European Patent Guide

How to get a European patent

24th edition

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Chapter 1 – Foreword

The **European Patent Guide** aims to provide applicants and their representatives with an outline of the procedure involved in applying for a European patent.

This updated 24th (2024) edition of the Guide is based on the revised European Patent Convention (EPC 2000) which entered into force on 13 December 2007. All references to articles or rules in this Guide therefore relate to the EPC as in force since that date or as amended between that date and July 2024. Please note, however, that in some cases certain provisions of the earlier Convention (EPC 1973) will continue to apply for applications which were pending at the time the revised EPC entered into force. The present edition has been updated to reflect the situation as at 1 July 2024, and takes account of changes to European Patent Office (EPO) procedures entering into force before or on that date. Users of this Guide should therefore always check the EPO website (*epo.org*) for information about any changes which may have occurred since then.

Any comments and questions on the present Guide may be addressed to Directorate 5.3.1 Patent Law and Processes (patentlaw@epo.org).

There is also another guide for applicants covering the Euro-PCT route (**Euro-PCT Guide: PCT procedure at the EPO** (see point 2.3.002)).

Chapter 2 - General

2.1 Introduction

2.1.001 This Guide outlines the provisions relevant to the filing of European patent applications, offering practical advice to smooth the way to a European patent. In addition, it briefly describes the post-grant procedures carried out by the EPO. It cannot, however, go into the details or specific issues of the European patent grant or post-grant procedures, and it does not constitute an official commentary on the European Patent Convention (EPC).

If you need more detailed information, you are advised to consult the **Guidelines for Examination in the European Patent Office**, a comprehensive guide to every stage of the grant procedure and to EPO practice.

The charts in Annexes I and in IV to the present Guide illustrate the course of the grant procedure and the time limits applicants have to observe.

2.1.002 In the right-hand margin[1] you will find references to the provisions of the EPC, the Implementing Regulations and the Rules relating to Fees, and to passages from the Guidelines for Examination in the EPO (2024 edition) and the Official Journal (OJ) of the EPO. You are strongly advised to consult the works in question before taking any decisions in practice.

The authentic texts of the EPC and the Guidelines are given in two EPO publications, the **European Patent Convention** and the **Guidelines for Examination in the European**

Patent Office, both available on the EPO website (*epo.org*), where you will find the latest edition of these and any of the other publications mentioned in this Guide. We also refer you to the decisions and notices published by the EPO in its Official Journal and on its website.

Decisions of the boards of appeal of the EPO (see points 5.7.001-5.7.012) are published on the EPO website. We recommend that you consult the relevant decisions when questions regarding the interpretation of particular EPC provisions arise. The **Case Law of the Boards of Appeal of the EPO** contains brief summaries of selected decisions and makes it easier to find the relevant ones.

The most important sources for European patent law and EPO practice, along with much other useful information, are accessible on the internet via the EPO website (*epo.org*).

2.1.003 As in any other patent grant procedure, you need to be thoroughly familiar with patent matters if you are to steer your way successfully through the European route. **So if you lack the requisite experience, we advise you to consult a professional representative before the EPO (see points 4.1.023-4.1.031).**

2.1.004 The EPO publication entitled **National law relating to the EPC** contains detailed information on the regulations and requirements governing European patent applications and patents in the contracting, extension and validation states. A valuable supplement to this Guide, it is available on the EPO website (*epo.org*).

2.2 Nature and purpose of the European Patent Convention

2.2.001A patent is a legal title granting its holder the right – in a particular country and for a certain period of time – to prevent third parties from exploiting an invention for commercial purposes without authorisation. The EPC has established a single European procedure for the grant of patents on the basis of a single application and created a uniform body of substantive patent law designed to provide easier, cheaper and stronger protection for inventions in the contracting states.

The contracting states are: Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye and United Kingdom.

In each contracting state for which it is granted, a European patent gives its proprietor the same rights as would be conferred by a national patent granted in that state. If its subject-matter is a process, protection is extended to products directly obtained by that process. Any infringement of a European patent is dealt with by national law (but see point 2.3.004).

Art. 64

A published European patent application provides provisional protection which is no less than that conferred by a contracting state for a published national application and which

must at least include the right to reasonable compensation in the event of wrongful infringement.

Art. 67

The standard term of a European patent is twenty years as from the date of filing. Provided that the annual renewal fees are duly paid, patents remain in force for the maximum term.

Art. 63

Article 63(2) sets out circumstances in which the term of a patent can be extended or a longer term granted. This option of extension by means of a supplementary protection certificate (SPC) is intended primarily for medicinal or plant protection product patents, where the administrative approval procedure takes so long that the useful life of the patent is diminished.

2.2.002 European patents may also be effective in some countries that have not acceded to the EPC (extension and validation states). At present these are Bosnia and Herzegovina (extension state) as well as Morocco, the Republic of Moldova, Tunisia, Cambodia and Georgia (validation states) (see point 2.5.001).

