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Convergence of practice

Common practice as regards double patenting

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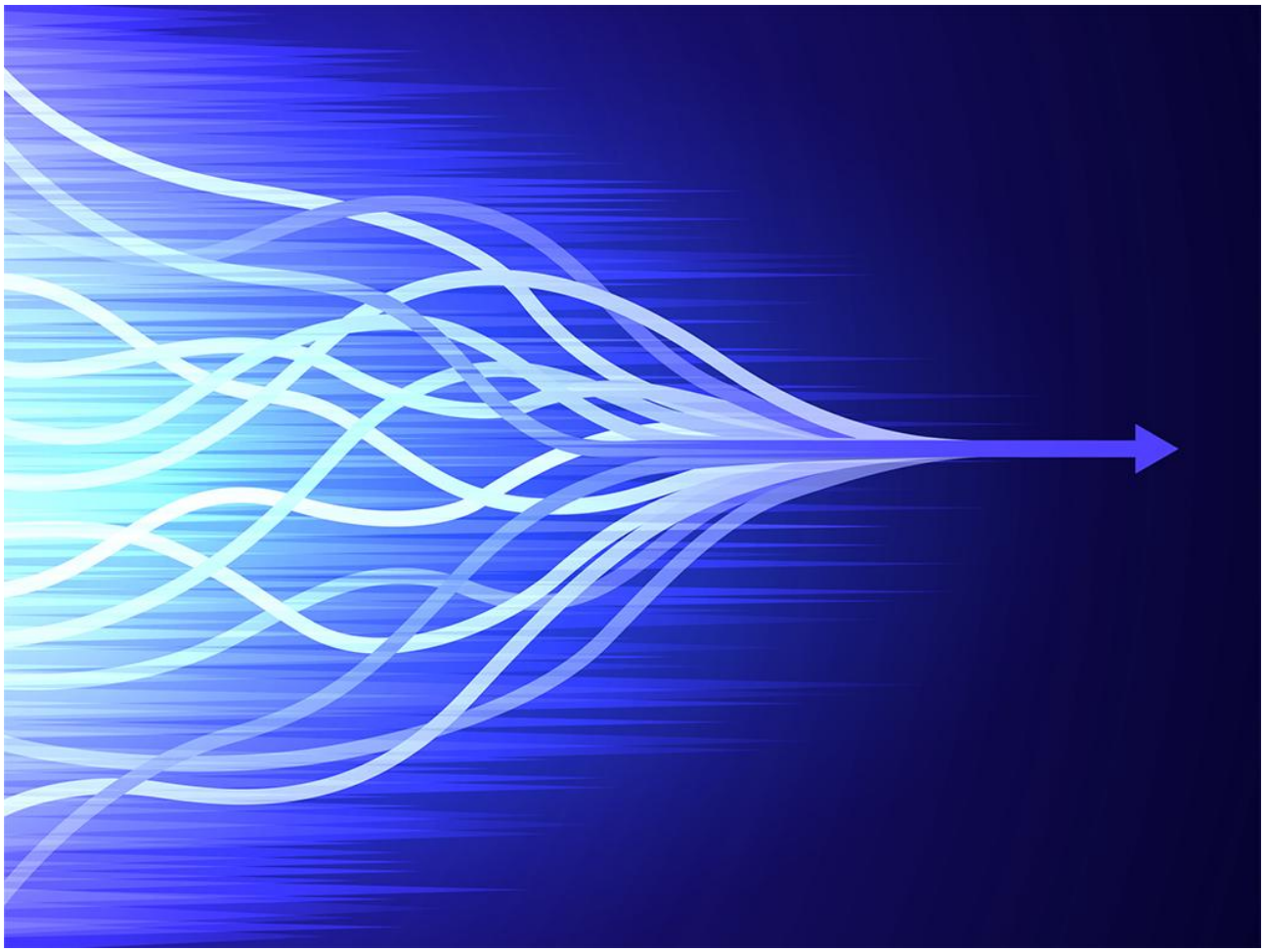

Common practice as regards double patenting

Considering that the prohibition on double patenting is a principle generally recognised in the majority of the EPC contracting states under which two patents with claims directed to the same subject-matter cannot be granted to the same applicant or his successor in title.

