

Part A

Guidelines for Formalities Examination

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Chapter I – Introduction

1. Overview

Part A of the Guidelines deals with:

- (i) the requirements and procedures to be followed in the various aspects of the formalities examination of European patent applications (chapters A-II to VI)
- (ii) formalities matters of a more general nature that can arise during the application procedure or post-grant stage (chapters A-VII and VIII)
- (iii) the presentation and execution of drawings and figurative representations accompanying a European patent application (chapter A-IX)
- (iv) fee matters (chapter A-X)
- (v) inspection of files, communication of information contained in files, consultation of the European Patent Register and issue of certified copies (chapter A-XI).

2. Responsibility for formalities examination

The matters covered in this part are intended for EPO formalities staff at all sites (The Hague, Munich and Berlin) and in particular for the Receiving Section, which is specifically responsible under the EPC for ensuring that the formal requirements for European patent applications are met. Once an application is transferred to the examining division, the latter accepts responsibility for the formalities of the application, although it should be understood that the term "examining division" is intended to include the formalities officer to whom this work is entrusted (see the decisions of the President of the EPO dated 12 December 2013, OJ EPO 2014, A6, 23 November 2015, OJ EPO 2015, A104, and 14 June 2020, OJ EPO 2020, A80).

Rule 10
Rule 11(3)

3. Purpose of Part A

This part of the Guidelines is intended to provide formalities officers with the knowledge and background to help them carry out their duties efficiently and uniformly. It does not override the EPC (see, in particular, paragraph 3 of the General Part).

4. Other parts relating to formalities

Formalities officers should not concern themselves with only Part A of the Guidelines. They will need to refer frequently to the other parts and in particular Part E, where appropriate.

Chapter II – Filing of applications and examination on filing

1. Where and how applications may be filed

European patent applications must be filed in writing. They may be filed by means of electronic communication (see A-II, 1.1) or by delivery by hand or ~~, by postal services (see A-II, 1.1) or by means of electronic communication (see A-II, 1.2).~~

Rule 1
Rule 2(1)

~~1.1—Filing of applications by delivery by hand or by postal services~~

~~European patent applications may be filed by delivery by hand or by postal services at the EPO's filing offices in Munich, The Hague or Berlin. The EPO's sub-office in Vienna is not a filing office, nor is the Brussels Bureau.~~

Art. 75(1)
Rule 35(1)

~~The opening hours of the EPO's filing offices are published in the EPO notice dated 14 February 2018, OJ EPO 2018, A18. Dates on which at least one of the filing offices is not open to receive documents are announced at regular intervals in the EPO Official Journal (see also E-VIII, 1.4). The filing offices may remain open during public holidays observed in the contracting states in which they are located. Since mail is not delivered on these days (see also E-VIII, 1.4), applications may be filed by delivery by hand or using other permitted means of filing (see A-II, 1.2; A-II, 1.3).~~

~~The EPO filing offices in Berlin and Munich (PschorrHöfe building only, see the EPO President's decision dated 3 January 2017, OJ EPO 2017, A11) are equipped with automated mailboxes, which may be used at any time. The automated mailbox facility is currently not available at the filing offices at Munich's Isar building and The Hague. Outside office hours documents may be handed in to the porter.~~

~~European patent applications (with the exception of divisional applications, see A-IV, 1.3.1, and applications according to Art. 61(1)(b), see A-IV, 2.5) may also be filed at the central industrial property office or other competent authority of a contracting state if permitted by that state's national law (see A-II, 1.6).~~

1.1—1.2 Filing of applications by means of electronic communication

1.2.1—Filing of applications by fax

~~Applications may also be filed by fax with the EPO's filing offices or with the competent national authorities of contracting states that permit this, namely — at present — Austria (AT), Bulgaria (BG), Czech Republic (CZ), Estonia (EE), Finland (FI), France (FR), Germany (DE), Iceland (IS), Ireland (IE), Luxembourg (LU), Monaco (MC), Norway (NO), Portugal (PT), Slovenia (SI), Spain (ES), Sweden (SE) and United Kingdom (GB). For further details, see the latest version of the booklet "National law relating to the EPC".~~

~~If a faxed application is illegible or incomplete, it is to be treated as not having been received to the extent that it is illegible or that the attempted~~

~~transmission failed, and the sender must be notified as soon as possible (see the EPO President's decision dated 20 February 2019, OJ EPO 2019, A18).~~

~~If a European patent application is filed by fax, a written confirmation is required only where the documents are of inferior quality. In this case, the EPO will invite the applicant to supply such documents within two months (Rule 2(1)). If the applicant fails to comply with this invitation in due time, the European patent application will be refused. To prevent duplication of files, applicants are asked to indicate on the paper version of the application documents the application number or fax date and the name of the authority with which the documents were filed and to make it clear that these documents represent "confirmation of an application filed by fax".~~

~~1.1.1~~ **1.2.2 Filing of applications in electronic form**

European patent applications and international (PCT) applications may ~~also~~ be filed electronically with the EPO ~~in electronically form~~ (see the decision of the President of the EPO ~~President's decision~~ dated 14 May 2021, OJ EPO 2021, xx December³ ~~–May 2023, OJ –EPO 2023, A48xx~~) using either

- (i) EPO Online Filing (OLF), by packaging and submitting the documents using the software provided by the EPO (see the decision of the President of the EPO dated 8 July 2022, OJ EPO 2022, A70 24 ~~–November 2023 concerning the version of the EPO Online Filing software to the used for the electronic filing of documents, (OJ –EPO 2023, A96)~~) unless the use of other software is permitted. Filings using OLF may be made online or on electronic data carriers accepted by the EPO. At present, they are CD-R discs conforming to the ISO 9660 standard and DVD-R or DVD+R discs (see the decision of the President of the EPO dated 14 May 2021, OJ EPO 2021, A42³ ~~–May 2023, OJ –EPO 2023, A48~~)
- (ii) Online Filing 2.0 ~~or~~
- (iii) the EPO web-form filing service: oOr
- (iv) the EPO Contingency Upload Service.

Other documents may also be filed electronically in proceedings under the EPC (see the decision of the President of the EPO dated 14 May 2021, OJ EPO 2021, xx December³ ~~–May 2023, OJ –EPO 2023, A48~~).

Certain procedural acts may be filed electronically using the MyEPO Portfolio service (see the decision of the President of the EPO dated 11 May 2022, OJ EPO 2022, A51⁹ ~~–October 2023, OJ –EPO 2023, A89, the EPO notice dated 9 –October 2023, OJ –EPO 2023, A90, and the EPO notice dated 11 May –2022, –OJ EPO 2022, –A52³ ~~May 2023, OJ EPO 2023, A50~~). Currently, only those documents specified in the above decision or in an announcement on the EPO website or in the EPO Official Journal may be filed using this service.~~

European patent applications may also be filed ~~in electronically form~~ with the competent national authorities of those contracting states that permit this.

1.1.2 ~~1.2.1~~ Filing of applications by fax

Applications may also be filed by fax with the EPO's filing offices in Munich, The ~~Hague~~ or Berlin (see A-~~II~~, 1.2) or with the competent national authorities of contracting states that permit this, namely – at present – Austria (AT), Bulgaria (BG), Czech Republic (CZ), Estonia (EE), Finland (FI), France (FR), Germany (DE), Iceland (IS), Ireland (IE), Luxembourg (LU), Monaco (MC), Norway (NO), Portugal (PT), Slovenia (SI), ~~Spain (ES)~~, Sweden (SE) and United Kingdom (GB). For further details, see the latest version of the booklet "National law relating to the EPC" available on the EPO website (epo.org).

If a faxed application is illegible or incomplete, it is to be treated as not having been received to the extent that it is illegible or that the attempted transmission failed, and the sender must be notified as soon as possible (see the decision of the President of the EPO dated 20 February 2019, OJ EPO 2019, A18).

If a European patent application is filed by fax, a written confirmation is required only where the documents are of inferior quality. In this case, the EPO will invite the applicant to supply such documents within two months (Rule 2(1)). If the applicant fails to comply with this invitation in due time, the European patent application will be refused. To prevent duplication of files, applicants are asked to indicate on the paper version of the application documents the application number or fax date and the name of the authority with which the documents were filed and to make it clear that these documents represent "confirmation of an application filed by fax".

1.2 ~~1.1~~ Filing of applications by delivery by hand or by postal services

European patent applications may be filed by delivery by hand or by postal services at the EPO's filing offices in Munich, The Hague or Berlin. The EPO's sub-office in Vienna is not a filing office, nor is the Brussels Bureau.

Art. 75(1)
Rule 35(1)

The opening hours of the EPO's filing offices are published in the EPO notice dated 14 February 2018, OJ EPO 2018, A18. Dates on which at least one of the filing offices is not open to receive documents are announced at regular intervals in the EPO Official Journal (see also E-VIII, 1.4). The filing offices may remain open during public holidays observed in the contracting states in which they are located. Since mail is not delivered on these days (see also E-VIII, 1.4), applications may be filed by delivery by hand or using other permitted means of filing (see A-~~II~~, 1.1; A-II, 1.3).

The EPO filing offices in Berlin and Munich's (PschorrHöfe building (~~only~~, see the decision of the President of the EPO dated 3 January 2017, OJ EPO 2017, A11) are equipped with automated mailboxes, which may be used at any time. The automated mailbox facility is currently not available at the filing offices ~~at~~ in Munich's Isar building and The Hague. Outside office hours documents may be handed in to the porter.

European patent applications (with the exception of divisional applications, see A-IV, 1.3.1, and applications according to Art. 61(1)(b), see A-IV, 2.5) may also be filed at the central industrial property office or other competent authority of a contracting state if permitted by that state's national law (see A-II, 1.6). First filings may need to be filed at national offices (see A-II, 3.2 and the booklet "National law relating to the EPC" - available on epo.org).

1.3 Filing of applications by other means

The filing of European patent applications by other means such as **email** is at present not allowed (see also the EPO notice dated 12 September 2000, OJ EPO 2000, 458).

1.4 Subsequent filing of documents

For the subsequent filing of documents, see A-VIII, 2.5.

1.5 Debit orders for deposit accounts held with the EPO

For European patent applications, debit orders for the fees due must be filed in an accepted electronic format (see A-X, 4.2.3), irrespective of how the application itself is filed. If an application is filed with a competent national authority (Art. 75(1)(b)) on paper, a paper debit order on mandatory Form 1020 for the fees intended to be paid is accepted by way of exception if it is included with that application on filing (see the Arrangements for deposit accounts (ADA), Supplementary publication 3, OJ EPO 2022, Supplementary publication 3, OJ EPO 2023, 10-19, and the decision of the President of the EPO dated 13 June 2023, OJ EPO 2023, A58). Paper Form 1020 is not accepted if filed direct with the EPO.

1.6 Forwarding of applications

The central industrial property office of a contracting state is obliged to forward applications filed (see A-II, 3.2) with it or with other competent authorities in that state to the EPO in the shortest time compatible with its national law on the secrecy of inventions (for debit order enclosures, see A-II, 1.5).

A time limit of six weeks after filing is specified for the onward transmission to the EPO of applications not classified as secret. This is extended to four months or, where priority has been claimed, to 14 months after the date of priority, for applications requiring further examination as to their classification as secret. An application received outside the specified time limits, either six weeks or four months, must be processed, provided it is received in Munich, The Hague or Berlin before the end of the 14th month after filing or, where appropriate, after the date of priority. Applications received after 14 months are deemed withdrawn. Re-establishment of rights and further processing in respect of the period under Rule 37(2) are not possible, since the loss of rights does not result from the applicant's failure to observe a time limit (see J 3/80). However, the applicant may file a request for conversion under Art. 135(1)(a) (see A-IV, 6).

If the time limit referred to in Rule 37(2) expires on a day on which the delivery or transmission of mail is interrupted or subsequently dislocated

Point 7.1.2 ADA

Point 12.1 ADA

Art. 77(1)

Rule 37(1)

Art. 77(3)

Rule 37(2)

Art. 135(1)(a)

Rule 134(2)

within the meaning of Rule 134(2), it will extend to the first day following the end of the period of interruption or dislocation.

1.7 Application numbering systems

1.7.1 Applications filed before 1 January 2002

For applications filed **before** 1 January 2002, the following numbering system applies:

The application number consists of nine digits. The first two digits (from left to right) indicate the filing year. The last (ninth) digit is a check digit. The third digit or third and fourth digits indicate(s) the place of filing.

The remaining digits are used for consecutively numbering the applications in the order in which they arrive at the place of filing.

International applications filed under the Patent Cooperation Treaty (PCT) and designating "EP" (Euro-PCT applications) receive the digit "7", "8" or "9" as the third digit.

1.7.2 Applications filed on or after 1 January 2002

For applications filed **on or after** 1 January 2002, the following numbering system applies:

The application number consists of nine digits. The first two digits (from left to right) indicate the filing year. The last digit is a check digit. The remaining six digits in between are used for consecutively numbering the applications in the order in which they arrive at the place of filing, starting from the lowest number within a specific range of six-digit numbers. The specific range reflects the place of filing. Where applicable, the range is subdivided into two ranges to distinguish between online and paper filings.

For international applications designating "EP" (Euro-PCT applications), the dedicated range for the six-digit number within the application number uses "7", "8" or "9" as the third digit and does not reflect the place or method of filing.

A list of the number ranges introduced in 2002, along with, where appropriate, the corresponding places of filing, is published in OJ EPO 2001, 465.

2. Persons entitled to file an application

A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it. *Art. 58*

For the purposes of proceedings before the EPO, the applicant will be deemed to be entitled to exercise the right to the European patent. *Art. 60(3)*

The application may be in the name of one person or several persons may be named as joint applicants. The application may also be filed by two or more applicants designating different contracting states. It may arise that a first applicant designates one group of contracting states and a second *Art. 59*
Art. 118

designates a different group of contracting states, while both applicants jointly designate a third group of contracting states. If the applicants for a patent are not the same for different contracting states they will be regarded as joint applicants in proceedings before the EPO (see A-III, 4.2.1 and 11.1 on when and under what circumstances the matter dealt with in this paragraph must be considered during formalities examination).

Art. 61(1)

If a national court finds that a person other than the applicant is entitled to the grant of a European patent that person has the option of prosecuting the application as their own application in place of the applicant (see A-IV, 2).

3. Procedure on filing

3.1 Receipt; confirmation

The receipt of European patent applications filed ~~online~~ via EPO Online Filing, Online Filing 2.0 or the EPO web-form filing service is acknowledged electronically ~~during the following~~ submission ~~session~~. Where it becomes apparent that the acknowledgment's transmission failed, the authority with which the application was filed promptly transmits the acknowledgment by other means where possible on the basis of the information supplied (see Art. 13 of the decision of the President of the EPO dated ~~14 May 2021, OJ EPO 2021, 3 May~~ 3 May 2023, OJ -EPO 2023, A48xx).

Rule 35(2)

The receipt of European patent applications filed using the EPO Contingency Upload Service is confirmed electronically by the EPO in the service itself. An acknowledgment of receipt indicating the application number assigned is sent separately in accordance with the provisions governing the filing of documents on paper (see following paragraph).

The acknowledgement of receipt of European patent applications filed on paper (usually the last page of EPO Form 1001) is issued by the authority with which the application is filed – either the EPO (Munich, The Hague or Berlin) or the competent national authority. The receipt must be issued without delay and include the application number and the date of receipt.

3.2 Filing with a competent national authority

If the application is filed with a competent national authority, that authority must inform the EPO without delay of receipt of the documents making up the application and indicate the nature and date of receipt of the documents, the application number and any priority date claimed. It is recommended that the authority should also indicate the applicant's or representative's reference number, where provided. In practice, the EPO receives the above information when the actual application is forwarded to it unless national security checks by the national authority delay the forwarding of the application, in which case a separate notice is sent by that authority to the EPO.

Rule 35(3)

When the EPO receives an application forwarded by the national authority of a contracting state, it notifies the applicant, indicating the date of receipt at the EPO. Once this communication has been received, all further documents relating to the application must be sent direct to the EPO.

Rule 35(4)

Where an application is not received by the EPO from the national authority of a contracting state before the end of the 14th month after filing or, if priority has been claimed, after the date of priority and is consequently deemed withdrawn (see A-II, 1.6), the applicant must be notified accordingly; all fees must be refunded, including any fees paid in advance of their due date.

Art. 77(3)

Rule 37(2)

Rule 112(1)

4. Examination on filing

4.1 Minimum requirements for according a date of filing

Art. 90(1)
Rule 10(1)

The EPO examines applications to determine whether they meet the minimum requirements for according a date of filing. This is done by the Receiving Section. These requirements are satisfied where the documents filed contain:

Rule 40(1)(a)

(a) an indication that a European patent is sought

Rule 40(1)(b)

(b) information identifying the applicant or allowing the applicant to be contacted

Rule 40(1)(c)

(c) a description or reference to a single previously filed application.

It is not necessary for the applicant to provide any claims to obtain a filing date. If the application is filed without claims but satisfies all requirements for obtaining a filing date, the applicant will be requested to provide at least one claim later according to Rules 57(c) and 58 (see A-III, 15).

Where the description is filed by reference to a previously filed application (see A-II, 4.1.3.1), the reference must contain the following information for the application to qualify for a filing date according to Rule 40(2):

(i) the filing date of the previously filed application

(ii) its file number

(iii) the office where it was filed

(iv) an indication that this reference replaces the description and any drawings.

Rule 1

To be accorded a filing date, these documents do not have to meet any particular requirements as to form or presentation. They must, however, be sufficiently legible to enable the information to be discerned.

4.1.1 Indication that a European patent is sought

Applicants must use the prescribed request for grant form (EPO Form 1001), which is available in ~~the EPO Online Filing and Online Filing 2.0's online filing tools~~ (see ~~A-II, 1.1.1~~~~A-II, 1.2.2~~) or can be downloaded free of charge from the EPO website (*epo.org*), to meet the requirement referred to in A-II, 4.1(a) to provide "the indication that a patent is sought" (see also A-III, 4).

4.1.2 Information concerning the applicant

For the purposes of establishing a filing date, information must be supplied which:

(i) identifies the applicant or

(ii) allows the applicant to be contacted.

If there are multiple applicants, the above information has to be supplied for only one of them. Any kind of information that allows the applicant to be contacted will be considered to fulfil requirement (ii), for example:

- (a) the name and address of the applicant's representative
- (b) a PO box number
- (c) a phone number.

If the information supplied is sufficient to establish a filing date but not for the EPO to establish whether or not the applicant requires a representative according to Art. 133(2), the procedure outlined in A-III, 16 will be followed.

In deciding whether the applicant information supplied satisfies the requirements for establishing a filing date, the EPO will take into account all data contained in the documents filed (see J 25/86). Objection should not be raised at this stage with regard to the status of the applicant or the entitlement to apply, or where, in the case of joint applicants, there is doubt as to the contracting states designated by the individual applicants.

4.1.3 Description

The contents of the description do not require close scrutiny – it is sufficient to identify a document (or documents) that appear(s) to include a description. If, instead of filing a description, the applicant files a reference to a previously filed application, see A-II, 4.1.3.1.

4.1.3.1 Reference to a previously filed application

Instead of application documents, the applicant can file a reference to a previously filed application under Rule 40(1)(c). The previously filed application referenced does not need to be claimed as priority.

Details required on the filing date

Rule 40(2)

Under Rule 40(2), to qualify for a filing date, the applicant must indicate the following details on the filing date:

- (i) the filing date of the previously filed application
- (ii) its file number
- (iii) the office where it was filed
- (iv) an indication that this reference replaces the description and any drawings.

The previously filed application referenced may also be an application for a utility model.

*Rule 40(3)**Copy of the previously filed application**Rule 53(2)*

The applicant must supply a copy of the previously filed application certified as correct by the authority with which it was filed within two months of the filing date (Rule 40(3)). However, according to Rule 40(3), last sentence, this requirement is dispensed with where the previously filed application is already available to the EPO under the conditions specified by the President. According to the EPO notice dated 14 September 2009, OJ EPO 2009, 486, a certified copy does not need to be filed where the previously filed application is a Euro-direct application or an international one filed with the EPO as receiving Office under the PCT. In all other cases, a certified copy of the previously filed application referenced must be filed within the time limit under Rule 40(3).

Where the previously filed application referenced is the claimed priority application, only one certified copy needs to be filed to satisfy the requirements relating to both the filing date (Rule 40(3)) and the priority claim (Rule 53(1), see A-III, 6.7).

For divisional applications filed by reference, see A-IV, 1.3.1.

*Rule 40(3)**Translation of the previously filed application*

If the previously filed application is not in an official EPO language, the applicant must also file a translation into one such language within two months of the filing date (Rule 40(3)). If the translation of the previously filed application is already available to the EPO, a copy of it will be included in the file free of charge and the applicant will not need to file it (Rule 40(3)).

Note that where the previously filed application is in an official language of an EPC contracting state according to Art. 14(4), the application may qualify for a reduction of the filing fee, provided that the applicant is entitled to a reduction according to Rule 6(3) in conjunction with Rule 6(4) to (7) (see A-X, 9.2.1 and 9.2.2). The reduction applies even in cases where the description is filed by reference to a previously filed application according to Rule 40(1)(c), where the previously filed application is in a language specified in Art. 14(4) but the claims are filed after the filing date in accordance with Rule 57(c) and Rule 58 and in an official EPO language. This is because the essential element for establishing a filing date (the provision of a description, see Rule 40(1)(c)) has been provided in a language giving rise to the entitlement to the reduction (see G 6/91, *mutatis mutandis*).

The claims

Applicants can also indicate that the reference to the previously filed application should also replace the claims (Rule 57(c)). This must be done on the filing date, preferably by selecting the appropriate box on the request for grant (EPO Form 1001). In that case, the previously filed application's claims will form the basis for the search and, as they satisfy the requirement of Rule 57(c), the applicant will not be invited to file claims later.

If applicants do not refer to the previously filed application's claims but only to the description and any drawings, they may file a set of claims at the same time as the reference (i.e. on the filing date). If they do not do so, the Receiving Section will invite them under Rule 58 to file claims (see A-III, 15).

4.1.4 Deficiencies

If the EPO (Receiving Section) notes either of the following deficiencies:

- Rule 40(1)(a) – no indication that a European patent is sought or
- Rule 40(1)(c) – no description or reference to a previously filed application,

*Art. 90(1) and
(2)
Rule 55
Rule 112(1)*

either of which prevents the application being accorded a filing date, it communicates this to the applicants and invites them to remedy the deficiency within a non-extendable period of two months from notification of a communication under Rule 55. If the requirements of Rule 40(1)(a) or Rule 40(1)(c), as applicable, are not met at the end of this period, the application will not be dealt with as a European patent application. The EPO will notify the applicant accordingly under Rule 112(1). In reply, the applicant may file a request for a decision under Rule 112(2) (see E-VIII, 1.9.3) or request re-establishment of rights under Art. 122 and Rule 136 (see E-VIII, 3).

If none of the available means of redress is filed on time, any fees paid are refunded. If the applicant wishes to pursue a European patent application, all documents relating to the purported application will have to be re-filed. Any such re-filed application will be accorded as the filing date the date on which all the requirements of Rule 40 are fulfilled.

Deficiency under Rule 40(1)(b)

If the information on the applicants is missing or does not enable the EPO to contact them (Rule 40(1)(b)), a communication concerning the deficiency cannot be sent. The European patent application will not come into existence unless the applicants correct this deficiency on their own initiative within two months of the date of receipt of the original documents. In this case, the filing date is the date on which all the requirements of Rule 40 are met.

Filing by reference to a previously filed application

Where the application is filed by reference to a previously filed application and the EPO (Receiving Section) notes that any of the following information is missing:

- (i) the filing date of the previously filed application
- (ii) its file number
- (iii) the office where it was filed

- (iv) an indication that this reference replaces the description and any drawings

then it proceeds as above and invites the applicant to remedy the deficiency within a two-month time limit (Rule 55). If the applicant does not remedy the deficiencies in due time, the application is not treated as a European patent application.

If the applicant does not provide the certified copy of the previously filed application within two months of filing the application (Rule 40(3)) and it is not already available to the EPO (see A-II, 4.1.3.1), then a communication according to Rule 55 will be sent to the applicant requesting that the certified copy be filed within a non-extendable period of two months. If the applicant does not provide the certified copy in due time, the application is not treated as a European patent application. Where a translation of the application is required but is not provided within the above time limit, the procedure given in A-III, 14 is followed. The filing date is unaffected by a missing translation.

4.1.5 Date of filing

The filing date accorded to the application is the date the application meets the requirements of Rule 40 and is either:

- (i) the date of receipt at the EPO or competent national authority or
- (ii) the date, not later than the two-month period referred to in Rule 55, on which the applicant rectifies any deficiencies. The applicant is informed of the filing date accorded to the application in this case.

Case (ii) is subject to one exception. Where the application is filed by reference to a previously filed application and the applicants fail to file the certified copy of the previously filed application within two months of the filing date as required by Rule 40(3), an invitation is sent to them to file it within two months of a communication according to Rule 55. If they file the certified copy within this two-month period, the application maintains its original filing date, provided that all other requirements for acquiring a filing date have been met.

The filing date may also change in cases where the applicant inserts missing parts of the description or missing drawings under Rule 56 (see A-II, 5) or corrects erroneously filed parts under Rule 56a (see A-II, 6) after the filing date.

5. Late filing of missing drawings or missing parts of the description

5.1 Late filing of missing drawings or missing parts of the description – on invitation

The application is examined on filing to check that it is entitled to a filing date. If, during this check, the EPO notes that parts of the description or drawings appear to be missing, it will invite the applicant to file the missing parts within a time limit of two months of a communication under Rules 56(1) and Rule 56a(1) (see A-II, 6). During this time limit, the applicant may proceed under Rule 56 or Rule 56a. If the applicant does not reply to this

Art. 90(1)
 Rule 56(1)
 Rule 56(4)(a)
 Rule 56a(1)

communication in time, then all references to the missing parts are deemed deleted. It should be noted that the applicant may not invoke the omission of the communication under Rules 56(1) and Rule 56a(1).

5.2 Late filing of missing drawings or missing parts of the description – without invitation

Applicants may also file missing parts of the description or missing drawings on their own initiative (without being invited to do so by the EPO) within two months of the original filing date. If the applicant does not do so within this period, all references to the missing parts are deemed deleted. If the applicant is invited by the EPO to file the missing parts, the period under Rule 56(1) takes precedence (see A-II, 5.1).

Rule 56(2)

Rule 56(4)(a)

If, within two months of the original filing date, applicants notice that parts of the description or drawings are missing in the application as originally filed, they should, on their own initiative, file the missing parts or missing drawings as soon as possible under Rule 56(2) because, in the absence of a communication from the EPO sent under Rules 56(1) and 56a(1), the possibility for applicants to file any missing or correct parts ends two months after the original filing date.

Further processing is ruled out for the time limits referred to in Rule 56 (Rule 135(2)).

Rule 135(2)

5.3 The filing date changes

If the applicant files missing parts of the description or missing drawings in accordance with the procedure specified in A-II, 5.1 or 5.2, then the filing date changes to the date on which the missing parts are received at the EPO. The applicant is informed of the new filing date. This is subject to the exception explained in A-II, 5.4.

Rule 56(2)

A "drawing" means a single numbered figure. Only whole figures are accepted according to Rule 56, even where only a part of the original figure was missing.

5.4 Missing parts of the description or missing drawings based on the priority application, no change in filing date

If the applicant files missing parts of the description or missing drawings after the filing date in accordance with the procedure specified in A-II, 5.1 or 5.2, the filing date does not change, provided that all of the following criteria are satisfied:

Rule 56(3)

- (i) the missing parts are filed within the applicable time limit*
- (ii) the application claims priority on the date on which the requirements laid down in Rule 40(1) were fulfilled (see A-II, 4.1 and A-II, 5.4.1)
- (iii) the applicant requests that the late-filed missing parts be based on the claimed priority in order to avoid a change in the filing date (see A-II, 5.4.1), and does so within the applicable time limit*

- (iv) the late-filed missing parts of the description or missing drawings are completely contained in the priority application (see A-II, 5.4.2)
- Rule 56(3)(a)* (v) the applicant files a copy of the priority application within the applicable time limit* unless such a copy is already available to the EPO under Rule 53(2) (see A-II, 5.4.3)
- Rule 56(3)(b)* (vi) where the priority application is not in an official EPO language, the applicant files a translation into one such language within the applicable time limit* unless such a translation is already available to the EPO under Rule 53(3) (see A-II, 5.4.4)
- Rule 56(3)(c)* (vii) the applicant indicates where in the priority application and, if applicable, where in its translation, the late-filed missing parts of the description or missing drawings are completely contained, and does so within the applicable time limit* (see A-II, 5.4.2).

*For the applicable time limit, see whichever of A-II, 5.1 or 5.2 applies.

Where the conditions for including the missing parts of the description or missing drawings under Rule 56(3) are fulfilled, the filing date remains unchanged. The EPO will inform the applicant of this in accordance with Rule 56(3).

Where criterion (i) is not satisfied, the late filing of missing parts is deemed not to have occurred and all references to those parts in the application are deemed deleted under Rule 56(4)(a) (see A-II, 5.1 and 5.2). In this case the filing date does not change but nor are the late-filed missing parts introduced into the application.

Rule 56(2) If the request according to Rule 56(3) does not comply with one or more of the above requirements (ii)-(iv), then according to Rule 56(2) the filing date changes to the date on which the EPO receives the late-filed missing parts of the application. The EPO will inform the applicant of this in accordance with Rule 56(2).

Rule 56(5) If the request according to Rule 56(3) does not comply with one or more of the above requirements (v)-(vii), then according to Rule 56(5) the filing date changes to the date on which the EPO receives the late-filed missing parts of the application. The EPO will inform the applicant of this in accordance with Rule 56(5).

5.4.1 Late-filed missing parts when priority is claimed

In the case of a request under Rule 56(3), the EPO checks that the requirements for the priority claim are met (see A-III, 6).

Rule 40(1) Where the applicant files a request under Rule 56(3) (see A-II, 5.4), the priority claim in question must have been in existence no later than on the

date on which the requirements laid down in Rule 40(1) were first fulfilled (see A-II, 4.1).

5.4.2 The missing parts of the description or missing drawings are completely contained in the priority application

In cases where no translation of the priority application is required and both the European patent application and the priority application are in the same official EPO language, the requirement that the late-filed parts of the application be "completely contained" in the priority application is met only if the parts of the priority application identified by the applicant according to Rule 56(3)(c) contain the same drawings with the same annotations or, for late-filed parts of the description, contain the same text.

If a translation of the priority application is required, then the requirement that the late-filed parts of the application be "completely contained" in the priority application is met only if the parts of the translation identified by the applicant according to Rule 56(3)(c) contain the same drawings with the same annotations or, for late-filed parts of the description, contain the same text.

In addition to the requirement that the missing drawings or the missing parts of the description be identical to the corresponding drawings or parts of the priority application, they must also be inserted in the description in a manner that does not result in additional technical content. Drawings of low visual quality are not considered missing within the meaning of Rule 56 and can, therefore, not be remedied under this provision (see J 12/14). However, it may be possible to remedy drawings of low visual quality under Rule 56a (see A-II, 6).

Rule 56a

Final assessment of the "completely contained" requirement falls under the responsibility of the examining division (see C-III, 1).

5.4.3 Copy of the priority application

The copy of the priority application that is required for the request according to Rule 56(3) does not need to be certified. However, if the applicants do provide a certified copy for their request according to Rule 56(3), they will not need to provide it again for their priority claim according to Rule 53(1).

Where a copy of the priority document is already available to the EPO under Rule 53(2) in accordance with the conditions laid down by the President, the applicant does not need to file it. See also A-III, 6.7.

5.4.4 Translation of the priority application

Where a translation of the priority application is already available to the EPO under Rule 53(2), the applicant does not need to file it.

In cases where the priority application is in an official EPO language and the European patent application is in a different official EPO language, the applicant is not required to file a translation of the priority application according to Rule 56(3)(b). However, since the language of the priority application differs from that of the European patent application, the requirement that the newly introduced drawings (if they contain annotations)

or parts of the description be "completely contained" in the priority application (Rule 56(3)) is not met.

This can be overcome by the applicant's supplying within the applicable time limit (see whichever of A-II, 5.1 or 5.2 applies), either:

- (i) a translation from the official language of the priority application into the official language of the European patent application of those parts of the priority application identified by the applicant as completely containing the missing parts of the description or missing drawings (Rule 56(3)(c)) or
- (ii) a declaration indicating that the late-filed missing parts of the description or missing drawings are an exact translation of the parts of the priority application identified by the applicant according to Rule 56(3)(c).

The entire priority application does not need to be translated, since this translation is required to satisfy the "completely contained" requirement of Rule 56(3), not the translation requirement of Rule 56(3)(b).

5.5 Withdrawal of late-filed missing drawings or missing parts of the description

Rule 56(2) and (4)

Where applicants file missing parts of the description or missing drawings and make no request to base these late-filed parts on a claimed priority, they are informed of the new filing date in a communication from the EPO (see A-II, 5.3). Within one month of this communication, the applicants may withdraw the late-filed parts of the application and if they do so, the redating of the application is deemed not to have taken place and all references to the missing parts of the description or missing drawings are deemed deleted. The EPO will inform the applicants of this.

Rule 56(2), (4) and (5)

Where applicants file missing parts of the description or missing drawings and request that these late-filed parts be based on a claimed priority, but the requirements of Rule 56(3) are not met within the applicable time limit, the filing date changes to the date on which the late-filed parts of the application are received at the EPO (Rule 56(2) or (5)). The applicants are informed of the new filing date in a communication from the EPO. Within one month of this communication, they may withdraw the late-filed parts of the application (Rule 56(6)); if they do so, the redating of the application is deemed not to have taken place, any filing of missing parts of the description or missing drawings is deemed not to have occurred and all references to the missing parts of the description or missing drawings are deemed deleted (Rule 56(4)). The EPO will inform the applicants of this.

Where a reference to a missing figure, e.g. "see Fig. 4", is deemed deleted, then reference signs cited in it are also deemed deleted, although any technical information in the reference that is still technically meaningful without the reference may be retained: e.g. "see Fig. 4, a distillation column (1), provided with a condenser (2)" becomes "a distillation column provided with a condenser". The publication of the application (see A-VI, 1.3)

in such a case will contain the application documents as originally filed, without the references deleted.

If the late-filed missing parts of the application do not satisfy the physical requirements of Rule 49(2) in conjunction with the decision of the President of the EPO dated 25 November 2022 (OJ EPO 2022, A113), the EPO will not invite the applicant to correct this deficiency according to Rule 58 until the one-month period for withdrawing them has expired without the applicant having withdrawn them (see A-III, 3.2.2).

5.6 Additional fee for pages

For the calculation of the additional fee for pages in excess of 35 ("page fee"), see A-III, 13.2.

6. Correction of erroneously filed application documents or parts

6.1 Correction of erroneously filed application documents or parts – on invitation

The application is examined on filing to check that it is entitled to a filing date. If, during this check, the EPO establishes that the description, claims or drawings (or parts of them) appear to have been erroneously filed, it will invite the applicant to file the correct documents within a time limit of two months of a communication under Rules 56(1) and 56a(1) (see A-II, 5). During this time limit, the applicant may proceed under Rule 56a or Rule 56. If the applicant does not reply to this invitation in time, any filing of the correct application documents or parts will be deemed not to have occurred and the erroneously filed documents or parts will remain in the application as filed (Rule 56a(5)). It should be noted that the applicant may not invoke the omission of the communication under Rules 56(1) and 56a(1) (see the EPO notice dated 23 June 2022, OJ EPO 2022, A71).

Rule 56a(1)
Rule 56a(5)

6.2 Correction of erroneously filed application documents or parts – without invitation

Applicants may also file correct (parts of) the description, claims or drawings on their own initiative (without being invited to do so by the EPO) within two months of the original filing date. If the applicant is invited by the EPO to file correct application documents or parts, the period under Rule 56a(1) takes precedence (see A-II, 6.1).

Rule 56a(3)

If, within two months of the original filing date, applicants notice that they filed erroneous application documents or parts, they should, on their own initiative, file the correct ones as soon as possible under Rule 56a(3) because, in the absence of an EPO communication sent under Rules 56 and 56a(1), the possibility for applicants to file any missing or correct parts ends two months after the original filing date.

Whether documents were erroneously filed depends only on the applicants' statement as to their intention. No further evidence is required by the EPO.

Further processing is ruled out for the time limits under Rule 56a(1) and (3) to (7) (Rule 135(2)).

Rule 135(2)

6.3 The filing date changes

If, after the filing date, the applicant corrects the application documents (or parts) in accordance with the procedures explained in A-II, 6.1 or A-II, 6.2, then the erroneously filed documents will be deemed not to have been filed and the correct documents will be added to the application. The filing date changes to the date on which the EPO receives the correct parts. The applicant is informed of the new filing date under Rule 56a(3). This is subject to the exception explained in A-II, 6.4.

Erroneously filed application documents remain in the file, even if they are considered not part of the application as filed. As such, following publication of the application, the erroneous application documents or parts are open to file inspection (see A-XI, 2.1 and A-XI, 2.3).

6.4 Correct application documents based on priority application, no change in the filing date

Rule 56a(4)

If, after the filing date, the applicant corrects the application documents (or parts) in accordance with the procedures explained in A-II, 6.1 or A-II, 6.2, then the filing date does not change, provided that all of the following criteria are satisfied:

- (i) the correct application documents (or parts) are filed within the applicable time limit*
- (ii) the application claims priority on the date on which the requirements of Rule 40(1) were fulfilled (see A-II, 4.1 and A-II, 6.4.1)
- (iii) the applicant requests that the correct application documents be based on the claimed priority (see A-II, 6.4.1) to avoid a change in the filing date, and does so within the applicable time limit*
- (iv) the correct application documents are completely contained in the priority application (see A-II, 6.4.1)
- (v) the applicant files a copy of the priority application within the applicable time limit* unless such a copy is already available to the EPO under Rule 53(2) (see A-II, 6.4.2)
- (vi) where the priority application is not in an official EPO language, the applicant files a translation into one such language within the applicable time limit* unless such a translation is already available to the EPO under Rule 53(3) (see A-II, 6.4.3)
- (vii) the applicant indicates where in the priority application and, if applicable, where in its translation, the correct application documents are completely contained, and does so within the applicable time limit* (see A-II, 6.4.2).

*For the applicable time limit, see whichever of A-II, 6.1 or A-II, 6.2 applies.

Where the conditions for including the correct application documents or parts under Rule 56a(4) are fulfilled, the date of filing remains unchanged. The

correct application documents or parts are included in the application and the erroneously filed ones remain in the application as filed. The EPO informs the applicants of this in a communication under Rule 56a(4). The erroneously filed documents may only be removed by amending the application during the grant proceedings and subject to Art. 123(2).

Where **criterion (i)** is not satisfied, any filing of the correct application documents or parts is deemed not to have occurred. In this case, the filing date does not change and the erroneously filed application documents or parts remain in the application. The EPO will inform the applicant of this in accordance with Rule 56a(5). *Rule 56a(5)(a)*

If the request according to Rule 56a(4) does not comply with one or more of **criteria (ii)-(iv)** above, then the date of filing will change to the date on which the EPO received the correct application documents or parts. They will be included in the application and the erroneously filed documents or parts will be deemed not to have been filed. The EPO will inform the applicant of this in accordance with Rule 56a(3). *Rule 56a(3)*

If the request according to Rule 56a(4) does not comply with one or more of **criteria (v)-(vii)** above, then the filing date will change to the date on which the EPO received the correct application documents or parts and the erroneously filed ones will be deemed not to have been filed. The EPO will inform the applicant of this in accordance with Rule 56a(6). *Rule 56a(6)*

6.4.1 Later-filed correct application documents or parts when priority is claimed

In the case of a request under Rule 56a(4), the EPO will check that the requirements for the priority claim are met (see A-III, 6). *Rule 56a(4)*

Where the applicant files a request under Rule 56a(4) (see A-II, 6.4), the priority claim in question must have been in existence on the date on which the requirements laid down in Rule 40(1) were fulfilled (see A-II, 4.1).