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The contracting states are: Albania, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Türkiye and United Kingdom.

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2.3 Relationship to other international conventions

2.3.001 The EPC constitutes a special agreement within the meaning of the Paris Convention for the Protection of Industrial Property.

This means in particular that the principles of the Paris Convention on claiming priority and the national treatment principle also apply in the European procedure and to European applications.

Art. 87-89

Since nearly all the EPC contracting states are members of the WTO, the relevant provisions of the TRIPS Agreement (Agreement on trade-related aspects of intellectual property rights) are implemented in the revised EPC.

2.3.002 The EPC further constitutes a regional patent treaty within the meaning of Article 45(1) PCT, which means that European patents can be granted on the basis of an international application filed under the PCT. The **Euro-PCT Guide** deals with this filing route to obtaining patent protection in Europe. It is available on the EPO website (*epo.org*).

Art. 150-153
R. 157-165
GL E-IX

2.3.003 The Agreement on the application of Article 65 EPC – the London Agreement – is an optional agreement aiming at reducing the costs relating to the translation of European patents. The EPC contracting states which have ratified or acceded to the Agreement undertake to waive, entirely or largely, the requirement for translations of European patents. For more information, please consult the EPO website (*epo.org*).

2.3.004 The Unitary Patent is a "European patent with unitary effect", which means a European patent granted by the EPO under the rules and procedures of the EPC to which, after grant, unitary effect is attributed for the territory of the EU member states participating in the Unitary Patent scheme and bound by the Agreement on a Unified Patent Court (UPCA). After grant of the European patent – but no later than one month after the mention of grant is published in the European Patent Bulletin – you have the option to file a request for unitary effect with the EPO if you wish to obtain a Unitary Patent. The tasks of the EPO include:

Supplementary publication 3, OJ EPO 2023
OJ EPO 2016, A39, A40, A41
OJ EPO 2013, 111, 132

–examining these requests and registering unitary effect

–setting up and administering the Register for unitary patent protection

–collecting renewal fees for Unitary Patents

These tasks are carried out by the EPO under rules which implement Regulation (EU) No 1257/2012 of the European Parliament and of the Council.

The Unitary Patent became available on 1 June 2023 when the UPCA entered into force. A list of the EU member states which have ratified the Agreement is available at: *consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2013001*.

For further detailed information, you can consult the **Unitary Patent Guide** on the EPO website (*epo.org*).

2.4 Choosing a route: national, European or international

2.4.001 The European procedure has not superseded the national grant procedures. So when seeking patent protection in one or more EPC contracting states you have a choice between following the national procedure in each state for which you want protection and taking the European route, which in a single procedure confers protection in all the contracting states that you designate.

2.4.002 If you decide you want a European patent, you have a further choice between the direct European route and the Euro-PCT route (see point 2.3.002 and the **Euro-PCT Guide: PCT procedure at the EPO**). With the direct European route, the entire European patent grant procedure is governed by the EPC alone; with the Euro-PCT route, the first phase of the grant procedure (the international phase) is subject to the PCT, while the regional phase before the EPO as designated or elected Office is governed primarily by the EPC.

2.4.003 We will now summarise the chief legal and economic factors that are likely to influence your choice between the European and national procedures.

Legal factors

2.4.004A European patent is granted after an examination designed to establish whether the European patent application and the invention to which it relates comply with the patentability requirements of the EPC.

These requirements are the basis not only for the granting of a European patent, but also for the assessment of its validity by national courts. In addition, under the EPC the extent of the protection conferred by the European patent is determined uniformly for all the contracting states.

Art. 69, 138

2.4.005 The grant procedure is conducted by the EPO's Receiving Section, search divisions and examining divisions; if they decide against your application, you can file an appeal before the boards of appeal of the EPO. Once a European patent has been granted, there follows a nine-month period in which third parties are entitled to file a reasoned notice of opposition; and at the end of the resulting opposition proceedings, either the patent is maintained as granted or as amended or it is revoked. The decision taken in the opposition proceedings applies to all designated contracting states and can also be appealed before the boards of appeal of the EPO.

Art. 16, 17, 18, 99, 106

Once it has been granted, you can file a request for limitation or revocation of your own patent.

Art. 105a, 105b

2.4.006 European patents have a uniform wording and a uniform extent of protection for all designated contracting states (but see points 4.2.027 and 4.2.039) and offer a high presumption of validity.

Patent law in the contracting states has been extensively harmonised with the EPC in terms of patentability requirements. However, as grant procedures continue to be differently structured and are conducted in parallel by several offices, the national route generally leads to national rights with differing extents of protection.

Economic factors

2.4.007 Processing fees in the European patent grant procedure are staggered; so at each stage of the procedure you have a further chance to decide, in the light of the completed stages, whether your interest in obtaining patent protection is still great enough to justify paying the next fee.