Recognising that the national law and practice of the participating EPC contracting states however differ in their approach to the application of the prohibition on double patenting;

Considering the Working Group's aim to assist examiners by providing a common practice comprising some elements which a communication should address when a double patenting objection is raised (see CA/73/22 Rev. 1);

Considering the objective to contribute to a more harmonised understanding of the situations where double patenting can occur and the utility to provide some general definitions and examples for that purpose;

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 19th March 2026 approved the following common practice:

Information to be provided when raising a double patenting objection

Legal basis and identification of concerned applications or patents

Where applicable, the legal basis for the prohibition on double patenting, invoking a specific legal provision or principle or case law as the case may be should be stated.

The patent applications or patents which trigger the prohibition on double patenting should be identified.

The conflicting application(s) may be identified in the search report.

Grounds for the application of the prohibition on double patenting

The situation where double patenting has arisen should be identified, namely whether double patenting arises between the following applications filed by the same applicant and any patents resulting from those applications:

- a parent and divisional application;
- an application and its priority application; or
- two applications filed on the same day.

The claimed subject-matter in each relevant patent application or patent should be compared, and the claimed subject-matter which is the same in each relevant patent application should be identified, with reference to documents cited in search reports where appropriate.

Where applicable, dependent claims may also be considered when examining whether the prohibition on double patenting applies.

The reasons as to why the relevant claimed subject-matter triggers the prohibition on double patenting should be stated.

Steps to be taken by the applicant and possible procedural consequences

A concluding statement should be provided, explaining the steps the applicant is required to take to overcome the prohibition on double patenting.

The applicant should for example be required to perform one of the following: amend one or more of the applications in such a manner that the subject-matter of the claims of the applications is not identical or choose which one of those applications is to proceed to grant.

The consequences for the application if no such action is taken, such as the refusal of the application, should be stated.

Appendix:

1. Definitions

The prohibition of double patenting is generally to be understood as the prohibition of the grant of two patents for the same applicant with claims directed to the same subject-matter.

It covers the situation where the respective applications contain claims explicitly including all of the same features, i.e. where the subject matter is identical. It also covers situations where the claims differ in their wording, but their subject-matter does not differ in substance.

A mere (i.e. partial) overlap does not prejudice the grant of two patents.

It is permissible to allow an applicant to proceed with two applications having the same description which do not claim the same subject-matter.

Subject to national law, a double patenting objection should be raised in the following situations (provided the claims are directed to the same subject-matter): two applications filed on the same day, parent and divisional applications, or an application and its priority application.

2. Examples of overlapping claim and partially overlapping claims

2.1. Overlapping claims

2.1.1. Independent claims only

The independent claim of application A1 read as follows:

An ironing device comprising an aluminium soleplate coated on its ironing face with polytetrafluoroethylene.

The independent claim of application A2 read as follows:

An ironing device comprising an aluminium soleplate coated on its ironing face with teflon.

As teflon and polytetrafluoroethylene are the same material – only with a different name – the subject-matter of claim 1 of both applications A1 and A2 is overlapping and is substantially the same. Therefore, a double patenting objection is to be raised.

2.1.2. Independent and dependent claims

The claims of application A1 read as follows:

Claim 1: a cup comprising feature A + feature B

Claim 2: a cup according to claim 1 further comprising feature C

The claim of application A2 reads as follows:

Claim 1: a cup comprising feature A + feature B + feature C

As the subject-matter of independent claim 1 of application A2 is identical to the subject-matter of claim 2 of application A1, a double patenting objection is to be raised.

2.2. Partially overlapping claims

2.2.1. Independent claims only

The independent claim of application A1 reads as follows:

Receptacle for hot liquids, comprising a circular base, a thin wall with a circular rim at an open end of the receptacle, and a grip area, which is thermally insulated from the wall; wherein the grip area is formed by a surface of a sleeve element of a thermally insulating material that is applied around the outer surface of the wall.

The independent claim of application A2 reads as follows:

Receptacle for hot liquids, comprising a circular base, a thin wall with a circular rim at an open end of the receptacle, and a grip area, which is thermally insulated from the wall; wherein base and wall are made out of plastics material.

The subject-matter of independent claim 1 of application A2 is only partially overlapping with the subject-matter of independent claim 1 of application A1. Consequently, no double patenting objection is to be raised.