The requirement that the correct application documents or parts be completely contained in the priority application is the same as for missing parts of the description or missing drawings filed under Rule 56(3) (see A-II, 5.4.2).

Final assessment of the "completely contained" requirement falls under the responsibility of the examining division (see C-III, 1).

6.4.2 Copy of the priority application

The same requirements apply as for missing parts of the description or missing drawings filed under Rule 56(3) (see A-II, 5.4.3).

6.4.3 Translation of the priority application

The same requirements apply as for missing parts of the description or missing drawings filed under Rule 56(3) (see A-II, 5.4.4).

6.5 Withdrawal of correct application documents or parts*Rule 56a(7)*

Where applicants are informed about the new filing date, they may, within one month of the communication under Rule 56a(3) or (6) as applicable (see A-II, 6.3 and A-II, 6.4), withdraw the correct application documents or parts in order to maintain the initial date of filing. In this case, redating of the application and any filing of the correct documents or parts will be deemed not to have occurred. The erroneously filed documents or parts will be restored to the application as filed. The EPO will inform the applicants of this in accordance with Rule 56a(7).

6.6 Same-day corrections*Rule 56a(2)*

If applicants become aware that they filed incorrect application documents or parts and wish to file correct ones on or before the date the requirements of Rule 40(1) are fulfilled (see A-II, 4.1), they can do so without needing to file a new application and pay the corresponding fees (Rule 56a(2)). The correct application documents or parts are included in the application and the erroneously filed ones are deemed not to have been filed. The EPO will inform the applicants of this in accordance with Rule 56a(2).

6.7 Correct application documents or parts filed after the search has started*Rule 56a(8)**Rule 112(1)**Rule 135(2)*

If applicants file correct application documents or parts after the EPO has already begun to draw up the search report, the EPO will invite them to pay a further search fee under Rule 56a(8) within a time limit of one month. If the fee is paid in time, the search will be completed on the basis of the filing date and the application documents established under the procedures described in A-II, 6.3, 6.4 or 6.5. If the fee is not paid in time, the application will be deemed withdrawn (Rule 112(1)). Further processing is available (Rule 135(2)). Payment of the further search fee is excluded from automatic debiting (see Annex A.1 to the ADA, point 3(l)).

6.8 Additional fee for pages

For the calculation of the additional fee for pages in excess of 35 ("page fee"), see A-III, 13.2.

6.9 Claims fee

For the calculation of the claims fee, see A-III, 9.

Chapter III – Examination of formal requirements

1. General

1.1 Formal requirements

The formal requirements that an application has to meet are examined by the Receiving Section and relate to: *Art. 90(3)*
Rule 57

- (i) representation
- (ii) signature
- (iii) physical requirements of the application
- (iv) abstract
- (v) request for grant
- (vi) claim to priority
- (vii) designation of inventor
- (viii) translations, where required
- (ix) the presence of at least one claim
- (x) filing and search fees.

1.2 Further checks

In addition, the Receiving Section has to:

- (i) carry out a preliminary check of the description and claims to ensure that the title of the invention, which will appear in the published application, generally meets the requirements of Rule 41(2)(b) *Rule 41(2)(b)*
- (ii) check whether any claims fees due have been paid (see also A-III, 9) *Rule 45(1) and (2)*
- (iii) check whether the certificate of exhibition under Rule 25 has been filed where the invention has been displayed under Art. 55(1)(b) (see also A-IV, 3) *Art. 55(1)(b)*
Rule 25
- (iv) check whether in the case of European patent applications relating to biological material the information under Rule 31(1)(c) and (d) is complete (see also A-IV, 4) *Rule 31*
- (v) check whether in the case of an application with nucleotide and/or amino acid sequences a prescribed sequence listing has also been filed (see also A-IV, 5 as well as the decision of the President of the EPO dated 9 December 2021, OJ EPO 2021, A96, and the EPO notice dated 9 December 2021, OJ EPO 2021, A97). *Rule 30*

The requirements listed above and the procedure to be followed when they are not met are considered in the following sections.

2. Representation

2.1 Requirements

The formalities officer must ensure that the requirements with regard to representation as set out in A-VIII, 1 are met. The main points are:

- | | |
|--------------------|--|
| <i>Art. 133(2)</i> | (i) applicants who have neither a residence nor principal place of business in a contracting state must be represented by an authorised professional representative or by an authorised legal practitioner fulfilling the requirements of Art. 134(8) |
| <i>Art. 133(3)</i> | (ii) where an applicant having residence or principal place of business in a contracting state is represented by an employee, the employee is authorised |
| <i>Rule 152</i> | (iii) the authorisation, if any is required (see A-VIII, 1.5 and the decision of the President of the EPO dated 12 July 2007, Special edition No. 3, OJ EPO 2007, L.1), must be in order , duly signed (see A-VIII, 3.2 and A-VIII, 3.4) and filed in due time. |

2.2 Non-compliance

The effect of non-compliance with the provisions concerning representation and the action to be taken by the formalities officer in dealing with any deficiency are considered in A-III, 16.

3. Physical requirements

3.1 General remarks

- | | |
|-------------------|---|
| <i>Art. 90(3)</i> | Every application that is subject to formal examination is examined for compliance with the requirements as to form set out below. Non-compliance with the requirements is considered in A-III, 16. |
|-------------------|---|

3.2 Documents making up the application, replacement documents, translations

The Receiving Section must ensure that the documents making up the application, i.e. request, description, claims, drawings and abstract, meet the requirements of Rule 49(2) in conjunction with **Art. 4(2)** of the decision of the President of the EPO dated 25 November 2022 (OJ EPO 2022, A113) to the extent necessary for satisfactory reproduction and reasonably uniform publication of the application under Rule 68(1). This equally applies to any supplementary document filed as an appendix to the description. When evaluating the quality of the application documents and their suitability for electronic and direct reproduction, the Receiving Section's objective must be to ascertain the discernibility of all details originally disclosed in the documents received on the date of filing. The Receiving Section should not, however, draw the applicant's attention to any deficiencies in the content of the application, namely those listed in **Art. 1(2)(i) and (j) and Art. 2(8)**, fourth sentence, of the decision of the President of the EPO dated

25 November 2022 (see also the EPO notice dated 25 November 2022, OJ EPO 2022, A114, point 8, and A-III, 16.1).

In the case of requirements that may necessitate some technical knowledge, such as those of Art. 1(2)(f) and (2)(h) of the decision of the President of the EPO dated 25 November 2022, the Receiving Section should, if in doubt, consult and take the advice of the search division. It should also consider taking action when the search division identifies a deficiency previously overlooked. It should be noted that flow sheets and diagrams are to be considered as drawings (Art. 1(3) of the decision of the President of the EPO dated 25 November 2022).

If the formal requirements of Rule 49(2) are not met, the applicant is invited to remedy this deficiency within a non-extendable two-month period (Rule 58 and Rule 50(1)). If it is not remedied in time, the application is refused (Art. 90(5)).

Once the examining division assumes responsibility for the application, it also becomes responsible for formal matters. It should pay particular attention to the more technical requirements, in particular those laid down in Art. 1(2)(i) and (j), Art. 2(8), fourth sentence, and Art. 2(9) and (10) of the decision of the President of the EPO dated 25 November 2022 (see also the EPO notice dated 25 November 2022, point 8).

*Rule 10
Art. 94(1)*

Replacement documents, including the amendment of granted patents (Rule 86), and translations in an official language of documents filed under the provisions of Art. 14(2) or (4) are subject to the same requirements as the documents making up the application. They must therefore be typed or printed. Submissions containing handwritten amendments to application or patent specification documents are formally deficient and need to be corrected (see OJ EPO 2013, 603; however, see also E-III, 8.7 and OJ EPO 2016, A22, as well as H-III, 2.2).

*Rule 1
Rule 49(2)
Rule 50(1) and
(2)
Rule 86*

In examination proceedings the invitation to correct formal deficiencies is sent by the formalities officer on behalf of the examining division (see the decision of the President of the EPO dated 12 December 2013, OJ EPO 2014, A6).

With regard to sequence listings, see A-IV, -5.

~~In the event of deficiencies under Rule 30, the Receiving Section must invite the applicant to remedy them within a non-extendable two-month period. If they are not remedied in time, the application is refused by the Receiving Section under Rule 30(3) (see the EPO President's decision dated 9 December 2021, OJ EPO 2021, A96, and the EPO notice dated 9 December 2021, OJ EPO 2021, A97; see also A-IV, 5).~~

The particular requirements for drawings are dealt with in A-IX.

3.2.1 Physical requirements of applications filed by reference to a previously filed application

If the application is filed by reference to a previously filed application under Rule 40(1)(c) (see A-II, 4.1.3.1), and if no translation is required, the certified copy of the previously filed application required under Rule 40(3) must satisfy the physical requirements. If the previously filed application is not in an official EPO language, only the translation under Rule 40(3) must satisfy the physical requirements (Rule 49(2)), provided that the authenticity of the contents of the original is not impugned.

3.2.2 Physical requirements of late-filed application documents or correct application documents or parts

Where claims are filed after the filing date (see A-III, 15) or where missing parts of the description, missing drawings or correct application documents or parts are inserted after the filing date (see A-II, 5 and A-II, 6), all of these late-filed application documents must also satisfy the physical requirements. Consequently, the EPO will carry out two separate checks, first on the physical requirements of the original application documents, and second on any late-filed application documents. Any deficiencies will be communicated only when the complete application documents are on file.

If the late filing of missing parts of the description, missing drawings or correct application documents or parts results in a change of the filing date, the applicant can withdraw the late-filed parts of the description or drawings up to one month after being notified of the change in filing date (Rule 56(6)). Similarly, they can withdraw correct application documents or parts filed under Rule 56a within the same period (Rule 56a(7)). Consequently, if the late-filed missing parts of the description, missing drawings or correct application documents or parts:

- (i) contain deficiencies with regard to the physical requirements and
- (ii) result in a change of the filing date,

the EPO will wait until the one-month period for their withdrawal has expired and will then send a communication according to Rule 58 in respect of these deficiencies, if the applicant has not withdrawn them in time.

3.3 Other documents

Rule 50(2)

All documents other than those making up the application must be typewritten or printed with a left margin of about 2.5 cm on each page (Art. 3 of the decision of the President of the EPO dated 25 November 2022, OJ EPO 2022, A113).

4. Request for grant

4.1 General remarks

Rule 41(1)

The request for grant must be made on the appropriate EPO form (EPO Form 1001), even though the request (the indication that a patent is sought, referred to in A-II, 4.1(i)) need initially be in no particular form. The latest version of EPO Form 1001 can be accessed in [EPO Online Filing and Online Filing 2.0](#) ~~the EPO's online filing tools, with the exception of web-form~~

~~filing and the EPO Contingency Upload Service~~, or downloaded from the EPO website (*epo.org*) (see ~~A-II, 1.2.2~~A-II, 1.1.1).

For filing with EPO Online Filing, applicants should always use the latest version of the ~~EPO Online Filing~~ software (see ~~A-II, 1.1.1-(i)~~A-II, 1.2.2-(i)) ~~or~~and, for paper filings and filings made with the EPO web-form filing service and the EPO Contingency Upload Service, the latest version of the form.

4.2 Examination of the request for grant form

The Receiving Section examines the request form to ensure that it contains the information listed in Rule 41(2), including the integral petition for grant (Rule 41(2)(a)). The applicant must be allowed to correct deficiencies in the request to the extent indicated in A-III, 16.

4.2.1 Information on the applicant

As specified in Rule 41(2)(c), the request must contain the name, address and nationality of the applicant and the state in which that party's residence or principal place of business is located. Where the application is filed by more than one applicant, the requirement must be satisfied for each applicant. At this stage in the proceedings, the formalities officer will consider the person named as applicant's entitlement to apply for a patent (A-II, 2).

Applicants (whether natural or legal persons) whose residence or principal place of business is in an EPC contracting state and who act without a professional representative can use an address for correspondence other than their residence. It must be the applicant's own address and be in an EPC contracting state. For the address to be used in proceedings before the EPO applicants must explicitly inform the EPO that it is to be used for correspondence, preferably by entering it in the box marked "Address for correspondence" on EPO Form 1001 (see the EPO notice dated 4 September 2014, OJ EPO 2014, A99). ~~Post Correspondence~~ cannot be sent to a different (natural or legal) person, since that requires a valid form of representation under Art. 133 and 134.

4.2.2 Signature

The request must be signed by the applicant or the appointed representative. If there is more than one applicant, each applicant or their appointed representative must sign the request. For further details as to the signature of the request, see A-VIII, 3.2 to 3.4.

Rule 41(2)(h)

4.2.3 Further requirements laid down by Rule 41(2)

The provisions of Rule 41(2)(b), (e), (f) and (g), dealing respectively with the title of the invention, divisional applications, Art. 61 applications and claim to priority, are considered in subsequent sections of this chapter and in A-IV.

5. Designation of inventor

5.1 General remarks

Every application must designate the inventor, who must be a natural person with legal capacity (J 8/20). The designation is incorporated in ~~the EPO's Online Filing and Online Filing 2.0~~ (see A-II, 1.1.1). When filing on paper, or in the EPO web-form filing service or the EPO Contingency Upload Service,

*Art. 81
Rule 19
Rule 41(2)(j)*

the designation is filed on a separate document where the applicant is not the inventor or the sole inventor. Where that is not the case, the designation must be effected on the request for grant form (EPO Form 1001) by selecting the appropriate box in section 22. Where the designation is effected on a separate document, a trilingual form – EPO Form 1002 – available on the EPO website should preferably be used.

5.2 Waiver of right to be mentioned as inventor

Rule 20(1)
Rule 143(1)(g)
Rule 144(c)
Art. 129(a)

Inventors designated by the applicant may send the EPO a written waiver of their right to be mentioned as inventor in the published European patent application and the European patent specification. If it is received in time, their name is not mentioned in the published European patent application, the European patent specification, the European Patent Register (Rule 143(1)(g)) and, consequently, the European Patent Bulletin. Moreover, in accordance with Rule 144(c), the designation of the inventor as well as the waiver is then excluded from file inspection under Art. 128(4). If the waiver is received after the publication of the European patent application, the mention of the inventor will be removed in the European Patent Register.

5.3 Designation filed in a separate document

Rule 19(1)

Where filed in a separate document, the designation must contain the inventor's family name, given names and country and place of residence. The place of residence is the city or municipality, i.e. not the province or region, where the inventor permanently resides and should preferably include the postal code (see the EPO notice dated 22 February 2021, OJ EPO 2021, A12). The country and place of residence may also be that of the inventor's employer (e.g. a company). The designation must contain the statement, referred to in Art. 81, indicating the origin of the right to the patent and the signature of the applicant or the appointed representative.

In the case of assignment, the words "by agreement dated ..." suffice. For inventions by employees, it is sufficient to mention that the inventor(s) is/are employee(s) of the applicant(s) and for cases of succession that the applicant(s) is/are heir(s) of the inventor(s).

The designation of inventor must be signed by the applicant or the appointed representative. With regard to the signature, the provisions set out in A-VIII, 3.2 to A-VIII, 3.4, apply.

Rule 19(2)

The EPO does not verify the accuracy of the information given in the designation of the inventor but checks whether the designated inventor is a natural person (J 8/20).

If the designation of inventor is filed subsequently, the requirements set out in A-VIII, 3.1 apply.

5.4 Deficiencies

Art. 90(3) to (5)
Art. 93(1)
Rule 60(1)
Art. 121

Where a designation is not filed or cannot be considered validly filed due to a deficiency (e.g. inventor's name / country / place of residence / applicant's signature is missing), the applicant is informed that the European patent application will be refused if the deficiency is not remedied within the period prescribed under Rule 60(1), i.e. within 16 months of the filing date or, if

priority is claimed, of the priority date. This time limit is deemed met if the information is communicated before completion of the technical preparations for publication (see A-VI, 1.2). For divisional applications, see A-IV, 1.5. Where the applicant has requested early publication and, accordingly, technical preparations for publication are completed before expiry of the 16-month time limit, the applicant can still file the designation within that time limit (see J 1/10). If the deficiency is not remedied in time, the application is refused and the applicant is notified accordingly. Further processing is possible according to Art. 121 and Rule 135 (see E-VIII, 2).

5.5 Incorrect designation

An incorrect designation may be rectified, provided that a request is received together with the consent of the wrongly designated person and that of the patent's applicant or proprietor where the request is not filed by that party. If a further inventor is to be designated, the consent of the inventor(s) previously designated is not necessary (see J 8/82). The provisions of A-III, 5.3 apply to the corrected designation *mutatis mutandis*. Rectification may also be requested after the proceedings before the EPO are terminated.

Rule 21(1)

Where an incorrect designation has been rectified and where the incorrect designation was recorded in the European Patent Register or published in the European Patent Bulletin, its rectification or cancellation will also be recorded or published there. Rectification of the designation of an inventor falls under the responsibility of the Legal Division (see the decisions of the President of the EPO dated 21 November 2013, OJ EPO 2013, 600 and 601).

Rule 21(2)

6. Claim to priority (see also F-VI)

6.1 General remarks

A European patent applicant is entitled to – and may claim – the priority of an earlier first application where:

- (i) the previous application was filed in or for a state or WTO member recognised as giving rise to a priority right in accordance with the provisions of the EPC (see also A-III, 6.2)
- (ii) the European patent applicant was the applicant who made the previous application or is their successor in title
- (iii) the European patent application is made during a period of twelve months from the previous application's filing date (see, however, A-III, 6.6) and
- (iv) the European patent application concerns the same invention as the invention disclosed in the previous application (see also A-III, 6.4 and F-VI, 1), which must be the "first application" (see F-VI, 1.4 and 1.4.1).

Art. 87(1), (2)
and (5)

As concerns **(i)**, the previous application may be an application for a patent, the registration of a utility model or a utility certificate. However, a priority right based on the deposit of an industrial design is not recognised (see J 15/80).

Art. 87(3)

So long as the contents of the previous application were sufficient to establish a filing date, that date can be used to determine a priority date, irrespective of the outcome (e.g. subsequent withdrawal or refusal) of the application.

As concerns (ii), it is important to note that the transfer of the application including the priority right is distinct from a possible transfer of the priority application and (or of the priority right as such) must have taken place before the filing date of the later European patent application and must be assessed valid under the EPC, regardless of any national laws relevant national provisions. The EPC does not set out any formal requirements for the transfer of the priority right (see G -1/22 and G -2/22). Where the previous application was filed by joint applicants, all of them must be among the later European patent application's applicants or have transferred their rights in the priority application to the later European patent application's applicant (see T 844/18). Proof of the transfer can be filed later. Yet, absent any substantiated indication to the contrary, there is a strong rebuttable presumption under the EPC that an applicant or joint applicants claiming priority in accordance with Art. 88(1) and Rule 52 are also entitled to the claimed priority. The burden of proof is shifted, and the examining division, opponent or third party challenging an applicant's entitlement to priority has to prove that this entitlement is missing. -Especially where an international application under the PCT is filed by joint applicants, including the priority applicant, but without naming the priority applicant as applicant for the European designation, the mere fact of the joint filing implies an agreement between the applicants allowing all of them to rely on the priority right, unless substantial facts indicate otherwise (see G -1/22 and G -2/22).

However, in the case of joint applicants filing the later European patent application, it is sufficient if one of the applicants is the previous application's applicant or their successor in title. There is no need for a special transfer of the priority right to the other applicant(s), since the later European patent application has been filed jointly. The same applies where the previous application itself was filed by joint applicants, provided that all of them, or their successor(s) in title, are among the later European patent application's joint applicants.

As concerns (iii), the priority period starts on the day following the first application's filing date (Art. 4C(2) Paris Convention and Rule 131(2)). Accordingly, where a priority claim relates to an application filed on the same day as the European patent application, it will be disregarded (see, however, also A-III, 6.6).

6.2 Applications giving rise to a right of priority

Applications giving rise to a right of priority referred to in A-III, 6.1(i) are those filed at industrial property offices:

Art. 87(1)

(a) of or acting for states party to the Paris Convention for the Protection of Industrial Property

Art. 87(1)

(b) of or acting for any member of the World Trade Organisation (WTO) or

- (c) not subject to either the Paris Convention or the Agreement establishing the WTO, but where: *Art. 87(5)*
- (i) that authority recognises that a first filing made at the EPO gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention and
 - (ii) the EPO President issues a communication indicating this.

To date, no such communication referred to in (c)(ii) has been issued and so this does not as yet apply. Furthermore, the members of the WTO do not necessarily have to be states as such but may also be intergovernmental bodies or regions with special status such as the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

In view of the wording of Art. 87(1), which refers to filings "in or for" any state party to the Paris Convention or member of the WTO, priority may be claimed of an earlier first-filed national application, a previous European patent application, a previous application filed under another regional patent treaty or an international application filed under the PCT. This includes the US "provisional application for patent" (notice from the EPO President dated 26 January 1996, OJ EPO 1996, 81). A list of the countries party to the Paris Convention is available on WIPO's website and regularly published in the EPO Official Journal. Likewise, a list of the members of the WTO is regularly updated on the WTO website.

~~The possibility previously excluded by decisions G 2/02 and G 3/02 of claiming priority from an application filed at the industrial property authority of a WTO member not party to the Paris Convention (Art. 87(1) EPC 1973) no longer applies under the revised Art. 87(1).~~

6.3 Multiple priorities

The applicant may claim more than one priority based on previous applications in the same or different states and/or WTO members. Where multiple priorities are claimed, time limits calculated from the priority date run from the earliest date of priority and, as a result, the European patent application must be made within twelve months of the earliest priority date (see, however, A-III, 6.6); this applies if earlier applications have been filed in any of the industrial property offices mentioned in A-III, 6.2.

Art. 88(2)

6.4 Examination of the priority document

The Receiving Section is not required to examine the content of the priority document. However, where it is obvious, e.g. from the title of the document, that the document concerns subject-matter quite different from that of the application, the applicant should be informed that that the document filed might not be relevant.

6.5 Declaration of priority

An applicant wishing to claim priority must file a declaration of priority indicating:

Art. 88(1)

Rule 52(1)

Rule 41(2)(g)

Art. 90(4)

- (i) the date of the previous application

- (ii) the state or WTO member in or for which it was filed
- (iii) its file number.

The declaration of priority should preferably be made on filing the European patent application (Rule 52(2)). In such a case the declaration of priority, indicating at least the date on which and the country for which the earlier application was filed, should be included on the request for grant form (Rule 41(2)(g)). However, if a priority claim is added or corrected after the request for grant form has been filed (see A-III, 6.5.1 and 6.5.2), the applicant will not be invited by the EPO to file a corrected request for grant.

The time limit for filing the certified copy of the priority document is the same as for making the priority claim (see A-III, 6.5.1 and 6.7). Consequently, where:

- (a) the applicant supplies the certified copy on time and
- (b) the date and file number are indicated on the certified copy

the requirements of Rule 52(1) are met.

6.5.1 Filing a new priority claim

Rule 52(2)

The declaration of priority should preferably be made on filing but can be made up to 16 months from the earliest priority date claimed. That is to say, items (i)-(iii) mentioned in A-III, 6.5 can be supplied up to 16 months after the earliest claimed priority date. Where the priority claim is inserted after the filing date and causes a change in the earliest priority date, this 16-month period is calculated from that new earliest priority date in accordance with Art. 88(2). A priority claim inserted after the filing date cannot be used in support of a request made under Rule 56(3) or 56a(4) (see A-II, 5.4 and A-II, 6.4).

The applicant cannot request further processing in respect of the time limit for introducing a new priority claim under Rule 52(2), since it is ruled out by Rule 135(2).

6.5.2 Correcting an existing priority claim

Rule 52(3)

The applicant may correct the declaration of priority within 16 months of the earliest priority date. Where the correction causes a change in the earliest claimed priority date, this time limit is the earlier to expire of:

- (i) 16 months from the earliest priority date as originally claimed or
- (ii) 16 months from the earliest priority date as corrected.

However, this time limit cannot expire earlier than four months after the date of filing. Thus, if the originally claimed priority date is incorrect and precedes the date of filing by more than twelve months, the applicants will always have at least four months to correct this date, i.e. the same period as if they had claimed the correct priority date (and for example got the file number wrong) and claimed a full twelve-month priority period.

If the applicant files a request for correction later it may, exceptionally, be allowed if it is apparent from the published application that a mistake was made (see A-V, 3 and other sources mentioned there).

6.5.3 Deficiencies in the priority claim and loss of the priority right

Four potential deficiencies exist with regard to the priority claim, namely:

Art. 90(4) and (5)

- (i) failure to indicate a date of the previous application or to indicate the correct date
- (ii) failure to indicate a state or WTO member in or for which it was filed or to indicate the correct state or WTO member
- (iii) failure to supply a file number
- (iv) failure to indicate the correct file number.

Deficiencies (i) and (ii) can only be corrected in accordance with the procedures and within the time limit indicated in A-III, 6.5.2. Failure to correct either of these deficiencies in time results in loss of the priority right in question according to Art. 90(5). Further processing does not apply to the time limit under Rule 52(3), since it is ruled out by Rule 135(2).

However, where applicants have failed to indicate the file number of the previous application (deficiency (iii)), as required by Rule 52(1), before expiry of the 16-month time limit laid down in Rule 52(2), they are invited by the EPO to provide it within a two-month period under Rule 59. This period can be extended under Rule 132(2) (see E-IX, 2.3.5 for Euro-PCT applications), but further processing is ruled out by Rule 135(2). Failure to reply in time to this communication results in the loss of the priority right in question according to Art. 90(5).

*Art. 90(4) and (5)
Rule 59*

If the applicant has failed to indicate the correct file number of the priority application (deficiency (iv)), a request for correction under Rule 139 can be filed (see A-V, 3).

6.6 Priority period

Where a priority claim's date precedes the European patent application's filing date by more than twelve months, the applicant may be informed by the Receiving Section that their priority claim is considered invalid unless they:

*Art. 122
Rule 133
Rule 134
Rule 136*

- (i) indicate a corrected date lying within the twelve-month period preceding the filing date and do so within the time limit according to Rule 52(3) (see A-III, 6.5.2) or
- (ii) request re-establishment of rights in respect of the priority period and do so within two months of the expiry of the priority period, and this request is subsequently granted (see paragraph below). This only applies where the applicant also filed the European patent application within the same two-month period.

Where priority is claimed from an application having the same filing date as the European patent application (see A-III, 6.1), the EPO will inform the applicant that priority cannot be claimed from this application unless the priority date can be corrected (see A-III, 6.5.2).

Rules 133 and 134 apply to the priority period under Art. 87(1). If the date indicated for the previous application is subsequent to or the same as the filing date, the procedure set out in A-III, 6.5.2 also applies (with regard to the possibility of correcting clerical or similar errors, see A-V, 3).

According to Art. 122 and Rule 136(1) re-establishment of rights in respect of the priority period (twelve months according to Art. 87(1)) is possible. The request for re-establishment must be filed within two months of expiry of the priority period (Rule 136(1)) and the omitted act, i.e. the establishment of a filing date for the European patent application, must also be completed in this period (Rule 136(2)). For more details on requesting re-establishment of rights, see E-VIII, 3.

6.7 Copy of the previous application (priority document)

Rule 53(1)
Art. 88(2)
Art. 90(4)

A copy of the previous application from which priority is claimed (priority document) must be filed before the end of the 16th month after the priority date. Priority documents may be filed in paper form or electronically using ~~OLF~~ [EPO Online Filing](#) or Online Filing 2.0, provided the latter are in an accepted document format, have been digitally signed by the issuing authority and the signature is accepted by the EPO. Such electronic priority documents are currently being issued by the patent offices of [Austria, Brazil, the Czech Republic, Greece, Italy, France, Poland, Portugal, Singapore and the USA](#), ~~Brazil, Portugal, Italy, Austria, France and Poland~~, with further offices expected to follow. Priority documents may not be filed using the EPO web-form filing service [or the EPO Contingency Upload Service](#) (see the decision of the President of the EPO dated ~~14 May 2021, OJ EPO 2021, A42 3–3~~ [3–3–May 2023, OJ EPO 2023, A48](#)) or by fax (see the decision of the President of the EPO dated 20 February 2019, OJ EPO 2019, A18). Where multiple priorities are claimed, the above time limit runs from the earliest date of priority.

The copy and the filing date of the previous application must be certified as correct by the authority with which the previous application was filed. Certification of the date may take the form of a separate certificate issued by that authority stating the filing date of the previous application (Rule 53(1), second sentence) or may be an integral part of the priority document itself. The certification of the copy's authenticity may also be a separate document or an integral part of the priority document.

A copy of the previous application (priority document) can also be filed on physical media other than paper, e.g. CD-R disc, provided that:

- (a) the physical medium containing the priority document is prepared by the authority with which the previous application was filed and comes with the guarantee that its content cannot undetectably be altered subsequently

- (b) the content of the physical medium is certified by that authority as an exact copy of (parts of) the previous application and
- (c) the filing date of the previous application is also certified by that authority.

The certificate(s) may be filed separately on paper. The physical medium must be readable and free of computer viruses and other forms of malicious logic.

At the request of the applicant, the EPO will include free of charge in the file of a European patent application a copy of the previous application from which priority is claimed retrieved via the WIPO Digital Access Service (DAS). DAS permits the automatic electronic exchange of priority documents between participating patent offices. Applicants may request the office of first filing (OFF) to make certified copies of previously filed patent applications available to DAS and then request offices of second filing (OSF) to retrieve the copies via DAS by indicating the DAS access code(s) corresponding to the previous application(s) (see the decision of the President of the EPO dated 13 November 2021, OJ EPO 2021, A83, and the EPO notice dated 22 February 2019, OJ EPO 2019, A27).

Rule 53(2)

If a priority document cannot be retrieved via DAS or if the applicant has not requested retrieval via DAS, the EPO will include free of charge a copy of the previous application in the file of the European patent application, if the previous application is:

- (i) a European patent application
- (ii) an international application filed with the EPO as receiving Office under the PCT.

No request is necessary for this. ~~If the previous application is a Chinese, Korean or United States application, the EPO will only include a copy of the previous application free of charge if the European patent application was filed before 1 January 2022 or, in the case of a Euro-PCT application that entered the European phase before that date, if the required priority document can be included in the application's file by 30 June 2023 (see the EPO notice dated 13 November 2021, OJ EPO 2021, A84).~~ If the language of the previous application was not one of the official EPO languages, it may still be necessary to file the translation or declaration under Rule 53(3) (see A-III, 6.8).

Where the applicant has already supplied a copy of the priority document in connection with a request to base late-filed parts of the description or drawings on the claimed priority under Rule 56 (see A-II, 5.4(v)) or to base correct application documents or parts on the claimed priority under Rule 56a (see A-II, 6.4(v)), there is no need to file it again. However, if the copy already provided was not certified as to its content and/or filing date, the applicant will need to provide the missing certification within the above time limit.

Art. 90(4) and
(5)
Rule 59

If applicants fail to provide a certified copy of the priority document within the above-mentioned period (Rule 53(1)), the EPO will invite them to provide it within a two-month period under Rule 59. This period can be extended under Rule 132(2) (see E-IX, 2.3.5 for Euro-PCT applications), but further processing is ruled out by Rule 135(2). If the applicant fails to provide it within this period, the priority right in question is lost (Art. 90(5)).

A copy of the previous application that cannot be included in the file will not be deemed duly filed under Rule 53(2). The EPO will inform applicants in good time and give them an opportunity to file the certified copy in accordance with Rule 53(1) (see the decision of the President of the EPO dated 13 November 2021, OJ EPO 2021, A83, and the EPO notice dated 13 November 2021, OJ EPO 2021, A84).

6.8 Translation of the previous application

Art. 88(1)
Rule 53(3)

Where the previous application claimed as priority is not in an official EPO language and the validity of the priority claimed is relevant for assessing the patentability of the invention concerned, the EPO will invite the applicant for or proprietor of the European patent to file a translation into an official EPO language within a period specified. The duration of this period will vary depending on the stage of proceedings at which the invitation is sent (see the subsequent subsections).

6.8.1 Invitation to file the translation before examination

Where the search division notes that a translation of the previous application is required, the invitation to provide it according to Rule 53(3) may be sent at the same time as either item (i) or item (ii) below:

- (i) the communication according to Rule 69(1) and Rule 70a(1) (where the applicant does not file the request for examination before the search report is transmitted – see A-VI, 2.1).

In this case, the time limit for providing the translation is the same as for filing the request for examination, i.e. six months from the date of mention of the publication of the European search report according to Rule 70(1).

- (ii) the communication according to Rule 70(2) (where the applicant files the request for examination before the (supplementary) European search report is transmitted – see A-VI, 2.3).

In this case the time limit for providing the translation is the same as for filing the confirmation of the request for examination according to Rule 70(2):

- (a) for applications not filed via the PCT, this is six months from the date of mention of the publication of the European search report (see A-VI, 2.3).
- (b) for Euro-PCT applications subject to the preparation of a supplementary European search report (see B-II, 4.3.2), this is

six months from the notification of the communication according to Rule 70(2) (see E-IX, 2.5.3).

In practice, the invitation according to Rule 53(3) will be sent to the applicant in a separate communication and, in some cases, might not be dispatched on exactly the same date as the applicable communication indicated in (i) or (ii) above. However, this will not affect the expiry date of the period for providing the translation, since the relevant event used in its calculation (the mention of the publication of the European search report or the notification of the communication under Rule 70(2)) is not related to the notification of the invitation according to Rule 53(3). An exception applies where the communication under Rule 53(3) is notified less than two months before expiry of the resulting period; in that case the time limit for filing the translation will be considered extended until two months after the notification of the invitation, without prejudice to its possible extension under Rule 132(2) (see E-VIII, 1.6).

6.8.2 Invitation to file the translation in examination/opposition

The period ~~set under Rule 132(2)~~ for providing the translation in either examination or opposition proceedings is four months.

Rule 132(2)

If not sent earlier (see A-III, 6.8.1), an invitation according to Rule 53(3) may be sent in examination proceedings either alone or as an annex to a communication according to Art. 94(3). When sent as an annex to a communication according to Art. 94(3), the time limit set for reply to that communication is the same as for providing the translation (i.e. four months), even where the issues raised in the communication are minor (see E-VIII, 1.2).

For Euro-PCT applications where the EPO acted as the ISA or the Supplementary International Searching Authority (SISA, Rule 45*bis* PCT), an invitation according to Rule 53(3) may be sent by the examining division only after the period according to Rule 161(1) has expired (see E-IX, 3.2).

Since the proprietor of a European patent might not have previously been invited to file a translation (in the examination procedure or earlier as indicated in A-III, 6.8.1) in cases where the validity of the claimed priority becomes relevant for assessing patentability in opposition proceedings, the EPO may make the above invitation during the opposition procedure.

In examination and opposition proceedings, where the applicant or proprietor has been invited to provide the translation, no summons to oral proceedings will be sent until either the translation is provided or (in examination proceedings) the period for further processing in respect of the time limit according to Rule 53(3) has expired, whichever is the earlier.

In practice, the search, examining or opposition division dealing with the patent application or patent will inform the formalities officer that a translation of the previous application is required and the formalities officer will then dispatch the above communication.

6.8.3 Loss of rights and legal remedies

If the applicant for or proprietor of the European patent does not provide the translation in time, the right of priority is lost and the applicant or proprietor is informed accordingly (see A-III, 6.11). This has the effect that the intermediate document(s) will become prior art under Art. 54(2) or Art. 54(3), as applicable, and therefore relevant for the assessment of patentability. There is no further invitation to the applicant or proprietor to file the translation. However, in examination proceedings, further processing is available in cases of failure to file the translation in time (see E-VIII, 2). Where appropriate, the applicant can also request a decision under Rule 112(2) (see E-VIII, 1.9.3).

Where translations of more than one previous application are requested and not provided in time, one further processing fee is due according to Rule 135(1) and Art. 2(1), item 12, RFees for each of these priorities. This applies even where the translations were requested in a single Rule 53(3) invitation.

In the event of failure to file the translation in time in opposition proceedings, the proprietor can request re-establishment of rights according to Art. 122 and Rule 136 (see E-VIII, 3). Further processing is not available to the patent proprietor in opposition proceedings. A decision according to Rule 112(2) may, however, be requested, if applicable (see E-VIII, 1.9.3).

6.8.4 Translation of previous application already filed

Where the applicant has already supplied a translation of the previous application in connection with a request to base late-filed parts of the description or drawings on the claimed priority under Rule 56 (see A-II, 5.4(vi)) or to base correct application documents or parts on the claimed priority under Rule 56a (see A-II, 6.4(vi)), the applicant does not need to file it again.

6.8.5 Voluntary filing of the translation of the previous application

Applicants for or proprietors of the European patent can file a translation of the previous application on their own initiative at any time during examination or opposition proceedings before the EPO.

6.8.6 Declaration replacing the translation

Alternatively, a declaration that the European patent application is a complete translation of the previous application may be submitted within those same time limits (see also F-VI, 3.4 and D-VII, 2). The declaration may also be made by selecting the appropriate box on the request for grant form (EPO Form 1001). This declaration is only valid if the text of the European patent application as filed is an exact translation of the previous application of which priority is claimed, i.e. with nothing added or omitted. If the European patent application did not contain claims on the filing date (see A-II, 4.1), the applicant can file these later (see A-III, 15). In such cases, for the declaration to be valid, the description of the European patent application must be an exact translation of the description of the claimed priority, regardless of whether the latter contained claims on its filing date. However, where the European patent application contains claims on its filing date and the previous application did not or contained fewer claims on its filing date, the

declaration is not valid. Furthermore, if the European patent application contains more or less text than is contained in the previous application as filed, such a declaration cannot be accepted. Where the declaration cannot be accepted for any of the above reasons, to comply with the requirement for filing a translation, a complete translation must be filed within the set time limit. A declaration's validity is not affected by the simple rearrangement of its various parts (i.e. the claims vs. the description) (e.g. if the claims are presented at the end of the application, whereas in the previous application they are at the beginning) or by the use of a different type of reference sign (e.g. Arabic rather than Roman numerals). However, a declaration is not acceptable if changes have been made within the parts of the application (e.g. different order of claims, added reference signs) or if sections of the application (e.g. listing of components, section headings and words in the drawings) are not identical to those in the previous application.

Where a European patent application claims multiple priorities, the declaration will only in exceptional cases be a translation of the full text of one of the previous applications. In such cases, it may be filed in respect of the identical previous application, while a complete translation of the other previous application(s) will have to be filed on request.

6.9 Non-entitlement to right to priority

A European patent application has no right to priority if:

- (i) the application was not filed within the twelve-month period referred to in A-III, 6.1(iii) and the applicant has neither:
 - (a) corrected the priority date on time (see A-III, 6.5.2) such that the European patent application's filing date no longer exceeds the twelve-month priority period under Art. 87(1) or the priority date is no longer the same as the filing date (see A-III, 6.6), nor
 - (b) successfully requested re-establishment of rights in respect of the priority claim (see A-III, 6.6)*Art. 87(1)*
- (ii) the previous application did not seek an industrial property right giving rise to a priority right (see A-III, 6.1) or *Art. 87(1)*
- (iii) the previous application does not give rise to a priority right in respect of the state, WTO member or industrial property authority in or for which it was filed (see A-III, 6.1(i) and 6.2). *Art. 87(1) and (4)*

6.10 Loss of right to priority

The right to priority for a European patent application is lost where:

- (i) the declaration of priority is not filed in due time (see A-III, 6.5.1) *Art. 90(4) and (5)*
- (ii) the declaration of priority is not corrected in due time (see A-III, 6.5.2 and 6.5.3) *Rule 53(3)*
- (iii) the certified copy of the previous application is not filed in due time (see A-III, 6.7)

- (iv) the translation of the previous application or the declaration referred to in A-III, 6.8.6 is not filed in due time in response to an invitation according to Rule 53(3) (see A-III, 6.8.3).

