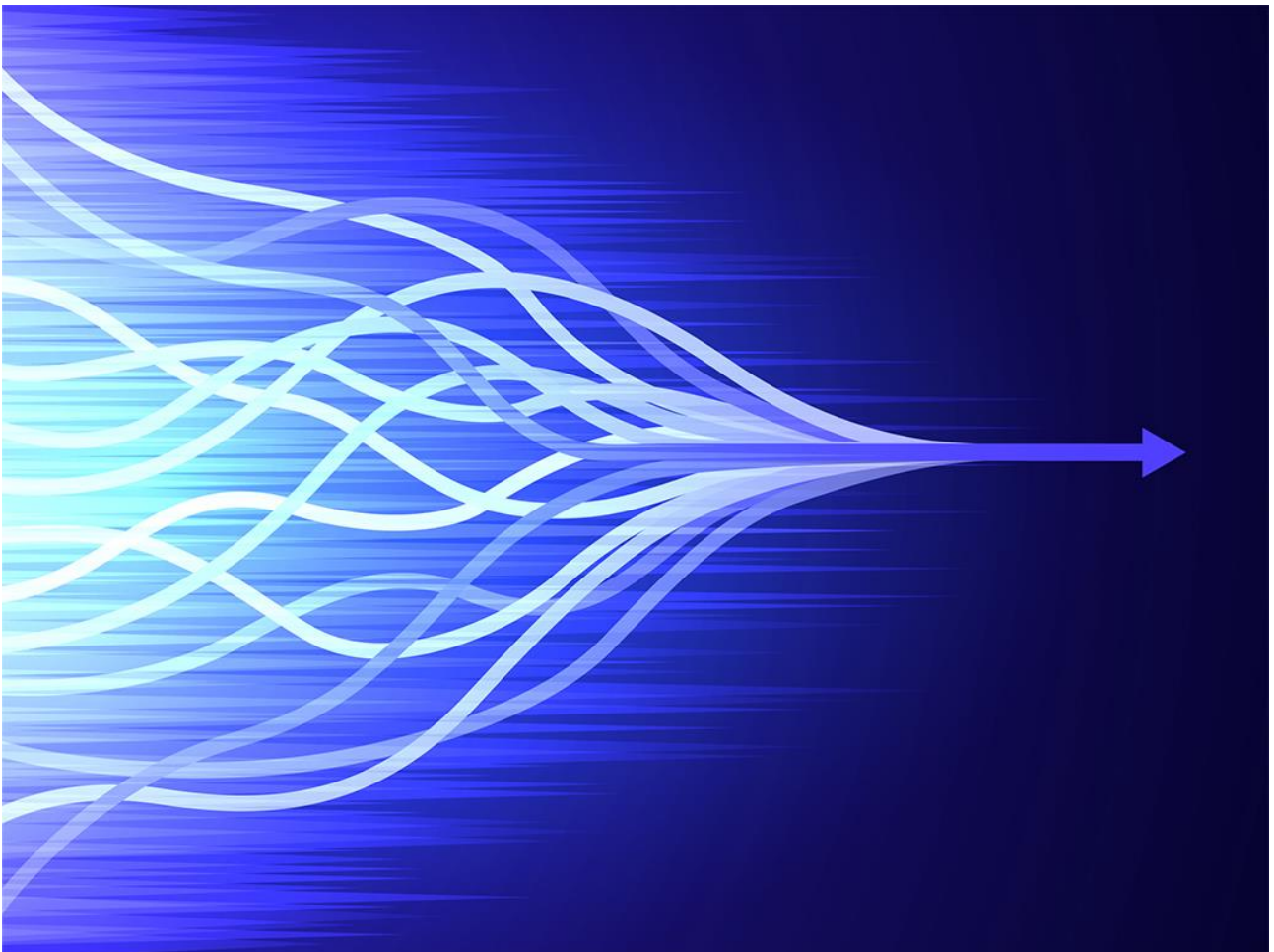


Convergence of practice

Common practice as regards allowable features in drawings

March 2024



Common practice as regards allowable features in drawings

Considering that a patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art and that drawings provide additional legal certainty as regards the correct disclosure of an invention;

Considering that the drawings play a crucial role when it comes to defining the matter for which protection is sought as the claims determine, with the help of the description and the drawings, the extent of protection conferred by a patent or a patent application;

Considering that the visual representation of an invention by drawings assists patent examiners in better understanding an invention for which a patent application is filed;

Considering that high-quality drawings are very important for the assessment of the patentability of the invention and for its correct publication;

Considering the advantages for both users and Offices of an alignment of the formal requirements governing the drafting of drawings and their allowable features;

Noting that any common practice will be implemented on a voluntary basis;

Having regard to the opinion of the Committee on Patent Law;

The Administrative Council of the European Patent Organisation at its meeting on 20 March 2024 approved the following common practice as regards allowable features in drawings:

Absence of drawings in application documents

- Offices are to provide that the request for a patent, the description, the claims and the abstract shall not contain drawings.