2.2.2. Independent and dependent claims

The claims of application A1 read as follows:

Claim 1: a cup comprising feature A

Claim 2: a cup according to claim 1 further comprising feature B

Claim 3: a cup according to claim 2 further comprising feature C

The claim of application A2 reads as follows:

Claim 1: a cup comprising feature A + feature B + feature D

As the subject-matter of independent claim 1 of application A2 is only partially overlapping with the subject-matter of claims 1, 2 and 3 of application A1, no double patenting objection is to be raised

1. Introduction

The Convergence of practice programme is a key part of the EPO's Strategic Plan 2028 (see CA/13/24). It aims to simplify the patent system, making it more accessible and efficient for users by reducing discrepancies in administrative procedures among different jurisdictions, with a particular emphasis on procedural harmonization. It exemplifies the EPO's commitment to fostering a more unified and accessible patent landscape in Europe, benefiting inventors and businesses alike. In 2025, the final pair of topics of the second cycle (see CA/73/22 Rev. 1) was addressed by the Working Groups on “Broad Claims” (WG11) and “Double Patenting” (WG12). The six new topics for the forthcoming third cycle of the programme and their prioritisation have been agreed upon by the Administrative Council (see CA/66/25 Rev.1).

A call for interest in participating in Working Group 12 on “Double Patenting” was launched in December 2024. In response, 27 EPC contracting states and one extension state indicated their willingness to join the discussions. BusinessEurope, epi and WIPO each nominated one representative as an observer in the discussions of the Working Group. The composition of Working Group 12 was as follows: Albania, Bosnia and Herzegovina, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Iceland, Ireland, Italy, Lithuania, Latvia, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Türkiye, United Kingdom, BusinessEurope, epi, WIPO and EPO.

In February 2025, the chairperson of the Working Group (a representative from the EPO), issued a comprehensive questionnaire with a view to identifying the practices concerning double patenting and to analysing the differences and commonalities among them. The replies received from the participants were compiled in a summary document which provided the basis for the subsequent discussions within the Working Group.

The Working Group held four virtual meetings (4 April 2025, 23 May 2025, 4 July 2025, 26 September 2025). Drawing from the discussions in these meetings, the Working Group developed a draft common practice comprising some elements which a communication should address when a double patenting objection is raised.

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 12 March 2025 and 7 October 2025. In order to further broaden the scope of the consultation process, on 20 October 2025 the EPO organised the sixth virtual platform on convergence of practice and informed users and offices of the results achieved within Working Groups 11 and 12 until then.

At its fourth meeting on 26 September 2025, the Working Group agreed upon a draft common practice as regards double patenting (see Annex 1). The Working Group also agreed upon associated explanatory remarks which are reflected below.

2. Explanatory remarks

2.1 Background

Document CA/73/22 Rev.1 as adopted by the Administrative Council of the European Patent Organisation sets out that the objective of Working Group 12 might be to come up with a recommendation with some guiding principles regarding double patenting. It specifies that the focus might be on the procedure to be followed by examiners when confronted with a double patenting case, what happens in cases of a partial overlap and the legal basis to be cited. This might be complemented by some concrete examples to help examiners. This would further increase

transparency, legal certainty and predictability for the benefit of examiners and users alike. Finally, CA/73/22 Rev. 1 states that the objective of the convergence exercise would not be to establish double patenting prohibitions in those contracting states without one; as described above, it would be to harmonise to a certain extent the practice for those offices with a double patenting prohibition in their laws.

2.2 Information to be provided when raising a double patenting objection

Almost two thirds of participating Offices confirmed that their jurisdiction provides for a prohibition on double patenting or that such a prohibition exists in practice. As is reflected in the preamble to the common practice, the Working Group recognises that the national law and practice of the participating EPC contracting states differ in their approach to the application of the prohibition on double patenting. Given this background, the Working Group aims to assist examiners in practice by providing a common practice comprising some elements which a communication should address when a double patenting objection is raised.

This will help to ensure that those jurisdictions who do provide for a prohibition on double patenting approach its application in the same way, to the extent permitted by their respective legal frameworks. Accordingly, the part of the common practice addressing the "information to be provided when raising a double patenting objection" sets out three aspects which should be included in a communication which raises a double patenting objection. These three aspects consist of:

- the legal basis and identification of concerned applications or patents;
- the grounds for the application of the prohibition on double patenting; and
- the steps to be taken by the applicant and the possible procedural consequences if the double patenting objection is not resolved.

Please note that the information to be provided when raising a double patenting objection only serves as a practical illustration. The content of a communication to the applicant in this context ultimately depends on the individual case at hand and on the applicable law.

2.3 Legal basis and identification of concerned applications or patents

The Working Group believes that it is helpful to expressly state the applicable legal basis for the prohibition on double patenting, with reference to the relevant legal provisions. It emerged from the replies to the questionnaire that double patenting could occur in different scenarios. The replies were mixed as to whether this would occur between a parent and a divisional application, an application and its priority application, or two applications filed on the same day. It is nevertheless clear that double patenting would always involve the application under consideration and another application or a granted patent. Offices should therefore identify all relevant applications when raising the prohibition on double patenting.