6.11 Notification

Rule 112(1)

The applicant is notified of any non-entitlement to or loss of a priority right. The computation of time limits that depend on the priority will take this new situation into account. This also applies where entitlement to a priority right is surrendered. The termination of a priority right has no effect on a time limit that has already expired (see also F-VI, 3.4 and E-VIII, 1.5). If the search has not yet been carried out, the Receiving Section notifies the search division of a loss of or non-entitlement to a priority date.

6.12 Copy of the search results for the priority or priorities

Rule 141(1)

An applicant claiming priority within the meaning of Art. 87 must file a copy of the results of any search carried out by the authority with which the previous application was filed together with the European patent application either without delay after receiving such results or, in the case of a Euro-PCT application, on entry into the European phase. This requirement also applies to priority claims that are subsequently withdrawn or lapse and to priority claims introduced or corrected after the filing date (see A-III, 6.5.1 and A-III, 6.5.2). The obligation under Rule 141(1) exists as long as the application is pending before the EPO and applies to all European and Euro-PCT applications filed on or after 1 January 2011 (OJ EPO 2009, 585). In the case of divisional applications, the relevant date is that on which the divisional application was received by the EPO (see A-IV, 1.2.1), not the filing date of the parent application. Where the copy is not provided to the EPO before the examining division assumes responsibility, the procedure is as set out in C-II, 5 and C-III, 6.

Where multiple priorities are claimed, the copy of the search results referred to above must be provided for all applications claimed as priority. If the search results are not drawn up in an official EPO language, no translation is required. The copy of the search results submitted must be a copy of the official document issued by the office where the previous application was filed. A simple listing of the prior art drawn up by the applicant will not suffice. Copies of the cited documents do not have to be provided (see the EPO notice dated 28 July 2010, OJ EPO 2010, 410).

Rule 141(2)

The copy referred to in Rule 141(1) is deemed duly filed if it is available to the EPO and is to be included in the European patent application's file under the conditions determined by the EPO President. According to the decision of the President of the EPO dated 5 October 2010, OJ EPO 2010, 600, these exceptions relate to cases where a search report of the following type was drawn up by the EPO on an application whose priority is claimed:

- (i) European search report (Art. 92)
- (ii) international search report (Art. 15(1) PCT)
- (iii) international-type search report (Art. 15(5) PCT)

- (iv) search report prepared on behalf of a national office on a national application. As at October 2021, the EPO performs searches for the national offices of Albania, Belgium, Croatia, Cyprus, France, Greece, Italy, Latvia, Lithuania, Luxembourg, Malta, Monaco, Netherlands, San Marino, United Kingdom.

The EPO also includes a copy of the search results referred to in Rule 141(1) in the European patent application's file, thus exempting the applicant from filing said copy where, based on an agreement with the national patent offices, the priority of a first filing made in one of the following states is claimed:

- Austria (see the decision of the President of the EPO dated 19 September 2012, OJ EPO 2012, 540)
- People's Republic of China (see the decision of the President of the EPO dated 8 April 2021, OJ EPO 2021, A38)
- Czech Republic (see the decision of the President of the EPO dated 11 July 2022, OJ EPO 2022, A79)
- Denmark (see the decision of the President of the EPO dated 10 December 2014, OJ EPO 2015, A2)
- Japan (see the decision of the President of the EPO dated 9 December 2010, OJ EPO 2011, 62)
- Republic of Korea (see the decision of the President of the EPO dated 27 February 2013, OJ EPO 2013, 216)
- Spain (see the decision of the President of the EPO dated 10 February 2016, OJ EPO 2016, A18)
- Sweden (see the decision of the President of the EPO dated 14 May 2021, OJ EPO 2021, A39)
- Switzerland (see the decision of the President of the EPO dated 4 June 2019, OJ EPO 2019, A55)
- United Kingdom (see the decision of the President of the EPO dated 9 December 2010, OJ EPO 2011, 62)
- United States of America (see the decision of the President of the EPO dated 9 December 2010, OJ EPO 2011, 62)

For divisional applications, where the results of the search on the claimed priority have already been provided in respect of the parent application, the applicant need not provide them again in respect of the divisional application (see the EPO notice dated 28 July 2010, OJ EPO 2010, 410).

7. Title of the invention

7.1 Requirements

Rule 41(2)(b)

The request for grant must contain the title of the invention. A requirement of Rule 41(2)(b) is that the title must clearly and concisely state the technical designation of the invention and must exclude all fancy names. In this regard, the following should be taken into account:

- (i) personal names, fancy names, the word "patent" or similar terms of a non-technical nature that do not serve to identify the invention should not be used
- (ii) the abbreviation "etc.", being vague, should not be used and should be replaced by an indication of what it is intended to cover
- (iii) titles such as "Method", "Apparatus", "Chemical Compounds" alone or similar vague titles do not meet the requirement that the title must clearly state the technical designation of the invention
- (iv) trade names and trade marks should also not be used; the Receiving Section, however, need only intervene when names are used which, according to common general knowledge, are trade names or trade marks.

7.2 Responsibility

Rule 41(2)(b)

The examining division bears ultimate responsibility for ensuring that the title accords with the provisions of the Implementing Regulations. The search division will nevertheless take action and amend the title to avoid, if possible, the publication of applications having titles that obviously do not comply with the applicable EPC provisions (see also F-II, 3). In such cases, the EPO will change the title on its own initiative if this appears necessary (see OJ EPO 1991, 224). ~~For divisional applications, see A-IV, 1.8.~~

The applicant learns if the title proposed has been approved by the search division upon transmission of the European search report. The wording of the title (in the three official EPO languages), as approved by the search division, is notified by the communication announcing the forthcoming publication.

The title of the invention is published and entered in the European Patent Register (Rule 143(1)(c)) in capital letters.

8. Prohibited matter

8.1 Morality or "*ordre public*"

Art. 53(a)

Rule 48(1)(a) and
(2)

The application must not contain statements or other matter contrary to "*ordre public*" or morality. Such matter may be omitted when the application is published, the published application indicating the place and number of words or drawings omitted. (Where drawings are omitted regard should be had to the physical requirements of A-III, 3.2.) The Receiving Section may check the description, claims and drawings to ascertain whether they contain offending matter. In order not to delay unduly the formalities examination, if

carried out, this will entail a cursory examination to ensure that the application does not contain the following prohibited matter: statements constituting an incitement to riot or to acts contrary to "*ordre public*", racial, religious or similar discriminatory propaganda, or criminal acts and grossly obscene matter. The Receiving Section may also take action to prevent the publication of such matter where the search division draws its attention to such matter which it had overlooked. The applicant is notified of the material omitted. In practice, it will usually be the search division that brings the existence of such material in the application to the attention of the Receiving Section.

8.2 Disparaging statements

According to Rule 48(1)(b), the application must not contain statements disparaging the products or processes of any particular person other than the applicant, or the merit or validity of applications or patents of any such person. However, mere comparisons with the prior art are not to be considered disparaging *per se*. Statements clearly falling into this category that are evident from the cursory examination referred to in A-III, 8.1 or to which attention is drawn by the search division may be omitted by the Receiving Section when publishing the application. In cases of doubt the matter should be left for the examining division. The published application must indicate the place and number of any words omitted and the EPO must furnish, upon request, a copy of the passage omitted. The applicant is again notified of the material omitted. (See also treatment of prohibited matter in proceedings before the examining division, F-II, 7.)

Rule 48(1)(b) and (3)

9. Claims fee

A European patent application containing more than 15 claims at the time of filing the claims (see the paragraph below) incurs a claims fee in respect of each claim in excess of that number. For applications filed and international applications entering the regional phase on or after 1 April 2009, a higher amount is payable for each claim in excess of 50. The claims' order is their sequence at their time of filing. If an application contains more than one set of claims, Rule 45 only applies to the set of claims containing the highest number of claims. If, as a result of claims having been deleted owing to non-payment of claims fees, the number of claims remaining in the set that originally incurred the fees falls below that of another set, then the number of claims in the latter set has to be reduced to the same number as that remaining in the set originally incurring the fees (see J 8/84). The claims fees must be paid within one month of filing the claims.

Rule 45(1) to (3)

Rule 112(1)

Rule 37(2)

Art. 2(1), item 15,

RFees

Where correct claims are filed under Rule 56a(3) or (4) (see A-II, 6), the claims fee is calculated on the basis of the set of claims first filed.

The claims may be filed at the following stages:

- (a) on the filing date or on the date on which the divisional application is filed (see A-II, 4.1.5 and A-IV, 1.2.1)
- (b) after the filing date, in a timely response to a communication from the EPO indicating their absence under Rule 58 (see A-III, 15)

- (c) after the filing date, by applicants on their own initiative before the EPO sends a communication according to Rule 58 (see A-III, 15).

Consequently, the claims fees must be paid within one month of whichever of the above dates of receipt applies.

If the claims fees have not been paid in due time, they may still be validly paid within a non-extendable grace period of one month from notification of a communication under Rule 45(2) pointing out the failure to observe the time limit. The applicant cannot waive this communication. If a claims fee is not paid within the grace period, the corresponding claim is deemed abandoned and the applicant is notified accordingly. The applicant cannot waive the communication under Rule 112(1) noting the deemed abandonment of claims under Rule 45(3). If the claims fees paid are insufficient to cover all the claims incurring fees (i.e. claim 16 onwards), and if when payment was made no indication was given as to which claims were covered by the fees paid, then the applicant is requested to specify which claims incurring fees are covered by the claims fees paid. The Receiving Section notifies the search division of claims that are deemed abandoned. Any claims fee duly paid is refunded only in the case referred to in Rule 37(2) (see A-II, 3.2, last paragraph).

In cases where:

- (i) the application was filed by reference to a previously filed application (see A-II, 4.1.3.1) and
- (ii) the applicant indicates on filing that the claims of this previously filed application take the place of claims in the application as filed,

the claims fees are due within one month of the filing date (since the claims of the previously filed application are effectively present on the filing date). However, the EPO will not send the applicant a communication under Rule 45(2) with an invitation to pay any claims fees due until the applicant has, within two months of the filing date (Rule 40(3)), filed the copy of the previously filed application, since it is only at this point that the EPO will know how many claims there are and consequently how many claims fees, if any, are due.

Features of a claim deemed abandoned under Rule 45(3) and not otherwise to be found in the description or drawings cannot subsequently be reintroduced into the application and, in particular, into the claims (see J 15/88). However, by filing a divisional application, applicants can pursue any (features of a) claim deemed abandoned due to non-payment of the claims fee in the procedure for the grant of a patent for the parent application.

Regarding Euro-PCT applications entering the European phase, see E-IX, 2.1.3 and E-IX, 2.3.8.

10. Abstract

10.1 General remark

Every application for a patent must contain an abstract. The effect of non-compliance with this requirement is dealt with in A-III, 16.

Art. 78(1)(e)
Art. 90(3)
Rule 57(d)

10.2 Content of the abstract

While responsibility for the definitive content of the abstract lies with the EPO (see F-II, 2), in practice, this is delegated to the search division since the definitive content of the abstract must be determined and transmitted to the applicant along with the search report. Where the search division confirms that the abstract filed does not relate to the claimed invention, the applicant is informed that the document filed does not constitute an abstract and is invited to correct the deficiency (see A-III, 16).

Rule 66

10.3 Figure accompanying the abstract

If the application contains drawings, applicants should indicate the figure (or figures, in exceptional cases) of the drawings that they suggest should accompany the abstract. Where this requirement is not met, the search division decides which figure(s) to publish. For the further procedure, see F-II, 2.4.

Rule 47(4)

11. Designation of contracting states

11.1 General remarks

All states party to the EPC at the application's filing date are deemed designated in the request for grant of a European patent (for a list of the EPC contracting states, see General Part, section 6). Any other state entered on the request for grant must be disregarded (for the designation of contracting states on the request for grant form, see A-III, 11.2.2, 11.3.5 and 11.3.6). When the application is in the name of joint applicants, each may designate different contracting states (see A-II, 2); objection is to be raised during the examination of formal requirements if there is any ambiguity as to the states designated by the individual applicants.

Art. 79(1)

11.2 European patent applications filed on or after 1 April 2009

11.2.1 Designation fee; time limits

A designation fee is payable for designating contracting states.

Art. 79(2)
Rule 39

For applications filed on or after 1 April 2009 this is a flat fee covering all EPC contracting states. Therefore, for these applications, the system of charging designation fees for individual designated states (see A-III, 11.3) no longer applies. For European divisional applications, see also A-IV, 1.3.4 and 1.4.1.

Art. 149(1)
Art. 2(1), item 3,
RFees

For European patent applications, the designation fee must be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.

Rule 39

For divisional applications and new applications under Art. 61(1)(b), the designation fee must be paid within six months of the date on which the

Rule 17(3)
Rule 36(4)

European Patent Bulletin mentions the publication of the European search report drawn up in respect of the European divisional application or the new European patent application (see A-IV, 1.4.1).

For Euro-PCT applications entering the European phase on or after 1 April 2009, see A-III, 11.2.5.

11.2.2 Payment of designation fee

Rule 39(1)

All states party to the EPC at the time of filing a European patent application are automatically designated when the application is filed. The designation fee, however, may be paid later (see A-III, 11.2.1).

Art. 2(1), item 3,
RFees

Payment of the designation fee covers all contracting states, except those for which the designation has been expressly withdrawn.

11.2.3 Consequences of non-payment of the designation fee

Rule 39(2)

An application is deemed withdrawn where the designation fee has not been paid by expiry of the period specified in Rule 39(1).

In this case, the EPO sends the applicant a communication under Rule 112(1) notifying them of the loss of rights. In response, the applicant can request further processing according to Art. 121 and Rule 135 (see E-VIII, 2).

The loss of rights ensues on expiry of the period under Rule 39(1) and not on expiry of the period for further processing (see G 4/98, *mutatis mutandis*).

For Euro-PCT applications entering the European phase on or after 1 April 2009, see A-III, 11.2.5.

11.2.4 Withdrawal of designation

Art. 79(3)
Rule 39(2) and
(3)

Subject to the final sentence of this paragraph, the applicant may withdraw the designation of one or more contracting states at any time up to the patent's grant. Withdrawing the designation of all contracting states results in the application being deemed withdrawn and the applicant being notified accordingly.

In neither case is a validly paid designation fee refunded (see A-X, 10.1.1).

Rule 15

A contracting state's designation may not be withdrawn from the date a third party proves to the EPO that they have initiated entitlement proceedings and up to the date when the EPO resumes proceedings for grant.

The applicant may withdraw designations when filing the European patent application, e.g. to avoid overlapping prior national rights with the priority application according to Art. 139(3). Timely payment of the designation fee will not cause those designations that have been withdrawn to be reactivated.

For European divisional applications, see A-IV, 1.3.4.

11.2.5 Euro-PCT applications entering the European phase

Rule 159(1)(d)

For Euro-PCT applications entering the European phase, the designation fee must be paid within 31 months of the filing or priority date, if the time limit specified in Rule 39(1) has expired earlier.

According to Rule 160(1), if the designation fee for the Euro-PCT application entering the European phase is not paid within the basic period under Rule 159(1)(d), the European patent application (see Art. 153(2)) is deemed withdrawn. If the EPO finds that that has occurred, it notifies the applicant of this loss of rights according to Rule 112(1). In response, the applicant can request further processing according to Art. 121 and Rule 135.

*Rule 160
Art. 153(2)*

For the designation fee in relation to Euro-PCT applications entering the European phase, see also E-IX, 2.1.4 and E-IX, 2.3.11.

11.3 European patent applications filed before 1 April 2009

This section refers to the relevant provisions that were in force until 31 March 2009 and that remain applicable to European patent applications filed and Euro-PCT applications entering the European phase before 1 April 2009.

11.3.1 Designation fee; time limits

A designation fee is payable for designating contracting states. A single joint designation fee is payable for Switzerland and Liechtenstein. All contracting states are deemed designated on payment of seven times the amount of one designation fee.

*Art. 79(2)
Rule 39, in force until
31 March 2009
Art. 149(1)
Art. 2(2), item 3 and
item 3a RFees*

For European patent applications, the designation fees must be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.

For divisional applications and new applications under Art. 61(1)(b) filed before 1 April 2009, the designation fees must be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the European divisional application or the new European patent application (see A-IV, 1.4.1).

*Rule 17(3),
in force until
31 March 2009
Rule 36(4)
in force until
31 March 2009*

For Euro-PCT applications entering the European phase before 1 April 2009, see A-III, 11.3.9.

11.3.2 Consequences of non-payment of designation fees

The designation of a state is deemed withdrawn where the designation fee has not been paid in due time for that state (see also A-III, 11.3.4).

*Rule 39(2),
in force until
31 March 2009*

If the designation fee for a particular contracting state is not paid in time, the EPO sends the applicant a communication under Rule 112(1) notifying them of the designation's deemed withdrawal according to Rule 39(2). In response, the applicant can request further processing according to Art. 121 and Rule 135 in respect of this partial loss of rights (see E-VIII, 2). This communication is not sent if the applicant waives the right to receive it in respect of the state in question by selecting the appropriate box on the request for grant form. By selecting that box, the applicant waived the right to further processing in respect of the designation or designations in question.

For Euro-PCT applications entering the European phase before 1 April 2009, see A-III, 11.3.9.

11.3.3 Amount paid insufficient

Art. 6(2),
1st sentence, RFees

If, during the period for requesting further processing, designation fees are paid without an additional sum sufficient to cover the further processing fee, it is first necessary to establish how many designation fees including the further processing fee are covered by the total sum paid. The applicant must then be invited, under Art. 6(2), first sentence, RFees, to indicate which contracting states the designation fees plus further processing fee are to be used for (see J 23/82, *mutatis mutandis*). For the subsequent procedure, see A-III, 11.3.7.

11.3.4 Application deemed withdrawn

Rule 39(3),
in force until
31 March 2009

An application is deemed withdrawn where no designation fee is validly paid by expiry of the period specified in Rule 39(1).

If no designation fees are paid on time leading to the deemed withdrawal of the application under Rule 39(3), in force until 31 March 2009, the EPO sends the applicant a communication according to Rule 112(1) notifying them of this loss of rights. In response, the applicant can request further processing according to Art. 121 and Rule 135 in respect of this total loss of rights (see E-VIII, 2).

Where the application is deemed withdrawn because of failure to pay the designation fees, the loss of rights ensues on expiry of the normal period under Rule 39(1). Similarly, the deemed withdrawal of a contracting state's designation takes effect upon expiry of the period under Rule 39(1), and not upon expiry of the period for further processing (see G 4/98, *mutatis mutandis*). The applicant is notified of the loss of rights and can remedy it by requesting further processing according to the procedures explained in A-III, 11.3.2.

11.3.5 Request for grant form

Art. 79(1) and
(2)

All states party to the EPC at the time of filing a European patent application are automatically designated when the application is filed. The designation fees payable for an application filed before 1 April 2009, however, may be paid later.

Applicants have time – until expiry of the period for paying the designation fees (Rule 39(1) and Rules 17(3) and 36(4)) – to decide which contracting states they actually want their patent to cover. This is done by paying the designation fees for those states, which may include an additional sum required to validate a request for further processing.

11.3.6 Indication of the contracting states

Art. 2(2), item 3,
RFees
Art. 6(1) RFees

For European patent applications filed before 1 April 2009, the designation fees are deemed paid for all contracting states on payment of seven times the amount of one designation fee. Such payments simply need to be marked "designation fees" for the purpose of the payment to be established.

However, if the applicant intended to pay fewer than seven designation fees when filing the application, it was for them to indicate the contracting states they wanted to designate in the appropriate section of the request for grant form (EPO Form 1001, versions prior to April 2009). This was to ensure that the designation fees paid were properly entered in the books. Non-payment of designation fees within the basic time limit results in a communication under Rule 112(1).

In response, the applicant may request further processing in respect of the lost designation(s). However, no Rule 112(1) communication will be sent and no further processing can be requested for designations in respect of which the applicant waived these rights by selecting the appropriate box on the request for grant form or where the designation in question was withdrawn.

For applicants taking part in the automatic debiting procedure, see also A-X, 7.2.

11.3.7 Amount payable

If, given the amount payable within the time limit in question, the sum paid for designation fees during the periods under Rule 39(1) or Rule 135(1) does not cover all the contracting states indicated on the request for grant form (EPO Form 1001) and no indication is provided of the contracting states the fees are intended for, then the payer is requested to indicate, within a period stipulated by the EPO, which states are to be designated (see also A-III, 11.3.3). If the payer fails to comply in due time, then Art. 8(2) RFees applies: the fees are deemed paid only for as many designations as are covered by the amount paid in the order in which the contracting states were designated (see J 23/82, *mutatis mutandis*). The designation of contracting states not covered by the fees is deemed withdrawn and the applicant is notified of the loss of rights (see A-III, 11.3.4, **paragraph 3**, regarding the time at which loss of rights ensues).

Art. 6(2),
1st sentence, RFees
Art. 8(2)
2nd sentence, RFees,
in force until
31 March 2009
Rule 39(2),
in force until
31 March 2009
Rule 112(1)

11.3.8 Withdrawal of designation

Subject to the final sentence of this paragraph, the applicant may withdraw a contracting state's designation at any time up to the patent's grant. A validly paid designation fee is not refunded when a designation is withdrawn. Withdrawing the designation of all contracting states results in the application being deemed withdrawn and the applicant being notified accordingly. A contracting state's designation may not be withdrawn from the date a third party proves to the EPO that they have initiated entitlement proceedings and up to the date when the EPO resumes proceedings for grant.

Art. 79(3)
Rule 39(3) in force
until 31 March 2009
and
(4),
in force until
31 March 2009
Rule 15

The applicant may withdraw designations when filing the European patent application, e.g. to avoid overlapping prior national rights with the priority application according to Art. 139(3). Timely payment of designation fees will not cause those designations that have been withdrawn to be reactivated. Furthermore, no Rule 112(1) communication will be sent in respect of a failure to pay designation fees for any designation withdrawn.

11.3.9 Euro-PCT applications entering the European phase before 1 April 2009

Rule 159(1)(d)

For Euro-PCT applications entering the European phase, a designation fee with respect to each contracting state designated, up to a maximum of seven times the amount of one designation fee to designate all contracting states, must be paid within 31 months of the filing or priority date if the time limit specified in Rule 39(1) has expired earlier. The principles laid down in A-III, 11.3.3, 11.3.6, 11.3.7 and 11.3.8 for European patent applications filed before 1 April 2009 apply to Euro-PCT applications in accordance with Art. 153(2), with the individual contracting states being indicated in the request for entry into the European phase (EPO Form 1200).

Rule 160, in force
until 31 March 2009
Art. 153(2)

Under Rule 160(2), the designation of a contracting state for which no designation fee has been paid in time is deemed withdrawn. According to Rule 160(1), if no designation fee is paid within the basic period under Rule 159(1)(d) for a Euro-PCT application entering the European phase, the European patent application (see Art. 153(2)) is deemed withdrawn. If the EPO finds that the deemed withdrawal of a European patent application or of a contracting state's designation has occurred, it notifies the applicant of this loss of rights according to Rule 112(1). In response, the applicant can request further processing according to Art. 121 and Rule 135.

For designation fees in relation to Euro-PCT applications entering the European phase, see also E-IX, 2.1.3 and E-IX, 2.3.11.

12. Extension and validation of European patent applications and patents to/in states not party to the EPC

12.1 General remarks

At the applicant's request and on payment of the prescribed fee, European patent applications (direct or Euro-PCT) and thus patents can be extended to European states having an extension agreement with the EPO (extension states). The same applies to requests for validation in European or non-European states having a validation agreement (validation states).

The states for which such requests may currently be filed are listed below:

(i) extension may be requested for the following European state:

Bosnia and Herzegovina (BA) since 1 December 2004

The EPO's extension agreements with the **Republic of Slovenia** (entry into force: 1 March 1994), the **Republic of Romania** (15 October 1996), the **Republic of Lithuania** (5 July 1994), the **Republic of Latvia** (1 May 1995), the **Republic of Croatia** (1 April 2004), the **Republic of North Macedonia** (as the former Yugoslav Republic of Macedonia) (1 November 1997), **Albania** (1 February 1996), the **Republic of Serbia** (1 November 2004) and **Montenegro** (1 March 2010) terminated when these countries acceded to the EPC with effect from 1 December 2002, 1 March 2003, 1 December 2004, 1 July 2005, 1 January 2008, 1 January 2009, 1 May 2010, 1 October 2010 and 1 October 2022 respectively. However, the extension system continues to apply to all European and international applications filed prior to those dates and to all European patents granted in respect of such applications.

- (ii) validation may be requested for the following states (OJ EPO 2015, A20, OJ EPO 2015, A85, OJ EPO 2017, A85, ~~and~~ OJ EPO 2018, A16, and OJ -EPO 2023, -Axx105):

| | |
|--------------------------|------------------------------|
| Morocco (MA) | since 1 March 2015 |
| Republic of Moldova (MD) | since 1 November 2015 |
| Tunisia (TN) | since 1 December 2017 |
| Cambodia (KH) | since 1 March 2018 |
| <u>Georgia (GE)</u> | <u>since 15 January 2024</u> |

Extension and validation agreements are bilateral international treaties concluded between the European Patent Organisation and an individual state. Within the territory of that state, the effects of a European patent application for which an extension or validation request has been filed, or of a European patent that has been validated in an extension or validation state, are based on national law. The provisions of the EPC, its Implementing Regulations and the Rules relating to Fees do not apply to the extension and validation systems unless and only to the extent that those provisions are referred to by the applicable national law. Thus, the EPC provisions concerning applicants' legal remedies and appeals do not apply in respect of any action taken by the EPO under the extension or validation procedure (see J 14/00, J 4/05 and J 22/10), e.g. where the extension or validation fee has not been paid within the applicable time limit indicated (A-III, 12.2). Similarly, no different claims, description or drawings are acceptable in respect of extension or validation states (see H-III, 4.4), as Rule 138 does not apply to the extension and validation systems.

A request for extension to or validation for the above-mentioned states is deemed made with any European patent application filed after entry into force and, in the case of the former, before termination of the respective extension agreements. This also applies to Euro-PCT applications, provided that the EPO has been designated for a European patent **and** the extension or validation state has been designated for a national patent in the international application. The request is deemed withdrawn if the extension or validation fee is not paid within the prescribed time limit (see A-III, 12.2). It is by paying the extension or validation fee that the applicant decides to extend the application to an extension state or validate it in a validation state. The declaration in the appropriate section of the request for grant form (EPO Form 1001) or of EPO Form 1200 for entry into the European phase before the EPO where the applicant is asked to state whether they intend to pay the extension or validation fee is merely for information purposes and intended to assist in recording fee payments.

A request for extension or validation in respect of a divisional application (see A-IV, 1) is deemed made only if the respective request is still effective in the parent application when the divisional application is filed.

12.2 Time limit for payment of extension and validation fees

Under the applicable national provisions of the extension and validation states, the extension or validation fee must be paid

- (i) for European patent applications within six months of the date on which the European Patent Bulletin mentions the publication of the European search report
- (ii) for Euro-PCT applications within the period for performing the acts required for an international application's entry into the European phase or within six months of the date of publication of the international search report, whichever is the later.

If the fee for an extension or validation state has not been paid within the corresponding basic period (see **items (i)** and **(ii)** above), the applicant can still pay the extension or validation fee together with a 50% surcharge

- (a) within a grace period of two months from expiry of the basic period for payment or
- (b) if the designation fee has not been paid, along with the filing of a valid request for further processing concerning the designation fee, within two months of notification of a communication of loss of rights with regard to the designation fee (see the EPO notices dated 2 November 2009, OJ EPO 2009, 603, and **5** February 2015, OJ EPO 2015, A19).

If the applicant fails to pay the extension or validation fee during the basic and the grace period, the request for extension or validation is deemed withdrawn. No communication of loss of rights is issued.

However, a noting of loss of rights for failure to pay the designation fee under Rule 39(2) or 159(1)(d) will draw the applicant's attention to the non-payment of the extension or validation fee, where appropriate, triggering the time limit mentioned in item **(b)** above.

A request for re-establishment of rights according to Art. 122 and Rule 136 is not possible in respect of payment of the extension or validation fee.

12.3 Withdrawal of the extension or validation request

The request for extension or validation may be withdrawn at any time. It will be deemed withdrawn if the European patent or Euro-PCT application is finally refused, withdrawn or deemed withdrawn. A separate communication is not issued to the applicant. Validly paid extension or validation fees are not refunded.

12.4 Extension and validation deemed requested

Extension and validation are deemed requested in respect of all extension and validation states (see, however, A-III, 12.1, **sixth paragraph**, regarding Euro-PCT applications), and this is indicated in the published application, the European Patent Register and the European Patent Bulletin. Those states for which the extension or validation fees have been paid are subsequently indicated in the European Patent Register, the European Patent Bulletin and the published patent specification.

12.5 National register

Extension and validation states publish in their national register the relevant data relating to European patent applications and patents extending to their territory.

13. Filing and search fees

13.1 Payment of fees

The applicant is required to pay a filing fee and, subject to the exception mentioned below (see the note to point (iii) below), a search fee. The filing and search fees must be paid within the following periods:

- (i) where neither (ii) nor (iii) applies, within one month of filing the European patent application *Rule 38*
- (ii) for European divisional applications or European patent applications filed according to Art. 61(1)(b), within one month of filing the divisional or Art. 61(1)(b) application *Rule 36(3)*
Rule 17(2)
- (iii) for Euro-PCT applications, within 31 months of the filing date or, where applicable, from the earliest claimed priority date*. *Rule 159(1)*

*Note that when a supplementary European search report is dispensed with by the EPO (see B-II, 4.3), no search fee is required for the Euro-PCT application (Rule 159(1)(e)).

With regard to applications of types (i) and (ii), the EPO will check that these fees have been paid. If either fee is not paid on time, the application is deemed withdrawn. The applicant will be notified by the EPO as to the loss of rights according to Rule 112(1) and can respond by requesting further processing according to Art. 121 and Rule 135. *Art. 90(3)*
Rule 57(e)
Art. 78(2)
Rule 36(3)
Rule 17(2)

Under Art. 2(1) RFees as amended by Administrative Council decision of 13 December 2017 (OJ EPO 2018, A4), the filing fee amount depends on the method and format used for filing the European patent application or its translation, if applicable. However, where a fee level relates to a means of electronic communication or a particular electronic document format, that level only applies when the means or format, as referred to in Art. 2(1) RFees, is made available. The date on which such fee level applies is to be specified by the EPO President (see Art. 2(4) RFees as adopted by Administrative Council decision of 12 December 2018, OJ EPO 2019, A3, and the EPO notice dated 24 January 2019, OJ EPO 2019, A6). At present, for European patent applications, the fee levels of the filing fee and of the fee for grant for filing in character-coded format (DOCX) are not applied. The latest information on the applicable fee levels and amounts can be found on the EPO website (see also A-X, 1).

With regard to Euro-PCT applications (type (iii)), see E-IX, 2.1.4.

For the reduction of the filing fee under the language arrangements, see *Rule 6(3) to (7)*
A-X, 9.2.1 and 9.2.2.

13.2 Additional fee (if application documents comprise more than 35 pages)

Rule 38(2) and
(3)
Art. 2(1), item 1a,
R~~F~~ees
Rule 49

This section relates only to applications filed and international applications entering the European phase on or after 1 April 2009 (see also the EPO notice dated 26 January 2009, OJ EPO 2009, 118, and its supplement, OJ EPO 2009, 338).

EP-direct applications

An additional fee is payable as part of the filing fee for European patent applications filed on or after 1 April 2009 and comprising more than 35 pages. The fee amount depends on the number of pages over 35. The language reduction under Rule 6(3) applies if the requirements of Rule 6(4), (6) and (7) have been met (see A-X, 9.2.1 and A-X, 9.2.2). The additional fee is payable within one month of the application's filing date or of the date of receipt of a European divisional application or a European patent application according to Art. 61(1)(b). If the application is filed without claims or by reference to a previously filed application, the additional fee is payable within one month of filing the first set of claims or the certified copy of the application referred to in Rule 40(3), whichever expires later. The additional fee is calculated on the basis of the pages of the description, claims, any drawings and one page for the abstract, in the language of filing. Where formal deficiencies in the documents making up the European patent application need to be corrected, the number of pages complying with the physical requirements (see A-III, 3 and A-IX) is taken as the basis for calculation. In particular, deficiencies relating to minimum margins, each document making up the application starting on a new sheet, line spacing and character size as well as the scale of drawings can potentially impact the number of pages (see the decision of the President of the EPO dated 25 November 2022, OJ EPO 2022, A113). Where this is the case, any additional fee due for the higher number of pages may be paid within two months of the invitation under Rule 58 drawing the applicant's attention to this requirement.

The pages of the request for grant (EPO Form 1001) and those forming part of a sequence listing within the meaning of Rule 30(1) are not counted, provided the sequence listing contained in the description is filed in XML format, in compliance with WIPO Standard ST.26 (see OJ EPO 2021, A97). Furthermore By way of exception, an additional fee is not due either for a parent application's ST.25 sequence listing filed in PDF format as part of a divisional application, an additional fee does not fall due for any ST.25 sequence listing in PDF format that is part of a divisional application and filed additionally to prevent any issues possibly arising from converting to WIPO Standard ST.26 (see OJ -EPO 2023, A98, and A-IV, -5.4). If the application is filed by reference to a previously filed application, the pages of the certified copy, excluding those for the certification, and for bibliographic data and any sequence listing in ST.25 if it is contained in the certified copy under Rule 40(3), are taken as the basis for the calculation, excluding the those pages for the certification, for bibliographic data and any sequence listing in ST.25 format contained in the certified copy under Rule -40(3). If the application is filed without claims, the additional fee takes account of the pages of the first set of claims filed.

Where missing parts are filed under Rule 56 (see A-II, 5) or correct application documents are filed under Rule 56a (see A-II, 6), the additional fee is calculated on the basis of the documents present at expiry of the time limit under Rule 38(3).

Euro-PCT applications

For international (Euro-PCT) applications entering the European phase on or after 1 April 2009, the additional fee is payable as part of the filing fee within the 31-month period of Rule 159(1). In general, it is calculated on the basis of the international application as published, regardless of the language of publication. The pages of the description, claims and drawings are counted, as well as one page for the bibliographic data with abstract. Any amendments under Art. 19 and/or 34 PCT are also considered part of the international publication and are taken into account for calculating the additional fee unless the applicant indicates that the procedure in the European phase is not to be based on them. The indications made in EPO Form -1200 should be clear so the EPO can readily identify the pages for which the additional fee is payable.

The pages of EPO Form 1200 itself and those forming part of a standard-compliant sequence listing under Rule 30(1) are not counted.

Amended application

If amendments are filed on entry into the European phase, the basis for calculating the additional fee depends on the language in which the international application was published, i.e. ~~in~~ one of the EPO's official languages or another language, e.g. ~~such as~~ Chinese.:

(i) International publication is in an EPO language

The additional fee is based on the ~~description~~ application as published, whereby any amended ~~description~~ pages replace the respective pages of the ~~description~~ application as published.

If the claims have been amended, the applicants must submit the entire set, even if the amendment concerns only some of them. -The additional fee is then based on the entire ~~amended~~ set of claims as amended.

(ii) International publication is not in an EPO language

If no amendments are filed on entry into the European phase, the application as published in a non-EPO language (e.g. Chinese) is taken as the basis for calculating the additional fee. However, if pages are amended, the translation of the application as required under Art. ~~icle~~ 153(4) and Rule 159(1)(a) is taken as the basis instead. This is because ~~A description drafted partly in an EPO language and partly in another language, e.g. Chinese, cannot be taken as a basis for calculating the additional fee because~~ the replacement pages are in a different language to the published pages, which would make a proper calculation of the additional fee impossible. Therefore, if the description or drawings are ~~is~~ amended, the translation of the description or

drawings as required under Article 153(4) and Rule 159(1)(a) is taken as the basis for calculating the additional fee. In this case, the amended pages replace the respective pages of the description or drawings as translated.

If only the claims are amended, the additional fee is based on the description and drawings as published in Chinese plus the entire set of claims as amended in the EPO language. If the claims are not amended, the additional fee is based on the claims as published in Chinese.

~~amended replacement pages one of the EPO's in an official result in additional being additional in this case to that of rendering additional otherwise the international application as published (even if published in a non-EPO language), any amended claims under Art. 19 PCT, which replace the claims as originally filed unless otherwise specified (see OJ EPO 2017, A74), and one page for the abstract. If there is more than one page of bibliographic data, the further pages are not counted. The pages of the latest set of any amended documents (Art. 34 PCT, amendments filed upon entry) on which European phase processing is to be based (Rule 159(1)(b)) will also be taken into account where available to the EPO by the date of payment of the additional fee within the 31 months. Any amended pages are added to the calculation of the page fee unless the applicant clearly specifies, at the latest by the date of payment, the amended pages which are to replace the corresponding pages of the application as published (see also E-IX, 2.1.1). This information should preferably be given in the relevant section of the form for entry into the European phase, and in particular in the related table (see notes on EPO Form 1200). If the applicant explicitly states that application documents filed on entry into the European phase have merely been reformatted (to reduce the number of pages subject to payment of an additional fee) rather than substantively amended, the EPO disregards these reformatted application documents and does not accept them as the basis for calculation of the additional fee (see the EPO notice dated 26 January 2009, OJ EPO 2009, 118, and its supplement, OJ EPO 2009, 338).~~

~~Any replacement pages must be filed in an official EPO language. Where the international application has not been published in an official EPO language, the additional fee for any amended description or drawings will be based on the translation of the international application filed on entry into the European phase (see E-IX, 2.1.4). Where claims are replaced, they must be submitted as an entire new set. The additional fee is then calculated on the basis of the amended set in the EPO language (OJ EPO 2009, 338).~~

If the applicant explicitly states that application documents filed on entry into the European phase have merely been reformatted (to reduce the number of pages subject to payment of an additional fee) rather than substantively amended, the EPO disregards these reformatted application documents and does not accept them as the basis for calculation of the additional fee (see the EPO notice dated 26 January 2009, OJ EPO 2009, 118, and its supplement, OJ EPO 2009, 338).

~~EPO Form 1200 is disregarded in the calculation of the additional fee.~~

~~The pages of any WIPO Standard ST.25-compliant sequence listing in TXT format filed as part of the description are disregarded when calculating the additional fee for Euro-PCT applications with an international filing date prior to 1 July 2022. If the international filing date is on or after 1 July 2022, the pages of a WIPO Standard ST.26-compliant sequence listing in XML format are disregarded.~~

In application of the general principles described above, for international applications comprising both erroneously filed application documents and correct application documents incorporated by reference (Rule 20.6 PCT in conjunction with Rule 20.5*bis*(d) PCT), irrespective of their date of filing (see OJ EPO 2020, A81, and OJ EPO 2022, A71; see also C-III, 1.3), the additional fee must be paid for all application documents contained in the international publication unless any are replaced by amendments filed on entry into the European phase, as specified by the applicant.

For international applications with an international filing date on or before 31 October 2022, corrections that the receiving Office allowed to be incorporated under Rule 20.6 PCT in conjunction with Rule 20.5*bis*(d) PCT are not effective in proceedings before the EPO as designated or elected Office (see OJ EPO 2020, A81). Nevertheless, the above general principles for calculating the additional fee apply. However, where applicants choose the abridged procedure outlined in C-III, 1.3 and the declaration to renounce the correct application documents incorporated by reference under Rule 20.5*bis*(d) PCT is received within the 31-month period for entering the European phase and before payment of the additional fee, this renunciation is, for the calculation of the additional fee, equal to an amendment of the international application as published. Accordingly, those pages identified in the publication of the international application as "**Incorporated by reference (Rule 20.6)**" are deducted from the international application as published. The same principle applies if, within the 31-month period for entering the European phase, the applicants declare their intention to renounce the erroneously filed application documents and, thus, the initial filing date. In that case, the erroneously filed pages are deducted from the international application as published when calculating the additional fee.