Art. 2 RFees

In particular, the separation between search and substantive examination (see points 5.1.002 and 5.1.003) enables you to decide in the light of the European search report (see point 5.2.010) whether it is worth requesting substantive examination.

2.4.008 In certain circumstances you may be interested in having your application processed faster, at the search stage or the substantive examination stage or both.

If you file a request for accelerated processing, the EPO will make every effort to reduce the usual processing times as much as it can, under the programme for accelerated prosecution of European patent applications.

GL E-VIII, 4

2.4.009 Your application may be a **first filing** with the EPO.

As a rule, you will be sent the search report within **five** months of the date of filing.

2.4.010 Like a first filing with a national office, a European first filing gives rise to the right of priority for a national, European or international second filing made in the priority year (see points 4.1.017-4.1.021).

2.4.011 Taking into account the fees levied for the European grant procedure, costs for representation by a single agent and the cost of conducting the proceedings in a single language, a European patent as a rule costs about as much as three or four national patents.

2.4.012 Information on fees and conditions for fee refunds is provided in points 4.3.010 ff.

2.4.013 The European procedure is conducted in one of the three official languages of the EPO (English, French, German), specifically the one in which you choose to file your application or a translation thereof. In addition, if you are from a contracting state whose language is not one of the EPO's official languages, you enjoy certain advantages as regards languages and fees if you use an official language of your contracting state (see points 4.1.008-4.1.010).

Art. 14(2), (3)
R. 6(3)
Art. 14(1) RFees
GL A-X, 9.2

2.4.014 In the final phase of the European patent grant procedure, however, you are required to file a number of translations. You have to provide the EPO with translations of the claims in its other two official languages. Some contracting states require you to file a translation of the European patent specification or of the claims in one of their official languages, if different from the language of the proceedings, in order for the European patent to take effect there (see point 5.4.023). Further information is available on the EPO website (*epo.org*).

Art. 65, 97
R. 71(3)

2.4.015 The European patent grant procedure lasts about two to four years from when the application is filed. It breaks down into two main stages. The first comprises formalities examination, search report preparation and the drafting of an opinion on whether the application and the invention to which it relates seem to meet the requirements of the EPC. The second comprises substantive examination.

R. 55-66, 70-72

2.4.016 In the first of these stages there is no need for your active involvement unless the Receiving Section finds formal deficiencies or the search division requests clarification of the subject-matter to be searched. However, in the second stage – substantive examination – your application is assigned to an examining division, which usually communicates with you or your representative before deciding whether to grant the patent or refuse the application (see points 5.1.003 and 5.4.001-5.4.022).

R. 62a, 63, 71-72

Competent preparation of the patent application and of all procedural steps before the EPO is a crucial factor in ensuring that the examination procedure runs quickly and satisfactorily (see point 2.1.003).

2.5 Extending/validating European patents to/in non-contracting states

2.5.001 The European Patent Organisation has signed cooperation and European patent extension agreements with a number of European states that are (or at the time were) not party to the EPC. Since 2010, it has concluded further agreements providing for European patents to have effect in non-contracting states. However, these "validation agreements" are not limited to European countries.

GL A-III, 12

As an applicant for a European patent you thus have a simple and cost-effective way of obtaining patent protection in some countries which are not contracting states. If you request extension/validation and pay the extension/validation fee(s) in time, you can have European patent applications (direct and Euro-PCT filings) and patents extended to/validated in these countries, where they will then in principle have the same effect as national applications and patents, will be subject to national law and will enjoy essentially the same protection as patents the EPO grants for EPC contracting states. You can currently request extension to Bosnia and Herzegovina, as well as validation in Morocco, the Republic of Moldova, Tunisia, Cambodia and Georgia. Lists of countries which have concluded an extension/validation agreement with the EPO are available at *epo.org/en/about-us/foundation/extension-states* and *epo.org/en/about-us/foundation/validation-states*.

The extension and validation systems are largely the same as the designation system for contracting states. For example, the period for payment of the extension/validation fee is the same as the period for payment of the designation fee. However, the extension and validation systems are based not on direct application of the EPC but solely on the relevant

national law modelled on the EPC. Hence they are subject to the national extension/validation rules of the country concerned. Further information is available at *epo.org/en/legal/extension-validation-system*.

Chapter 3 – Patentability

3.1 Introduction

3.1.001 European patents are granted for inventions that are new, involve an inventive step and are susceptible of industrial application. An invention can belong to any field of technology.

Art. 52(1)

3.2 Invention

3.2.001 The EPC does not define the meaning of "invention", but it does provide a non-exhaustive list of subject-matter and activities that may not be regarded as inventions, i.e. that are expressly excluded from patentability.

