the Examining Division;

- (vii) provided the requirements of the EPC are met, a European patent is granted for the States designated;
- (viii) the specification of the European patent is published by the EPO;
- (ix) any person may give notice of opposition to the European patent granted; after examining the opposition, the Opposition Division decides whether to reject the opposition, maintain the patent in amended form, or to revoke the patent;
- (x) the patent proprietor may request limitation or revocation of the granted patent; the Examining Division will decide whether this request is to be granted
- (xi) if the European patent is amended, the EPO publishes a new specification of the European patent amended accordingly.

Any decision by an EPO first-instance department which adversely affects a party is subject to review before a Board of Appeal of the EPO. With the exception of matters of importance to the question of interlocutory revision, the appeals procedure is not dealt with in these Guidelines.

6. Contracting States to the EPC

The following states are Contracting States* to the EPC (date of effect of the ratification in brackets):

Albania	(1 May 2010)
Austria	(1 May 1979)
Belgium	(7 October 1977)
Bulgaria	(1 July 2002)
Croatia	(1 January 2008)
Cyprus	(1 April 1998)
Czech Republic	(1 July 2002)
Denmark ¹	(1 January 1990)
Estonia	(1 July 2002)
Finland	(1 March 1996)
Former Yugoslav Republic of Macedonia	(1 January 2009)
France ²	(7 October 1977)
Germany	(7 October 1977)
Greece	(1 October 1986)
Hungary	(1 January 2003)
Iceland	(1 November 2004)
Ireland	(1 August 1992)
Italy	(1 December 1978)
Latvia	(1 July 2005)
Liechtenstein	(1 April 1980)
Lithuania	(1 December 2004)
Luxembourg	(7 October 1977)
Malta	(1 March 2007)
Monaco	(1 December 1991)
Netherlands ³	(7 October 1977)
Norway	(1 January 2008)
Poland	(1 March 2004)
Portugal	(1 January 1992)
Romania	(1 March 2003)
Serbia	(1 October 2010)
San Marino	(1 July 2009)
Slovak Republic	(1 July 2002)
Slovenia	(1 December 2002)
Spain	(1 October 1986)
Sweden	(1 May 1978)
Switzerland	(7 October 1977)
Turkey	(1 November 2000)
United Kingdom ⁴	(7 October 1977)
(total: 38)	

* An up-to-date list of the Contracting States to the EPC is published each year in issue No. 4 of the Official Journal of the EPO.

¹ The EPC does not apply to Greenland and the Faroe Islands.

² The EPC applies to the territory of the French Republic, including the overseas territories.

³ The EPC is also applicable to Sint Maarten, Curaçao, Bonaire, Sint Eustatius and Saba, but not to Aruba.

⁴ The EPC is also applicable to the Isle of Man. For further information on the registration of European patents, designating the United Kingdom, in overseas states and territories, see OJ EPO 2004, 179.



7. Extension to states not party to the EPC

For extension of European patent applications and patents for states not party to the EPC, see A-III, 12 and sub-sections.