Where the international application was published in a non-EPO language, the general practice described above also applies. Since the applicant's intention to follow the abridged procedure on entry into the European phase is considered an amendment of the international application as published, the additional fee is calculated on the basis of the translation of those application documents that are maintained for the further proceedings (either the correct application documents incorporated by reference or the erroneously filed ones) and any further amendments replacing (part of) them (see the EPO notice dated 14 June 2020, OJ EPO 2020, A81).

Example 1:

International application, published in English, containing 100 pages:

| | |
|---------------------|----|
| Abstract | 1 |
| Description | 50 |
| Claims | 20 |
| Drawings | 20 |
| claims, Art. 19 PCT | 9 |

Total pages **100**

Amended claims (EP entry) 10

On entry into European phase, within the 31-month period, 10 pages of amended claims are filed to replace previous pages of claims, as indicated by the applicant in EPO Form 1200.

-> number of pages on which calculation is based: 100 - 20 (original claims) - 9 (Art. 19 PCT) + 10 (amended claims on EP entry) - 35 (fee-exempt)

-> number of pages to be paid for: 46

Example 2:

International application, published in Chinese, containing 75 pages:

| | Number of pages in Chinese (ZH) | Number of pages in English (EN), translation filed on entry into the European phase |
|--|---------------------------------|---|
| Abstract | 1 | 1 |
| Description | 40 | 50 |
| Claims | 15 | 25 |
| Drawings | 19 | 19 |
| Total number of pages | 75 | 95 |
| Amended description of the translation | - | 3 |

On entry into the European phase, the translation into English is filed within the 31-month period. Three pages of the translated description as originally filed are replaced by three amended pages, as indicated by the applicant in EPO Form 1200.

-> number of pages on which calculation is based: 35 (abstract, claims and drawings in ZH) + 47 (EN translation of description - 3) + 3 (amended description of the translation) - 35 (fee-exempt)

-> number of pages to be paid for: 50

If in the above example only the claims are amended, the additional fee is based on the description, drawings and abstract as published in Chinese and the translation of the entire set of claims as amended.

Pages of amendments filed after the additional fee's payment date, in particular during the Rule 161(1) or Rule 161(2) period (see E-IX, 3), are not taken into account. Consequently, if amendments filed at this stage reduce the number of pages already paid for, no refund will be made.

If the additional fee is not paid on time, the application is deemed withdrawn. The EPO will notify the applicant of the loss of rights according to Rule 112(1); the applicant can request further processing according to Art. 121 and Rule 135. The further processing fee is calculated on the basis of the number of pages on file at the relevant period's expiry and for which the additional fee, calculated as set out above has not been paid. The amount of the further processing fee in respect of the additional fee does not take into account the basic filing fee according to Art. 2(1), item 1, RFees if this was paid on time.

Art. 78(2)

13.3 Additional fee for divisional applications

Regarding the additional fee payable as part of the filing fee for divisional applications of second or subsequent generations filed on or after 1 April 2014, see A-IV, 1.4.1.1 and the EPO notice dated 8 January 2014, OJ EPO 2014, A22.

Rule 38(4)

*Art. 2(1), item 1b,
RFees*

14. Translation of the application

There are three situations in which a translation of the European patent application will be required:

Art. 14(2)

Rule 6(1)

- (i) the European patent application was filed according to Art. 14(2) in a non-EPO language
- (ii) the European patent application was filed by reference to a previously filed application in a non-EPO language (Rule 40(3))
- (iii) the European divisional application was filed in the same language as the earlier (parent) application on which it is based, where this was not an official EPO language (Rule 36(2) – see A-IV, 1.3.3).

In all cases, a translation of the application must be filed at the EPO: in cases (i) and (ii) this must occur within two months of the filing date according to Rule 6(1) (for type (i)) or Rule 40(3) (for type (ii)); in case (iii) it must occur within two months of the divisional application's filing according to Rule 36(2).

The EPO will check compliance with this requirement. If the translation has not been filed, the EPO will invite the applicant to rectify this deficiency under Rule 58 within two months in accordance with the procedure explained in A-III, 16.

Art. 90(3)

Rule 57(a)

Failure to file the translation on time in response to the invitation under Rule 58 results in the application being deemed withdrawn according to Art. 14(2). The EPO will then notify the applicant of this loss of rights

Rule 58

according to Rule 112(1). Further processing is ruled out by Rule 135(2) for the above time limits for supplying the translation under Rule 40(3), Rule 6(1) and Rule 36(2) and for the time limit for rectifying the failure to file the translation under Rule 58. Consequently, further processing is not possible in this case. However, the applicant may request re-establishment according to Art. 122 and Rule 136 for failure to comply with the time limit under Rule 58.

For translations in respect of international applications entering the European phase, see E-IX, 2.1.2.

15. Late filing of claims

*Art. 80
Rule 40(1)*

To obtain a filing date, the European patent application does not have to contain any claims. The presence of at least one claim is nonetheless a requirement for a European patent application according to Art. 78(1)(c), but a set of claims can be provided after the filing date according to the procedure described below.

*Art. 90(3) and
(5)
Rule 57(c)
Rule 58*

The EPO will check whether at least one claim is present in the application. If there is not, the EPO will issue an invitation under Rule 58 inviting the applicant to file one or more claims within two months. If the applicant fails to do so within this period, the application is refused according to Art. 90(5). The applicant is notified of this decision according to Rule 111. Further processing for failure to observe the time limit under Rule 58 is ruled out under Rule 135(2). The applicant may, however, request re-establishment according to Art. 122 and Rule 136 or may appeal.

Where the application documents as originally filed did not include at least one claim, applicants may also file claims on their own initiative after the filing date but before the EPO invites them to do so under Rule 58. In this case, the EPO does not issue a communication under Rule 58.

If the applicant does supply a set of claims in response to the invitation under Rule 58, the claims must have a basis in the application documents (description and any drawings) provided on the filing date (Art. 123(2)). This requirement will first be checked at the search stage (see B-XI, 2.2).

If the application was filed by means of a reference to a previously filed application in accordance with Rule 40(3) and the applicant indicated on the filing date that the previously filed application's claims were to take the place of claims in the application as filed (see A-II, 4.1.3.1), then, provided the previously filed application also contained claims on its filing date, claims were present on the filing date and no communication under Rule 58 will be sent.

The above procedure also applies to divisional applications (Art. 76(1)) and applications filed in accordance with Art. 61(1)(b).

16. Correction of deficiencies

16.1 Procedure for formalities officers

Art. 90(3)

Where, when examining for compliance with the requirements set out in earlier sections of this chapter, the formalities officer discovers deficiencies that may be corrected, they must give the applicant the opportunity to rectify each such deficiency within a specified period. The most common potential deficiencies at this stage of the procedure and the provisions governing their rectification are:

| | | |
|-----------|--|-----------------------|
| A-III, 2 | Representation | Rule 58 |
| A-III, 3 | Physical requirements | Rule 58 |
| A-III, 4 | Request for grant | Rule 58 |
| A-III, 5 | Designation of inventor | Rule 60 |
| A-III, 6 | Claim to priority | Rule 52(3), Rule 59 |
| A-III, 9 | Payment of claims fees | Rule 45 |
| A-III, 10 | Abstract | Rule 58 |
| A-III, 13 | Filing fee, including any additional fee, search fee | Rule 112(1), Rule 135 |
| A-III, 14 | Translation of the application | Rule 58 |
| A-III, 15 | Late filing of claims | Rule 58 |
| A-IV, 5 | Late furnishing of a standard-compliant sequence listing | Rule 30(3) |

The formalities officer should raise all formal objections that become evident from a first examination of the application – with the exception of those noted in A-III, 3.2 – in the appropriate communication. The definitive resolution of certain matters will likely be impossible at this stage, e.g. filing of priority documents for which the filing period has not expired, and further reports may be necessary. If the applicant is required to appoint a representative but has not done so, the formalities officer should deal with only this deficiency in the first report. Any request(s) for correction of other deficiencies will not be sent until a representative has been appointed, and will be sent to that representative.

16.2 Period allowed for remedying deficiencies

The period for remedying the following deficiencies is two months from a communication pointing them out according to Rule 58: *Rule 58*

- (i) non-appointment of a representative where the applicant has neither residence nor principal place of business in a contracting state – see A-III, 2 (regarding failure to file an authorisation where this is necessary, see A-VIII, 1.5 and the decision of the President of the EPO dated 12 July 2007, Special edition No. 3, OJ EPO 2007, L.1)
- (ii) documents making up the application not complying with physical requirements (see A-III, 3)
- (iii) request for grant (with the exception of the priority criteria) not satisfactory (see A-III, 4)
- (iv) abstract not filed (see A-III, 10)
- (v) where required, translation of the application not filed (see A-III, 14)

(vi) no claims (see A-III, 15).

Art. 90(5)

Art. 14(2)

The period under Rule 58 is not extendable. If the above deficiencies under (i)-(iv) or (vi) are not rectified in time, the application is refused under Art. 90(5). If the deficiency under (v) is not rectified in time, the application is deemed withdrawn under Art. 14(2). Under Rule 135(2), further processing is ruled out for all of the above losses of rights, which all arise from the failure to observe the time limit of Rule 58.

The following deficiencies are rectified under provisions other than Rule 58:

(vii) non-payment of the claims fees (Rule 45 – see A-III, 9)

(viii) priority document or file number of the previous application is missing (Rule 59 – see A-III, 6)

(ix) non-payment of filing fee, including any additional fee, and search fee (see A-III, 13)

(x) non-filing of a standard-compliant sequence listing (Rule 30(3) – see A-IV, 5).

Rule 45

According to Rule 45(2), the period for remedying deficiencies related to the payment of claims fees under (vii) is one month from a communication pointing out their non-payment. Failure to correct this deficiency in time leads to the claims in question being deemed abandoned under Rule 45(3). Further processing applies to this loss of rights.

Art. 90(5)

Rule 59

Deficiencies under (viii) are to be corrected within two months of a communication under Rule 59. This period can be extended under Rule 132(2) (see E-IX, 2.3.5 for Euro-PCT applications) but further processing is ruled out by Rule 135(2). Failure to correct this deficiency in time leads to the loss of the priority right.

Art. 78(2)

Failure to pay the filing, additional or search fee on time results in the deemed withdrawal of the application according to Art. 78(2). This loss of rights ensues directly on expiry of the applicable time limit (see A-III, 13). A ~~deficiency~~ Deficiencies under (ix) can be corrected by requesting further processing.

Rule 30

The deficiency under Rule 30(1) can be corrected within two months of a communication under Rule 30(3). This period is not extendable but further processing is available. Failure to correct this deficiency in time leads to the refusal of the European patent application (see A-IV, 5).

Where appropriate, the search division is informed of any loss of rights.

Chapter IV – Special provisions

1. European divisional applications (see also C-IX, 1)

1.1 General remarks

A divisional application may be filed relating to any pending earlier European patent application. A divisional application filed on the same day as the parent application is not considered validly filed. The term "earlier application" is understood to mean an application filed at least one day before the divisional application and refers to the immediate application on which the divisional application is based ("parent application"). Where the earlier application is a Euro-PCT application, a divisional application can only be filed upon the earlier application's effective entry into the European phase (see E-IX, 2.4.1).

Art. 76
Rule 36(1)

The divisional application is accorded the same filing date as the parent application and benefits from any priority right of the parent application in respect of the subject-matter contained in the divisional application (see A-IV, 1.2.1).

Where the applicant inserts missing parts of the description and/or missing drawings under Rule 56 (see A-II, 5) or corrects erroneously filed parts under Rule 56a (see A-II, 6) after the divisional application's date of receipt, the requirements of Rule 36(1) may no longer be fulfilled (see A-IV, 1.1.1). If the divisional application claims priority, the date of receipt does not change if the missing parts or the correct application documents are completely contained in the earlier application whose priority is claimed (Art. 88(1)).

A European patent application may give rise to more than one divisional application. A divisional application may itself give rise to one or more divisional applications.

Where a divisional application is deemed not validly filed due to non-fulfilment of one of the filing conditions (see also A-IV, 1.1.1 and 1.1.3), the applicant will be duly informed in a communication under Rule 112(1) stating that the application will not be processed as a European divisional application and providing the opportunity to apply for a decision on the EPO's findings under Rule 112(2) (see E-VIII, 1.9.3). Any fees paid will be refunded if the loss of rights becomes final.

1.1.1 Pendency of the earlier application

The parent application must be pending when a divisional application is filed. Reference is made in this regard to the observations in G 1/09 and J 18/09 as to what constitutes a pending application. In the case of an application filed as a divisional application from an application that is itself a divisional application, it is sufficient that the latter is still pending on the second divisional application's date of receipt.

An application is pending up to (but **not** on) the date that the European Patent Bulletin mentions the grant of the patent (OJ EPO 2002, 112). Rule 134 does not apply in this case. It is not possible to validly file a divisional application

when the parent application has been finally refused, withdrawn or is deemed withdrawn (see also the paragraphs below).

If an application is **deemed withdrawn** due to non-observance of a time limit (e.g. following failure to pay the filing fee (Art. 78(2)), a renewal fee (Art. 86(1)), the fee for grant and publishing or the claims fees, or to file the translation of the claims (Rule 71(7)) in due time), the application is no longer pending when the non-observed time limit has expired.

If a renewal fee is not paid by the due date (Rule 51(1)), the application is pending up to the last day of the six-month period for payment of that fee with an additional fee (Rule 51(2), first sentence), and a divisional application may still be filed during this period – even if the fees are ultimately not paid. Deemed withdrawal of the application takes effect on expiry of the six-month period (Rule 51(2), second sentence).

Once the application is deemed withdrawn, a divisional application can only be validly filed if the loss of rights, as communicated under Rule 112(1), is subsequently remedied. In such a case, the application is deemed to have been pending throughout.

Art. 112a(5)

Depending on the non-observed time limit, the loss of rights may be remedied either by means of an allowable request for further processing (see E-VIII, 2) or, where applicable, by a request for re-establishment of rights (see E-VIII, 3). Furthermore, if the findings in the notice of loss of rights are considered inaccurate, the applicant may also request a decision under Rule 112(2) (see E-VIII, 1.9.3). If the competent EPO body shares this opinion or if it gives an unfavourable decision that is subsequently overturned on appeal, no loss of rights will have ever occurred and the application will have been pending throughout (see J 4/11, reasons 22). The same applies if the appeal decision is set aside by the grant of a petition for review and the appeal proceedings are reopened under Art. 112a(5), with the consequence that the decision under Rule 112(2) is overturned.

If an application has been **refused** and no appeal has (yet) been filed, the application is still pending within the meaning of Rule 36(1) until expiry of the time limit for filing the notice of appeal (Art. 108), and a divisional application can be validly filed until this period expires (see G 1/09). Where the applicant does validly file a notice of appeal but fails to submit the written statement setting out the grounds of appeal, the refused application is pending until the time limit for filing the grounds of appeal under Art. 108 expires (see J 23/13). If the grounds of appeal are submitted in due time, the decision to refuse cannot take effect until the appeal proceedings are over. As the provisions relating to the filing of divisional applications also apply in appeal proceedings (Rule 100(1)), a divisional application may then be filed while such appeal proceedings are under way. If the appeal proceedings are reopened under Art. 112a(5), the application will have been pending throughout.

If the parent application is **withdrawn** by the applicant, a divisional application can be filed up to (i.e. including) the date on which the declaration of withdrawal is received by the EPO.

While proceedings are stayed in accordance with Rule 14(1) (see A-IV, 2.2), divisional applications cannot be filed. Rule 14(1) constitutes a *lex specialis* with regard to the right to file a divisional on a pending application provided for in Rule 36(1) (see J 20/05 and G 1/09, reasons 3.2.5).

If a purported divisional application is filed when the parent application is not pending, the EPO will issue a communication under Rule 112(1) (see A-IV, 1.1). The pendency of the earlier application is not a procedural deadline or time limit that would lead to a loss of rights in the event of non-compliance. Instead, it is a condition of a substantive nature for the filing of divisional applications (see G 1/09, reasons 3.2.3). Therefore, the provisions on re-establishment of rights and further processing do not apply to the filing of divisional applications (see J 10/01, reasons 15).

1.1.2 Sequences of divisional applications

A divisional application can also be an earlier application within the meaning of Art. 76(1) for one or more further divisional applications. The characterising feature of a sequence of divisional applications, each divided out from its predecessor, is that each member of the sequence claims as date of filing the date of the root application in which the subject-matter divided out in sequences of divisional applications was first disclosed (see G 1/05, G 1/06).

In a sequence of divisional applications, a first-generation divisional application is a divisional application based on an application that is not itself a divisional application, i.e. the root application. A second-generation divisional application is a divisional application based on a first-generation divisional application; and so on.

1.1.3 Persons entitled to file a divisional application

Only the applicant on record of the earlier application may file a divisional application. In the case of multiple applicants, a divisional application may only be filed jointly by all applicants on record. This means that, in the case of a transfer of an application, a divisional application may only be filed by or on behalf of the new applicant(s) if the transfer was duly registered and therefore effective vis-à-vis the EPO (Rule 22) at the divisional application's date of receipt. A purported divisional application that is not (jointly) filed in the name of the applicant(s) of the parent application will not be processed as a European divisional application. The EPO will inform applicants by issuing a communication under Rule 112(1) (see A-IV, 1.1).

1.2 Date of filing of a divisional application; claiming priority

1.2.1 Date of filing

A European divisional application may be filed in respect of subject-matter not extending beyond the content of the parent application as filed. Provided this requirement is met, the divisional application is deemed filed on the parent application's filing date and enjoys that application's priority (see A-IV, 1.2.2).

*Art. 76(1),
2nd sentence*

Art. 63(1)
Art. 80
Rule 40(1)

A divisional application filed in due form, i.e. meeting the requirements of Art. 80 and Rule 40(1) (see A-II, 4.1 *et seq.*), is accorded the same filing date as the parent application or that of the root application in the case of a sequence of divisional applications. Whether the divisional application's subject-matter is confined to that of the parent application is not decided until the examination procedure (see C-IX, 1.4 *et seq.*). The term of a patent granted for a European divisional application is 20 years from its filing date, i.e. the filing date of the root application.

Since Rule 40(1) does not require a European patent application to contain any claims on its filing date, the same applies to a European divisional application. The applicant can file the claims after filing the divisional application according to the procedures detailed in A-III, 15. This may be done after the parent application is no longer pending, provided that the requirements of Rule 40(1) were satisfied with regard to the divisional application when the parent application was still pending. If the parent application's claims are included in the divisional application's description, they must be clearly identified as part of the description (see F-IV, 4.4).

1.2.2 Priority claim of a divisional application

Art. 76(1)
Rule 53(2) and
(3)

A priority claimed in the parent application also applies to the divisional application, provided that the parent application's priority claim has not been lost or withdrawn by the date the divisional application is filed; it is not necessary to claim it formally a second time. The priority claim can be withdrawn in respect of the divisional application (F-VI, 3.5, E-VIII, 8.2 and E-VIII, 8.3). However, this will have no effect on the parent application's priority claim. Similarly, any withdrawal of the priority claimed in the parent application after the divisional application's filing has no effect on the latter's priority claim.

Where the parent application claims multiple priorities under Art. 88(2), the applicant may claim fewer priorities in respect of the divisional application. To do so, they must file a clear and unambiguous withdrawal of the priority claim or claims in question in respect of the divisional application (see the EPO notice dated 12 November 2004, OJ EPO 2004, 591). In the absence of such a withdrawal, all priorities that have not lapsed in respect of the parent application when the divisional is filed also remain valid with respect to that application. What is more, all such priority claims remain valid for the divisional, even if the applicant provides an incorrect or incomplete priority claim when filing it.

If a certified copy and a translation of the previous application, if applicable (see A-VII, 3.3), have been filed in respect of the parent application before the divisional application is filed, it is not necessary to file the priority document and any translation again in respect of the divisional. The EPO makes a copy of these documents and places them in the divisional application's file (see the decision of the President of the EPO dated 12 July 2007, Special edition No. 3, OJ EPO 2007, B.2).

If, when the divisional application is filed, a priority document has not been filed in respect of the parent application, it must be filed in respect of the divisional application and, if the priority claim of the parent application's

remaining subject-matter is to be retained, in respect of the parent application also. Applicants can also inform the EPO, within the time limit set for filing priority documents in the divisional application proceedings, that they have meanwhile submitted these documents in respect of the parent application. If the divisional application's subject-matter relates only to some of the priorities claimed in the parent application, priority documents in respect of the divisional application need be filed for those priorities only.

This applies also as regards indicating the file number of the previous application. For the time limits for indicating the file number and for filing the priority documents, see A-III, 6.5, 6.5.3 and 6.7 *et seq.*

Rule 52(2)

1.3 Filing a divisional application

1.3.1 Where and how to file a divisional application

A divisional application must be filed with the EPO. ~~must be filed with the EPO in Munich, The Hague or Berlin by delivery by hand, by postal services or by fax. It~~ may also be filed using EPO Online Filing, **Online Filing 2.0**, ~~or the EPO web-form filing service or the EPO Contingency Upload Service (see A-II, 1.1.1 A-II, 1.2.2). If filed by delivery by hand, by postal services or by fax, divisional applications must be filed with the EPO in Munich, The -Hague or Berlin.~~

Rule 36(2)

Rule 35(1)

The filing of a European divisional application with a national authority has no effect in law; the authority may however, as a courtesy service, forward the European divisional application to the EPO. If a competent national authority chooses to forward the application, it is not deemed received until the documents have reached the EPO.

The divisional application may be filed by reference to a previously filed application. The procedures are as provided for in Rule 40(1)(c), (2) and (3) (see A-II, 4.1.3.1). Where the divisional application is filed by reference to an international application that has effectively entered the European phase (see A-IV, 1.1) and was not filed with the EPO as receiving Office, a certified copy of the international application originally filed with the PCT receiving Office must be filed (OJ EPO 2009, 486).

1.3.2 Request for grant

The request for grant of a patent must contain a statement that a divisional application is sought and state the number of the parent application. It should also mention which generation of divisional application is being filed (Rule 38(4), Art. 2(1), item 1b, RFees). If the request is deficient, as can arise if there is no indication that the application constitutes a divisional application, even though some of the accompanying documents contain an indication to that effect or if the number is missing, the deficiency may be corrected ~~in the manner indicated in A-III, 16~~ in the manner indicated in A-III, 16 or under Rule -139 (see A-V, 3).

Rule 41(2)(e)

1.3.3 Language requirements

As indicated in A-VII, 1.3, a divisional application must be filed in the language of the proceedings of the parent application. Alternatively, if the earlier (parent) application was filed in a non-official EPO language, the

Rule 36(2)

divisional application may be filed in the same language. In this case a translation into the language of the proceedings of the earlier application must then be filed within two months of filing the divisional application (see A-III, 14).

1.3.4 Designation of contracting states

Art. 76(2)
Rule 36(4)

All contracting states designated in the earlier application at the time of filing a European divisional application are deemed designated in the divisional application (see also G 4/98). If no designations have been withdrawn in respect of the parent application, then all states party to the EPC at the date of the parent's filing are automatically designated in the divisional application when filed. Conversely, contracting states that have had their designation withdrawn in respect of the parent application at the time of filing the divisional application, cannot be designated in respect of the divisional application.

If the parent application was filed before 1 April 2009 and the time limit for paying the designation fees has not yet expired for the parent application when the divisional application is filed, and no designations have been withdrawn in respect of the parent application, then all states party to the EPC at the parent's filing date are automatically designated in the divisional application when it is filed. Conversely, contracting states that have had their designation withdrawn or deemed withdrawn in respect of the parent application at the time of filing the divisional application, cannot be designated in respect of the divisional application.

The flat designation fee payable for divisional applications filed on or after 1 April 2009 does not cover contracting states that have had their designation withdrawn or deemed withdrawn at the time of filing the divisional application.

1.3.5 Extension and validation states

All extension and validation states designated in the earlier application at the time of filing a European divisional application are deemed designated in the divisional application. For more details regarding the designation of these states, see A-III, 12.1.

1.4 Fees

1.4.1 Filing, search and designation fee(s)

Rule 36(3) and (4)
Art. 79(2)

The filing fee and search fee for the divisional application must be paid within one month of filing the European patent application. For the additional fee due for any pages in excess of 35, see A-III, 13.2. For the additional fee due for divisional applications of second or subsequent generations, see A-IV, 1.4.1.1. The designation fee(s) must be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the divisional application.

The search fee must be paid even if a further search fee has already been paid under Rule 64(1) in respect of the search report on the parent application for the part of the application that was lacking in unity and that is

now the subject of the divisional application (for reimbursement of the search fee, see A-IV, 1.8).

If, within the applicable time limit, the filing, search or designation fees have not been paid, the application is deemed withdrawn. The EPO informs the applicant of these losses of rights in a communication under Rule 112(1). The applicant can request further processing according to Art. 121 and Rule 135.

Rule 36(3) and (4)

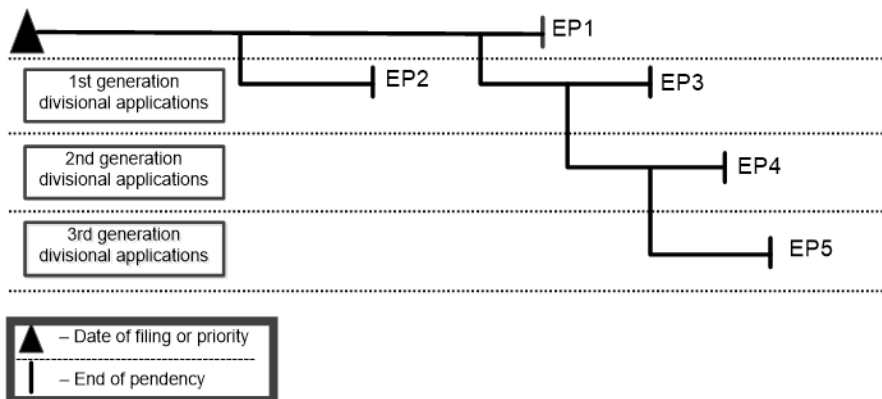
For divisional applications filed before 1 April 2009, see A-III, 11.3.2 and 11.3.4 for the deemed withdrawal of single designations or of the application and applicable remedies.

1.4.1.1 Additional fee for divisional applications of second or subsequent generations

An additional fee is payable as part of the filing fee for divisional applications of second or subsequent generations filed on or after 1 April 2014 (see the EPO notice dated 8 January 2014, OJ EPO 2014, A22). The fee amount varies depending on the generation to which the divisional application filed belongs (see A-IV, 1.1.2). First-generation divisional applications are not subject to the additional fee. The fee amount grows progressively from the second to the fifth generation and becomes a flat fee for the fifth and subsequent generations (Art. 2(1), item 1b, RFees).

*Rule 38
Art. 2(1), item 1b,
RFees*

Example:



In this example, no additional fee would be due in respect of EP2 and EP3, as they are first-generation divisional applications. The amount of the additional fee for second-generation divisional applications would apply to EP4, and the amount for third-generation divisional applications would apply to EP5.

The additional fee is part of the filing fee for divisional applications of second and subsequent generations. Therefore, it must be paid within the same period as the filing fee, and the same provisions apply if not paid in due time (see A-IV, 1.4.1). Likewise, the reduction of the filing fee under the language arrangements applies to this additional fee, provided that the requirements laid down in Rule 6(4) to (7) are complied with (see A-X, 9.2.1 and 9.2.2).

1.4.2 Claims fees

Rule 45(1)

If, at the time of filing the first set of claims, the divisional application comprises more than 15 claims, a claims fee is payable in respect of each claim in excess of that number (see A-III, 9). Claims fees are payable even if they were paid in the parent application in respect of claims relating to the subject-matter now the subject of the divisional application (see A-III, 9).

1.4.3 Renewal fees

Art. 86(1)

Art. 76(1)

Rule 51(3)

Art. 2(1), item 5,

RFees

For the divisional application, as for any other European patent application, renewal fees are payable to the EPO. They are due in respect of the third year and each subsequent year, calculated from the date of filing of the earlier (parent) application or that of the root application in the case of a sequence of divisional applications. Under Art. 76(1) in conjunction with Rule 51(3), the parent application's filing date is also the date from which the time limits for paying the renewal fees for the divisional application (Art. 86(1)) are calculated. If, when the divisional application is filed, renewal fees for the parent application have already fallen due, these must also be paid for the divisional application and fall due when the latter is filed (see also A-IV, 1.1.1). The period for paying these fees is four months after filing the divisional application. If not paid in due time, they may still be validly paid within six months of the date on which the divisional application was filed, provided that at the same time the additional fee of 50% of the renewal fees paid late is paid.

Rule 51(3)

Art. 2(1),

item 5, RFees

If, within the four-month period referred to above, a further renewal fee falls due or a renewal fee falls due for the first time, it may be paid without an additional fee within that period. It may otherwise still be validly paid within six months of the due date, provided that at the same time the additional fee of 50% of the renewal fee paid late is paid. When calculating the additional period the principles developed by the Legal Board of Appeal should be applied (see J 4/91).

Further processing for failure to pay renewal fees on time is ruled out by Rule 135(2). However, re-establishment is possible. In the case of applications for re-establishment of rights in respect of renewal fees falling due on filing of the divisional or within the four-month period laid down in Rule 51(3), second sentence, the one-year period prescribed by Rule 136(1) starts to run only after the six months under Rule 51(2) have expired.

Example:

| | |
|-------------|---|
| 25.03.2008: | date of filing of parent application |
| 11.01.2011: | filing of divisional application and due date of renewal fee for the third year |
| 31.03.2011: | due date of renewal fee for the fourth year |
| 11.05.2011: | expiry of four-month period under Rule 51(3) |
| 11.07.2011: | expiry of six-month period under Rule 51(2) in respect of the renewal fee for the third year |
| 30.09.2011: | expiry of six-month period under Rule 51(2) in respect of the renewal fee for the fourth year |
| 11.07.2012: | expiry of one-year period under Rule 136(1) in respect of the renewal fee for the third year |
| 01.10.2012: | expiry of one-year period under Rule 136(1) in respect of the renewal fee for the fourth year (extended under Rule 134(1)). |

For other examples see A-X, 5.2.4.

1.5 Designation of the inventor

The provisions of A-III, 5.4 apply with regard to the designation of the inventor, except that, where the designation of the inventor has not been provided or is deficient (i.e. it does not comply with Rule 19), the applicant will be invited to provide or correct it within a two-month period specified by the EPO (see E-VIII, 1.6). The divisional application requires a separate designation, independent of the parent application on which it is based.

Rule 60(2)

1.6 Authorisations

The provisions of A-VIII, 1.5 and 1.6 apply with regard to authorisations in respect of the divisional application. If, according to these provisions, the representative has to file an authorisation, they may act on the basis of an individual authorisation filed in respect of the parent application only if it expressly empowers them to file divisional applications.

1.7 Other formalities examination

Other than for matters referred to in A-IV, 1.1 to 1.6, the formal examination of divisional applications is carried out as for other applications. The provisions of Rule 30 apply with regard to divisional applications relating to nucleotide or amino acid sequences filed after 1 January 1993 (see A-IV, 5).

1.8 Search, publication and request for examination of divisional applications

Divisional applications are searched, published and examined in the same way as other European patent applications.

The search fee is refunded if the conditions of Art. 9(2) RFees are met (see the decision of the President of the EPO dated ~~14 January 2022~~17 January –2023 concerning the refund of the search fee under

Art. 9(2) RFees, ~~OJ EPO 2022, A8~~~~OJ EPO 2023, —A4~~, for divisional applications for which the search is completed on or after 1 April 2022).

The divisional application is published in accordance with Art. 93(1). The filing or priority date taken for calculation of the 18-month period for publication is the filing date or the earliest priority date claimed (see A-IV, 1.2.1). Since this period has usually already expired when the divisional application is filed, the technical preparations for publication are completed as soon as all formal requirements with respect to the divisional application have been fulfilled. ~~In rare cases Therefore, the titles may not be reviewed by the search division before publication.~~ The applicant is informed of the intended publication date (see also A-VI, 1.1).

The time limit for filing the request for examination begins to run on the date on which the European Patent Bulletin mentions the publication of the search report concerning the divisional application.

2. Art. 61 applications and stay of proceedings under Rule 14

2.1 General

Art. 61(1)
Rule 16

Under Art. 61(1), a court or competent authority ("court") may by a final decision find that a person other than the registered applicant is entitled to the grant of a European patent. Provided that the European patent has not yet been granted, this third party may, within three months after the decision has become final, in respect of those contracting states designated in the European patent application in which the decision has been taken or recognised or has to be recognised on the basis of the Protocol on Recognition annexed to the European Patent Convention:

- Art. 61(1)(a) (i) prosecute the application as their own application in place of the applicant (see A-IV, 2.4 and 2.7)
- Art. 61(1)(b) (ii) file a new European patent application in respect of the same invention (see A-IV, 2.5 and 2.7) or
- Art. 61(1)(c) (iii) request that the application be refused (see A-IV, 2.6 and 2.7).

If the application is no longer pending due to its having been withdrawn, refused or being deemed withdrawn, the third party can still file a new European patent application in respect of the same invention, in accordance with Art. 61(1)(b) (see G 3/92).

2.2 Stay of proceedings for grant

Rule 14(1)

If a third party provides proof to the EPO that they have opened proceedings against the applicant for the purpose of seeking a judgement that they are entitled to the grant of the European patent, the EPO will stay the proceedings for grant unless it receives written consent from the third party to continue such proceedings. This consent is irrevocable.

Proceedings for grant may not be stayed before the publication of the European patent application. In the case of a Euro-PCT application

proceedings may only be stayed after expiry of the time limit for entry into the European phase.

Furthermore, Rule 14(1) only refers to national entitlement proceedings that result directly, i.e. generally and automatically, in decisions mentioned in Art. 61(1) and not to proceedings initiated before a court of a non-contracting state (see J 6/03, r.21). Jurisdiction and the recognition of decisions regarding the right to the grant of a European patent for EPC contracting states are governed by the Protocol on Recognition, which under Art. 164(1) is an integral part of the EPC. Arbitration awards may be recognised, provided that they may automatically be recognised by all designated contracting states, e.g. in line with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958.

The dates on which proceedings are stayed and resumed will be entered in the European Patent Register (Rule 143(1)(s)). They will also be communicated to the parties.

For the stay of opposition proceedings, see D-VII, 4.1.

2.2.1 Responsible department

Sole responsibility for procedures where the applicant is not entitled lies with the EPO's Legal Division (see the decision of the President of the EPO dated 21 November 2013, OJ EPO 2013, 600).

Art. 20

2.2.2 Date of the stay of proceedings

A stay of proceedings under Rule 14(1) takes immediate effect from the date the EPO receives satisfactory evidence that national proceedings have been instituted against the applicant seeking a decision within the meaning of Art. 61(1) (J 9/12).

The requirements for effectively initiating court proceedings are governed by national law (J 7/00).

2.2.3 Legal nature and effects of the stay

The stay of proceedings is a unique preliminary procedural measure that is justified as a preventive measure to preserve the third party's possible rights to the patent in dispute and that takes immediate effect (J 28/94, J 15/06). In particular, the stay of the grant proceedings is ordered by a communication of the EPO without having heard the applicant. However, the applicant may, in view of that communication, request the issue of an appealable decision.

Stay of proceedings implies that the legal status quo existing at the time of the suspension is maintained, i.e. neither the EPO nor the parties can validly perform any legal acts while proceedings are suspended (J 38/92). In particular, the applicant is not allowed to withdraw either the European patent application or the designation of any contracting state (Rule 15). Likewise, no divisional application can be filed during the stay of proceedings (J 20/05 and J 9/12).

An automatic debit order ceases to be effective on the day a stay of the proceedings under Rule 14 takes effect (see **point 11.1(c) AAD**, Annex A.1

to the ADA, Supplementary publication 3, OJ EPO 2022). Therefore, after resumption of proceedings a new automatic debit order must be filed if the applicant wishes to continue using the automatic debiting procedure.

2.2.4 Interruption of time limits

Rule 14(4)

The time limits in force at the date of stay other than time limits for payment of renewal fees are interrupted by such stay. The time that has not yet elapsed begins to run from the date on which proceedings are resumed. However, the time still to run after the resumption of the proceedings must not be less than two months. As for renewal fees, they continue to fall due during the period of stay. Also, in accordance with Rule 14(4), the period for payment of renewal fee with an additional fee provided for in Rule 51(2) is not interrupted.

Example: The European Patent Bulletin mentions the European search report's publication on 15 March 2017. Proceedings are stayed on Friday, 5 May 2017 and resumed on Friday, 18 August 2017. At the resumption of proceedings, the six-month period from the date of the mention of the search report's publication for payment of the examination fee (Rule 70(1)) does not begin to run again in its entirety but only for the days and months not yet elapsed. This time must not be less than two months (Rule 14(4)).

The six-month period starts on the day following the search report's publication, in accordance with Rule 131(2), i.e. on 16 March 2017, and ends on 15 September 2017. The period that is already running when proceedings are stayed on 5 May 2017 ends on 4 May 2017.

The period that has elapsed between 15 March 2017 and 4 May 2017 is one month and 19 days. The remaining period to run after the resumption is more than two months.

Calculation of the remaining non-elapsed period:

On the day of suspension, 5 May 2017, the first month of the running period has passed and so have 19 days of the second month. Thus, on that day, 11 days and four months remain (from 5 May 2017 to 15 May 2017 inclusive and from 15 May 2017 to 15 September 2017 inclusive). This non-elapsed period must be added to the date of resumption in order to calculate the deadline for payment of the examination fee.

Resumption is on 18 August 2017. All time limits start running again from and including this day (Rule 131(2) does not apply):

After adding first the remaining days and then the remaining months, it is necessary to check whether the last day falls on a day on which the EPO receives mail according to Rule 134(1): calculating 11 days from and including 18 August 2017 results in 28 August 2017. Adding four months to that gives 28 December 2017 as the end of the time limit for payment of the fee. Since the EPO was closed from Monday, 25 December 2017 to Monday, 1 January 2018, the period is extended to 2 January 2018 in accordance with Rule 134(1).