Art. 52(2), (3), 53
GL G-II, 3

In this respect your attention is particularly drawn to the following four fields:

3.2.002 The first is **programs for computers**, which are not regarded as inventions if claimed as such. However, a computer program is not excluded from patentability under Article 52 if, when running on a computer, it causes a further technical effect going beyond the "normal" physical interaction between the program (software) and the computer (hardware). An example of a further technical effect is where the program serves to control a technical process or governs the operation of a technical device. The internal functioning of the computer itself under the influence of the program could also bring about such an effect.

Art. 52(2)(c), (3)
GL G-II, 3.6
GL Index for Computer-Implemented Inventions

Thus computer programs are not automatically excluded from patentability. More information about the patentability of computer-implemented inventions is available on the EPO website (*epo.org*).

3.2.003 The second field is **methods for treatment** of the human or animal body **by surgery or therapy**, and **diagnostic methods** practised on the human or animal body. These inventions are expressly excluded from patentability. The exclusion from patentability does not apply to products, substances and compositions for use in such methods, e.g. medicaments or surgical instruments. Substances and compositions are in fact singled out for special treatment in the EPC as regards the novelty requirement: even a known

substance or composition may be patented for further medical or veterinary uses, provided that such use is novel and inventive.

Art. 53(c), 54(4), (5)
GL G-II, 4.2

This exception does not exclude the patentability of other methods of treatment of living human beings and animals; moreover the treatment of body tissues after they have been removed from the human or animal body and diagnostic methods applied to such tissues are patentable as long as the tissues are not returned to the same body.

GL G-II, 4.2.1

3.2.004 The third field is **plant and animal varieties** and essentially biological processes for the production of plants or animals and the plants or animals exclusively obtained by such processes, which are expressly excluded from patentability.

Art. 53(b)
R. 26, 27, 28(2)
GL G-II, 5.4

In the case of plant varieties, a separate form of protection is available in most contracting states and under EU law.

A process for the production of plants or animals is essentially biological if it is based on sexual crossing of whole genomes and on the subsequent selection of plants or animals, even if other technical steps relating to the preparation of the plant or animal or its further treatment are present in the claim before or after the crossing and selection steps.

The exclusion does not apply to microbiological processes or the products of such processes. In general, biotechnological inventions are also patentable if they concern biological material that is isolated from its natural environment or produced by means of a technical process, even if it previously occurred in nature.

GL G-II, 5.5

3.2.005 The last field is inventions excluded from patentability because their commercial exploitation would be contrary to "**ordre public**" or **morality**. In particular, patents are not granted in respect of processes for cloning human beings, processes for modifying the germ line genetic identity of human beings, uses of human embryos for industrial or commercial purposes, or processes for modifying the genetic identity of animals that are likely to cause them suffering without any substantial medical benefit to humans or animals, and also animals resulting from such processes.

Art. 53(a)
R. 28(1)
GL G-II, 4.1

3.3 Novelty

Basic principles

3.3.001 An invention is considered to be new if it does not form part of the state of the art.

Art. 54(1)
GL G-VI

The definition of the state of the art in the EPC reflects the principle of absolute novelty: the state of the art comprises everything made available to the public anywhere in the world by means of a written or oral description, by use, or in any other way, before the date of filing or priority. However, novelty is prejudiced only by something which is clearly disclosed to a skilled person in a **single** source of prior art, e.g. in a patent application published before the date of priority.

Art. 54(2), 89
GL G-IV

3.3.002 An earlier disclosure of the invention is non-prejudicial only if it occurred less than **six months** before the filing of the European patent application **and** was due to an evident abuse in relation to the applicant or to display at an exhibition falling within the terms of the Paris Convention on international exhibitions.[2] Except in these two cases, the second of which is rare in practice, any disclosure of the invention before the date of filing or, if applicable, the earliest priority claimed (see point 4.1.021) can be cited against the applicant as forming part of the state of the art, even if the applicant themself was responsible for the disclosure.

Art. 55
R. 25
GL A-IV, 3
GL G-V

[2]Every year the EPO in its Official Journal publishes a list of exhibitions falling within the terms of this Convention that have been registered by the International Exhibition Bureau.

Prior rights

3.3.003 The state of the art is also held to comprise the content of European patent applications filed before the date of filing or priority but not published until on or after that date.

Art. 54(3), 89
GL B-VI, 4

A PCT application which is filed before the date of filing or priority but not published until on or after that date and for which the EPO acts as designated Office forms part of the state of the art for the purposes of Article 54(3) if the filing fee has been paid to the EPO and the

PCT application is published in one of the EPO's official languages (English, French or German). If the PCT application was published in Arabic, Chinese, Japanese, Korean, Portuguese, Russian or Spanish, a translation into one of the official languages of the EPO must have been filed with the EPO, which will publish it (see point 2.3.002).

Art. 153(5)
R. 165
GL G-IV, 5.2

Everything in the earlier application as filed is prejudicial to novelty.