Minimum margins

- Offices are to prescribe minimum margins for sheets containing drawings which should be as follows: top side 2.5 cm; left side 2.5 cm; right side 1.5 cm; bottom 1.0 cm.

Execution of drawings in grayscale and colour

- Offices are to provide that drawings may also be submitted in grayscale and colour.

Photographs

- Offices are to provide that photographs may be filed as drawings and that photographs must fulfil the applicable requirements for drawings.

General layout of drawings

- Offices are to provide that the figures in drawings are to be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.

Prohibited matter

- Offices are to provide that drawings are not to contain statements or other matter contrary to "ordre public" or morality.

Cross-sections

- Offices are to provide that cross-sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines.

Reference signs

- Offices are to provide that reference signs not mentioned in the description or claims are not to appear in the drawings, and vice versa.

Text matter on drawings

- Offices are to provide that the drawings shall not contain text matter, except where indispensable to understand the drawings, a few short keywords, such as "water," "steam," "open," "closed," "section on AB".

1. Introduction

The convergence of practice programme is a key initiative of the Office. On the basis of this programme and with the involvement of user associations, the EPO and the national offices of the EPC contracting and extension states try to find common ground in areas where diverging administrative practices exist. After the completion of the first convergence cycle, the Administrative Council approved the continuation of the convergence of practice programme and the launch of six new topics for a second cycle (CA/73/22 Rev. 1).

As a first pair of topics (2023/2024) for the new cycle, the Administrative Council decided to roll out the topics "Allowable features in drawings" (WG7) and "Issuing and accepting electronic priority documents" (WG8). A call for interest was launched in December 2022, whereupon 27 EPC contracting states and 1 extension state indicated their interest in participating in the discussions of working group 7. BusinessEurope, epi and WIPO nominated one representative as an observer in the discussions of the Working Group.

The exact composition of the working group was as follows: Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, San Marino, Slovakia, Spain, Sweden, Turkey, the United Kingdom, epi, BusinessEurope, WIPO and the European Patent Office (EPO).

In February 2023, the chairperson of the Working Group (a representative of the EPO) issued a detailed questionnaire to identify the administrative practices regarding the different formal requirements concerning the common practice as regards allowable features in drawings in the participating states and to determine any differences and similarities among these practices. The answers from the participants were compiled in a summary document which served as a basis for the discussions within the Working Group.

The Working Group held four virtual meetings (19 April 2023, 26 May 2023, 5 July 2023, 27 September 2023). Based on the discussions in these meetings and considering the results of the questionnaire, the Working Group identified nine areas where a convergence of practice was considered to particularly benefit both users and patent offices.

In parallel to the discussions in the Working Group and in accordance with the methodology agreed by the Committee on Patent Law (see CA/PL 14/19, point 21), users were consulted and updated on the progress of the work via the SACEPO Working Party on Rules on 16 March 2023 and 26 October 2023. In order to further broaden the scope of the consultation process, on 31 October 2023 the EPO organised the fourth virtual platform on convergence of practice and informed users and offices of the results achieved within the Working Groups 7 and 8 until then.

At its fourth meeting on 27 September 2023, the Working Group agreed to recommend to the Administrative Council the enclosed common practice as regards allowable features in drawings for adoption and any subsequent voluntary implementation. The Working Group also agreed upon explanatory remarks to the nine different areas contained in this recommendation for a common practice which are reflected below.

2. Explanatory remarks

2.1 Absence of drawings in application documents

Almost all Offices confirmed that their jurisdiction prescribes that the request for a patent, the description, the claims and the abstract must not contain drawings. However, the replies to the questionnaire showed that some Offices do not provide for such a requirement. In view of these differences, the Working Group is of the opinion that an alignment would be advantageous as it would ensure consistent practice with regard to a simple structural rule, which ensures that the drawings are kept separate from the other parts of the patent application. It therefore recommends that Offices are to provide that the request for a patent, the description, the claims and the abstract shall not contain drawings.

2.2 Minimum margins

All respondents but one confirmed that their jurisdiction prescribes minimum margins for sheets containing drawings. Moreover, a very large majority of Offices specified that their jurisdiction prescribes minimum margins for sheets containing drawings of at least: top 2.5 cm; left 2.5 cm; right 1.5; bottom 1 cm. Given that these minimum margins also correspond to those specified by WIPO (see Rule 11.6(c) PCT and the EPO (see OJ EPO 2022, A113), with a view to aligning this technical standard, the Working Group recommends that the minimum margins for sheets containing drawings are prescribed as at least: top 2.5 cm; left 2.5 cm; right 1.5 cm; bottom 1 cm.