2.2.5 Resumption of the proceedings for grant

The date of resumption of proceedings as well as the legal basis for the resumption is to be communicated to the third party and the applicant. *Rule 14(3)*

2.2.5.1 Resumption after final decision in entitlement proceedings

Grant proceedings will be resumed where evidence is provided that a final decision within the meaning of Art. 61(1) has been taken unless a new European patent application under Art. 61(1)(b) has been filed for all the designated contracting states. If the decision is in favour of the third party, the proceedings may not be resumed earlier than three months after the decision has become final unless the third party requests the resumption. *Rule 14(2)*

2.2.5.2 Resumption regardless of the stage of entitlement proceedings

The Legal Division may also order the resumption of grant proceedings regardless of the stage reached in the proceedings against the applicant. In this case, it is at the discretion of the Legal Division to decide whether the proceedings are to be continued. This discretion is to be exercised with due regard to the interests of the parties. In particular, the outcome of the court proceedings in the first instance and the duration of the stay of proceedings before the EPO are to be taken into consideration, as well as an evident abuse of proceedings, e.g. in the form of delaying tactics. *Rule 14(3)*

2.3 Limitation of the option to withdraw the European patent application

From the time when a third party proves to the EPO that they have initiated proceedings concerning entitlement (see A-IV, 2.2) and up to the date on which the EPO resumes the proceedings for grant (see A-IV, 2.2.5), neither the European patent application nor the designation of any contracting state may be withdrawn. *Rule 15*

2.4 Prosecution of the application by a third party

Any third parties wishing to avail themselves of the possibility open to them under Art. 61(1)(a) (see A-IV, 2.1(i)) must declare their intention in writing to the EPO in due time. They then take the place of the erstwhile applicant. The proceedings for grant are continued from the point reached when they were stayed or when the declaration was filed by the third party (see A-IV, 2.2). *Art. 61(1)(a)*

2.5 Filing a new application

A new European patent application under Art. 61(1)(b) must be filed ~~in electronically-form or on~~ paper ~~or electronic form~~ with the EPO in Munich, The Hague, ~~Munich~~ or Berlin. It is not possible to file an application according to Art. 61(1)(b) with the competent authorities of a contracting state. *Art. 61(1)(b)*
Art. 76(1)

The new application is in many other respects treated as a European divisional application and corresponding provisions apply. In particular, the following provisions relating to divisional applications apply *mutatis mutandis*:

- (i) accordance of the date of filing of the earlier application and entitlement to priority date – see A-IV, 1.2; *Art. 61(2)*

(ii) information in the request for grant – see A-IV, 1.3.2;

*Rule 17(2) and
(3)*

(iii) filing, search, designation and claims fees – see A-IV, 1.4.1 and 1.4.2;

Rule 45(1)

(iv) designation of inventor – see A-IV, 1.5.

(v) language requirements – see A-IV, 1.3.3.

Rule 51(6)

However, arrangements for renewal fees are different. For the year in which the new application is filed and for the years beforehand, no renewal fees are payable.

In other respects the formal examination is carried out as for other applications.

If it is adjudged that a third party is entitled to the grant of a European patent for only some of the contracting states designated in the earlier application, and the third party files a new application for these states, the earlier application continues to be in the name of the earlier applicant for the remaining states.

Rule 17(1)

The earlier application is deemed withdrawn on the new application's filing date for the contracting states originally designated in which the decision has been taken or recognised.

2.6 Refusal of the earlier application

Art. 61(1)(c)

The EPO must accede to a third-party request under Art. 61(1)(c) to refuse the earlier application. The decision is open to appeal (Art. 106(1)).

2.7 Partial transfer of right by virtue of a final decision

Rule 18(1)

If by a final decision it is adjudged that a third party is entitled to the grant of a European patent in respect of only part of the matter disclosed in the European patent application, Art. 61 and Rules 16 and 17 apply to that part.

3. Display at an exhibition

3.1 Certificate of exhibition; identification of invention

*Art. 55(1)(b) and
(2)*

Rule 25

Where an applicant states when filing an application that the invention which is the subject of the application has been displayed at an official or officially recognised international exhibition falling within the terms of the Convention on international exhibitions, they must file a certificate of exhibition within four months of the filing of the European patent application. The exhibitions recognised are published in the EPO's Official Journal. The certificate must:

- (a) have been issued during the exhibition by the authority responsible for the protection of industrial property at that exhibition
- (b) state that the invention was exhibited at the exhibition
- (c) state the opening date of the exhibition and the date of the first disclosure, if different from the opening date of the exhibition

- (d) be accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.

3.2 Defects in the certificate or the identification

The Receiving Section acknowledges receipt of the certificate and identification of the invention. It draws the applicant's attention to any manifest defects in said documents in case it is possible to rectify the deficiencies within the four-month period allowed. The applicant is notified according to Rule 112(1) if the certificate or identification is not furnished within the time allowed. The applicant may request further processing in respect of this loss of rights according to Art. 121 and Rule 135.

4. Applications relating to biological material

4.1 Biological material; deposit of such

In accordance with Rule 26(3), "biological material" means any material containing genetic information capable of reproducing itself or being reproduced in a biological system.

Rule 26(3)

Where in relation to an application concerning biological material an applicant states having deposited in accordance with Rule 31(1)(a) the biological material with a depositary institution recognised for the purposes of Rules 31 and 34, the applicant must, if such information is not contained in the application as filed, submit the name of the depositary institution and the accession number of the culture deposit and, where the biological material has been deposited by a person other than the applicant, the name and address of the depositor, within whichever of the following periods is the first to expire:

Rule 31(1)(c) and (d)

Rule 31(2)

- (i) within 16 months of the European patent application's filing date or the priority date, this time limit being deemed to have been met if the information is submitted before completion of the technical preparations for publication of the European patent application
- (ii) if a request for early publication of the application according to Art. 93(1)(b) is submitted, up to the date of such submission
- (iii) if it is communicated that a right to inspection of the files under Art. 128(2) exists, within one month of such communication.

Rule 31(2)(a)

Rule 31(2)(b)

Rule 31(2)(c)

Further processing is ruled out by Rule 135(2) for the above time limit according to Rule 31(2). Nor is Art. 122 applicable because a lack of disclosure cannot be remedied by way of re-establishment under Art. 122 (see the EPO notice dated 7 July 2010, OJ EPO 2010, 498).

Art. 83

Moreover, where the depositor and applicant are not identical, the same time limit applies for submitting a document satisfying the EPO that the depositor has authorised the applicant to refer to the deposited biological material in the application and has given unreserved and irrevocable consent to the deposited material being made available to the public in accordance with Rule 33(1) and (2) or Rule 32(1). The depositor's authorisation for the applicant to refer to the deposit and the consent to the material being made

Rule 31(1)(d)

available to the public must have existed from the filing date of the application in question. For a recommended wording for this declaration, see paragraph 3.5 of the above notice. For Euro-PCT applications, the document referred to above must be provided to the International Bureau before completion of the technical preparations for international publication (see the EPO notice dated 7 July 2010, OJ EPO 2010, 498, points II.7 to II.8).

Note, however, that where the depositor is one of several applicants the document referred to in Rule 31(1)(d) is not required (see the above notice).

Rule 33(6)

The depositary institution must be on the list of depositary institutions recognised for the purposes of Rules 31 to 34, as published in the EPO's Official Journal. This list includes the depositary institutions, especially the International Depositary Authorities under the Budapest Treaty. An up-to-date list is regularly published in the EPO's Official Journal.

The applicant is strongly recommended to file the deposit receipt issued by the depositary institution with the EPO since this document indicates, in particular, the depositor and shows the information required under Rule 31(1)(a) and (c). This information enables the EPO to certify any requests to issue a sample (see A-IV, 4.2 and A-IV, 4.4) and the examining division to establish whether the application satisfies the requirements under Art. 83 (see also F-III, 6.2 and F-III, 6.3). A deposit receipt must be filed for each sample of biological material disclosed in the application and deposited under the Budapest Treaty for the purposes of Rule 31. The deposit receipt may be filed as long as proceedings before the EPO are pending.

4.1.1 New deposit of biological material

Rule 34

If biological material deposited according to Rule 31 ceases to be available from the recognised depositary institution, an interruption in availability shall be deemed not to have occurred if:

- (i) a new deposit of that material is made in accordance with the Budapest Treaty
- (ii) a copy of the receipt of that new deposit issued by the depositary institution is forwarded to the EPO within four months of the date of the new deposit, stating the number of the European patent application or patent.

The non-availability may occur because, for example:

- (a) the material has degraded such that it is no longer viable
- (b) the authority with which the original deposit was made no longer qualifies for that kind of material, either under the Budapest Treaty or under bilateral agreements with the EPO.

In either case (a) or (b) above, a new deposit must be made within three months of the depositor's being notified of the non-availability of the organism

by the depositary institution (**Art. 4(1)(d) Budapest Treaty**). This is subject to the exception where:

- the non-availability of the deposit is for the above reason (b) and
- the depositor does not receive the above notification from the depositary institution within six months of the date on which it is published by the International Bureau that the depositary institution is no longer qualified in respect of the biological material in question.

In this exceptional case, the new deposit must be made within three months of the date of the said publication by the International Bureau (**Art. 4(1)(e) Budapest Treaty**).

If, however, the original deposit was not made under the Budapest Treaty but rather at a depositary institution recognised by the EPO by virtue of a bilateral agreement, the above-mentioned six-month period is calculated from the date when the EPO publishes the fact that the depositary institution is no longer qualified to accept deposits of the biological material in question under that bilateral agreement.

4.1.2 Application filed by reference to a previously filed application

Where the application was filed by reference to a previously filed application in accordance with the procedures described in A-II, 4.1.3.1 and the previously filed application referenced already satisfied the requirements of Rule 31(1)(b) and (c) on its filing date, these requirements will also be satisfied in respect of the European patent application.

If the information on the deposited biological material present in the previously filed application as filed does not satisfy Rule 31(1)(c), the EPO will not know this until the applicant files the certified copy and any required translation of the previously filed application (at the latest within two months of the filing date – Rule 40(3)). Even where the certified copy and any translation required are filed up to two months from the filing date, if the requirements of Rule 31(1)(c) are not satisfied, the time limit for rectification of this deficiency according to Rule 31(2) is unaffected (see A-IV, 4.2).

4.2 Missing information; notification

When the Receiving Section notices that the information required under Rule 31(1)(c) (indication of the depositary institution and accession number of the culture deposit) or the information and the document referred to in Rule 31(1)(d) (authorisation to refer to the deposit and consent to it being made available) is not contained in or has not yet been submitted with the application, it should notify the applicant of this fact, as this information can only be validly submitted within the time limits specified in Rule 31(2). In the case of missing information under Rule 31(1)(c), the deposit must be identified in the patent application as filed in such a way that the accession number submitted later can be traced back without ambiguity. This can normally be done by indicating the identification reference given by the depositor within the meaning of **Rule 6.1(a)(iv)** of the Budapest Treaty (see G 2/93). Where the depositary institution and/or the accession number is/are missing in the application on the date of filing but the applicant provides

Art. 97(2)

Rule 31

Art. 83

the information within the applicable time limit (Rule 31(2)), the missing information about the depositary institution and/or the accession number is published on the front page of the published European patent application (see A-VI, 1.3).

The applicant is also informed when a deposit with a recognised depositary institution is referred to but no depositary institution receipt has been filed (the applicant is advised to provide this receipt when filing the application, if possible – see the EPO notice dated 7 July 2010, OJ EPO 2010, 498). Filing the receipt is essential for identifying the depositor, whose name needs to be established before the EPO can certify a third party's request for the issue of a sample of the deposited material (see also A-IV, 4.1). Any further action, i.e. establishing whether the information available satisfies the sufficiency-of-disclosure requirement, is a matter for the examining division. See also F-III, 6, in particular F-III, 6.3(ii), as regards the examining division's treatment of applications relating to biological material. If the examining division is of the opinion that the invention is not sufficiently disclosed due to a lack of information concerning the biological material that constitutes the subject of the invention, it may refuse the European patent application (see F-III, 3). Further processing is ruled out by Rule 135(2) for the time limit according to Rule 31(2) for supplying the information required by Rule 31(1)(c) and (d).

4.3 Availability of deposited biological material to expert only

Rule 32(1)

Under Rule 32(1)(a) and (b), until the date on which the technical preparations for publication of the application are deemed complete, the applicant may inform the EPO that, until the publication of the mention of the grant of the European patent or, where applicable, for 20 years from the filing date if the application has been refused or withdrawn or is deemed withdrawn, the availability referred to in Rule 33 is to be effected only by the issue of a sample to an independent expert nominated by the requester.

The above communication must take the form of a written declaration addressed to the EPO. This declaration may not be contained in the description and the claims of the European patent application but may be given in the appropriate section of the request for grant form (EPO Form 1001).

If the declaration is admissible, it is mentioned on the front page when the European patent application is published (see also A-VI, 1.3).

For Euro-PCT applications published in the international phase in an official EPO language, the applicant must request the expert solution from the International Bureau before completion of the technical preparations for international publication, preferably using Form PCT/RO/134 (see the EPO notice dated 7 July 2010, OJ EPO 2010, 498). For Euro-PCT applications not published in the international phase in an official EPO language, the applicant may request the expert solution under Rule 32(1) before completion of the technical preparations for publication of the translation of the international application required under Rule 159(1)(a) (see the above notice).

If the applicant duly informs the EPO under Rule 32(1), the biological material is issued only to an independent expert nominated by the requester. The requirements and obligations applying to experts are laid down by the EPO President and are deemed fulfilled by signing the relevant declaration on a dedicated EPO form (see the decision of the President of the EPO dated 10 July 2017, OJ EPO 2017, A60, and the EPO notice dated 10 July 2017, OJ EPO 2017, A61). Expert nominations must be accompanied by a declaration whereby the experts undertake to comply with the pertinent requirements and obligations and confirm that they know of no circumstances that might give rise to justified doubts as to their independence or that might conflict in any other way with their function as expert.

Rule 32(2)

4.4 Requests for samples of biological material

From the date of publication of a European patent application relating to biological material, the biological material deposited in accordance with Rule 31 will be made available on request to any person having the right to inspect the files (see A-XI, 1). Such availability will be effected by issuing a sample to the person making the request or, where the applicant has so requested, to an expert nominated by the requester (see A-IV, 4.3). The EPO makes available on its website the forms to be used for obtaining samples of biological material deposited under the Budapest Treaty and that the EPO is asked to certify under Rule 33(4).

Rule 33

The EPO's certification of the request signals to the depositary institution that, based on its verification of the status of the application/patent and the related data in the EPO records, it may issue a sample of the biological material to the requester or the expert, as applicable. The EPO is exempted from verifying and assessing the expert's suitability and independence (OJ EPO 2017, A60).

After certification, the EPO will send the request to the depositary institution and copies to the applicant or proprietor of the European patent and to the certified party. It is up to the certified party to pay the fees requested by the recognised depositary institution direct to them.

5. Applications relating to nucleotide and amino acid sequences

If nucleotide and amino acid sequences within the meaning of Rule 30(1) are disclosed in the European patent application, they are to be represented in a sequence listing that complies with WIPO Standard ST.26. WIPO Standard ST.26 is a worldwide standard that, in Annex VII, contains recommendations on how to prevent potential added or deleted subject-matter in sequence listings due to conversion from WIPO Standard ST.25 to WIPO Standard ST.26. The EPO relies on these recommendations as guidance for examination. Each nucleotide or amino acid sequence extending over the minimum length as defined in the standard and disclosed in the application documents (including drawings) needs to be listed in the sequence listing, even if the sequence is only a fragment of another disclosed sequence. The sequence listing must be filed in electronic form, i.e. in XML format as required under WIPO Standard ST.26, using EPO Forms 1001E, 1200E or 1038E, which are available in EPO Online Filing and Online Filing 2.0, or on an electronic data carrier (see A-II, 1.1.1 and OJ EPO 2023, A48~~OJ EPO~~

Rule 57(j)

Rule 30(1)

Rule 30(2)

Art. 123(2)

~~2023, Axx). Where the European patent application is filed online, the electronic sequence listing in the required format is to be attached.~~ The sequence listing must not be filed on paper or in PDF format. Regarding divisional applications, see A-IV, -5.4. Nonetheless, if two or more sequence listings are filed on the filing date, only the standard-compliant sequence listing will be used as the basis for the search. See the decision of the President of the EPO dated 9 December 2021, OJ EPO 2021, A96, and the EPO notice dated 9 December 2021, OJ EPO 2021, A97, as well as the decision of the President of the EPO dated 24 April 2023, OJ EPO 2023, A46, and the EPO notice dated 24 April 2023, OJ EPO 2023, A47.

Where a sequence listing is filed or corrected after the filing date, the applicant is required to submit a statement that it does not include matter going beyond the content of the application as filed. Standard-compliant sequence listings filed subsequent to the filing date, i.e. in reply to the invitation under Rule 30(3), are not part of the description and, therefore, not published with the European patent application. Whenever a sequence listing that is part of the description is corrected or amended, a complete new sequence listing must be filed. The corrected or amended sequence listing must comply with the applicable WIPO standard, which depends on the application's date of filing. For applications filed on or after 1 July 2022, sequence listings must comply with WIPO Standard ST.26. For applications filed before that date, the sequence listing must comply with WIPO Standard ST.25.

For applications referring to sequences belonging to the prior art, see F-II, 6.1.

Art. 90(3)
Rule 30(3)

The Receiving Section will inform the applicant of any deficiencies as to the sequence listing or as to the necessary statements and issue an invitation to remedy the deficiencies and pay a late furnishing fee within a non-extendable period of two months. The late furnishing fee compensates for the administrative efforts of issuing the communication under Rule 30(3) and delaying the transmission of the application to the search division until after availability of a standard-compliant sequence listing. The late furnishing fee therefore does not have to be paid if the standard-compliant sequence listing is filed after the filing date but before the Receiving Section has issued the communication under Rule 30(3). If the requirements of Rule 30 in conjunction with the decision of the President of the EPO dated 9 December 2021 are not complied with in due time, where appropriate following the invitation to do so from the Receiving Section, which includes the payment of the late furnishing fee, the application will be refused according to Rule 30(3). This also applies if a sequence listing is subsequently filed in the required electronic format but still contains deficiencies with respect to the WIPO standard. Such deficiencies will not prompt the EPO to issue another invitation under Rule 30(3) triggering a new period of two months unless the previous invitation did not draw the applicant's attention to such remaining deficiencies (see J 7/11).

Art. 121
Rule 135

The applicant may request further processing of the application (see E-VIII, 2).

5.1 Sequence information filed under Rule 56

The possibility of filing a sequence listing as a missing part of the description is, as a rule, very rare. The principle of Rule 56 is that it must be obvious from the application documents as filed that part of the description appears to be missing (see A-II, 5.1). Very few cases fulfil the conditions for parts of the description being missing in the form of a sequence listing. Rule 56, for example, is applicable where the description quotes sequence identifier numbers (SEQ ID Nos.) but the sequences are not further disclosed in the description. Although in such a case the disclosure is missing in the form of a sequence listing, the Receiving Section is not expected to identify such omissions as qualifying for Rule 56, and according to Rule 56(1) the applicant may not invoke the omission of a communication under Rule 56(1) or (2). However, applicants may file the missing parts of the description relating to sequences on their own initiative within two months of the filing date according to Rule 56(2) (see A-II, 5.2).

According to Rule 57(j), any late-filed sequence information will be checked for compliance with Rule 30(1) in conjunction with the rules laid down by the EPO President.

If the late-filed sequence information or sequence listing does not conform to the above requirements, then the communication under Rule 30(3) is sent to the applicant (see A-IV, 5).

If, on the other hand, the late-filed sequence information includes a standard-compliant sequence listing according to the requirements of Rule 30(1), no Rule 30(3) communication will be sent. In such a case the late furnishing fee under Rule 30(3) does not fall due.

The above applies regardless of whether the late-filed parts of the description result in a change of the filing date (see A-II, 5.3) or if the late-filed missing parts can be based on the claimed priority, allowing the original filing date to be maintained (see A-II, 5.4). If, however, the late-filed parts of the description result in a change of the filing date, any communication according to Rule 30(3) which might be required will only be sent after the one-month period for the withdrawal of the late-filed parts has expired without the applicant having withdrawn them (see A-II, 5.5).

In the case where the applicant inserts a sequence listing into the description as a late-filed part of the description according to Rule 56, the sequence listing so added, whether standard-compliant or not, is considered part of the description on the filing date (regardless of whether this has changed) and, consequently, is published with the European patent application.

The rare possibility to file a sequence listing as a late-filed missing part must, however, be clearly differentiated from those cases where the application as filed contains:

- the complete sequence information in the body of the description but no standard-compliant sequence listing

- a sequence listing that does not contain all sequences disclosed in the application documents
- a sequence listing that does not comply with the applicable WIPO standard.

In such cases, Rule 30 applies and the applicant will be invited under Rule 30(3) to file a standard-compliant sequence listing.

5.2 Sequence information filed under Rule 56a

Erroneously filed sequence listings may be corrected under Rule 56a (see A-II, 6).

5.3 Sequence listings of an application filed by reference to a previously filed application

Where the application is filed by reference to a previously filed application (see A-II, 4.1.3.1), and that previously filed application contained sequence listings on its filing date, then those sequence listings form part of the application as originally filed. This is subject to the exception that, where the sequences only appear in the claims and not in the description or drawings of the previously filed application, and the applicant did not include the claims of the previously filed application in the reference, then those sequences are not included in the European patent application as originally filed and a sequence listing must be filed separately. If in such a case the sequence listing is filed on the European patent application's filing date, it is published with the European patent application.

A sequence listing complying with the applicable WIPO standard and filed in the previously filed application after the filing date is not part of the description (Rule 30(2)) and, therefore, not included in the reference to the description and any drawings under Rule 40(1)(c). Consequently, the applicant must file a standard-compliant sequence listing for the European patent application separately.

Where the previously filed application is not available to the EPO, it will not be possible to carry out the check according to Rule 57(j) on the compliance of the sequence listing with Rule 30(1) until the applicant files the certified copy and any translation required, which must be done within two months of the filing date (Rule 40(3)). If, after receipt of the certified copy and translation, where applicable, the examination by the Receiving Section reveals that the sequence listing contained does not comply with Rule 30(1) in conjunction with the rules laid down by the EPO President, the EPO will send a communication according to Rule 30(3) inviting the applicant to correct any deficiencies and pay the late furnishing fee (see A-IV, 5).

If the previously filed application referred to is a European patent application or an international application filed with the EPO as receiving Office, and the sequence listing contained satisfied the requirements of Rule 30 or Rule 5.2 PCT **on its date of filing** then all the requirements of Rule 30(1) are satisfied automatically on the filing date of the European patent application filed by reference to this application. If the sequence listing of the previously filed application does not comply with WIPO Standard ST.26, for

instance because it was filed before the entry into force of the new WIPO standard, an invitation will be issued under Rule 30(3) to submit a standard-compliant sequence listing.

If the previously filed application was filed with any other office, the applicant will have to ensure that all the requirements of Rule 30(1), in conjunction with the rules laid down by the EPO President, are met. In particular, the applicant must consider that any electronic standard-compliant sequence listing filed on the filing date of the previously filed application will in most cases not be part of the certified copy under Rule 40(3) issued by the filing office: due to technical limitations, the certified copy received by the EPO will in most cases contain a converted sequence listing that is not standard-compliant. Hence, the applicant will still have to provide a standard-compliant sequence listing to the EPO to satisfy the above requirements. The same applies where the previously filed application was a European patent application or an international application filed with the EPO as receiving Office, but where one or more of the elements required to satisfy the requirements of Rule 30(1) or Rule 5.2 PCT in conjunction with WIPO Standard ST.26 were not present on the filing date. If this is not the case, the procedure in A-IV, 5 will be followed (a communication under Rule 30(3) will be sent).

In alignment with the practice for divisional applications, a sequence listing in WIPO Standard ST.25 format contained in the certified copy under Rule 40(3) (e.g. converted from the TXT~~txt~~ file available to the issuing office) is excluded from the calculation of the additional fee for pages in excess of 35 (see also A-IV, -5.4 and A-III, -13.2).

5.4 Sequence listings of a divisional application

As an independent European patent application, a divisional application must also satisfy the requirements of Rule 30 in conjunction with the decision of the President of the EPO dated 9 December 2021 concerning the filing of sequence listings, OJ EPO 2021, A96 (see G 1/05, reasons 3.1). Without prejudice to the requirements of Art. 76(1), second sentence, if a sequence listing is to form part of the description of the divisional application, it must be submitted together with the other documents making up the divisional application unless reference is made to a previously filed application containing a sequence listing as part of the application (Rule 40(1)(c)). Where the sequence listing of the parent application is in a format complying with WIPO Standard ST.25, it must be converted into one complying with WIPO Standard ST.26. To avoid the potential risk of adding and/or losing subject-matter due to conversion, applicants may additionally file the parent application's ST.25 sequence listing in PDF format as part of the divisional application. In ~~that~~ such cases, the pages of the ST.25 sequence listing are excluded from the calculation of the additional fee for pages in excess of 35 ("page fee"). The same practice applies to divisional applications filed by reference where the certified copy (Rule 40(3)) contains a ~~ST.25~~ sequence listing in ST.25 format (see also A-IV, -5.3 and A-III, -13.2). In order to comply with Rule 30(1), the sequence listing in WIPO Standard ST.26 format must in such cases be filed subsequently (see OJ EPO 2023, -A98). The late furnishing fee under Rule 30(3) does not fall due if the ST.26 sequence listing is filed before the EPO issues the communication under Rule 30(3) (see A-IV, -5).

~~However, a~~An applicant who has filed a WIPO Standard ST.26-compliant sequence listing under Rule 30 with regard to the earlier application (parent application) is exempted from having to submit said sequence listing if it is intended to be used for search purposes only (i.e. not as part of the description) in respect of the divisional application (the relevant check box for this is preselected in **section 38.3 on Form 1001**). This enables the EPO to add a copy of the standard-compliant sequence listing filed for the earlier (parent) application to the dossier of the divisional application in XML format and for search purposes only (see OJ EPO 2021, A97, **point 18**). However, since the content of the disclosure of the invention is the responsibility of the applicant, any sequence listing that is to form part of the description must be filed by them. The sequence listing of the earlier application is, thus, not automatically added to the dossier of the divisional application if

- the applicant files a WIPO Standard ST.26-compliant sequence listing as part of the divisional application's description
- the sequence listing available in the earlier application does not comply with WIPO Standard ST.26.

6. Conversion into a national application

Art. 135

The central industrial property office of a contracting state must apply the procedure for the grant of a national patent or another protective right provided for by the legislation of that state at the request of the applicant for or the proprietor of the European patent under the circumstances specified in Art. 135(1). If the request for conversion is not filed within the three-month period specified in Rule 155(1), the effect referred to in Art. 66 will lapse (i.e. the European patent application will cease to be equivalent to a regular national filing in the designated contracting states).

Art. 135(2)
Rule 155(2) and
(3)

The request for conversion is to be made to the EPO, except where the application is deemed withdrawn under Art. 77(3); in this case the request is filed with the central industrial property office with which the application was filed. That office will, subject to national security provisions, transmit the request direct to the central industrial property offices of the contracting states specified in it, together with a copy of the file relating to the European patent application. If the central industrial property office with which the application was filed does not transmit the request before the expiry of 20 months from the filing date, or if claimed, from the priority date, then Art. 135(4) applies (i.e. the effect of Art. 66 lapses).

Art. 135(3)
Rule 155(2)

If a request for conversion is filed with the EPO, it must specify the contracting states in which the application of national procedures is desired and be accompanied by a conversion fee. In the absence of the fee the applicant or proprietor is notified that the request will not be deemed filed until the fee is paid. The EPO transmits the request to the central industrial property offices of the specified contracting states accompanied by a copy of the files relating to the European patent application or patent.

Chapter V – Communications concerning formal deficiencies; amendment of application; correction of errors

1. Communications concerning formal deficiencies

Where an application is found to be formally deficient during a formalities examination, the Receiving Section or, where appropriate, the examining division issues one or more communications to the applicant identifying all the particular EPC requirements not met and, in the case of deficiencies that can be corrected, inviting the applicant to correct them within specified periods (see A-III, 16). In the exceptional case of communications that do not detail all deficiencies, see A-III, 16.1. The applicant will be notified of the consequences, e.g. application deemed withdrawn, priority right lost, that result from the deficiencies or failure to take appropriate action within due time.

In general, depending on the deficiency in question, either:

- (i) a time limit will be specified by the EPO, subject to Rule 132, for meeting the objection, e.g. an invitation to supply the priority document or priority file number under Rule 59 or
- (ii) a fixed time limit will apply, e.g. two months for correcting deficiencies under Rule 58.

For further details see E-VIII, 1. If a deficiency is not rectified in due time, then the legal effects that are envisaged will apply.

2. Amendment of application

2.1 Filing of amendments

Prior to receiving the European search report, the applicant may amend the application only if invited by the Receiving Section to remedy particular deficiencies, including when no claims are present in the application as originally filed. In this case, the applicant must rectify this deficiency by filing a set of claims in response to a communication according to Rule 58 (see A-III, 15). In the period between receiving the European search report and a first communication from the examining division, i.e. also when the application may still be with the Receiving Section, applicants may of their own volition amend the description, claims and drawings (Rule 137(2)). Where a search opinion accompanies the search report under Rule 62(1), the applicant must respond to it by filing observations and/or amendments (see B-XI, 8 for details and exceptions to this requirement). However, the European patent application may not be amended in such a way that it contains subject-matter extending beyond the content of the application as filed (regarding the publication of claims thus amended in response to the European search report under Rule 137(2), see also A-VI, 1.3).

Rule 58
Rule 137(1) and
(2)
Art. 123(1) and
(2)
Rule 68(4)

2.2 Examination of amendments as to formalities

The Receiving Section examines amendments, filed before the receipt of the search report, for formal requirements. Such amendments must remedy the

Rule 58
Rule 137(1)

deficiencies notified by the Receiving Section. The description, claims and drawings may be amended only to the extent sufficient to remedy the disclosed deficiencies, which makes it necessary for the Receiving Section to compare any amended description, claims and drawings with those originally filed. Where, for example, a fresh description is filed to replace an earlier description that was objected to on account of non-compliance with the physical requirements, the Receiving Section must compare both descriptions, and the objection is not met until the wording is identical. However, identity of wording with the application documents as originally filed is not a requirement for amendments rectifying the following deficiencies:

- (i) filing at least one claim according to Rule 58, where no claims existed on filing (see A-III, 15) (these claims must still satisfy the requirements of Art. 123(2), but this check is carried out by the search and examining divisions)
- (ii) the filing of missing parts of the description or missing drawings according to Rule 56 (see A-II, 5).

Amendments that extend beyond the remedying of deficiencies and that are filed prior to receipt of the search report may be taken into consideration in the subsequent procedure, provided that on receipt of the search report the applicants declare that they wish them to be maintained.

Examination as to formalities of amendments filed after the receipt of the search report and before the application is transferred to the examining division is the responsibility of the Receiving Section.

The procedure for effecting amendments is dealt with in H-III, 2.

3. Correction of errors in documents filed with the EPO

Linguistic errors, errors of transcription and mistakes in any document filed with the EPO may be corrected on request under Rule 139, first sentence. Requests for such corrections may be made at any time, provided that proceedings are pending before the EPO (see J 42/92). However, if the error to be corrected concerns items that third parties might expect to be able to take at face value and whose correction would jeopardise their rights, the request for correction must be filed as soon as possible, and at least in time for incorporation in the publication of the European patent application. With regard to correction of priority claims, specific provisions apply with a view to protecting the interests of third parties and allow the applicant to correct priority claims and lay down a time limit for doing so (see Rule 52(3) and A-III, 6.5.2). This ensures that corrected priority information is available when the application is published. The applicant can only correct the priority claim after this date, in particular after publication of the application, under certain limited circumstances where it is apparent on the face of the published application that a mistake has been made. See J 2/92, J 3/91 and J 6/91 as well as J 11/92 and J 7/94. Each of these decisions indicated situations under EPC 1973 where the requester could correct priority data even though it was too late for a warning to be published with the application. These same situations apply *mutatis mutandis* under EPC 2000 to the acceptance of requests to correct priority claims after the end of the time limit according to

Rule 139,
1st sentence

Rule 52(3). Regarding correction of the date indicated for the previous filing, see also A-III, 6.6.

After expiry of the two-month time limit for correcting erroneous (parts) of the application documents under Rule 56a(1) or 56a(3) (see A-II, 6), the correction of errors in application documents is governed by Rule 139, second sentence. The allowability of such corrections under Rule 139 is subject to strict requirements.

Rule 56a

If the error is in the description, claims or drawings, the correction must be obvious in the sense that it is immediately evident that nothing else could have been intended than what is offered as the correction. Such a correction may be effected only within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from all of the documents as filed (see G 3/89 and G 11/91; see also H-VI, 2.2.1). The documents to be considered in assessing whether the correction is allowable are those of the application as originally filed, including any late-filed missing parts of the description or missing drawings filed according to Rule 56, or application documents or parts corrected according to Rule 56a, regardless of whether this resulted in a change of the filing date (see A-II, 5 *et seq* and A-II, 6 *et seq*). However, claims filed after the filing date in response to an invitation according to Rule 58 (see A-III, 15) cannot be used in assessing the allowability of the request.

Rule 139,
2nd sentence

It is not allowable under Rule 139 to replace the complete set of application documents (i.e. description, claims and drawings) with other documents that the applicant had intended to file with the request for grant (see G 2/95).

The examining division decides on the request for correction. If such a request is pending before termination of the technical preparations for publication, a reference to it is published on the front page.

In the case of electronic filing of European patent applications, the technical documents (description, claims, abstract and drawings) may be attached in their original format, provided it is one listed in the decision of the President of the EPO dated ~~14 May 2021, OJ EPO 2021, A42~~ 3 May 2023, OJ EPO 2023, A48. Under this decision, these technical documents may also be attached in a format other than those listed, provided that on filing the application the applicant informs the EPO where it can reasonably acquire the corresponding software. If, on the filing date, the documents making up the European patent application are available both in the format provided by the Online Filing software and in another admissible format in accordance with the above decision, the documents in the latter format can also be used to determine whether a request for correction of the description, claims or drawings is allowable.

Chapter VI – Publication of application; request for examination and transmission of the dossier to examining division

1. Publication of application

1.1 Date of publication

The application is published as soon as possible after the expiry of a period of 18 months from the filing date or, where priority is claimed, from the earliest priority date. Upon request from the applicant, the application may, however, be published before that date, provided that the filing and search fees have been validly paid and there are no formal deficiencies in the application documents (see A-III, 1.1 and 16). Deficiencies not yet remedied concerning the designation of inventor are not a bar to early publication (see A-III, 5.4 and J 1/10). If the application is ready for grant before expiry of the 18-month period, see C-IV, 7.1 and C-VI, 3.

Art. 93(1)

If the applicant abandons the priority date, the publication is deferred, provided that the EPO receives the abandonment notification before the technical preparations for publication are completed. These preparations are considered completed at the end of the day that comes five weeks before expiry of the 18th month following the earliest date of priority if priority is claimed, or following the filing date if the priority is abandoned or no priority is claimed (see the decision of the President of the EPO dated 12 July 2007, Special edition No. 3, OJ EPO 2007, D.1). The applicant is informed about the termination of the preparations, the publication number and intended publication date. Where the priority abandonment notification is received after that time, publication, if not already completed, takes place as if the priority date applied, although a notice as to the abandonment of the priority will appear in the European Patent Bulletin (see F-VI, 3.5). The same procedure is followed when the priority right is lost under Art. 90(5) (see A-III, 6.10).

1.2 No publication; preventing publication

The application is not published if it has been finally refused or deemed withdrawn or withdrawn before the technical preparations for publication are completed (see A-VI, 1.1). These preparations are considered completed at the end of the day that comes five weeks before expiry of the 18th month following the filing or priority date (see the decision of the President of the EPO dated 12 July 2007, Special edition No. 3, OJ EPO 2007, D.1). The application is, however, published if, upon termination of the preparations, a request for a decision under Rule 112(2) has been received but no final decision has yet been taken (see OJ EPO 1990, 455) or if there is a pending request for re-establishment of rights under Art. 122 and Rule 136(1).

Rule 67(2)

If, after termination of the preparations, the application is withdrawn, non-publication cannot be guaranteed. However, the EPO will endeavour (in accordance with the principles of J 5/81) to prevent publication on a case-by-case basis if the stage reached in the publication procedure permits this without undue effort (see the EPO notice dated 25 April 2006, OJ EPO 2006, 406).

Rule 15

The application may be withdrawn by means of a signed declaration, which should be unqualified and unambiguous (see J 11/80). EPO Form 1018, which can be downloaded free of charge from *epo.org*, ensures that the declaration is unambiguous (also in respect of any conditions for withdrawal). It is therefore highly recommended to use it for withdrawing the European patent application (see also the EPO notice dated 12 August 2019, OJ EPO 2019, A79). The applicant is bound by an effective declaration of withdrawal (see C-V, 11) but may make it subject to the proviso that the content of the application not be made known to the public. This takes into account the procedural peculiarity that the applicant making the declaration of withdrawal ~~less in later than~~ five weeks before the date of publication cannot know whether publication can still be prevented. However, neither the application nor the designation of a contracting state may be withdrawn from the time a third party proves that they have initiated entitlement proceedings and up to the date on which the EPO resumes the proceedings for grant (see also E-VIII, 8).

1.3 Content of the publication

*Rule 68(1), (3)
and (4)
Rule 20
Rule 32(1)*

The publication must contain the description, the claims and any drawings as filed, including any sequence listing filed on the filing date, ~~and including~~ any late-filed missing parts of the description or missing drawings filed according to Rule 56(2) or (3) (see A-II, 5), ~~or any correct (parts) of the~~ application documents according to Rule 56a-(3) or (4) (see A-II, 6 and the EPO notice dated 23 June 2022, OJ EPO 2022, A71). Where correct (parts of the) application documents are included under Rule 56a(4), the publication also contains the erroneous (parts of the) application documents – clearly marked as erroneously filed – as the application as filed, ~~clearly marked as erroneously filed.~~ Where the procedure under Rule 56 or 56a is not finalised when the technical preparations for publication are terminated, a correction of the publication will be initiated as soon as the filing date and content of the application are finally determined. The publication will also specify, where possible, the person(s) designated as the inventor(s). If the claims were filed after the filing date according to the procedures explained in A-III, 15, this will be indicated when the application is published (Rule 68(4)).

The publication also indicates as designated contracting states all states party to the EPC on the date the application was filed unless individual states have been withdrawn by the applicant before the termination of the technical preparations for publication. When a European patent application filed before 1 April 2009 is published, the states for which protection is actually sought may not yet be known because the time limit under Rule 39(1) for paying the designation fees is still running. Those definitively designated – through actual payment of designation fees – are announced later in the European Patent Register and the European Patent Bulletin (see Information from the EPO, OJ EPO 1997, 479). For European divisional applications, see A-IV, 1.3.4.

*Rule 68(2) and
(4)
Rule 66*

The publication also contains any new or amended claims filed by the applicant under Rule 137(2), together with the European search report and the abstract determined by the search division if both are available before the technical preparations for publication are terminated. Otherwise the

abstract filed by the applicant is published. The search opinion is not published with the European search report (Rule 62(2)), though it is open to file inspection (see A-XI, 2.1). If the EPO has received a communication from the applicant under Rule 32(1) ("expert solution"), this too must be mentioned (see the EPO notice dated 7 July 2010, OJ EPO 2010, 498). Further data may be included at the discretion of the EPO President.

With the exception of documents that have to be translated, originals of documents filed are used for publication purposes where they meet the physical requirements referred to in A-VIII, 2; otherwise, the amended or replacement documents meeting these requirements are used. Application documents that are of such bad quality that any improvement would result in an extension of the subject-matter as originally filed are published as filed. Prohibited matter may be omitted from the documents before publication, the place and number of words or drawings omitted being indicated (see A-III, 8.1 and A-III, 8.2). Documents incorporated in an electronic file are deemed to be originals (Rule 147(3)).

If a request for correction under Rule 139 of errors in the documents filed with the EPO is allowed, it must be incorporated in the publication. If, upon termination of the technical preparations for publication, a decision is still pending on a request for correction of items that third parties might expect to be able to take at face value and whose correction would jeopardise their rights, this must be mentioned on the front page of the publication (see the case law in A-V, 3), as must a request for correction of errors in the description, claims or drawings (see A-V, 3).

Rule 139

The correction of errors occurring in the course of the European patent application's publication can be requested at any time (see H-VI, 3). Complete republication of the application will take place where appropriate.

1.4 Publication in electronic form only

All European patent applications, European search reports and European patent specifications are published in electronic form only, on a publication server (see the decision of the President of the EPO dated 12 July 2007, Special edition No. 3, OJ EPO 2007, D.3, and OJ EPO 2005, 126) accessible via the EPO website (*epo.org*).

1.5 Separate publication of the European search report

If not published with the application, the European search report is published separately (also electronically).