The consequences that any earlier national patent applications or patents have for the patentability of the invention in the designated contracting states are assessed by the competent national courts after the European patent has been granted (but see point 4.2.040).

Art. 139(2)
GL H-III, 4.4

3.3.004 As a rule, a conflict between two European patent applications has only limited consequences, as the disclosed content of the earlier application is relevant only to the assessment of the later application's novelty, not its inventive step. Hence the later application's claims can mostly be drafted in such a way that the earlier application is not prejudicial to novelty.

Art. 56
GL G-IV, 5

3.4 Inventive step

3.4.001 An invention is held to involve an inventive step if it is not obvious to the skilled person in the light of the state of the art (which does not include prior rights, see points 3.3.003-3.3.004). In assessing inventive step as opposed to novelty (see point 3.3.001), **multiple** sources of prior art may be applied.

Art. 56

The inventive step requirement is intended to prevent exclusive rights forming barriers to normal and routine development.

3.4.002 The EPO seeks to make a realistic and balanced assessment of the inventive step criterion. Inventive step is usually evaluated on the basis of the "problem/solution" approach, in other words whether the solution presented to the problem in the patent application is obvious or not to the person skilled in the art.

GL G-VII

This always depends on the specific circumstances of the case. Depending on the situation, various factors are taken into account, such as the unexpected technical effect of a new

combination of known elements, the choice of specific process parameters within a known range, the difficulty the skilled person has in combining known documents, secondary indicia such as the fact that the invention solves a long-standing technical problem which there have been many attempts to solve, or the overcoming of a technical prejudice.

If you need more detailed information, you are advised to refer to the Guidelines for Examination and to the decisions of the boards of appeal (see point 2.1.002).

Chapter 4 – Preparing and filing a European patent application

4.1 Formal requirements

Entitlement to file European patent applications

4.1.001 A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person, irrespective of nationality and place of residence or business (but see point 4.1.023).

Art. 58, 59, 118
GL A-II, 2

A European patent application may also be filed by joint applicants or by two or more applicants designating different contracting states; where there are different applicants for different contracting states, they are regarded as joint applicants for the purposes of proceedings before the EPO (see also point 4.1.029).

States for which European patent applications may be filed

4.1.002 When filing a European patent application all the contracting states for which the EPC has already entered into force on the date of filing are deemed to be designated (see point 2.2.001 for the list of contracting states).

Art. 79

Switzerland and Liechtenstein may only be designated jointly.

Art. 149
OJ EPO 1980, 407

4.1.003 In addition, European patent applications and patents may be extended to states not party to the EPC. At present, the only extension state is Bosnia and Herzegovina (see point 2.5.001).

4.1.004 European patent applications and patents can be validated in the countries in which a validation agreement entered into force on or before the date of filing of the European patent application (see point 2.5.001).

References in this Guide to the designation of contracting states also apply to extension to and validation in non-contracting states, unless explicitly stated otherwise.

4.1.005 Even though all the contracting states are deemed to be designated upon filing of the application you must subsequently confirm the designations by paying the appropriate fee, which covers the designation of all contracting states, unless you have expressly withdrawn individual designations.

Art. 79(2)
R. 39
Art. 2(1), item 3, RFees
GL A-III, 11

As regards extension and validation states, the extension and all validations are deemed to be requested upon filing of the application, but you need to confirm the request for extension/validation by paying the extension/validation fee for each state to or in which you wish to extend or validate protection.

GL A-III, 12

Languages for European patent applications

4.1.006 The official languages of the EPO are English, French and German.

Art. 14(1)

4.1.007 If you file your European patent application in any other language, you need to file a translation into one of the official languages of the EPO within two months of filing the application. If the translation is not filed in time, you will be invited to file it within two months of the notification of the invitation. If the translation is not filed within the time limit set in the invitation, the application is deemed to be withdrawn.

Art. 14(2)
R. 6(1), 58
GL A-III, 14

The language in which you file the European application (or its translation, if not filed in English, French or German) is used as the language of the proceedings, and any amendments made to the application or the European patent must be drawn up in that language. Otherwise, in written proceedings, any party may use any of the EPO's official languages.

Art. 14(3)
R. 3
GL A-VII, 2, 3.1

At any time during the proceedings before the EPO, the translation may be brought into conformity with the text of the application as filed.

Art. 14(2)

With regard to divisional applications see point 5.8.004.

Language arrangements to assist applicants from certain contracting states

4.1.008 If you (or one of your co-applicants) have your residence or principal place of business in a contracting state that has a language other than English, French or German as an official language, or if you (or one of your co-applicants) are a national of such state but are resident abroad, you may file a European patent application and/or the request for examination in one of that state's official languages ("admissible non-EPO language").