2.3 Execution of drawings in grayscale and colour

The replies to the questionnaire showed that all respondents allow the execution of drawings in black and white. 13 respondents replied that their jurisdiction allows the execution of drawings in grayscale and 8 replied that their jurisdiction allows the execution of drawings in colour. The responses were mixed as to whether the jurisdictions allow for the end-to-end processing in colour and/or grayscale (filing, examination, publication, online file inspection).

The Working Group recognizes the value of grayscale and colour drawings in the clear and effective disclosure of certain types of invention and agrees that it is desirable to progress on this. Therefore, the Working Group recommends that Offices are to provide that drawings may also be filed in grayscale and colour. The Working Group furthermore encourages Offices to allow for the end-to-end processing of drawings filed in grayscale and colour as this offers the best quality of drawings in terms of disclosure. It believes that Offices should allow grayscale and colour drawings to be submitted even if they are subsequently made available to the public only in black and white.

2.4 Photographs

The responses to the questionnaire showed that a majority of Offices allow the filing of photographs as drawings. Most respondents confirmed that their jurisdiction prescribes that photographs must fulfil the applicable requirements for drawings.

The Working Group recognizes that for certain types of inventions, photographs are beneficial for an adequate illustration and thus full disclosure of a claimed invention. For example, histological tissue cross sections, in vivo imaging or crystalline structures can be better shown by high-quality photographs. Accordingly, the Working Group recommends that Offices provide that photographs may be filed as drawings. Offices may however choose to accept photographs only where it is

impossible to present what is to be shown in a drawing. Such photographs must fulfil the applicable requirements for drawings (e.g. paper size, margins, numbering, etc.).

From the group of respondents that accepts the filing of photographs as drawings, 13 Offices replied that their jurisdiction allows for the end-to-end processing of such photographs. End-to-end processing avoids that images are converted to black and white for publication purposes, which means that details may be lost when it comes to file inspection or publication which could impact the disclosure of the invention. The Working Group therefore encourages Offices to provide for an end-to-end processing of photographs. Pending the introduction of such an end-to-end processing, Offices should allow (colour) photographs to be submitted even if they are subsequently converted into black and white for the purpose of making them available via publication and file inspection.

2.5 General layout of drawings

All Offices apart from two confirmed that their jurisdiction prescribes that the figures are to be numbered consecutively in Arabic numerals (independently of the numbering of the sheets). The Working Group believes that an alignment of the requirements for drawings as regard the general layout would be advantageous. It therefore recommends that Offices are to provide that the figures are to be numbered consecutively in Arabic numerals.

2.6 Prohibited matter

Most of the respondents confirmed that their jurisdiction prescribes that any prohibited matter is to be omitted from the drawings. The Working Group recognizes the benefit of reaching an alignment on this prohibition. It therefore recommends that Offices are to provide that drawings are not to contain statements or other matter contrary to "ordre public" or morality. Certainly, national Offices are to determine what constitutes "ordre public" and morality, which remains their prerogative.

2.7 Cross-sections

All Offices but three confirmed that their jurisdiction prescribes that cross-sections must be indicated by hatching which should not impede the clear reading of the reference signs and leading lines. The Working Group believes that an alignment of the requirements for drawings as regard cross-sections would be advantageous in terms of a clear and consistent representation of drawings. It therefore recommends that Offices are to provide that cross-sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines.

2.8 Reference signs

Reference signs facilitate the comprehension of the invention by establishing the connection between the features mentioned in the description or claims and the corresponding reference signs in the drawings. A very large majority of the respondents confirmed that their jurisdiction prescribes that reference signs not mentioned in the description and claims may not appear in the drawings, and vice versa. There would be considerable confusion if the drawings were to use reference signs not appearing in the description or in the claims. The same holds true if a single feature were to be allocated different reference signs in the various drawings. In order to ensure a consistent use of reference signs as between the description, the claims and the drawings, the Working Group recommends that reference signs not mentioned in the description or claims are not to appear in the drawings, and vice versa.

2.9 Text matter on drawings

The principle that the drawings shall not contain text matter is already recognized by almost all participants. It is also recognized by WIPO and the EPO. To ensure consistency between Offices, the Working Group recommends them to provide that the drawings shall not contain text matter. However, this principle should feature exceptions, namely where indispensable to understand the drawings, a few short keywords, such as "water," "steam," "open," "closed," "section on AB" are to be allowed. In the case of electric circuits and block schematic or flow sheet diagrams, a few short catchwords indispensable for understanding may be allowed. However, text should be kept to the absolute minimum indispensable for understanding the drawing. In the case of flow charts and block diagrams, if the essential information cannot be conveyed sufficiently by the graphical part of the drawing, the requirement to keep the text to a minimum may be eased to allow a short phrase or sentence to be used.