Any conflict between applications should be drawn to the applicant’s attention as soon as it is identified since it is desirable that the issue is resolved before any of the patents are granted. This is in the interest of legal certainty and enables the applicant to decide how they wish the conflict to be resolved, for example by amending the application to distinguish the inventions from one another or by deciding which application should proceed.

2.4 Grounds for the application of the prohibition on double patenting

It is suggested that the situation where double patenting has arisen should be indicated. This means that the examiner needs to identify whether double patenting has arisen between the following applications filed by the same applicant:

- a parent and divisional application (there may also be cases where several divisional applications claim substantially the same subject-matter, even if that subject-matter differs from the parent application), or
- an application and its priority application; or
- two applications filed on the same day.

The Working Group recommends that Offices closely monitor double patenting cases, especially where a parent and a divisional application are involved.

The examiner should also compare the claimed subject-matter in each relevant patent application or patent, and the claimed subject-matter which is considered the same in each relevant patent application should be identified. Reference should also be made to documents cited in search reports for this subject-matter, where appropriate. Where applicable, and depending on the applicable national law, dependent claims should also be considered when assessing whether the prohibition on double patenting applies.

Finally, the reasons as to why the relevant claimed subject-matter triggers the prohibition on double patenting should be stated, i.e. the reasons why the subject-matter to be compared is considered to be the same, especially in situations where the subject matter is not identical in wording but the same in substance (see also the definitions and examples set out in the annex).

2.5 Steps to be taken by applicant and possible procedural consequences

The practices of the participating Offices are different when it comes to the steps an applicant would be required to take in case the prohibition on double patenting applies. Some Offices only require the applicant to amend one or more of the applications in such a manner that the double patenting prohibition no longer applies. On the other hand, most participating Offices require the applicant to amend one or more of the applications in such a manner that the double patenting prohibition no longer apply or choose which one of those applications is to proceed to grant. The EPO permits the withdrawal of overlapping designations in order to overcome the prohibition on double patenting.

Notwithstanding the variation in practice across jurisdictions, the Working Group is of the opinion that it is important that the steps the applicant is required to take are detailed in a concluding statement, together with information on any procedural consequences for the patent application or applications in question.

The applicant should for example be required to perform one of the following: amend one or more of the applications in such a manner that the subject-matter of the claims of the applications is not identical or choose which one of those applications is to proceed to grant. The consequences for the application if no such action is taken, such as the refusal of the application, should be stated.

2.6 Annex: definitions and examples

Definitions

The definitions set out in the annex have been drafted to explain and illustrate the terms used in the section on the "Information to be provided when raising a double patenting objection". The Working Group considers that they can help to achieve a common understanding for the examiners when preparing a communication raising a double patenting objection with the information set out above. The detailed definitions do of course ultimately depend on the applicable national law.

The first term to be defined for the purpose of a communication raising a double patenting objection is obviously the term "double patenting". It is deliberately framed broadly to encompass all possible different national variations. Double patenting covers the situation where the respective applications contain claims explicitly including all of the same features, i.e. where the subject matter is identical. It is considered important to underline that it also covers situations where the claims differ in their wording but their subject-matter does not differ in substance. On the other hand, a double patenting objection need not be raised in case of a mere (i.e. partial) overlap. A partial overlap does not prejudice the grant of two patents, as is further illustrated in the examples section.

The definitions also set out that it is permissible to allow an applicant to proceed with two applications having the same description which do not claim the same subject-matter to support a consistent practice between Offices. Finally, the definitions set out the situations in which a double patenting objection should be raised, namely two applications filed on the same day, parent and divisional applications, or an application and its priority application. This is again without prejudice to national definitions which are ultimately applicable.

Examples

The examples set out in the annex serve to illustrate possible situations where claims could be considered to overlap or partially overlap. The assessment to be made by the examiner will always depend on the individual case at hand and on the applicable law. In the examples, the relevant applications are all being filed by the same applicant.

The examples are divided into two separate parts: one part covering overlapping claims (i.e. where a double patenting objection is to be raised by the examiner) and another part covering partially overlapping claims (i.e. where a double patenting objection need not be raised by the examiner). In order to reflect the different practices at national level, these two parts both comprise examples with independent claims only and with both independent and dependent claims.