Art. 14(4)
GL A-VII, 3.2

4.1.009 If you are thus entitled to file the application or the request for examination in an admissible non-EPO language and do so, a 30% reduction of the filing and/or examination fee applies if you, as an applicant, are a natural person, a microenterprise, a small or medium-sized enterprise, a non-profit organisation, a university or a public research organisation. In order to benefit from the reduction, you must submit a declaration of entitlement at the latest by the time of payment of the (reduced) filing or examination fee. The declaration can be made directly in the request for grant of a European patent (EPO Form 1001; see point 4.1.013) or by filing EPO Form 1011, available on the EPO website (*epo.org*).

R. 7a, 7b
Art. 14(1) RFees
GL A-X, 9.2

If you have co-applicants, each one of them must also be either a natural person or an entity according to the above definition and must declare so if you wish to benefit from the 30% reduction of the filing and/or examination fee.

R. 7a(5)

4.1.010 If point 4.1.008 applies to you, at any time in the procedure after filing your application you may file any documents subject to a time limit in an official language of your state; but within one month of filing any such document you must submit a translation into the language of the proceedings. However, if you use the official language of your state for filing an opposition, appeal or petition for review, you can file the translation into one of the official languages of the EPO within the opposition, appeal or petition for review period

respectively, if that period expires after the one-month period. If you do not file the translation in due time, the document is deemed not to have been filed.

Art. 14(4)
R. 6(2)
GL A-VII, 3.2

Fee-related support for small entities

4.1.011 Irrespective of your nationality or domicile, if you are a micro-entity – that is, a microenterprise, natural person, non-profit organisation, university or public research organisation – and you have filed fewer than five patent applications in the preceding five years, you are entitled to a 30% reduction in the main procedural fees. These include the filing fee, the search fee, the examination fee, the designation fee, the fee for grant and the renewal fees for the European patent application. If you wish to benefit from the reduction, you must expressly declare your micro-entity status. The declaration can be made by checking the box provided in the request for grant or by filing EPO Form 1011 separately.

R. 7a(3), (4)

OJ EPO 2024, A8

In the case of co-applicants, each of them must be a micro-entity for the fee reduction to apply.

R. 7a(5)

It is possible to combine the fee-reduction scheme related to language with the one for micro-entities, and so you may be eligible for fee reductions under both Rule 7a(1) and Rule 7a(3).

Items making up a European patent application

4.1.012 A European patent application consists of a **request** for the grant of a European patent, a **description** of the invention, one or more **claims**, any **drawings** referred to in the description or claims, and an **abstract**.

Art. 78(1)

Request for grant

4.1.013 The request **must** be filed on a **form prescribed by the EPO** (EPO Form 1001). The request for grant form is integrated in the electronic filing tools EPO Online Filing and Online Filing 2.0.

R. 41
GL A-III, 4.1
OJ EPO 2023, A48

The form, which can also be submitted using the EPO Contingency Upload Service, and the associated explanatory notes can be downloaded free of charge from the EPO website (*epo.org*). You are strongly advised to read the explanatory notes carefully before completing the request form. By completing the form you meet all the mandatory requirements governing the information that the request for grant must contain.

The request must be **duly signed**. It may be signed by your representative if you have appointed one. Where it is signed on behalf of a legal person, the signatory's position within the legal entity must also be indicated. If you have co-applicants and do not appoint a European representative, the request for grant must be signed by all of the applicants (see point 4.1.029).

R. 2(2)
GL A-III, 4.2.2
GL A-VIII, 3.2, 3.4

Designation of inventor

4.1.014 In your European patent application you must designate the inventor(s). The inventors must be natural persons.

Art. 81
GL A-III, 5

If you yourself are not the inventor or are not the sole inventor, you must file the designation of the inventor in a separate document, which must indicate the origin of your right to the European patent.

R. 19
GL A-III, 5

You can designate the inventor(s) in the tools provided by the EPO for online filing. Another option is to fill in and file the "Designation of inventor" form (EPO Form 1002) available on the EPO website (*epo.org*).

4.1.015 The person designated as the inventor will be mentioned in the published European patent application, in the European patent specification, in the European Patent Register and in the European Patent Bulletin, unless they waive this right in due time in advance of publication.

Art. 127, 128(4), 129(a)
R. 20(1), 143(1)(g), 144(c)
GL A-III, 5.2

4.1.016 If you do not designate the inventor when you file the European patent application, you will be invited to correct this deficiency within **sixteen months** after the date of filing or, if priority is claimed, the earliest priority date, and in any event no later than five weeks prior to the intended date of publication of the application (see point 5.3.001). If you fail to submit the designation of inventor within the specified period, your application will be refused (see point 5.2.005).

Art. 90(3)-(5)
R. 60(1)
GL A-III, 5.4

Claiming priority

4.1.017 If you or your predecessor in title have duly filed an application for a patent, a utility model or a utility certificate in or for any state party to the Paris Convention for the Protection of Industrial Property or any member of the World Trade Organization you may claim priority when filing a European patent application in respect of the same invention. You must file the European patent application no later than **twelve months** after filing the first application (see points 5.10.008-5.10.010).