2. Request for examination and transmission of the dossier to the examining division

2.1 Communication

The Receiving Section communicates to the applicant the date on which the European Patent Bulletin mentions the publication of the European search report and draws attention to the provisions with regard to the request for examination as set out in Art. 94(1) and (2) and Rule 70(1). In the unlikely event that the communication wrongly specifies a later date than the date of the publication's mention, the later date is decisive as regards the time limit

Rule 69(1) and (2)

for filing the request for examination (see A-VI, 2.2 and C-II, 1) and also for responding to the search opinion (see B-XI, 8 and A-VI, 3) unless the error is obvious. In the communication, the applicant is also informed that the designation fee(s) must be paid within six months of the date on which the European Patent Bulletin mentions the search report's publication (see A-III, 11.2 and 11.3).

Rule 70a(1)

Where the time limit under Rule 70(1) is that within which the applicant must reply to the search opinion (i.e. where Rule 70(2) does not apply), the invitation under Rule 70a(1) is sent in a combined communication with the communication according to Rule 69(1) (see C-II, 3.3).

2.2 Time limit for filing the request for examination

*Art. 94(1) and
(2)
Rule 70(1)*

The request for examination may be filed by the applicant up to the end of six months after the date on which the European Patent Bulletin mentions the European search report's publication. The request for examination is not deemed filed until the examination fee has been paid (see C-II, 1). If the applicant does not file the request for examination and pay the examination fee within the above time limit, then the procedure explained in A-VI, 2.3 applies.

*Art. 78(1)(a)
Rule 41(1)*

The mandatory request for grant form (EPO Form 1001) contains a written request for examination. To confirm the written request, the applicant only needs to pay the examination fee within the time limit under Rule 70(1).

Art. 11(a) RFees

Applicants may also pay the examination fee as from the filing date and prior to receipt of the European search report. In that case, the Receiving Section invites them under Rule 70(2) to indicate within six months of the date of the mention of the search report's publication in the European Patent Bulletin whether they wish to proceed further with their application (see CII, 1.1). If, after receipt of the European search report, the applicant decides not to pursue the application and does not react to the invitation under Rule 70(2), the application will be deemed withdrawn under Rule 70(3), and the examination fee will be refunded in its entirety (see A-VI, 2.5).

Point 5.1(c) AAD

If the applicant has filed an automatic debit order, the examination fee will normally be debited at the end of the six-month period. For cases in which the applicant wishes the application to be transmitted earlier to the examining division, **see the AAD** in Annex A.1 of Supplementary publication 3, OJ EPO 2022.

Rule 70(1)

The request for examination may not be withdrawn.

Regarding Euro-PCT applications entering the European phase, see E-IX, 2.1.4 and E-IX, 2.5.2.

2.3 Legal remedy

*Art. 94(2)
Rule 112(1)*

If the request for examination is not validly filed by paying the examination fee before expiry of the period under Rule 70(1), the application is deemed withdrawn and the applicant is notified accordingly. In response to this loss-of-rights communication, the applicant can request further processing in accordance with Art. 121 and Rule 135 (see E-VIII, 2).

If the applicants have validly filed a request for examination before the European search report has been transmitted to them, the Receiving Section invites them according to Rule 70(2) to indicate within six months of the date of the mention of the search report's publication in the European Patent Bulletin whether they wish to proceed further with their application. If they fail to respond to this request in time, the application is deemed withdrawn and the applicants are notified accordingly. In this case, the applicants may also avail themselves of the legal remedy under Art. 121 and Rule 135 (further processing of the application). Regarding reimbursement of the examination fee, see A-VI, 2.2 and A-X, 10.2.3. C-VI, 3 describes the procedure in respect of a categorical request for examination, as provided for in Rule 10(4), where the applicant waives the right to the communication according to Rule 70(2).

*Rule 70(2) and
(3)
Rule 112(1)
Art. 121*

Regarding Euro-PCT applications entering the regional phase, see E-IX, 2.1.3 and E-IX 2.5.2.

2.4 Transmission of the dossier to the examining division

If the Receiving Section finds that the request for examination was filed in due time, or the wish to proceed further with the application was indicated in due time (Rule 70(2)), it transmits the application to the examining division. Otherwise, it will notify the applicant of the loss of rights that has occurred (see Rule 112(1)).

*Art. 16
Art. 18(1)
Rule 10*

The dossier as transmitted to the examining division contains the following:

- (i) all documents filed in relation to the application, including priority documents, translations and any amendments
- (ii) any certificate filed in relation to display at an exhibition (see A-IV, 3) and any information furnished under Rule 31 if the application relates to biological material (see A-IV, 4)
- (iii) the European search report, if applicable the search opinion, the content of the abstract as drawn up by the search division and the internal search note, if any
- (iv) ~~copies of~~ documents cited in the search report and ~~two copies of the~~ publication document(s)
- (v) the applicant's response to the search opinion (see B-XI, 8) or to the WO-ISA, supplementary international search report or IPER prepared by the EPO (see E-IX, 3.2 and E-IX, 3.3.4)
- (vi) all relevant correspondence.

The Receiving Section will direct attention to any aspects of the application requiring urgent attention by the examining division, e.g. any letters that have to be answered before the application is examined in its proper turn.

2.5 Refund of examination fee

Art. 11 RFees

The examination fee is refunded:

- (i) in full if the European patent application is withdrawn, refused or deemed withdrawn before substantive examination has begun (Art. 11(a) RFees)
- (ii) at a rate of 50% if the European patent application is withdrawn after substantive examination has begun and
 - before expiry of the (extended) time limit for replying to the first invitation under Art. 94(3) issued by the examining division proper or
 - if no such invitation has been issued, before the date of the communication under Rule 71(3) (Art. 11(b) RFees).

As concerns (i) above, this applies to all European patent applications that are withdrawn, refused or deemed withdrawn on or after 1 July 2016. As concerns (ii) above, this applies to all European patent applications for which substantive examination began on or after 1 November 2016 (see the Administrative Council decision of 29 June 2016, OJ EPO 2016, A48). ~~For all applications for which substantive examination began before that date, Art. 11 RFees as in force before 1 November 2016 continues to apply, which means that there will be no refund if the application is withdrawn, refused or deemed withdrawn at this stage of proceedings.~~

Communications under Art. 94(3) "issued by the examining division proper" (see also C-III, 4) are all communications indicating that the application does not meet the requirements of the EPC and referring to deemed withdrawal under Art. 94(4) if the deficiencies are not duly remedied. These include the following:

- ~~— invitations under Rule 137(4)~~
- minutes of consultations by phone or in person, accompanied by an invitation to remedy deficiencies
- communications relating to the "completely contained" criterion under Rule 56(3) or 56a(4)
- summonses to oral proceedings under Rule 115(1) to which a communication complying with the requirements of Art. 94(3) and Rule 71(1) is annexed.

In contrast, communications addressing purely formal deficiencies and issued by formalities officers as part of the duties entrusted to them, even if issued on the basis of Art. 94(3), do not constitute communications under Art. 94(3) "issued by the examining division proper". Likewise, communications issued by the examining division proper on some other legal basis, such as Rule 164(2)(a), Rule 53(3) or Art. 124, have no bearing on the period for a withdrawal qualifying for the 50% refund (see the EPO notice dated 30 June 2016, OJ EPO 2016, A49).

An applicant unsure whether substantive examination has begun and wanting to withdraw the application only if certain to receive the 100% refund

may make withdrawal contingent upon the refund ("conditional" withdrawal). The date of the start of examination (C-IV, 7.1) is indicated by means of EPO Form 2095 in the public part of the dossier and is thus open to file inspection in the European Patent Register after the patent application's publication. If EPO Form 2095 is not on file, substantive examination is deemed to have started on the date on which the first communication from the examining division proper is issued (e.g. a communication under Art. 94(3), Rule 71(3) or any other legal basis as mentioned above). Before publication, the applicant can request the relevant information from the EPO or access it electronically via the [MyEPO Portfolio and My Files services](#). For more details, see OJ EPO 2013, 153, [and OJ EPO –2023, –A89–A49 and OJ EPO –2023, –A50.](#)

2.6 Reduction in examination fee

Where applicants having their residence or principal place of business within the territory of a contracting state having an official language other than English, French or German and nationals of that state who are resident abroad make use of the options provided for under Art. 14(4), the examination fee is reduced under certain circumstances (Rule 6(3) to (7) in conjunction with Art. 14(1) RFees) (see A-X, 9.2.1 and 9.2.3).

Art. 14(4)
Rule 6
Art. 14(1) RFees

3. Response to the search opinion

The applicant is required to respond to the search opinion within the time limit under Rule 70(1) or, if a communication under Rule 70(2) is sent (see C-II, 1.1), within the time limit under Rule 70(2). If the applicant fails to respond to the search opinion on time, the application is deemed withdrawn (Rule 70a(3)). For more details, see B-XI, 8.

Rule 70a

Chapter VII – Languages

1. Admissible languages on filing

1.1 General

European patent applications can be filed in any language. However, if filed in a language other than an official EPO language (English, French and German), a translation into one of the official languages must be filed within two months of the date of filing (Rule 6(1)). Although filing in any language is in principle possible, there may be limitations due to the applicable national law for applications filed at a central industrial property office or the competent national authority under Art. 75(1)(b).

*Art. 14(1) and
Art. 14(2)
Rule 6(1)*

In the case of applications filed in "an admissible non-EPO language" (see A-VII, 3.2), a reduction of the filing fee is allowed for certain categories of applicants (see A-X, 9.2.1 and A-X, 9.2.2).

Rule 6(3) to (7)

Filing a European patent application in a single language is not a requirement for according a filing date (Art. 90(3) in conjunction with Art. 14(2)). However, where an application is filed in more than one language, the EPO will invite the applicant to remedy the deficiency.

1.2 Filing by reference

Where the description is filed by reference to a previously filed application (see A-II, 4.1.3.1) and the latter is not in an official EPO language, the applicant must also file a translation into one such language within two months of the filing date.

Rule 40(3)

1.3 European divisional applications; Art. 61 applications

European divisional applications must be filed in the language of the proceedings of the earlier (parent) application. Alternatively, if the earlier (parent) application was not in an official EPO language, the divisional application may be filed in the language of the earlier (parent) application. In this case a translation into the language of the proceedings of the earlier application must be filed within two months of the filing of the divisional application.

Rule 36(2)

The same applies to the filing of a new European patent application under Art. 61(1)(b).

Art. 61(2)

1.4 Invitation to file the translation

Where the translation is not filed in due time, the EPO will invite the applicant to rectify this deficiency within a non-extendable period of two months. Failure to file the translation in time in response to this invitation results in the application being deemed withdrawn under Art. 14(2), in which case further processing is ruled out (see A-III, 14).

*Art. 90(3)
Rules 57 and 58*

2. Language of the proceedings

The official EPO language (English, French or German) in which the application is filed, or into which it is subsequently translated, constitutes the "language of the proceedings". Where the EPO invites the applicant to file

Art. 14(3)

the translation (see A-VII, 1.4), the invitation will be sent by default in English with an update to the language of the proceedings on receipt of the translation, if applicable.

The language of the proceedings is the only language used by EPO departments in written proceedings on that application (see G 4/08).

Rule 3(2)

Where European patent applications are filed in one of the official EPO languages, or after they have been translated into one of them, the description, claims and drawings can only be amended in that official language, which is the language of the proceedings.

Any claims filed after the filing date will need to be filed in the language of the proceedings.

Example: If an application is filed without claims in Japanese and is then translated into English, the claims will need to be filed in English. Subsequent amendments to the application will also have to be filed in English.

3. Derogations from the language of the proceedings in written proceedings

3.1 Parties' written submissions

Rule 3(1)

With the exception of amendments to the European patent application or European patent, any party may use any of the EPO's three official languages in written proceedings before the EPO.

3.2 Admissible non-EPO languages

*Art. 14(3) and
Art. 14(4)*

Natural or legal persons having their residence or principal place of business within an EPC contracting state having a language other than English, French or German as an official language, and nationals of that state resident abroad, may file documents that have to be filed within a time limit in an official language of that state ("admissible non-EPO language"). For example, an Italian or Swiss applicant may file a reply in Italian to a communication from the examining division issued under Art. 94(3).

Rule 6(2)

A translation of a document filed in an admissible non-EPO language into an official language of the EPO must be filed within a non-extendable period of one month (Rule 6(2)). However, if the document is a notice of opposition or appeal or a petition for review (Art. 112a), the period extends to the end of the opposition or appeal period or the period for petition for review, if this expires later. The translation can be into any of the EPO's official languages, regardless of the language of the proceedings.

3.3 Priority document

Rule 53(3)

Where the certified copy of the previous application whose priority is claimed (priority document) is not in an official EPO language, a translation into one such language need only be filed at the invitation of the EPO. This invitation is issued only where the validity of the priority claim is relevant to determining the patentability of the invention concerned. The translation may be replaced by a declaration that the European patent application is a complete translation of the previous invention.

See A-III, 6.8 for more information on the translation of priority documents.

3.4 Documents filed as evidence

Documents to be used as evidence may be filed in any language. This applies to all proceedings before the EPO and, especially, to publications (for instance, an extract from a Korean periodical cited by an opponent to show lack of novelty or lack of inventive step). However, the department dealing with the case may require a translation of the document or relevant parts of it in one of the official EPO languages, to be chosen by the person filing the document. If the document is filed by the applicant in pre-grant proceedings, the EPO should require a translation of the document or relevant parts of it unless the examiners are fully competent in the language concerned. In opposition proceedings the same principles apply, taking into account the interests of all parties. The time limit for filing the translation will be specified by the competent EPO department on a case-by-case basis and will depend on the language concerned and the length of the document or relevant parts, taking account of the provisions of Rule 132 (see E-VIII, 1.2). If the required translation is not filed in due time, the EPO may disregard the document in question.

Rule 3(3)

3.5 Third-party observations

Third-party observations (E-VI, 3) must be filed in writing and in one of the EPO's official languages. Supporting documents, e.g. prior-art citations, can be written in any language.

Rule 114(1)

If the third-party observations and/or prior art are not in an official EPO language (Art. 14(1)), the EPO may invite the third party, if identifiable, to submit a translation of the observations and, where appropriate, of the cited prior art in one such language within a period according to Rule 132.

4. Derogations from the language of the proceedings in oral proceedings

This subject is dealt with in E-V.

Rule 4

5. Documents filed in the wrong language

Documents making up the European patent application can only be filed in the wrong language on the occasion of its amendment, since the application can originally be filed in any language (see A-VII, 1.1). In such a case, as well as if any other document is not filed in the prescribed language or any required translation is not filed in due time, the document is deemed not filed. The person who has filed the document will be notified accordingly by the EPO. Even though deemed not filed, the document concerned will become part of the file and therefore accessible to the public according to Art. 128(4).

Art. 14(1)

In the event of failure to file a translation of the filed documentary evidence upon invitation in due time, the documents in question may be disregarded by the EPO.

Rule 3(3)

Where submissions accompanying the performance of a procedural act subject to a time limit (e.g. filing the designation of the inventor, filing a certified copy of the earlier application for which priority is claimed or filing the translation of the priority document under Rule 53(3)) are not filed in an

official EPO language, they will be included in the file without note being taken of their content.

*Rules 79(1)
and 114(2)*

Observations by third parties and notices of oppositions will be communicated to the applicant or the patent proprietor even if they are deemed not filed.

6. Languages of publication

Art. 14(5) and (6)

European patent applications are published only in the language of the proceedings, whereas European patent specifications are published in the language of the proceedings together with translations of the claims in the other two official languages.

7. Correction and certification of the translation

Art. 14(2)

Any error in the translation filed can be corrected at any time during proceedings before the EPO, i.e. during pre-grant proceedings and also during opposition proceedings, bringing the translation into conformity with the application as filed in the original language (e.g. with the originally filed Japanese-language application). This applies similarly to translations filed for Euro-PCT applications upon entry into the European phase (see E-IX, 2.1.2). However, correction of the translation during opposition proceedings will not be allowed if it contravenes Art. 123(3), i.e. if it implies an amendment of the claims that extends the protection conferred.

*Rule 7
Art. 70(2)*

Unless evidence is provided to the contrary, the EPO will assume, for the purposes of determining whether the subject-matter of the European patent application or European patent extends beyond the content of the application as filed (Art. 123(2)), that the translation filed under Art. 14(2) or Rule 40(3) is in conformity with the original text of the application (e.g. in Japanese). The text of the application as filed however remains the basis for determining the allowability of amendments under Art. 123(2) or the content of the disclosure for the purposes of Art. 54(3) (see G-IV, 5.1).

Rule 5

The EPO has the discretion to require the filing of a certificate that a translation supplied corresponds to the original text, within a period to be specified (see E-VIII, 1.2 and E-VIII, 1.6). An invitation to file the certificate may only be made where the EPO has serious doubts as to the accuracy of the translation. Failure to file the certificate in due time will lead to the document being deemed not received unless the EPC provides otherwise. Further processing is possible according to Art. 121 and Rule 135.

As a rule, certification is not required in respect of the translations of the claims in the other two official languages required under Rule 71(3).

8. Authentic text of the application or patent

*Art. 70(1)
Art. 14(8)*

The text of an application or patent in the language of the proceedings is the authentic text. It therefore follows that the translation of the claims of the patent specification required by Art. 14(6) is for information only.

Chapter VIII – Common provisions

1. Representation

1.1 General principles

Subject to the next sentence, no person may be compelled to be represented by a professional representative in proceedings before the EPO; this holds for all parties to such proceedings, e.g. applicants, proprietors, opponents. A party (natural or legal person) who has neither residence nor principal place of business in a contracting state must be represented by a professional representative; the party must act through a professional representative in all proceedings other than in filing the application (which includes all acts leading to the ~~assignment~~ accordance of a date of filing) or initiating the European phase within the applicable time limit (see E-IX, 2.3.1). To "be represented" is to be interpreted as meaning due representation, including not only notice of the appointment of a professional representative but also, where applicable, the filing of authorisations of the appointed representative (see A-VIII, 1.6).

*Art. 133(1) and
Art. 133(2)
Art. 90(3)
Rule 152*

Parties having their residence or principal place of business in a contracting state may also act direct before the EPO, even if they have appointed a professional representative (see A-VIII, 1.2), an employee (see A-VIII, 1.3) or a legal practitioner (see A-VIII, 1.5) to act on their behalf. When conflicting instructions are received from parties and their representative, each will be advised of the other's action.

Should opponents who are party to proceedings and do not have either residence or principal place of business within the territory of one of the contracting states fail to meet the requirement set out under Art. 133(2) in the course of the opposition procedure (e.g. the representative withdraws from the opposition case or is deleted from the list of professional representatives), they are requested to appoint a new representative. Irrespective of whether they do so, the EPO will nevertheless inform opponents of the date and location of any oral proceedings and point out that if they appear alone they will not be entitled to act before the division.

1.2 Representation by a professional representative; list of professional representatives; associations

Representation of natural or legal persons in proceedings before the EPO may only be undertaken by professional representatives whose names appear on a list kept for this purpose by the EPO. See, however, also A-VIII, 1.5. The Legal Division has sole responsibility for entries and deletions in the list of professional representatives (see Article. 20(1) and the decision of the President of the EPO dated 21 November 2013, OJ_EPO 2013, 600). A group of at least two professional representatives registered with the EPO ~~under the name of~~ as an association within the meaning of Rule 152(11) may be appointed collectively to represent a party under that name (see OJ_EPO 2013, 535). In that case, each member of the association may perform procedural acts on behalf of the party, while correspondence from the EPO, according to Rule 130, is addressed to the association rather than one particular member. Parties are recommended to

*Art. 134(1),
Rule-152(11)*

clearly specify whether they wish to appoint the association or an individual representative belonging to that association (see also A-VIII, 1.7). The Legal Division is responsible for the registration of associations (OJ EPO 2013, 600).

1.3 Representation by an employee

Art. 133(3)
Art. 134(1)
Rule 152

Parties having their residence or principal place of business in a contracting state are not obliged to be represented by a professional representative in proceedings before the EPO. They may, irrespective of whether they are legal or natural persons, act through an employee, who need not be a professional representative but who must ~~be~~ always file an authorisation (see A-VIII, 1.6, and A-VIII, 1.7).

1.4 Common representative

Art. 133(4)
Rule 151(1) and (2)

Joint applicants, joint proprietors of patents and more than one person giving joint notice of opposition or intervention may act through a common representative. If the request for the grant of a European patent, the notice of opposition or the request for intervention does not name a common representative, the party first named in the relevant document will be considered the common representative. The common representative can thus be a legal person. However, if one of the parties is obliged to appoint a professional representative and has done so, this representative will be considered the common representative acting on behalf of all parties. In such a case, no other party can act as common representative. However, if the first named party in the document has appointed a professional representative, that representative will be considered to be acting on behalf of all parties.

If the European patent application or patent is transferred to more than one person, and such persons have not appointed a common representative, the preceding provisions will apply. If such application is not possible, the EPO will require the parties to appoint a common representative within a two-month period specified by the EPO (see E-VIII, 1.6). ~~If a change of representative is requested for joint applicants, any authorisation must be signed by all applicants. If this is not the case, the parties will likewise be invited to appoint a common representative before registration can take place.~~ If this request is not complied with, the EPO will appoint the common representative (J -10/96). ~~If a change of representative is requested for~~

In the case of joint applicants for whom a change of representative is requested, any authorisation must be signed by all applicants. If this is not the case, the parties will likewise be invited to appoint a common representative before registration can take place.

For Rule 151 to apply, each party or their duly authorised representative must have signed the document (request for grant, notice of opposition, etc.) giving rise to their participation (see also A-III, 4.2.2 and A-VIII, 3.2 and 3.4). Otherwise the party cannot take part in the proceedings, nor therefore be represented by a common representative.

1.5 Representation by a legal practitioner

Representation in proceedings under the EPC may also be undertaken in the same way as by a professional representative (see A-VIII, 1.2) by any legal practitioner qualified in one of the contracting states and having their place of business within such state, to the extent that they are entitled, within the said state, to act as a professional representative in patent matters. Legal practitioners entitled to act as representatives before the EPO are not entered on the list of professional representatives (see J 18/99). However, they are registered in an internal database administered by the Legal Division (see OJ EPO 2013, 600).

*Art. 134(1) and
Art. 134(8)*

1.6 Signed authorisation

Representatives acting before the EPO must, on request, file a signed authorisation (see A-VIII, 3.2) within a two-month period specified by the EPO (see E-VIII, 1.6). Both individual and general authorisations (see A-VIII, 1.7) within the meaning of Rule 152(4) serve the same purpose. For general authorisations, the indication of the registration number is equivalent to the filing of the authorisation itself. The filing of an authorisation is distinct from the appointment of a representative for a specific case. If the requirements of Art. 133(2) are not fulfilled, the same period will be specified for the communication of the appointment and, where applicable, for the filing of the authorisation.

Rule 152

Professional representatives who identify themselves as such will be required to file a signed authorisation only in certain cases, in particular if there is a change of representative (see **Art. 1(2) of the decision of the President of the EPO** dated 12 July 2007, Special edition No. 3, OJ EPO 2007, L.1). No authorisation is required where a professional representative other than the appointed one (and not being a member of the same association or law firm) performs a procedural act on behalf of a party to proceedings, e.g. filing a reply to the communication under Rule 71(3), provided that it is apparent from the submission that they are acting at the request of that party without the intention to take over representation. In case of doubt as to a professional representative's entitlement to act on behalf of a party, the EPO may require the filing of an authorisation (see **Art. 1(3) of the above decision**).

However, a legal practitioner entitled to act as a professional representative in accordance with Art. 134(8) or an employee acting for an applicant in accordance with Art. 133(3), first sentence, but who is not a professional representative, must always file a signed authorisation (see **Art. 2 and Art. 3 of the above decision**) to be in a position to validly perform procedural acts. In Euro-PCT proceedings, persons representing ~~clients~~-applicants in these capacities are not required to file signed authorisations if they have already filed an authorisation expressly covering proceedings established by the EPC with the EPO as receiving Office, ISA or IPEA. Where a representative is appointed to act on behalf of the applicant in several of that party's applications, it is not necessary to file an individual authorisation for each application (see A-VIII, 2.4). A clear indication of the applications concerned

is sufficient; the EPO will make sure that a copy of the authorisation is included in all of the files concerned.

The authorisation can also be filed by the applicant. This also applies where the applicant is obliged to be represented, as fulfilling the requirement to be represented is not itself a procedural step under Art. 133(2) to which the rule of obligatory representation applies.

An association of representatives can be authorised to represent a party before the EPO within the meaning of Art. 134(1) (Rule 152(11)). A party appointing several representatives can authorise them collectively as an association instead of having to do so individually, provided that the association in question is registered with the EPO (OJ EPO 2013, 535). Where invited to file an authorisation by way of an exception, a reference to that registration number in the authorisation will suffice.

An authorisation remains in force until its termination is communicated to the EPO. Transfer of representation or termination of authorisation can, subject to certain conditions, be effected electronically by the representative using the My Files service (see the decision of the President of the EPO dated 26 April 2012, OJ EPO 2012, 352). The authorisation will not terminate upon the death of the person who gave it unless the authorisation provides to the contrary (Rule 152(9)).

1.7 General authorisation

An authorisation may cover more than one application or patent. Also, a general authorisation enabling a representative to act in respect of all the patent transactions of the party making the authorisation may be filed. However, an authorisation given for EP proceedings (EPO Form 1004) does not extend to UP proceedings unless this is indicated by ~~tick~~selecting the corresponding box on EPO Form 1004. Alternatively, a separate general authorisation ~~only solely for the~~ UP proceedings may be used (EPO Form 7004).— A corresponding procedure applies to the withdrawal of an authorisation.

However, the filing of a general authorisation is distinct from the appointment of a representative for a specific case. The party granting a general authorisation is not bound to appoint one of the representatives listed in any specific procedure before the EPO. Nor does a general authorisation allow the EPO to assume, without any additional information, that a person listed should be appointed as a representative in a specific case (see J 17/98). Therefore, in a specific case, a party wishing to appoint the representative(s) listed in a general authorisation must notify the EPO accordingly by referring to the general authorisation number already registered. The Legal Division is responsible for the registration of general authorisations (OJ EPO 2013, 600).

1.8 Invitation to file authorisation and legal consequence in case of non-compliance

Where the appointment of a legal practitioner entitled to act as professional representative in accordance with Art. 134(8), or an employee acting for an applicant in accordance with Art. 133(3), first sentence, but who is not a

Art. 133(2)
Rule 152(2), (4), (7),
(8) and (9)

Rule 152(2) and
(6)
Rule 132

professional representative, is communicated to the EPO without an authorisation being filed, the representative is invited to file the authorisation within a two-month period specified by the EPO (see E-VIII, 1.6). Where a party having neither residence nor principal place of business within a contracting state has failed to fulfil the requirements of Art. 133(2) (see A-VIII, 1.1), the invitation will be sent direct to the party concerned. The same period will be specified for the communication of the appointment and, where applicable, the filing of the authorisation. The period may be extended in accordance with Rule 132 on request by the representative or party as the case may be (see E-VIII, 1.6). If such authorisation is not filed in due time, any procedural steps taken by the representative other than filing a European patent application or initiating the European phase within the applicable time limit (see E-IX, 2.3.1) will, without prejudice to any other legal consequences provided for in the EPC, be deemed not taken. The party is informed accordingly.

2. Form of documents

2.1 Documents making up the European patent application

The physical requirements that the documents making up the European patent application, i.e. request, description, claims, drawings and abstract, must satisfy are set out in Rule 49(2) in conjunction with the decision of the President of the EPO dated 25 November 2022 (OJ EPO 2022, A113). In particular, when amending the application documents, amendments must be typed. Any submissions containing handwritten amendments to application documents – unless they involve graphic symbols and characters and chemical and mathematical formulae – are a formal deficiency (see Art. 2(7) of the decision of the President of the EPO dated 25 November 2022 and 50(1)). The EPO President may lay down further special formal or technical requirements for the filing of documents, in particular with regard to the filing of documents by means of electronic communication (Rule 2(1)). Notes on the preparation of OCR-readable patent applications are published in OJ EPO 1993, 59. The particular requirements relating to drawings are dealt with in A-IX.

2.2 Replacement documents and translations

Replacement documents and translations in an official language of documents filed under the provisions of Art. 14(2) or Rule 40(3) are subject to the same requirements as the documents making up the application.

Rule 49(1)

Rule 50(1)

2.3 Other documents

Documents other than those referred to in the previous paragraphs should be typewritten or printed with a left margin of about 2.5 cm on each page (Art. 3 of the decision of the President of the EPO dated 25 November 2022, OJ EPO 2022, A113).

Rule 50(2)

2.4 Number of copies

Documents relating to more than one application or patent (e.g. individual or general authorisation) or having to be communicated to more than one party, only need to be filed in one copy (see also A-VIII, 1.5). However, in the case of letters accompanying submitted documents (in particular EPO

Form 1038), a separate copy must be filed for each file to which the document they accompany relates.

For example, where two different applications share a common priority claim, the applicant only needs to file one copy of the priority document, but this must be accompanied by two different letters each relating to one or the other application (preferably two copies of EPO Form 1038). Each letter (or EPO Form 1038) must be duly signed and indicate one or the other of the two application numbers in respect of which the priority document is being filed (see also A-VIII, 3.1).

2.5 Filing of subsequent documents

Rule 2(1)

After a European patent application has been filed, the documents referred to in Rule 50 may be filed by delivery by hand, by postal services (see [A-II, 1.2-A-II, 1.21](#)) or by means of electronic communication (see [A-II, 1.1-A-II, 1.21.4](#)). These include filing electronically by means of EPO Online Filing, Online Filing 2.0, the EPO web-form filing service, the EPO Contingency Upload Service or, for certain procedural actions, MyEPO Portfolio (see [A-II, 1.1.1](#)) and by fax (see [A-II, 1.1.2-A-II, 1.2.4](#)). ~~and in electronic form by means of EPO Online Filing, Online Filing 2.0 and the EPO web-form filing service (see [A-II, 1.2.2](#)).~~ Authorisations ~~and priority documents~~ are, however, excluded from filing by fax or using the EPO web-form filing service. Priority documents are excluded from filing by fax, using the EPO web-form filing service or the EPO Contingency Upload Service. For the means of filing accepted for priority documents, see A-III, 6.7.

The EPO web-form filing service must not be used to file any documents in respect of opposition, limitation and revocation proceedings as well as appeal proceedings and proceedings for review by the Enlarged Board of Appeal (see the decision of the President of the EPO dated ~~14 May 2021, OJ EPO 2021, A423~~ May 2023, OJ EPO 2023, A48).

If subsequent documents relating to European patent applications are filed by fax, written confirmation reproducing the contents of those documents and complying with the requirements of the Implementing Regulations to the EPC must be supplied on invitation from the EPO within two months of the invitation's notification. If the applicant fails to comply with this request in time, the fax is deemed not to have been received (see the decision of the President of the EPO dated 20 February 2019, OJ EPO 2019, A18).

Written confirmation is requested if the documents communicated by fax are of inferior quality.

Art. 14(4)
Rule 6(2)

If, in a fax, a party avails itself of Art. 14(4), the subsequent copy must be filed in the same language as the fax, in which case the copy is deemed received on the fax's filing date. The period under Rule 6(2) for filing the translation under Art. 14(4) begins on the day following the fax's filing date.

Subsequent documents may not be filed ~~on diskette,~~ by email or similar means (see also the notice dated 12 September 2000 concerning

correspondence with the Office via email, OJ EPO 2000, 458). However, during telephone consultations and during interviews and oral proceedings held by videoconference, documents filed subsequently as referred to in Rule 50, including authorisations, must be filed by email (for more details see the decision of the President of the EPO dated 13 May 2020, OJ EPO 2020, A71; see also E-III, 8.5.2).

3. Signature of documents

3.1 Documents filed after filing the European patent application

All documents, other than annexes, filed after filing the European patent application must be signed by the person responsible. Under Art. 133, only the applicant or the authorised representative may act in the European patent grant procedure (see A-VIII, 1.6). Documents filed after filing the European patent application may therefore be effectively signed only by these persons.

Rule 50(3)
Art. 133

Documents such as the priority document or its translation must be accompanied by a cover letter or at least bear a note on the document itself addressed to the EPO and duly signed by a person authorised to act before the EPO. This also applies, for example, to the designation of inventor if this has been signed by an applicant with neither residence nor principal place of business in one of the EPC-contracting states. As regards the authorisation, see A-VIII, 1.6. The signature of the entitled person confirming performance of a written act of procedure helps to clarify the state of the proceedings. It shows whether the act of procedure has been validly performed and also prevents circumvention of the provisions relating to representation. EPO Form 1038 (letter accompanying subsequently filed items) may also be used as a separate letter. ~~A separate form must be used for each file (see the EPO notice dated 8 November 1990, OJ EPO 1991, 64). The same applies when, instead of using EPO Form 1038, the applicant submits an accompanying letter with the document in question (see also A-VIII, 2.4). In the case of electronic filing, several documents for a file can be attached to a single EPO Form 1038E.~~

~~EPO Form 1037 can be used for the subsequent filing on paper, at the same time, of items relating to several applications, but without signature. EPO Form 1037 is merely an acknowledgment. Its use is particularly recommended for subsequent filing of documents already bearing the required signature (such as replies to communications).~~

Submissions filed electronically must be signed by an entitled person, although they may be transmitted using a smart card issued to another person. If the signature is omitted on a document not falling within the meaning of A-VIII, 3.2, the EPO must invite the party concerned to sign it within a fixed time limit. This also applies if the document in question bears the signature of an unentitled person (e.g. the secretary of an authorised representative), a deficiency which for the purposes of the time limits under way is treated as equivalent to omission of the signature of an entitled person. If signed in due time, the document retains its original date of receipt; otherwise it is deemed not received. ~~Likewise, documents filed electronically must be signed by an entitled person, although they may be transmitted using a smart card issued to another person.~~ See also A-VIII, 3.2 below.

Rule 50(3)

3.2 Documents forming part of the European patent application

In addition to the documents referred to in A-VIII, 3.1, certain documents forming part of the application must be signed. These include the request for grant, the designation of the inventor and, where applicable, the authorisation of a representative. If a European patent application is filed electronically, a facsimile image of the signer's handwritten signature, a text-string signature or an enhanced electronic signature, as applicable, may be used to sign the above documents (Art. 12 of the decision of the President of the EPO dated ~~14 May 2021, OJ EPO 2021, A42~~ 3 May 2023, OJ EPO 2023, A48).

With the exception of the authorisation of a representative, the documents may be signed by an authorised representative instead of the applicant.

3.3 Form of signature

If documents are filed electronically using EPO Online Filing, the signature may take the form of a facsimile signature, a text-string signature or an enhanced electronic signature. Where documents are filed using Online Filing 2.0, the EPO web-form filing service or the EPO Contingency Upload Service, the signature may take the form of a facsimile signature or a text-string signature.- Procedural actions performed in MyEPO Portfolio require a signature in the form of a text string (see OJ EPO 2023, A89).

A facsimile signature is a reproduction of the filing person's signature. A text-string signature is a string of characters, preceded and followed by a forward slash (/), selected by the signatory to prove their identity and intent to sign. An enhanced electronic signature is an electronic signature issued or accepted by the EPO (see OJ EPO 2023, A48).

For signatures accepted on electronically filed assignment documents, see E-XIV, 3.

Where a document is filed by fax, the reproduction on the fax of the signature of the person filing the document will be considered sufficient. The name and position of that person must be clear from the signature (see the decision of the President of the EPO dated 20 February 2019, OJ EPO 2019, A18).

Where a document is filed on paper, ~~A~~a rubber stamp impression of a party's name, whether a natural or legal person, must be accompanied by a personal signature. Initials or other abbreviated forms will not be accepted as a signature. Where the party concerned is a legal person, a document may in general be signed by any person who purports to sign on behalf of that legal person. The entitlement of a person signing on behalf of a legal person is not checked by the EPO, except where there is reason to believe that the person signing is not authorised and in that case evidence of authority to sign should be called for.

~~Where a document is filed by fax, the reproduction on the fax of the signature of the person filing the document will be considered sufficient. The name and~~

~~position of that person must be clear from the signature (see the EPO President's decision dated 20 February 2019, OJ EPO 2019, A18).~~

~~If documents are filed electronically using EPO Online Filing, the signature may take the form of a facsimile signature, a text-string signature or an enhanced electronic signature. Where documents are filed using Online Filing 2.0 or the EPO web-form filing service, the signature may take the form of a facsimile signature or a text-string signature. A facsimile signature is a reproduction of the filing person's signature. A text string signature is a string of characters, preceded and followed by a forward slash (/), selected by the signatory to prove their identity and intent to sign. An enhanced electronic signature is an electronic signature issued or accepted by the EPO (see OJ EPO 2021, A42).~~

~~For signatures accepted on electronically filed assignment documents, see E-XIV, 3.~~

3.4 Joint applicants

If there is more than one applicant (see A-VIII, 1.3), each applicant or their appointed representative must sign the request for grant and, where applicable, the appointment of the common representative. This also applies if one of the applicants is considered the common representative under Rule 151(1), first sentence. However, the common representative may sign the designation of inventor and all documents filed after the filing of the application under Rule 50(3). Authorisations on behalf of more than one applicant must be signed by all applicants.

Rule 151(1)

Chapter IX – Drawings

This chapter deals with the requirements to be met by drawings contained in the application or patent. Guidance on the presentation of application documents, including drawings, is provided in the decision of the President of the EPO dated 25 November 2022 (OJ EPO 2022, A113, Rule 49(2)), which is the legal basis for the practice described below.

Rule 49

Rule 50

1. Graphic forms of presentation considered as drawings

1.1 Technical drawings

All types of technical drawings are considered drawings within the meaning of the EPC; these include, for instance, perspectives, exploded views, sections and cross-sections, details on a different scale, etc. Drawings also cover "flow sheets and diagrams", which include functional diagrams and graphic representations of a given phenomenon expressing the relationship between two or more magnitudes.

Other graphic forms of presentation – chemical and mathematical formulae and tables – may also be included in the description, claims or abstract but are not subject to the same requirements as drawings (see Art. 2(8) of the decision of the President of the EPO dated 25 November 2022). These are dealt with in A-IX, 11. If they are nevertheless submitted as drawings, they are subject to the same requirements as drawings.

1.2 Photographs

The EPC makes no express provision for photographs; they are nevertheless allowed where it is impossible to present in a drawing what is to be shown and provided that they are directly reproducible and fulfil the applicable requirements for drawings (e.g. paper size, margins, etc.). Colour photographs can be submitted but will be scanned, printed and made available via file inspection only in black and white. If colours are necessary for discerning details of the photographs submitted, these details may be lost when the photograph is made available in black and white via publication and file inspection. See also A-IX, 7.1.

Photographs (or their copies) are to be numbered like drawings and briefly described in the description (Rule 42(1)(d)).

2. Representation of drawings

2.1 Grouping of drawings

All drawings must be grouped together on the sheets specifically intended for drawings and may not be included in the description, claims or abstract, even if these finish at the top of a page or leave sufficient room, and even if there is only one figure.

OJ EPO 2022, A113

Rule 49(2)

2.2 Reproducibility of drawings

The drawings must be presented in such a way as to allow their electronic or direct reproduction by scanning, photography, electrostatic processes, photo offset and microfilming in an unlimited number of copies.

2.3 Figure accompanying the abstract

As regards the figure, or exceptionally figures, to accompany the abstract in a European patent application containing drawings, see A-III, 10.3 and F-II, 2.3 and 2.4. The figure(s) illustrating the abstract must be the figure(s) most representative of the invention and must be chosen from the drawings accompanying the application. It is therefore not permissible to draw a special figure for the abstract that differs from the other figures in the application.