Art. 87
GL A-III, 6
GL F-VI, 1.3

If the earlier application was filed in or for an EPC contracting state, you may also designate that state in the subsequent European application. The earlier application whose priority you claim may also be a European or an international (PCT) application (see point 2.4.010).

4.1.018 You may claim multiple priorities in respect of one European patent application, even if they originate from different countries. You may also claim multiple priorities for any one claim. If you claim multiple priorities, time limits which run from the date of priority are computed from the earliest priority date.

Art. 88(2), (3)
GL F-VI, 1.5
GL A-III, 6.3

4.1.019 To claim the priority of an earlier application you must indicate the date, country and file number of the earlier application.

Art. 88(1)
R. 52, 53
GL A-III, 6.5, 6.7
GL F-VI, 3.1-3.3
OJ EPO 2023, A48

You must also file the priority document, i.e. a copy of the earlier application certified by the authority with which it was filed, together with authentication of its filing date from that authority, within 16 months of the priority date. Some patent offices issue electronic priority

documents. These may be filed with the EPO, using Online Filing or Online Filing 2.0, provided they are in an accepted document format and are digitally signed by the issuing authority. In certain cases you are exempted from having to submit a priority document: currently the EPO includes a copy of the earlier application whose priority you claim in the file of the European patent application free of charge if the earlier application is a European patent application or an international patent application filed with the EPO as receiving Office.

It is also possible for you to request that the EPO retrieve the priority document electronically via the WIPO Digital Access Service (DAS), provided that the office where the first filing was made participates in this service. To enable you to make use of DAS, the Office of First Filling will generate a dedicated access code, which you will need to provide to the EPO together with your retrieval request. You can file the retrieval request directly in the request for grant of a European patent (EPO Form 1001; see point 4.1.013) or by filing EPO Form 1013, available on the EPO website (*epo.org*). In response, the EPO will automatically retrieve, free of charge, the priority document issued by the Office of First Filing. For more information please consult the WIPO website (*wipo.int*).

OJ EPO 2021, A83
OJ EPO 2019, A27

If you are filing a European patent application claiming priority from an earlier application, you have to file a copy of any search results in respect of the earlier application. Where the search results are not available when filing the European patent application, they have to be filed without delay after they have been made available to you. The obligation to file the search results for the earlier application exists as long as the application is pending before the EPO. Where the EPO notes, at the time when the examining division assumes responsibility, that the search results have still not been filed, it invites you to file them within a non-extendable time limit of two months. If you fail to file the search results or a declaration that they are not available to you, the European patent application will be deemed to be withdrawn.

Art. 124
R. 70b, 141
GL A-III, 6.12

You are exempted from the obligation to file a copy of the search results if the EPO drew up the search report or your priority application was filed in Austria, China, the Czech Republic, Denmark, Japan, the Republic of Korea, Spain, Sweden, Switzerland, the UK or the US. In future, further countries are expected to be included in this list.

4.1.020 You should preferably submit the declaration of priority indicating the date, country and file number of the earlier application **when you file your European patent application**.

R. 41(2)(g), 52(1)
GL A-III, 6.5, 6.7
GL F-VI, 3.2

You must supply the complete declaration of priority and the priority document no later than **sixteen months** after the earliest priority date.

R. 52(2), 53(1)

If you do not indicate the file number or file the copy of the earlier application within the above time limit, you will be invited to remedy the deficiency; if you fail to do so, you will lose your right to priority (but see point 5.2.006).

R. 59
GL A-III, 6.7, 6.10, 6.11

4.1.021 Among the effects of a valid claim to priority is that the date of priority determines the prior art that can be cited against the European patent application.

Art. 54(2), (3), 60(2), 89

As a rule, the EPO initially examines only the formal conditions for claiming priority. The examining division (see points 5.4.001 et seq.) normally checks whether a right to priority exists if it finds prior art (see point 3.3.001) from between the priority date and the date of filing of the European patent application or if it finds a prior right under Article 54(3) (see point 3.3.003). The subject-matter for which priority is claimed must be derivable directly and unambiguously from the full disclosure of the invention in the priority document.

GL F-VI, 2.1, 2.4

Where the priority document is not in English, French or German, you may be invited to file a translation of the previous application into one of the EPO's official languages. If you receive such an invitation, which may happen throughout the grant or opposition proceedings, you must file the translation within the period set by the EPO. Alternatively, if the European patent application is a complete translation of the previous application, you may submit a declaration to that effect. If you fail to supply the translation of the priority document or the declaration in due time, the right to priority with respect to the priority claim in question will be lost. However, during grant proceedings, you may file a request for further processing if you have failed to file the translation in time.