3. Conditions if drawings are filed on paper regarding the paper used

OJ EPO 2022, A113

In the case of paper filings, drawings must be on sheets of A4 paper (29.7 cm x 21 cm) which must be pliable, strong, white, smooth, matt and durable (recommended paper weight: 80-120 g/m², see OJ EPO 1994, 74).

All sheets must be free from cracks, creases and folds. Only one side of the sheet may be used. The use of card is not allowed.

Each sheet must be reasonably free from erasures and must be free from alterations. Non-compliance with this rule may be authorised if the authenticity of the content is not in question and the requirements for good reproduction are not in jeopardy.

Any corrections made must be durable and permanent so that they cannot give rise to any doubt. Special products for corrections, such as white masking fluid, may be used, provided they are indelible and comply with the other requirements of the decision of the President of the EPO dated 25 November 2022.

The sheets must be connected in such a way that they can easily be turned over, separated and joined together again.

Permanent fastenings (for example, crimped eyelets) are not permitted. Only temporary fastenings (staples, paper clips and grips, etc.) that leave only slight marks in the margin may be used.

4. Presentation of the sheets of drawings

4.1 Usable surface area of sheets

On sheets containing drawings, the usable surface area may not exceed 26.2 cm x 17 cm. These sheets may not contain frames round the usable or used surface. The minimum margins are as follows: top side: 2.5 cm; left side: 2.5 cm; right side: 1.5 cm; bottom 1 cm.

4.2 Numbering of sheets of drawings

All sheets making up the European patent application must be numbered in consecutive Arabic numerals. These must be centred at the top of the sheet but not in the top margin.

The numbering on sheets of drawings must be positioned within the maximum usable surface area as defined in **Art. 1(1)** of the decision of the President of the EPO dated 25 November 2022. Instead of appearing in the middle of the sheet, the numbering may, however, be positioned towards the right-hand side if the drawing comes too close to the middle of the edge of the usable surface. This numbering should be clear, for example in numbers larger than those used for reference numbers.

All application sheets must be numbered consecutively. The application consists of all the following documents: the request, the description, the claims, the drawings and the abstract. The numbering should preferably be effected using three separate series of numbering, each beginning with one. The first series applies to the request only and is already printed on the form to be used. The second series commences with the first sheet of the description and continues through the claims until the last sheet of the abstract. The third series applies only to the sheets of the drawings and commences with the first sheet of such drawings.

There are no objections to including the description, claims, abstract and drawings in one series of numbering beginning with one. The series of numbering must then commence with the first sheet of the description.

5. General layout of drawings

The various figures on the same sheet of drawings must be laid out according to certain requirements as to page-setting and numbering, and figures divided into several parts must comply with particular requirements.

5.1 Page-setting

As far as possible all figures of the drawings should be set out upright on the sheets. If a figure is broader than it is high, it may be set out so that the top and bottom of the figure lie along the sides of the sheet with the top of the figure on the left side of the sheet.

In this case, if other figures are drawn on the same sheet, they should be set out in the same way, so that all the figures on a single sheet lie along parallel axes.

Where the sheet has to be turned in order to read the figures, the numbering should appear on the right-hand side of the sheet.

5.2 Numbering of figures

The different figures must be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.

This numbering should be preceded by the abbreviation "FIG", whatever the official language of the application. Where a single figure is sufficient to illustrate the invention, it should not be numbered and the abbreviation "FIG"

must not appear. This also applies to numbers and letters identifying the figures, i.e. they must be simple and clear and may not be used in association with brackets, circles or inverted commas. They should also be larger than the numbers used for reference signs.

An exception to the above may be permitted only as regards partial figures intended to form one whole figure, irrespective of whether they appear on one or several sheets. In this case the whole figure may be identified by the same number followed by a capital letter (e.g. FIG 7A, FIG 7B).

5.3 Whole figure

Where figures drawn on two or more sheets are intended to form one whole figure, the figures on the various sheets must be so arranged that the whole figure can be assembled without concealing any part of the partial figures.

Partial figures drawn on separate sheets must always be capable of being linked edge to edge, that is to say no figure may contain parts of another.

The case may arise where the parts of a whole figure are drawn on a single sheet following a layout different from that of the whole figure, e.g. a very long figure divided into several parts placed one above the other and not next to one another on a sheet. This practice is permitted. However, the relationship between the different figures must be clear and unambiguous. It is therefore recommended that a scaled-down figure be included showing the whole formed by the partial figures and indicating the positions of the sections shown.

6. Prohibited matter

Rule 48(1) and (2)

The provisions on the omission of prohibited matter within the meaning of Rule 48(1)(a) (see A-III, 8.1 and F-II, 7.2) also apply to drawings.

Rule 48(1)(c)

Statements or other matter of the type referred to in Rule 48(1)(c) (see F-II, 7.4) that are likely to appear in drawings are, in particular, various kinds of advertising, e.g. where the applicant includes in the drawing obvious business or departmental markings or a reference to an industrial design or model, whether registered or not. Doing so introduces matter that is clearly irrelevant or unnecessary, which is expressly prohibited by Rule 48.

7. Executing of drawings

7.1 Drawings of lines and strokes

The decision of the President of the EPO dated 25 November 2022 sets certain standards for lines and strokes in the drawing to permit satisfactory reproduction by the various means described in [Art. 2](#) of that decision.

The drawings must be executed in black. Colour drawings can be submitted but will be scanned, printed and made available via file inspection in black and white only (see also A-IX, 1.2 in respect of colour photographs). In respect of the content of priority documents issued by the EPO in such a case, see A-XI, 5.2.

In all cases the thickness of the lines and strokes must take into account the scale, nature, execution and perfect legibility of the drawing and of the reproductions.

All lines must be drawn with the aid of drafting instruments save those for which no instrument exists, e.g. irregular diagrams and structures.

7.2 Shading

The use of shading in figures is allowed provided it assists in their understanding and is not so extensive as to impede legibility.

7.3 Cross-sections

7.3.1 Sectional diagrams

Where the figure is a cross-section on another figure, the latter should indicate the position and may indicate the viewing direction.

Each sectional figure should be capable of being quickly identified, especially where several cross-sections are made on the same figure, e.g. by inscribing the words "Section on AB", or to avoid the use of lettering, by marking each end of the cross-section line on the diagram with a single Roman numeral. This number will be the same as the (Arabic) numeral identifying the figure where the section is illustrated. For example: "Figure 22 illustrates a section taken along the line XXII-XXII of Figure 21".

7.3.2 Hatching

A cross-section must be set out and drawn in the same manner as a normal view whose parts in cross-section are hatched with regularly spaced strokes, the space between strokes being chosen on the basis of the total area to be hatched.

Hatching should not impede the clear reading of the reference signs and leading lines. Consequently, if it is not possible to place references outside the hatched area, the hatching may be broken off wherever references are inserted. Certain types of hatching may be given a specific meaning.

7.4 Scale of drawings

If the scale of the figure is such that all essential details would not be clearly distinguished when reproduced electronically or photographically with a linear reduction in size to two-thirds, then the figure must be redrawn to a larger scale, and if necessary the figure should be split up into partial figures so that a linear reduction in size to two-thirds is still intelligible.

The graphic representation of the scale of drawings in cases where its inclusion is considered useful must be such that it is still usable when the drawing is reproduced in reduced format. This excludes indications of size such as "actual size" or "scale ½", both on the drawings and in the description, in favour of graphic representations of the scale.

7.5 Numbers, letters and reference signs

Numbers, letters and reference signs and any other data given on the sheets of drawings, such as the numbering of figures, pages of the drawing,

acceptable text matter, graduations on scales, etc., must be simple and clear, and not used in association with any brackets, inverted commas, circles or outlines whatsoever. Signs such as 6' and 35" are not regarded as including inverted commas and are therefore permitted.

Numbers, letters and reference signs should preferably all be laid out the same way up as the diagram to avoid having to rotate the page.

7.5.1 Leading lines

Leading lines are lines between reference signs and the details referred to. Such lines may be straight or curved and should be as short as possible. They must originate in the immediate proximity of the reference sign and extend at least as far as the features indicated.

Leading lines must be executed in the same way as lines in the drawing in accordance with **Art. 1(2)(a)** of the decision of the President of the EPO dated 25 November 2022.

7.5.2 Arrows

Arrows may be used at the end of the leading lines, provided that their meaning is clear. They may indicate a number of points:

- (i) a freestanding arrow indicates the entire section towards which it points
- (ii) an arrow touching a line indicates the surface shown by the line looking along the direction of the arrow.

7.5.3 Height of the numbers and letters in the drawings

A minimum size of 0.32 cm is required for all numbers and letters used on the drawings so that their reduction in size to two-thirds remains easily legible.

The Latin alphabet should normally be used for letters. The Greek alphabet is to be accepted however where it is customarily used, e.g. to indicate angles, wavelengths, etc.

7.5.4 Consistent use of reference signs in description, claims and drawings

Reference signs not mentioned in the description and claims may not appear in the drawing, and vice versa.

Reference signs appearing in the drawing must be given in the description and the claims taken as a whole. As regards use of these signs in the claims, see F-IV, 4.18.

Features of a drawing should not be designated by a reference in cases where the feature itself has not been described. This situation may arise as a result of amendments to the description involving the deletion of pages or whole paragraphs. One solution would be to strike out on the drawing reference signs that have been deleted in the description. Such corrections

must be made in accordance with **Art. 2(11)** of the decision of the President of the EPO dated 25 November 2022.

Where for any reason a figure is deleted then the applicant or proprietor ought to delete all reference signs relating solely to that figure appearing in the description and claims.

In the case of applications dealing with complex subjects and incorporating a large number of drawings, a reference key may be attached to the end of the description. This key may take whatever form is appropriate and contain all the reference signs together with the designation of the features that they indicate. This method could have the advantage of standardising the terminology used in the description.

7.5.5 Consistent use of reference signs in drawings

The same features, when denoted by reference signs, must be denoted by the same signs throughout the application.

It would be very confusing if a single feature were allocated different reference signs in the various drawings. However, where several variants of an invention are described, each with reference to a particular figure, and where each variant contains features whose function is the same or basically the same, the features may, if this is indicated in the description, be identified by reference numbers made up of the number of the figure to which it relates followed by the number of the feature, which is the same for all variants, so that a single number is formed, e.g. the common feature "15" would be indicated by "115" in Fig. 1 while the corresponding feature would be indicated by "215" in Fig. 2. This system has the advantage that an individual feature and the figure on which it is to be considered can be indicated at the same time. It can also make complex cases involving many pages of drawings easier to read. Instead of the common reference sign being prefixed by the number of a figure, it may, when the individual variants are described with reference to particular groups of figures, be prefixed by the number of the particular variant to which it relates; this should be explained in the description.

7.6 Variations in proportions

Elements of the same figure must be in proportion to each other unless a difference in proportion is indispensable for the clarity of the figure.

As a preferred alternative to a difference in proportion within one figure for clarity purposes, a supplementary figure may be added giving a larger-scale illustration of the element of the initial figure. In such cases it is recommended that the enlarged element shown in the second figure be surrounded by a finely drawn or "dot-dash" circle in the first figure pinpointing its location without obscuring the figure.

8. Text matter on drawings

It should first be noted that **Art. 1(2)(d) and (g)** of the decision of the President of the EPO dated 25 November 2022 also applies to text matter on the drawings.

For indications of the type "section on AB", see A-IX, 7.3.1.

The drawings must not contain text matter except when absolutely indispensable, and then only a single word or a few words. As flow sheets and diagrams are considered drawings (see A-IX, 1.1), text must be kept to the absolute minimum indispensable for understanding the drawing.

Where text matter is deemed indispensable for understanding the drawing, only the barest minimum of words should be used, and a space free of all lines of drawings should be left around them for the translation.

Compared with other types of drawings, flow sheets comprising method steps may need more than just a bare minimum of words to be understood since the essential information may not be adequately conveyed by the graphical part of the drawing. In such cases, the requirement to keep the text to an absolute minimum may be relaxed somewhat to allow more than a few words, such as a short sentence, for each method step.

As regards the justification for text matter on drawings, see F-II, 5.1.

9. Conventional symbols

Known devices may be illustrated by symbols having a universally recognised conventional meaning, provided no further detail is essential for understanding the subject-matter of the invention. Other signs and symbols may be used on condition that they are not likely to be confused with existing conventional symbols, that they are readily identifiable, i.e. simple, and that they are clearly explained in the text of the description.

Different types of hatching may also have different conventional meanings as regards the nature of a material seen in cross-section.

10. Amendments to drawings

Amendments are permitted to the drawings, as well as to the other documents. These amendments may be made at the request of the party concerned or of the EPO. The amendments may concern either clerical errors or more substantial changes.

Amendments to drawings are, in general, subject to the same rules as apply in respect of amendments to other application documents and therefore do not require further analysis here. See also A-III, 16, A-V, 2, B-XI, 8, C-III, 2, C-IV, 5, Part H, in particular H-II, 2 and H-III, 2.

Art. 123(2)

The general rule governing the admissibility of amendments, which the examiner must always bear in mind, is that they must not extend the content of the application as filed, i.e. they must not have the effect of introducing new material.

If drawings that depart substantially from the physical requirements laid down in the Implementing Regulations are filed to establish a particular date of filing or retain a priority date, the Receiving Section will permit them to be amended or replaced to provide drawings complying with the Implementing Regulations, provided that it is clear that the amendments do not introduce

new material into the application. In view of this proviso, applicants should take care that any "informal" drawings filed clearly show all the features necessary to illustrate the invention.

11. Graphic forms of presentation not considered as drawings

11.1 Chemical and mathematical formulae

In exceptional cases, chemical or mathematical formulae may be written by hand or drawn if necessary, but it is recommended that appropriate aids such as stencils or transfers be used. For practical reasons, formulae may be grouped together on one or more sheets annexed to the description and paginated with it. It is recommended in such cases that each formula be designated by a reference sign and the description should contain references to these formulae whenever necessary.

Chemical or mathematical formulae must employ symbols in general use and must be drawn in such a way that they are completely unambiguous. Figures, letters and signs that are not typed must be legible and identical in form in the various formulae, irrespective of the document in which they appear.

Chemical or mathematical formulae appearing in the text of the application or patent must have symbols, the capital letters of which are at least 0.21 cm high. Where they appear on sheets of drawings, these symbols must be at least 0.32 cm high.

All mathematical symbols used in a formula appearing in a description, in an annex or on sheets of drawings must be explained in the description unless their significance is clear from the context. In any case, the mathematical symbols used may be collated in a list.

11.2 Tables

11.2.1 Tables in the description

For the sake of convenience, the tables may also be grouped together on one or more sheets annexed to the description and paginated with it.

If two or more tables are necessary, each should be identified by a Roman number, independently of the pagination of the description or drawings or of the figure numbering, or by a capital letter, or by a title indicating its contents, or by some other means.

Each line or column in a table must begin with an entry explaining what it represents and, if necessary, the units used.

Both characters and tables alike must satisfy the requirements of **Art. 2(7) and (4)** of the decision of the President of the EPO dated 25 November 2022 regarding the maximum usable surface areas of sheets.

11.2.2 Tables in the claims

The claims may include tables if their subject-matter indicates a need for them. In this case, the tables must be included in the text of the relevant claim; they may not be annexed to the claims nor may reference be made to

tables contained in or annexed to the description. The claims may refer to other application documents only where this is absolutely necessary (see F-IV, 4.17). The mere desire to avoid copying said documents does not constitute absolute necessity.

Chapter X – Fees

1. General

Various fees have to be paid for a European patent application, to renew a European patent and to obtain legal remedies. Fees may also need to be paid by third parties, as is the case, for example, for issuing certified copies of documents or the certified extract from the European Patent Register (see OJ EPO 2019, A15). Fees may be validly paid by any person. The amounts of the fees, the ways in which they are to be paid and the date of payment are determined in the Rules relating to Fees (RFees). Guidance for the payment of fees, expenses and prices with information about:

- the current version of the Rules relating to Fees and the schedule of fees
- important implementing rules to the Rules relating to Fees
- the payment and refund of fees and expenses
- other notices concerning fees and prices and
- international applications, including Euro-PCT applications entering the European phase,

as well as the amounts of the principal fees for European and international applications and an extract from the Rules relating to Fees is published at regular intervals in the Official Journal. Information relating to fees and methods of payment, including the EPO bank account for payments in euro, can also be found on the EPO website (epo.org). ~~under: Applying for a patent/Fees.~~

The EPC and its Implementing Regulations lay down the time limits for paying fees and the legal consequences of non-compliance with the time limits. The time limits for payment and the legal consequences of non-payment are dealt with in the chapters of the Guidelines covering the respective stages of the procedure. The methods of payment, the date on which payment is considered to be made, due dates, particulars concerning the purpose of payments and reimbursement of fees are all dealt with below.

2. Methods of payment

Fees may be paid:

Art. 5 RFees

- (i) by payment or transfer to a bank account held by the EPO
- (ii) by debiting a deposit account opened in the records of the EPO in Munich (see A-X, 4.2 and 4.3)
- (iii) by credit card (see A-X, 4.4)
- (iv) by requesting reallocation of a refund (see A-X, 10.4).

3. Currencies

Art. 5 RFees
Point 1 ADA

The fees due to the EPO must be paid in euro. A debit order must be in euro.

4. Date considered as date on which payment is made

4.1 Payment or transfer to a bank account held by the European Patent Organisation

Art. 7(1),
(3) and
(4) RFees

The date on which payment is deemed made is the date on which the amount payable actually enters the European Patent Organisation's bank account. The date on which payment is deemed made may therefore be the day following the payment or transfer or an even later date in the event of delays within the bank. However, payment may still be considered made in due time, despite being paid late, if the payment or transfer was effected before expiry of the time limit for payment in a contracting state and if evidence to this effect is provided (see A-X, 6). For the steps required for the efficient processing of payments made by bank transfer, see the EPO notice dated 19 July 2022, OJ EPO 2022, A81.

4.2 Deposit accounts with the EPO

4.2.1 General remarks

Art. 7(2) RFees

The Arrangements for deposit accounts (ADA) and their annexes are updated on a regular basis, either in their entirety or in part, whenever a change or clarification of the scope of practice is required. A consolidated version of the ADA was last published as Supplementary publication 3, OJ EPO 2022. The ADA can also be found on the EPO website (epo.org) ~~under: Applying for a patent/Fees.~~

A distinction must be drawn, in connection with deposit accounts, between:

Point 3 ADA

(i) payments to replenish deposit accounts and

Point 1 ADA

(ii) payments of fees in connection with proceedings under the EPC or the PCT.

4.2.2 Payments to replenish a deposit account

Point 3.2 ADA
Point 3.3 ADA

Payments to replenish a deposit account are to be made in euro to the EPO bank account. Payments in a different currency will only be accepted if freely convertible. However, the deposit account will always be credited in euro (the only currency in which these accounts are kept) after conversion at the current rate of exchange. Replenishments are credited to the deposit account on the date on which the payment actually enters the EPO bank account.

Point 4.2 ADA
Point 5.2 ADA

Repayments of deposit account balances can only be remitted to the deposit account holder. For this purpose, the deposit account holder must send a signed request as an email attachment to the EPO at support@epo.org or complete the online contact form available on the EPO website and submit it together with ~~with~~-all bank details necessary for the transfer (point 5.2 ADA).

4.2.3 Debiting the deposit account

Point 7.1.1 ADA

Debiting occurs on the basis of an electronic debit order which has been duly signed or authenticated by the account holder, ~~or~~ the authorised

representative or a person authorised by the account holder using means accepted for the online service in question. ~~The signature may take the form of a text string signature, a facsimile signature, an enhanced electronic signature or authentication with smart card if payment is made via Central Fee Payment.~~ The debit order may be ~~for individual fees for one or more applications, – i.e. a single debit order~~ for individual fees for one or more patent applications, i.e. a single or, if given in Central Fee Payment, a batch debit order, – than one, or an automatic debit order for one or more patent applications. Batch debit orders are only possible in Central Fee Payment (see A-X, 4.3).

The debit order for European patent applications must be filed in an electronically processable format (XML) via:

*Point 7.1.2 ADA
Point 7.1.3 ADA*

- EPO Online Filing using EPO Forms 1001E, 1200E, 2300E or 1038E
- Online Filing 2.0 using EPO Forms 1001E, 1200E or 1038E
- Central Fee Payment
- MyEPO Portfolio.

See also the decision of the President of the EPO dated 19 July 2022 concerning the revision of the Arrangements for deposit accounts and their annexes, Supplementary publication 3, OJ EPO 2022, ~~and~~ the EPO notice dated 19 July 2022, OJ EPO 2022, A81, the decision of the President of the EPO dated 24 April 2023 concerning the revision of the Arrangements for deposit accounts and their annexes in view of the entry into force of the Unitary Patent system, Supplementary publication 3, OJ EPO 2023, 10, the EPO notice dated 24 April 2023, Supplementary publication 3, OJ EPO 2023, 20, and the decision of the President of the EPO dated 13 June 2023, OJ EPO 2023, A58.

Debit orders submitted in any other way, e.g. on paper, by fax, via the EPO web-form filing service or the EPO Contingency Upload Service, or using a different format such as a PDF attachment, are invalid and thus will not be executed (for an exception, see A-II, 1.5). This may result in the time limit for paying a fee being missed. In that case applicants may make use of any of the legal remedies available.

*Point 7.1.3 ADA
Point 10.3 ADA*

If any of the accepted means of filing debit orders is unavailable at the EPO on the last day for paying a particular fee, the payment period will be extended until the next day on which all such means as are available for the type of application concerned can be accessed again. Payment periods are also extended in the event of a general unavailability of electronic communication services, or other like reasons within the meaning of Rule 134(5) (see the EPO notice dated 22 October 2020, OJ EPO 2020, A120).

*Rule 134(1) and (5)
Point 11 ADA*

When using the EPO's online filing services, "deposit account" must be selected as the payment method to pay any selected fees.

Point 7.2.1 ADA

Point 4.4 AAD

In general, debit orders will be processed immediately upon their receipt, provided there are sufficient funds in the deposit account and provided a deferred execution date (see next paragraph) has not been specified. Automatic debit orders are processed at the end of the day on the decisive payment date.

Point 10.2 ADA

A debit order may specify that payment is to be executed at a date later than the submission date. In that case, the payment date is deemed to be the execution date specified. Payment orders with a deferred execution date may be executed up to 40 days after the submission date.

A debit order must be carried out notwithstanding incorrect information given in it if the intention of the person giving the order is clear (see T 152/82). The EPO corrects a debit order on its own initiative, for example, if there is a discrepancy between the type of fee intended to be paid and the corresponding amount due on the date of receipt of the debit order (see also A-X, 7.1.2). The party is informed of any such correction by means of a communication from the EPO providing a two-month period for objection in the event of disagreement by the party. In that case, the fee will be debited as indicated in the (erroneous) debit order or, if applicable, any corrective booking executed will be reverted. The principles outlined above, however, do not allow the correction of a debit order by adding any fee that is not indicated in it, even if, according to the status of proceedings, that fee is due on the date of receipt of the debit order.

Point 13 ADA

A debit order may be revoked in whole or in part by the person making the payment by sending a signed written notice to support@epo.org by email or by completing the online contact form available on the EPO website (epo.org) and submitting it together with the signed written notice. For a debit order revocation notice to be effective, it must be received by the EPO no later than on the date on which the debit order is received. A debit order with deferred payment date may be revoked in Central Fee Payment until one day before the intended execution date or at the latest on the intended execution date by signed written notice sent to the EPO as indicated above.

Point 9 ADA

Payments via deposit account effected in Central Fee Payment are validated, meaning that the debit order for a fee is automatically rejected if the fee falls within one of the following categories:

- renewal fees and fees for the transfer of rights made in respect of patent applications for which the loss of rights or the refusal has become final
- renewal fees for granted European patents
- renewal fees received before the earliest valid payment dates under Rule 51(1)
- double-payments for fees that can be paid only once in the proceedings before the EPO.

4.2.4 Date of receipt of the debit order; insufficient funds

Provided there are sufficient funds in the deposit account on the date the EPO receives the debit order or on the execution date, that date will be considered the date on which the payment is made.

Point 7.2.1 ADA

Point 7.4.1 ADA

This applies also where a debit order is filed together with an application filed under Art. 75(1)(b) with a competent national authority of a contracting state (see A-II, 1.6). If the EPO does not receive the debit order until after expiry of the period allowed for paying fees which can be paid on filing, that period is deemed observed if evidence is available or presented to the EPO to show that the debit order was filed with the competent authority of the contracting state at the same time as the application, provided that sufficient funds were available in the account at the time the period expired.

If, on the date of receipt of the debit order or on the date specified as the execution date (point 10 ADA), the account does not contain sufficient funds to fully cover all the fees indicated for an application (shortfall), the fees are booked in ascending order of application number ("PCT" before "EP" before "UP") and fee code, according to point 7.3 ADA, as long as the funds allow. Once a debit order cannot be executed in full due to insufficient funds, no other debit order is booked until the account is duly replenished. The outstanding payment is considered to have been made on the date on which the deposit account is duly replenished. On the application of the safety provision in the case of late receipt of the replenishment payment at the EPO, see A-X, 6.2.2.

Point 7.3 ADA

Point 7.4.1 ADA

Point 7.4.2 ADA

Point 7.5 ADA

4.3 Automatic debiting procedure

A deposit account may also be debited for one or more European patent applications on the basis of an automatic debit order, signed or authenticated by or on behalf of the account holder (automatic debiting procedure), in accordance with the Arrangements for the automatic debiting procedure (abbreviated to "AAD"). The AAD plus explanatory notes are published as Annexes A.1 and A.2 to the ~~ADA~~ in Supplementary publication 3, OJ-EPO-2022. The AAD can also be found on the EPO website (*epo.org*) under: Applying for a patent/Fees.

Point 14 ADA

Point 1 AAD

Point 10 AAD

An automatic debit order may be filed on behalf of the applicant, the patent proprietor or the appointed representative and must be filed in an electronically processable format (XML) via ~~the~~ EPO Online Filing software or Online Filing 2.0 using EPO Forms 1001E, 1200E or 1038E, or via Central Fee Payment. An automatic debit order can be revoked only via Central Fee Payment and only for the proceedings as a whole.

An automatic debit order extends to all types of fees covered by the automatic debiting procedure and payable in respect of the proceedings specified in it. As the proceedings progress, each fee is automatically debited and treated as having been paid in due time, provided that the deposit account contains sufficient funds. The automatic debit order may not be restricted to specific types of fees.

Point 4.4 AAD
Point 4.5 AAD
Point 5 AAD

In the case of multiple payments from the same deposit account, the EPO processes automatic debit orders in ascending order of application number ("PCT" before "EP" before ~~"UP"~~) and fee code (unless otherwise indicated) at the end of the day on the decisive payment date. It is thus important for the deposit account to contain sufficient funds at the decisive payment date to cover all automatic debit orders due.

Art. 5 RFees,
Art. 7 RFees

4.4 Payment by credit card

~~Payment by credit card has been available since 1 December 2017 (see OJ EPO 2017, A72).~~ Payments by credit card must be made via Central Fee Payment, which is available on the EPO website (*epo.org*), using a credit card accepted by the EPO (American Express, Mastercard and Visa). They are deemed made on the date on which the transaction is approved (see OJ EPO 2017, A72). The EPO bears any transaction-related charges. The requirements and arrangements for payments by credit card are set out in detail in the EPO notice dated 16 February 2022 (see OJ EPO 2022, A18).

5. Due date for fees

5.1 General

5.1.1 Due date

Art. 4(1) RFees
Rule 51(1),
2nd sentence

In the EPC, the term "due date" has a special meaning, namely the first day on which payment of a fee may be validly effected, not the last day of a period for such payment (see A-X, 6, "Payment in due time"). The due date for fees is generally laid down by provisions of the EPC or of the PCT. If no due date is specified, the fee is due on the date of receipt of the request for the service incurring the fee concerned.

A fee may not be validly paid before the due date. The only exceptions are:

- (i) renewal fees (see A-X, 5.2.4)
- (ii) fees paid voluntarily in response to the communication under Rule 71(3) (where amendments are also filed in response to that communication, see C-V, 4.2).

Payments that may not be validly made before the due date may be refunded by the EPO. If payment is made shortly before the due date, it is possible that the EPO will not return the payment. In this case, however, payment only takes effect on the due date. This does not apply to payments via deposit account of renewal fees made before the earliest valid payment dates under Rule 51(1), see A-X, 5.2.4.

5.1.2 Amount of the fee

When the fees are generally increased, the date of payment is set as the relevant date for determining the amount of the fees (see **Art. 2** of the Administrative Council decision of 5 June 1992, OJ EPO 1992, 344). As a rule, setting the date of payment as the relevant date makes it unnecessary to ascertain the actual due date for determining the amount of the fee. Fees cannot validly be paid before the due date (apart from the exceptions mentioned in A-X, 5.1.1(i) and (ii)).

5.2 Due date for specific fees

5.2.1 Filing fee and search fee

The filing and search fees are due on the day the European patent application is filed. They must be paid either within one month of that date (Rule 38(1), Rule 17(2), Rule 36(3)) or, for Euro-PCT applications, within 31 months of the filing date or, where applicable, of the earliest priority claimed (Rule 159(1)(c) and (e)). Where fees are paid before expiry of the 31-month period and early processing is not explicitly requested (see E-IX, 2.8), they will be retained by the EPO on the assumption that the applicant indeed wishes to pursue the European-phase processing of the application on expiry of the 31-month period (see A-III, 13.1). For the additional fees payable as part of the filing fee, see A-III, 13.2 and A-IV, 1.4.1.1.

5.2.2 Examination fee and designation fee

The examination fee is due when the request for examination is filed. Since the latter is contained in the request for grant form (EPO Form 1001), the examination fee may be paid straight away on the European patent application's filing date if the application is filed with said prescribed EPO Form 1001. It may be paid up to expiry of the period laid down in Rule 70(1), namely within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.

The designation fee falls due upon publication of the mention of the European search report. It may be paid within six months of the mentioned date of publication (Rules 39(1), 17(3) and 36(4)). Where paid before the due date, e.g. upon filing of the application, the designation fee will however be retained by the EPO. These payments will only be considered valid from the due date, provided that the amount paid corresponds to the amount payable on the ~~due date~~ of payment (see A-X, 5.1.2).

For Euro-PCT applications, see E-IX, 2.1.4 and E-IX, 2.8.

5.2.3 Fee for grant and publishing

The fee for grant and publishing falls due on notification of the communication under Rule 71(3) requesting that this fee be paid. Under Rule 71(4), the same applies for claims fees added during the procedure to those that were already paid under Rule 45(1) and (2) or Rule 162(1) and (2) (see A-X, 7.3.2).

Rule 71(1)

Rule 71(4)

5.2.4 Renewal fees

Renewal fees for a European patent application in respect of the coming year are due on the last day of the month containing the anniversary of the European patent application's filing date.

Rule 51(1)

According to Rule 51(1) as amended with effect from 1 April 2018 (OJ EPO 2018, A2), the renewal fee in respect of the third year may be paid up to six months before it falls due. All other renewal fees may not be validly paid more than three months before they fall due.

Example A:

| | |
|------------|---|
| 15.11.2016 | Filing date |
| 31.05.2018 | Earliest date for valid payment of third-year renewal fee under Rule 51(1) |
| 30.11.2018 | Due date for third-year renewal fee under Rule 51(1) |
| 31.08.2019 | Earliest date for valid payment of fourth-year renewal fee under Rule 51(1) |
| 30.11.2019 | Due date for fourth-year renewal fee under Rule 51(1) |

Example B:

| | |
|------------|--|
| 15.07.2016 | Priority date |
| 14.07.2017 | Filing date |
| 31.01.2019 | Earliest date for valid payment of third-year renewal fee under Rule 51(1) |
| 15.02.2019 | Expiry of 31-month period for the performance of all acts required under Rule 159(1) |
| 31.07.2019 | Due date for third-year renewal fee under Rule 51(1) |
| 30.04.2020 | Earliest date for valid payment of fourth-year renewal fee under Rule 51(1) |
| 31.07.2020 | Due date for fourth year renewal fee under Rule 51(1) |

Renewal fee payments made before the permissible prepayment periods are not valid. If a debit order for a renewal fee is received via Central Fee Payment before the earliest valid payment dates under Rule 51(1), it will be rejected at source by the validation functionality (see A-X, 4.2.3). If a payment is made too early either by filing a valid debit order via OLF and Online Filing 2.0 or by using any other payment method (i.e. bank transfer or credit card), the renewal fee will be refunded by the EPO according to the procedures laid down in A-X, 10.

Rule 51(2)
Rule 134

If the renewal fee has not been validly paid on or before the due date, it may still be validly paid within six months of the said date, provided that the additional fee is paid within this period. The additional fee can be paid until the last day of the sixth month following the month containing the anniversary of the date of filing (see J 4/91, reasons 2.7). This six-month period begins on the last day of the month referred to in Rule 51(1), first sentence, even if the circumstances described in Rule 134(1), (2) and (5) apply. Rule 134 is applicable to the calculation of the expiry of the six-month time limit for payment of the additional fee (see J 4/91, reasons 3.2). Whilst a notice draws the applicant's attention to the possibility under Rule 51(2) and Art. 2(1), item 5, RFees, the omission of such notification may not be invoked (see J 12/84 and J 1/89). For renewal fees for European divisional applications, see A-IV, 1.4.3.

For Euro-PCT applications, if the renewal fee in respect of the third year would have fallen due earlier under Rule 51(1), ~~it does not fall~~ the due date is deferred to until expiry of the 31st month, i.e. on the last day of the 31-month period under Rule 159(1). This deferred due date, and hence the expiry of another period (the 31-month period), forms the basis for calculating the additional period for payment of the renewal fee with an additional fee (see J 1/89, the principles of which apply). For example:

| | |
|------------------|--|
| 20.04.2016 (Wed) | Priority date |
| 17.10.2016 (Mon) | Filing date |
| 31.10.2018 (Wed) | Due date for third-year renewal fee under Rule 51(1) |
| 20.11.2018 (Tue) | Expiry of 31-month period under Rule 159(1) = deferred due date for third-year renewal fee |
| 20.05.2019 (Mon) | Last day for payment of the renewal fee (plus additional fee) since the six-month period under Rule 51(2) expires that day |

If the applicant requests entry into the regional phase before the expiry of the 31-month period (see Art. 23(2) PCT and Art. 40(2) PCT), in order for the request to become effective the renewal fee in respect of the third year has to be paid if the fee has fallen due earlier under Rule 51(1). If the renewal fee is not paid on the date early processing is requested, the request for early processing will be effective only from the date on which the renewal fee is paid (and all further requirements necessary on the latter date have been complied with) (see E-IX, 2.8).

The obligation to pay renewal fees terminates with the payment of the renewal fee due in respect of the (patent) year in which the mention of the grant of the European patent is published, see Art. 86(2). "Patent years" are calculated as from the application's filing date. The first patent year (Art. 86(1), Art. 141(1)) starts on the filing date and ends on the same date of the following year. For the second and subsequent years, the patent year starts one day after the anniversary of the filing date and ends on the same day as the filing date of the following year.

*Art. 86(1) and
Art. 141(1)*

Example of due date and time limits for payment:

| | |
|------------------|---|
| 15.12.2016 (Thu) | Priority date |
| 02.07.2017 (Sun) | Filing date |
| 31.01.2019 (Thu) | First day for validly paying third-year renewal fee |
| 31.07.2019 (Wed) | Due date for third-year renewal fee under Rule 51(1) |
| 31.01.2020 (Fri) | Last day for validly paying renewal fee plus additional fee (Rule 51(2)); see J 4/91, reasons 2.7 |
| 30.04.2020 (Thu) | First day for validly paying fourth-year renewal fee |

| | |
|------------------|---|
| 31.07.2020 (Fri) | Due date for fourth-year renewal fee = last renewal fee to be paid to the EPO and last day for payment of this renewal fee without additional fee |
| 04.11.2020 (Wed) | Mention of grant of the European patent in the European Patent Bulletin |

Example 1 of last renewal fee payable to the EPO:

| | |
|------------------|--|
| 21.01.2017 (Sat) | Filing date |
| 22.01.2019 (Tue) | Start of third patent year |
| 31.01.2019 (Thu) | Due date for third-year renewal fee (to be paid to the EPO) |
| 31.10.2019 (Thu) | First day for validly paying fourth-year renewal fee |
| 15.01.2020 (Wed) | Mention of grant of the European patent in the European Patent Bulletin |
| 22.01.2020 (Wed) | Start of fourth patent year |
| 31.01.2020 (Fri) | Due date for fourth-year renewal fee (no longer to be paid to the EPO; if already paid, to be refunded, see A-X, 10.1.1) |

This means that for the last renewal fee payable to the EPO, it is not the due date but the beginning of the respective patent year that is decisive. If the mention of the grant of the European patent is published on the anniversary of the filing date, the renewal fee in respect of the next patent year, which has not yet begun, is no longer payable to the EPO but to the national authorities.

Example 2 of last renewal fee payable to the EPO:

| | |
|------------------|---|
| 22.05.2017 (Mon) | Filing date |
| 23.05.2019 (Thu) | Start of third patent year |
| 31.05.2019 (Fri) | Due date for third-year renewal fee (to be paid to the EPO) |
| 12.05.2022 (Thu) | Date of dispatch of communication under Rule 71(3) |
| 20.05.2022 (Fri) | Approval of the text for grant and translation of the claims submitted, fee for grant and publication and all claims paid |
| 23.05.2022 (Mon) | Start of sixth patent year |
| 31.05.2022 (Tue) | Due date for sixth-year renewal fee, payable to EPO (Rule 71a(4)) |
| 30.11.2022 (Wed) | Payment of the sixth renewal fee with additional fee (Rule 51(2)) |
| 04.01.2023 (Wed) | Mention of grant of the European patent in the European Patent Bulletin |
| 31.05.2023 (Wed) | Due date for seventh-year renewal fee (no longer to be paid to the EPO) |

This means that, if the renewal fee in respect of the next patent year falls due after notification of the communication under Rule 71(3) and before the next possible date for publication of the mention of the grant of the European

patent, the renewal fee is payable to the EPO (Rule 71a(4)). In that case, the mention of the grant will not be published until the renewal fee has been paid. If the renewal fee or any additional fee (Rule 51(2)) is not paid in time the application is deemed withdrawn.

Special provisions apply with regard to the due date for renewal fees in respect of cases where there is a successful request for re-establishment of rights under Art. 122 or a successful petition for review of a decision of the board of appeal under Art. 112a.

Rule 51(4) and (5)

5.2.5 Claims fees

Claims fees are due upon filing the first set of claims, which may be the filing date or may occur later (see A-III, 9 and 15).

5.2.6 Fees for limitation/revocation, opposition, appeal, petition for review

All of these fees are due on the date that the document in question is filed (request for limitation, request for revocation, notice of opposition, notice of appeal and petition for review).

5.2.7 Fees payable for procedural and other requests

The fees payable for procedural requests are due as provided for in the Implementing Regulations. These requests become effective on payment of the prescribed fee, which thus falls due on the request's filing date. This is the case, for example, for the fee for further processing (Art. 121, Rule 135(1), see also E-VIII, 2) and the fee for re-establishment of rights (Art. 122, Rule 136(1), see also E-VIII, 3). Similarly, the fees payable for other requests, such as the fee for the registration of transfers (Rule 22(2)) and the administrative fees laid down by the EPO President in accordance with Art. 3 RFees, for instance, for issuing a priority document (Rule 54) or a certificate for a European patent (Rule 74), fall due on the request's filing date.

6. Payment in due time

6.1 Basic principle

A fee is considered to have been paid in due time if the date of payment (see A-X, 4) fell on or before the last day of the relevant time limit – or the time limit extended under Rule 134.

6.2 Late payment of fees – period for payment considered observed

6.2.1 Fees paid by bank transfer – application of Art. 7(3) and (4) RFees

If a fee paid by bank transfer enters the EPO's bank account after the period in which it should have been made, the period for payment of that fee is considered observed if the payer provides evidence to the EPO that they fulfilled one of the following conditions in an EPC contracting state within the period for payment of that fee:

Art. 7(3) and (4) RFees

- (i) payment of the fee was effected through a banking establishment

- (ii) an order was duly given to a banking establishment to transfer the amount of the payment.

The EPO may ask the person who made the payment to produce evidence, within a period to be specified by it, as to the date on which one of the conditions mentioned above was fulfilled in order for the period for payment of the fee to be considered observed.

Where the period for payment is considered observed in application of Art. 7(3) and (4) RFees, any further processing fee paid will be refunded (see A-X, 6.2.5).

6.2.2 Safety provision for late replenishment of deposit accounts

Where a payment to replenish the deposit account is considered to have been made after expiry of a period in which it should have been made (see A-X, 4.2.4), the EPO will consider the period as having been observed if evidence is provided that an adequate replenishment of the deposit account was authorised:

- (i) at least one day before expiry of the period for paying the fee if using the SEPA Credit Transfer scheme
- (ii) at the latest on the last day of the period for paying the fee if using the SEPA Instant Credit Transfer scheme
- (iii) at least three days before expiry of the period for paying the fee if any other type of order was given to a banking establishment within an EPC contracting state.

Where the requirements under point 7.5.1 ADA are fulfilled, any further processing fee paid will be refunded (see A-X, 6.2.5).

6.2.3 Debit orders filed with a competent national authority

For debit orders accompanying applications filed with a competent national authority, see A-X, 4.2.4 and A-II, 1.5.

6.2.4 Amount of fee payable

As noted in A-X, 5.1.2, the amount of fee payable is always that applying on the date of payment (see also the transitional provisions in the Administrative Council decisions revising fees). Art. 7(3) and (4) RFees protects the applicant in the event of late payment from the legal consequences of expiry of the payment period but not from the obligation to make up any differences resulting from an increase in the amount of fee in the meantime. For debit orders accompanying applications filed with a competent national office (Art. 75(1)(b)), see **point 12.3 of the ADA** (Supplementary publication 3, OJ EPO 2022).

6.2.5 Noting of loss of rights

If applicants who have been sent a communication under Rule 112(1) noting non-compliance with a payment time limit claim that the payment was made in due time under Art. 7(1), (3) and (4) RFees or in accordance with the safety provision for replenishment of deposit accounts, they must apply for a

Point 7.4.1 ADA

Point 7.5.1 ADA

Rule 112

decision under Rule 112(2) and submit the requisite evidence. As an auxiliary request, applicants are advised to request further processing.

7. Purpose of payment

7.1 General

7.1.1 Conditions for valid payment

There are two conditions for a fee payment to be valid:

- (i) it must relate to pending proceedings
- (ii) it must be made in due time, i.e. the date of payment (see A-X, 4) must be on or after the due date (see A-X, 5.1.1). In addition, for a time limit for payment to be deemed observed, the full amount of the fee must have been paid in due time. *Art. 8 RFees*

An essential condition for a valid payment to the EPO in the case of payment or transfer to the bank account held by the European Patent Organisation is that the amount enters that account. The payment is valid in respect of the amount entering the account. If an insufficient amount has been paid by mistake, it is not possible to rectify the error by having the shortfall paid subsequently deemed paid on the original date of payment. The same applies to payments made via credit card. Payment is a matter of fact whereby a certain amount is transferred to and put at the disposal of the EPO. It is not, therefore, a document filed with the EPO or a procedural declaration that may be corrected under Rule 139. However, the EPO may, where it is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment (Art. 8 RFees).

In the case of payment via deposit account, the essential condition, in addition to those specified under points (i)-(ii) above, is that the debit order clearly specifies the purpose of payment by indicating the fee intended to be paid, thus authorising the EPO to debit the fee for this particular purpose. Furthermore, the EPO can only debit the full amount of the fee if there are sufficient funds in the deposit account. In respect of underpayments due to incorrect information given in a debit order, see A-X, 4.2.3. See also A-X, 7.1.2 concerning corrections of the purpose of payment.

7.1.2 Purpose of payment

A distinction must be drawn between these conditions for valid payment (see A-X, 7.1.1) and the indication of the purpose of the payment. Indication of the purpose of the payment serves to identify the proceedings for which the fee is intended (e.g. for fee payments, the application number) and the specific type of fee. If the purpose of the payment cannot immediately be established, the person making the payment will be requested to communicate the purpose in writing within a specified period. If they comply with this request in due time, the payment and the original payment date remain valid. This is also the case when the clarification involves reassigning the payment to another application. Otherwise the payment will be considered not made. The boards of appeal have decided that if the purpose of the payment has evidently been given incorrectly, this deficiency is not prejudicial if the *Art. 6 RFees*

intended purpose can be established without difficulty from the remaining information. The inadvertent use of a fee by the EPO for a different purpose from that evidently intended by the person making the payment has no effect on the purpose intended by that person (see J 16/84). Similarly, a debit order must be carried out notwithstanding incorrect information given in it if the intention of the person giving the order is clear. Instructions to carry out the order must be given by the EPO department qualified to recognise what is clearly intended (see T 152/82).

In the case of changes to the purpose of payment not arising from Art. 6(2) RFees, the date of payment is the date of receipt of the request for the change.

7.2 Indication of the purpose of the payment in the case of designation fees

The following applies only to applications filed before 1 April 2009.

The designation fees are deemed paid for all contracting states upon payment of seven times the amount of one designation fee. Such payments simply need to be marked "designation fees" in order for the purpose of the payment to be established. If fewer than seven designation fees are paid and the payment agrees with the declaration in the appropriate section of the request for grant form (EPO Form 1001), payment should once again simply be marked "designation fees". However, if the payment differs from the intended payment as stated on the request form, the contracting states for which the payment is now intended should be indicated with the payment.

If there is no such indication and the amount paid is insufficient to cover all the contracting states mentioned in the appropriate section of the request form, the procedure under A-III, 11.3.7 applies.

If an automatic debit order has been given, applicants must inform the EPO prior to expiry of the basic period under Rule 39(1) if they wish to pay designation fees for contracting states other than those indicated on the request form. If not, an amount equal to seven times the amount of one designation fee or the designation fees for the contracting states indicated on the request form is debited.

The same applies for Euro-PCT applications that entered the European phase before 1 April 2009.

7.3 Indication of the purpose of payment in the case of claims fees

7.3.1 Claims fees payable on filing the European patent application

If the applicant pays the claims fees for all the claims incurring fees, the indication "claims fees" suffices to identify the purpose of the payment. If the amount paid is insufficient to cover all the claims fees, the procedure under A-III, 9 applies.

*Art. 2(2), item 3,
RFees*

Art. 6(1) RFees

Rule 45(1)

7.3.2 Claims fees payable before the grant of the European patent

In the communication under Rule 71(3), the applicant may be requested to pay claims fees due before the European patent is granted. If the applicant fails to pay the fee for all the claims in due time, the application is deemed withdrawn (Rule 71(7)).

Rule 71(4)

8. No deferred payment of fees, no legal aid, no discretion

The EPC makes no provision for deferring payment of fees (see J 2/78, reasons 3) or for granting legal aid. An indigent party can still apply for legal aid from the competent national authority. However, the time limit for payment is not extended in such a case; a party claiming national legal aid must make the corresponding arrangements as early as possible so that they are in a position to pay the fee in due time. The EPO has no discretion in waiving or refunding, without any legal basis, fees that have become due (see J 20/87).

9. Reduction of fees

9.1 General

Where a fee reduction applies, ~~is reduced – in contrast to cases of fee refunds~~ – the reduced rate may be paid instead of the full fee. The factual conditions for a reduction of the fee must be met on ~~or before~~ the day the payment is made ~~period for payment expires~~.

9.2 Reduction under the language arrangements

9.2.1 Conditions

European patent applications can be filed in any language. If filed in a language other than an official EPO language, a translation must be furnished. Consequently, the languages that can be used for filing European patent applications fall into three categories:

Art. 14(2)

- (a) official EPO languages
- (b) official languages of contracting states other than English, French or German, such as Dutch, Italian or Spanish ("admissible non-EPO languages")
- (c) all other languages, such as Chinese, Japanese or Korean.

Furthermore, documents that have to be filed within a time limit may also be filed in an admissible non-EPO language if the applicant's residence or principal place of business is within the territory of a contracting state having the language in question as an official language or if the applicant is a national of such a contracting state (see A-VII, 1.1 and 1.2).

Art. 14(4)

In the case of European patent applications filed on or after 1 April 2014 ~~and international applications entering the European phase on or after that date~~, a 30% reduction of the filing and/or examination fee for certain categories of applicants is provided for. For international applications entering the European phase on or after 1 April 2014, a 30% reduction of the examination fee is provided for (see the EPO notice dated 10 January 2014,

Rule 6(3)

Art. 14(1) RFees

OJ EPO 2014, A23). In this regard, it is necessary to file the documents making up the application "as filed" and/or the request for examination in an admissible non-EPO language, and to file the translation not earlier than simultaneously (see G 6/91).

Rule 6(4)

The categories of applicants eligible for the fee reductions are:

- small and medium-sized enterprises (SMEs)
- natural persons
- non-profit organisations, universities and public research organisations

whose residence or principal place of business is in an EPC contracting state with an official language other than English, French or German, and nationals of such states who are resident abroad.

Rule 6(5)

The definition of SMEs is that contained in European Commission Recommendation 2003/361/EC of 6 May 2003 as published in the Official Journal of the European Union. Under the recommendation, an enterprise is considered to be any entity engaged in an economic activity, irrespective of its legal form. The category of micro, small and medium-sized enterprises is made up of enterprises employing fewer than 250 persons, having an annual turnover not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million and for which no more than 25% of the capital is held directly or indirectly by another company that is not an SME.

The eligibility of the further entities listed in Rule 6(4) is subject to the following definitions:

- (i) "Non-profit organisations" are organisations not allowed by their legal form or statutes, under the relevant law, to be a source of income, profit or other financial gain to their owners, or – if allowed to make a profit – there is a legal or statutory obligation to reinvest the profits made in the interest of the organisation.
- (ii) "Universities" are to be understood as "classical" universities, meaning institutions of higher education and research, under the relevant law. However, comparable entities, such as secondary or higher education establishments, will be considered to be universities.
- (iii) "Public research organisations" are entities such as universities or research institutes that are organised under public law and, irrespective of how they are financed, have the primary goal of conducting fundamental research, industrial research or experimental development and of disseminating the results by way of teaching, publication or technology transfer. All profits must be reinvested in carrying out these activities, in disseminating the results or in teaching.

If there are multiple applicants, each one must be an entity or a natural person within the meaning of Rule 6(4) for the fee reduction to apply; it is however sufficient for only one of them to be entitled to use an admissible non-EPO language (Art. 14(4), Rule 6(3)).

Rule 6(7)

Applicants wishing to benefit from the reduction in the filing or examination fee under Art. 14(1) RFees must expressly declare that they are an entity or natural person covered by Rule 6(4).

Rule 6(6)

Changes in the status of an entity under Rule 6(4) occurring after filing the declaration will not have a retroactive effect on fee reductions that were justified when granted.

The EPO will conduct checks to ensure compliance with the eligibility criteria laid down in Rule 6(3) to (7). If the checks give rise to reasonable doubt in the course of the grant proceedings as to the veracity of the declaration given by the applicant, the EPO may request appropriate evidence.

Should it become apparent that an incorrect declaration has been filed, the fee would not be validly paid since it was reduced unjustifiably and the application may be deemed withdrawn under Art. 78(2) and/or 94(2). The same applies if no declaration has been filed. Where applicable, the loss of rights arising from an incorrect or missing declaration may be remedied by filing a request for further processing under Art. 121 and Rule 135 – subject to making good any underpayment and paying the fee for further processing (see E-VIII, 2) – or by requesting a decision under Rule 112(2) (see E-VIII, 1.9.3).

In respect of European patent applications, oppositions, appeals, petitions for review or requests for limitation or revocation filed before 1 April 2014 and international applications having entered the European phase before that date, the fee reduction in force until then was applied.

9.2.2 Reduction of the filing fee

On filing a European patent application, the presence of a description is necessary for the accordance of a filing date (Rule 40(1)(c)). ~~claims are no longer required for this. According to J 4/88, only the~~The description, ~~therefore, and claims~~ needs ~~ed~~ to be in an admissible non-EPO language to qualify for the fee reduction (not the request for grant, for example; see J 4/88). ~~However, since claims are no longer required for a filing date, the essential element is now the description.~~

Consequently, the filing fee is reduced if the European patent application (i.e. at least the description) is filed in an admissible non-EPO language and the applicant satisfies the eligibility criteria mentioned in A-X, 9.2.1.

Where the application is filed by reference to a previously filed application (see A-II, 4.1.3.1), and the previously filed application referred to is in an admissible non-EPO language, and the applicant satisfies the eligibility criteria mentioned in A-X, 9.2.1, then the applicant is also entitled to the reduction in the filing fee. For the purposes of the reduction, it does not matter

whether the applicant requested that the claims of the previously filed application take the place of the claims in the application as filed (see above).

The reduction of the filing fee is also applicable to divisional applications if the parent application was filed in an admissible non-EPO language (see A-IV, 1.3.3 and A-X, 9.2.1) and the divisional application is filed in the same admissible non-EPO language as the earlier application (Rule 36(2) and Rule 6(3)), provided that the other requirements for the reduction are met (see above) and a translation is filed in time (see A-X, 9.2.1).

Since the additional fees that are payable if the application either comprises more than 35 pages or is a second- or further generation divisional application form part of the filing fee, the reduction applies also to them.

9.2.3 Reduction of the examination fee

Art. 14(4)
Rule 6

Applicants eligible for the fee reduction will be allowed a reduction in the examination fee if the request for examination is filed in an admissible non-EPO language. EPO Forms 1001 (Request for grant of a European patent) and 1200 (Entry into the European phase) contain drop-down menus/pre-printed boxes where the request for examination in an admissible non-EPO language and the declaration under Rule 6(6) can be selected/entered. In these cases, the filing of a translation of the request is not necessary, since the written request for examination in the three EPO official languages is preselected in the same forms. Wordings for the request for examination in the admissible non-EPO languages are listed on the EPO website. Where the request for examination in an admissible non-EPO language is filed subsequent to EPO Form 1001 or EPO Form 1200, a translation of the request for examination in the procedural languages must be refiled (see G 6/91). Subsequent documents related to examination proceedings need not be filed in the admissible non-EPO language.

If the conditions for the reduction of the examination fee where the EPO has drawn up the international preliminary examination report are also fulfilled, see A-X, 9.3.2.

9.3 Special reductions

9.3.1 Reduction of the search fee for a supplementary European search

Art. 153(7)

The search fee for a supplementary European search report is reduced by a fixed amount for PCT applications for which the patent office of Austria, Finland, Spain, Sweden or Türkiye, the Nordic Patent Institute or the Visegrad Patent Institute was the International Searching Authority or where one of these offices prepared the supplementary international search report (see the Administrative Council decisions of 27 October 2011, OJ EPO 2011, 616; 25 October 2012, OJ EPO 2012, 584; 16 December 2015, OJ EPO 2016, A2; 28 June 2017, OJ EPO 2017, A57; 12 December 2019, OJ EPO 2020, A3; ~~and~~ 15 December 2021, OJ EPO 2022, A2; and 14 December 2022, OJ EPO 2023, A25).

Where the requirements for fee reduction are fulfilled, the fee reduction is granted only once, i.e. for the supplementary search fee paid under

Rule 159(1)(e). The reduction applies independently of whether the first invention in the claims was searched by the ISA in the international phase. The reduction does not apply to any further search fee (to be) paid under Rule 164(1).

No reduction of the supplementary search fee applies for PCT applications for which an International Searching Authority other than the ones mentioned above was selected. For the latest overview of the amounts payable, see the EPO notice dated ~~21 March 2022, OJ EPO 2022, A29~~ 6 March 2023, OJ EPO 2023, A28.

9.3.2 Reduction of the examination fee where the international preliminary examination report is drawn up by the EPO

Where the EPO has drawn up the international preliminary examination report in respect of an international application, the examination fee is reduced by 75% in proceedings before the EPO as elected Office. Accordingly, the reduction applies to the Euro-PCT application entering the European phase. The reduction of the examination fee does not apply to divisional applications for whose parent application the EPO has drawn up the international preliminary examination report.

Art. 14(2) RFees

If the conditions for a reduction under the language arrangements (see A-X, 9.2.3) are also fulfilled, the examination fee is first reduced by 75%, then by a further 30%, i.e. the total reduction is **82.5%**, or the amount payable is **17.5%** of the full fee.

10. Refund of fees

10.1 General remarks

A fee that has been validly paid (see A-X, 7.1.1) is not refunded. For instance, a validly paid further processing fee is not refunded if the request for further processing is rejected due to non-completion of the omitted act, which is another requirement of Rule 135(1) (see E-VIII, 2). As an exception to this general principle, a validly paid fee is refunded if there are special provisions for the refund in either the EPC or the Rules relating to Fees (see A-X, 2).

By contrast, any fee that has not been validly paid is to be refunded (see A-X, 10.1.1 to A-X, 10.1.3 below).

10.1.1 Fee payments lacking a legal basis

If a payment does not relate to a pending European patent application (e.g. it relates to a patent application already deemed withdrawn) or to pending proceedings, there is no legal basis for the payment. In these cases, the amount paid must be refunded.

If the payment is made before or on the due date and if, no later than that date, the legal basis ceases to exist (e.g. because the patent application is deemed withdrawn or is withdrawn), the amount paid is to be refunded. For the designation fee and renewal fees, see A-X, 5.2.2 and 5.2.4 respectively. Fees paid after the due date and before expiry of the time limit for payment are refunded only if there is a particular reason for a refund (see A-X, 10.2).

10.1.2 Late payments

The payment of a fee after expiry of the applicable time limit is not valid and must be refunded unless a valid request for further processing has been filed. Examples: filing fee, search fee, designation fee or examination fee paid as laid down under the provisions relating to further processing (Art. 121 and Rule 135), without the further processing fee required by Rule 135(1) and Art. 2(1), item 12, RFees (see E-VIII, 2).

10.1.3 Insignificant amounts

Art. 12 RFees

Where the sum paid is larger than the fee, the excess will not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. It has been decided that any amount up to EUR ~~46-17~~ constitutes an insignificant amount (see the decision of the President of the EPO dated ~~14 February 2020, — OJ EPO 2020, A177~~ March 2023, OJ EPO 2023, A27).

10.2 Special refunds**10.2.1 Refund of the search fee**Art. 9 RFees
Rule 10

The search fee for a European or supplementary European search is refunded in the cases provided for in Art. 9 RFees and in the decision of the President of the EPO dated ~~14 January — 2022, OJ EPO 2022, A8~~ 17 January 2023, OJ EPO 2023, A4, which applies to European patent applications in respect of which the European or supplementary European search is completed on or after 1 April ~~2022~~2023. Details on criteria for refund of search fees are given in the EPO notice dated 9 January 2009, OJ EPO 2009, 99, according to which the search division will determine the level of refund to be applied. In the event of disagreement, the applicant may request an appealable decision (Art. 106(2)), which is issued by the Receiving Section where the examining division has not yet assumed responsibility for the application (Rule 10) (see B-XI, 2).

For the purposes of Art. 9(1) RFees, the date of the start of the search is indicated by means of EPO Form 1704 in the public part of the dossier and is thus open to file inspection in the European Patent Register after the patent application's publication (see also B-IV, 1). Before publication, the EPO will provide the applicant with the relevant information upon request, or this information can be accessed electronically via the MyEPO Portfolio and My Files ~~or MyEPO Portfolio~~ services.

10.2.2 Refund of the further search feeRule 64(2),
164(5)

If an applicant has paid a further search fee following a communication from the search division under Rule 64(2) but the examining division finds, on request, that the communication was not justified, the further search fee will be refunded. The same principle applies if the applicant has paid a search fee on the basis of an invitation by the examining division under Rule 164(2) (see C-III, 3.1). In such cases, the examining division will, on request, review the justification for charging the search fee in its invitation under Rule 164(2) (see C-III, 3.4).

10.2.3 Refund of the examination fee

Art. 11 RFees

The examination fee will be refunded in the situations described in Art. 11 RFees (see A-VI, 2.2, third paragraph, and A-VI, 2.5).

10.2.4 Refund under Rule 37(2)

If a European patent application filed with a competent national authority is deemed withdrawn under Art. 77(3), all fees, in particular the filing, search and designation fees and any claims fees paid, will be refunded.

Rule 37(2)

10.2.5 Refund of the fee for grant and publishing

If the application is refused, withdrawn prior to notification of the decision on the grant of a European patent or, at that time, deemed withdrawn, the fee for grant and publishing will be refunded. The date of the decision's notification is determined as indicated in E-II, 2. Note that this date is later than the date on which the decision is handed over to the EPO internal postal service (i.e. decision G 12/91 does not apply in this case).

Rule 71a(6)

This may happen, for example, where the applicant pays the fee for grant and publishing within the Rule 71(3) period but does not pay the claims fees due and/or neglects to file the translations of the claims leading to deemed withdrawal of the application under Rule 71(7) (see C-V, 3).

Where the application is refused, the refund will be effected only after the period for filing an appeal has expired without an appeal being filed (see E-XII, 6). Where the application is deemed withdrawn, the refund will be effected only after the period for requesting further processing has expired without further processing being requested by the applicant (see E-VIII, 2).

10.2.6 Refund of the appeal fee

The appeal fee may be refunded in full or in part in some specific situations provided for in Rule -103. However, the department of first instance is only competent to decide on and order a full refund of the appeal fee in the case of an interlocutory revision, if it considers the reimbursement equitable by reason of a substantial procedural violation (Rule- 103(1)(a)).

Rule 103

In all other situations, reimbursement of the appeal fee, in partially or in full, is decided on by the bBoard of aAppeal.

10.3 Method of refund

Refunds are made either to a deposit account held with the EPO or by transfer to a bank account (see the EPO notice dated 27 February 2019, OJ EPO 2019, A26). Refunds are not made to a credit card account (see the EPO notice dated 16 February 2022, OJ EPO 2022, A18).

10.3.1 Refunds to a deposit account

Fees are refunded to any deposit account that the applicant, proprietor or opponent/appellant (if applicant or proprietor) has indicated in its refund instructions. In most cases this will be the deposit account of the party to the proceedings itself, but it may also be a third party's deposit account. The EPO notifies the party to the proceedings about the intended refund and the deposit account to which the amount will be credited in a separate communication.

Point 15 ADA

Refund instructions, i.e. to which deposit account refunds are to be made, are to be filed in an electronically processable format (XML) via EPO Online Filing or Online Filing 2.0, using EPO Form 1001E, 1200E or 1038E, preferably as early as possible in the proceedings before the EPO. Refund instructions submitted in any other way, e.g. on paper, by fax, via the EPO web-form filing service or the EPO Contingency Upload Service, are invalid and will not be processed. Refund instructions can be updated at any time using EPO Form 1038E.

For international applications filed with the EPO as receiving Office or for which the EPO acted as an International Authority under the PCT, new refund instructions are to be filed when entering the European phase using EPO Form 1200E.

In the case of a request for a change of representative or a transfer of rights, new refund instructions, if applicable, should be submitted as soon as possible using EPO Form 1038E, preferably together with the request. The updated refund instructions will apply only once the EPO has confirmed the change's recording. If no new refund instructions are present, a deposit account recorded for an applicant or representative who has withdrawn from the proceedings will be deleted by the EPO on its own initiative. The same applies to the deposit account held by a third party indicated in the refund instructions of the former applicant or representative.

If no refund instructions are on file when a refund becomes due or if they are ambiguous, the EPO will on its own initiative establish whether it can make a refund to a deposit account held by the appointed professional representative or by the applicant (or appellant, if applicant/proprietor). Otherwise it will invite the person who made the payment to claim the refund online.

In the case of a refund of fees not payable by the applicant, proprietor or appellant (if applicant or proprietor), e.g. the opposition fee, the EPO will on its own initiative establish whether the refund can be credited to a deposit account. Otherwise it will invite the person who made the payment to claim the refund online.

10.3.2 Refunds to a bank account

If a refund cannot be made to a deposit account, the party to the proceedings is invited to claim the refund online via the EPO website (fee-payment.epo.org/refundepo.org) using a refund code provided in a non-public communication. Upon successful registration and sign in, the refund can be claimed by entering the application's details, the refund code and a bank account.

10.4 Reallocation instead of refund

If a party files a written request, the payment may be reallocated instead of being refunded. The date of receipt of the reallocation instructions is then considered the payment date for the new purpose of payment.

11. Crediting of fees under Rule 71a(5)

If, in response to an invitation under Rule 71(3), the applicant has already paid the fee for grant and publishing or the claims fees, the amount paid will be credited if a further such invitation is issued. This may happen where:

- (i) the applicant requests amendments or corrections in response to the first Rule 71(3) communication or requests the reversal of amendments proposed by the examining division in that communication (see C-V, 4.1) and also voluntarily pays the fee for grant and publishing and claims fees (even though this is not required, C-V, 4.2) and the examining division then issues a subsequent Rule 71(3) communication (see C-V, 4.6 and 4.7.2)
- (ii) after the applicant has approved the text for grant in response to the first Rule 71(3) communication (which requires payment of the fee for grant and publishing and any claims fees due – see C-V, 1.1), examination is resumed (see C-V, 6.1) leading to a subsequent Rule 71(3) communication being issued (see C-V, 6.2).

11.1 Crediting of the fee for grant and publishing

The amount of the fee for grant and publishing paid in response to the first Rule 71(3) communication is credited towards the amount of this same fee due in response to the second Rule 71(3) communication. If this fee increases between the first and second Rule 71(3) communications, the difference must be paid within the period for reply to the second Rule 71(3) communication.

For European patent applications filed before 1 April 2009 or international applications entering the European phase before that date, the fee for grant and publishing incorporates a fixed component and a component in respect of each page of the application in excess of 35 (see C-V, 1.2 and A-III, 13.2). If the overall fee changes between the first and second Rule 71(3) communication, any shortfall must be paid within the second Rule 71(3) period (e.g. resulting from a fee increase or an increase in the number of pages). Any excess will be refunded (for example where the version of the application on which the second Rule 71(3) communication is based has fewer pages than the earlier version on which the first Rule 71(3) communication was based).

*Art. 2(2),
item 7, RFees*

11.2 Crediting of claims fees

The amount of the claims fees paid in response to the first Rule 71(3) communication is credited towards the amount of the claims fees due in response to the second Rule 71(3) communication. In this regard it is important to note that, unlike claims fees paid on filing under Rule 45 or on entry into the European phase under Rule 162, it is not the number of claims paid for that is used in the calculation but rather the amount paid.

If the amount of the claims fees due increases between the first and second Rule 71(3) communications (e.g. because of an increase in the per-claim fee or in the number of claims or both), the difference must be paid within the period for reply to the second Rule 71(3) communication.

To calculate the amount of the claims fees due in response to the second Rule 71(3) communication, the number of fee-free claims (15) and also the number of claims fees paid on filing or on entry into the European phase are deducted from the number of claims on which both the first and second Rule 71(3) communications are based. Thereafter, the amount of the claims fees paid in response to the first Rule 71(3) communication is then credited towards (and so deducted from) the amount of the claims fees due in response to the second Rule 71(3) communication (if the amount of fees due after the second Rule 71(3) communication is smaller than that voluntarily paid after the first Rule 71(3) communication, see C-V, 4.2).

11.3 Separate crediting of the fee for grant and publishing and claims fees

The crediting of claims fees and the fee for grant and publishing is dealt with separately. Claims fees are not credited towards any increase in the fee for grant and publishing.

11.4 Further processing fee and crediting of fees

Where the applicant has requested further processing in respect of the first Rule 71(3) communication (see E-VIII, 2), the further processing fee is not credited towards any increase in the amount of the fees due in response to the second Rule 71(3) communication.

Nor is the further processing fee paid in respect of the first Rule 71(3) communication credited towards any subsequent request for further processing in respect of the second Rule 71(3) communication.

Chapter XI – Inspection of files; communication of information contained in files; consultation of the European Patent Register; issue of certified copies

1. General

After a European patent application has been published, any person may inspect and obtain information from the files relating to the application and the resultant European patent. Similarly, anybody may request the issue of a sample of biological material in accordance with Rule 33 (see A-IV, 4.4).

*Art. 128
Rule 143, Rule 144
Rule 145, Rule 146
Art. 3(1) RFees*

The provisions governing file inspection are contained in Art. 128 and Rules 144 and 145 (see A-XI, 2); those governing communication of information are contained in Rule 146 (see A-XI, 3). For international (PCT) applications, see E-IX, 2.10.

The European Patent Register, containing the particulars specified in Rule 143 and accessible free of charge, can be consulted to ascertain the state of the proceedings and the legal status of patent rights. It also provides access to the files of published European patent applications and patents for inspection (see A-XI, 4). The inspection of paper files on the premises of the European Patent Office was discontinued in 2007.

On request, the EPO issues certified copies of documents contained in the files or of other documents (see A-XI, 5).

Any fees payable for any of the above services are laid down by the President under Art. 3(1) RFees and are regularly published in the Official Journal. See also the schedule of fees and expenses on the EPO website (*epo.org*).

An administrative fee, if any, falls due when the request is received. The methods of payment and the date on which payment is deemed made are dealt with in the Rules relating to Fees (see A-X, 2 and 4). Where the administrative fee has been duly paid, it will not be refunded (see A-X, 10.1).

2. Inspection of files

2.1 Documents open to file inspection

All parts of the file compiled when conducting the examination, opposition and appeal procedure with the parties are open for inspection, subject to the restrictions mentioned below (see A-XI, 2.3). This includes information on the dates of the start of search and examination, any invitations under Rule 63(1) or Rule 62a(1) and the search opinion, if applicable.

*Art. 128
Rule 145(2)
Rule 147(2)*

As regards application documents corrected under Rule 56a, see A-II, 6 and the EPO notice dated 23 July 2022, OJ EPO 2022, A71.

Observations by third parties (Art. 115) are an integral part of the files and as such are open to inspection in accordance with Art. 128. A request by a third party to treat their observations or part of them confidentially cannot be

granted. In such a case, the third party will be notified accordingly (see E-VI, 3).

The parts of the file excluded from inspection (see A-XI, 2.3) are kept separate from those open to inspection.

2.2 Conducting file inspections

Rule 145(2)
Art. 3(1) RFees

The EPO President determines all file inspection arrangements, including the circumstances in which an administrative fee is payable (see the decision of the President of the EPO dated 20 February 2019, OJ EPO 2019, A16).

As a rule, published patent applications and granted patents can be inspected in the European Patent Register, which is accessible free of charge via the EPO website. In exceptional cases, and only if accompanied by a substantiated request, uncertified paper copies of files or uncertified extracts from the European Patent Register are still issued. The corresponding administrative fees have been abolished (see the EPO notice dated 20 February 2019, OJ EPO 2019, A15, and the decision of the President of the EPO dated 20 February 2019, OJ EPO 2019, A16).

Regarding requests to furnish certified copies of documents from the file or a certified extract from the European Patent Register, see A-XI, 5.

2.3 Restrictions to file inspection

Art. 128(4)
Rule 146
Rule 145
Rule 144

Inspection of files is subject to the restrictions laid down in Rule 144.

The parts of the file excluded from inspection are:

Rule 144(a)

(i) the documents relating to the exclusion of or objections to members of the boards of appeal or of the Enlarged Board of Appeal

Rule 144(b)

(ii) draft decisions and opinions, and all other documents used for the preparation of decisions and opinions, which are not communicated to the parties

Rule 144(c)

(iii) the designation of the inventor if that party has waived the right to be mentioned as inventor under Rule 20(1)

Rule 144(d)

(iv) any other document excluded from inspection by the EPO President on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the resulting patent; these include documents relating to file inspection and requests for accelerated search and accelerated examination under the "PACE" programme (see the decision of the President of the EPO dated 12 July 2007, Special edition No. 3, OJ EPO 2007, J.3)

Art. 38(1) PCT
Rule 94 PCT

(v) subject to Rule 94.2 and 94.3 PCT, the files relating to international preliminary examination for a Euro-PCT application in respect of which the EPO is the International Preliminary Examining Authority and for which an international preliminary examination report has not yet been established (see OJ EPO 2003, 382; see also E-IX, 2.10).

Apart from listing the documents automatically excluded from file inspection by the EPO, the decision of the President referred to under point (iv) above stipulates that, on request, (parts of) other documents may be excluded from file inspection where their inspection is claimed to be prejudicial to the legitimate personal or economic interests of a natural or legal person. Any such request needs to be duly substantiated and specify how the legitimate personal or economic interests of the party are affected and what the relevant consequences are rather than merely making a statement concerning a party's interests in general. Also, any requests for exclusion from file inspection should be clearly marked, allowing them to be immediately identified as such and to be provisionally excluded from inspection, pending a final decision on the request.

When a submission is to be excluded from file inspection only partially, only the parts or passages in question are excluded; the rest of the submission remains public.

If it is decided that certain papers, either marked "confidential" or in view of the nature of their content, are not to be excluded from file inspection under Rule 144, they are returned to the sender (see T 516/89).

2.4 Confidentiality of the request

Correspondence in proceedings relating to the inspection of files conducted between the EPO and the person requesting the inspection is included in the non-public part of the file. The EPO does not provide the applicant with any information about the proceedings relating to the inspection of files (see A-XI, 2.3(iv) but also A-XI, 2.5, third paragraph).

2.5 File inspection before publication of the application

Until the European patent application is published, the files may be inspected only by applicants or with their consent. The [MyEPO Portfolio and My Files](#) and ~~MyEPO Portfolio~~ services allow applicants to inspect the public part of the files relating to their still unpublished applications (see the ~~EPO notice dated 13 December 2011, OJ EPO 2012, 22, and the~~ decision of the President of the EPO and EPO notice both dated [9 October 2023](#) ~~11 May 2023~~ [11 May 2023](#) concerning the web-based online service MyEPO Portfolio, ~~OJ EPO 2022, A51 and A52~~ [OJ EPO 2023, A89, and OJ EPO 2023, A90](#), respectively, as well as the [EPO notice dated 3 May 2023, OJ EPO 2023, A50](#), and the [EPO notice dated 13 December 2011, OJ EPO 2012, 22](#)). If a third party requests file inspection without at the same time submitting the applicant's consent, the EPO will not release the files until the applicant's approval has been presented.

Art. 128(1)

However, prior to the European patent application's publication, any person who can prove that applicants have invoked their rights under the application against them may also inspect the files. The rights under a European patent application are also deemed to have been invoked where rights under a first filing in a contracting state have been invoked and the subsequent European patent application is mentioned at the same time (see J 14/91). If such proof is not furnished together with the request, the EPO will invite the requester within a specified period to supply proof. If that is not done in due time, the request will be refused.

Art. 128(2)

If a request for inspection of the files under Art. 128(2) is made, the applicant is entitled to notification of the identity of the person making the request. Professional representatives requesting inspection of the files on behalf of a third party under Art. 128(2) must therefore give the third party's name and address and file an authorisation.

A decision on a request for inspection of the files under Art. 128(2) is only taken once the applicant has been heard. If the applicant objects and provides grounds for believing that the requirements under Art. 128(2) are not met within the period set by the EPO, a decision will be delivered. This decision is subject to appeal.

Art. 128(3)

Prior to a European divisional application's publication the file of this divisional application may be inspected only in the cases described in Art. 128(1) and (2). This also applies where the parent application has already been published. However, where a European divisional application or a new European patent application filed under Art. 61(1)(b) is published, the files of the earlier application may be inspected prior to that earlier application's publication and without the relevant applicant's consent.

2.6 Publication of bibliographic data before publication of the application

Art. 128(5)

In accordance with Art. 128(5), the EPO publishes in the European Patent Bulletin the bibliographic data relating to European patent applications that had been announced for publication but for which the application documents were not published, either because the application was withdrawn or because the announcement was erroneous. The lists of these publication numbers can be found on the European publication server, which is accessible via the EPO website (*epo.org*).

3. Communication of information contained in the files

Rule 146

Subject to the restrictions provided for in Art. 128(1) to (4) and Rule 144 (see A-XI, 2.3), the EPO may, upon request, communicate information concerning any file of a published European patent application or a European patent. This is subject to the payment of an administrative fee (see A-XI, 1 and OJ EPO 2019, A14 and A15).

However, the EPO may refer to the option to obtain inspection of the file itself, should it deem this to be appropriate in view of the quantity of information to be supplied.

Correspondence in proceedings relating to the communication of information conducted between the EPO and the person requesting the information is filed in the part of the file that is not accessible to the public. The EPO does not provide the applicant with any information about the proceedings relating to the communication of information.

4. Consultation of the European Patent Register

Art. 127

Rule 143

Rule 21(2)

The European Patent Register can be accessed free of charge via the EPO website (*epo.org*) (see A-XI, 2.2). Entries in the European Patent Register are made starting from the publication of the European patent application up to expiry of the period of opposition or the termination of opposition

proceedings. Where applicable, the date and purport of any decision taken in revocation or limitation proceedings (Art. 105b(2)) and/or on a petition for review (Art. 112a) are also included (Rule 143(1)(x) and (y)). Since the correction of the designation of the inventor may be made at any time (see A-III, 5.5), there is no time restriction for related entries in the European Patent Register.

Apart from the data to be entered under Rule 143(1), the European Patent Register includes, under Rule 143(2), additional application and procedural data not published in the European Patent Bulletin (see the decision of the President of the EPO dated 15 July 2014, OJ EPO 2014, A86). Register data may also be obtained by telephone from Customer Services: epo.org/service-support/contact-us.html. In exceptional cases, an extract from the Register will be provided on receipt of a substantiated request (see OJ EPO 2019, A15).

5. Issue of certified copies

5.1 Certified copies of documents from the files or of other documents

The EPO will issue on request a certified copy of the European patent application or European patent specification, or of other documents from the files of European patent applications and patents (e.g. an extract from the European Patent Register), provided that the conditions for file inspection (Art. 128(1) to (4)) are fulfilled and an administrative fee has been paid (see A-XI, 1 and ~~OJ EPO 2019, A14~~[OJ EPO 2023, A3](#)).

A certified copy of the European patent certificate with specification attached is supplied to the patent proprietor on request (see C-V, 12).

Rule 74

5.2 Priority documents issued by the EPO

Any priority document (i.e. the certified copy of the European patent application together with the certificate stating its filing date) will only be issued to the (original) applicant or that party's successor in title on written request. If such request is missing, the EPO will invite the requester to file it and will supply the certified copy only once this requirement has been fulfilled. In the case of applications filed in a language other than an official EPO language (Art. 14(2)), the priority document relates to the application as originally filed, not to the translation in one of the official EPO languages.

Rule 54

The EPO President determines all necessary arrangements, including the form of the priority document and the circumstances in which an administrative fee is payable (see A-XI, 1 and the decision of the President of the EPO dated 20 February 2019 on the inspection of files, OJ EPO 2019, A16). The content of priority documents corresponds to the application documents as available on the filing date and as contained in the electronic file, reproduced in black and white (see A-IX, 1.2 and 7.1 and the EPO notice dated 14 January 2020, OJ EPO 2020, A7).

Where a European patent application claims the priority of a previous European patent application or an international application filed with the EPO as receiving Office under the PCT, a certified copy of the previous application

will be included in the file free of charge. Furthermore, if the patent office at which a European priority document is to be filed participates in the WIPO Digital Access Service (DAS), it is possible for that office to retrieve the European priority document free of charge via DAS by providing the access code that the EPO generates for every European patent application filed with it and every international application filed with the EPO as receiving Office (see also A-III, 6.7).