Art. 121
R. 53(3), 135
GL A-III, 6.8
GL F-VI, 3.4

Filing by reference

4.1.022 Instead of filing application documents, you may file a European patent application by making reference to a previously filed application. When filing your patent application by reference to a previously filed application, you should indicate in the request for grant form (section 26.1 of the paper form) the filing date, the file number and the state or office where the previous application was filed. The reference must indicate that it replaces the description and any drawings. You will then have to file a certified copy of the previously filed

application within two months of filing the application. If the previous application is not in English, French or German, you must file a translation thereof into one of those languages within the same time limit unless such a translation is already available to the EPO. If you do not file the certified copy within the said time limit or within a time limit set in a subsequent invitation, the application will not be dealt with as a European patent application. If you do not file a translation of the previously filed application within the said time limit or within a time limit set in an invitation, the application will be deemed to be withdrawn (but see points 4.1.007 and 5.10.008 ff).

Art. 14(2), 90(1), (2)
R. 40(1)(c), (2), (3), 55
GL A-II, 4.1.3.1, 4.1.4
GL A-III, 14

Claims can also be filed by reference to those in the previously filed application. However, you may also decide to file a new set of claims replacing the set in the previously filed application.

Representation

4.1.023 If you have your residence or principal place of business in a contracting state, you may act on your own behalf in proceedings before the EPO (but see point 2.1.003).

Art. 133(1)
GL A-VIII, 1
GL A-III, 2

If you have neither a residence nor your principal place of business in a contracting state, you must appoint a representative and act through them in all proceedings before the EPO other than in filing your European patent application and paying the fees.

Art. 133(2)

4.1.024 Representation before the EPO may be undertaken only by professional representatives who are on a list maintained by the EPO, or by legal practitioners entitled to act before the EPO. You will find a searchable online database of professional representatives on the EPO website (*epo.org*).

Art. 134(1), (8)
GL A-VIII, 1.2, 1.5

4.1.025 As a rule, professional representatives and legal practitioners who identify themselves as such do not need to file an authorisation, unless required under special circumstances.

GL A-VIII, 1.6

Representatives may be authorised either by individual authorisation or by general authorisation. The relevant forms, to which amendments are permitted, can be downloaded free of charge from the EPO website (*epo.org*).

R. 152(1), (4)
GL A-VIII, 1.6, 1.7

General authorisations are registered at the EPO. These are a practical option for all concerned.

4.1.026 If an authorisation is required but not filed within the period specified by the EPO, any actions taken by the representative other than the filing of the European patent application and the payment of fees are deemed not to have been taken.

R. 152(2), (6)
GL A-VIII, 1.8

4.1.027 If several representatives are appointed, they may act either jointly or singly before the EPO, regardless of any provisions to the contrary in the notification of their appointment or in the authorisation. With multiple representatives it is also advisable to give the particulars of only one of them in the request for grant, appending "et al." to their name. The EPO will address its correspondence to the representative named in the request for grant as long as it is not informed to the contrary.

R. 152(10)

You may also appoint an association of representatives consisting of professional representatives in private practice or employed in a company. In such a case each representative practising in this association is deemed to be authorised.

R. 152(11)
GL A-VIII, 1.6

If you appoint an association, all communications will be notified to the registered address of the association indicated in the request for grant form (see point 4.1.013).

4.1.028 If you have your residence or principal place of business in a contracting state, you may also be represented by an employee, who need not be a professional representative.

Art. 133(3)
GL A-VIII, 1.3

An employee who is representing their employer and who is not a professional representative or a legal practitioner must have an individual or general authorisation (see point 4.1.025).

4.1.029 If an application is filed by more than one person, the request for grant should designate one of them or a professional representative as the common representative. Otherwise, the applicant named first in the request for grant is deemed to be the common representative. However, if one of the applicants is obliged to appoint a professional

representative, the latter is deemed to be the common representative unless the applicant named first in the request for grant has appointed a professional representative.

Art. 133(4)
R. 41(3), 151(1)
GL A-VIII, 1.4

4.1.030 The particulars of the representative's name and business address given in the request for grant are recorded in the European Patent Register, published in the European Patent Bulletin and printed in the published European patent application and patent.

Art. 129(a)
R. 68, 143(1)(h)

4.1.031 Notifications sent by the EPO (communications, notices, decisions and summonses) are addressed:

Art. 119
R. 130
GL E-II, 2.5

(a) to the representative recorded in the European Patent Register; or

(b) to you as applicant if you do not appoint a representative, and also if an employee is acting on your behalf.

If you are acting without a professional representative, have several addresses and wish notifications in proceedings before the EPO to be sent to one address while a different address is to be used for publications, the European Patent Register and the patent certificate, you can indicate an address for correspondence in the request for grant (see point 4.1.013), "Address for correspondence" (section 9 of the paper form). The address for correspondence must be your own address and must be located in an EPC contracting state. Post cannot be sent to a different (natural or legal) person, since that requires a valid form of representation under Articles 133 and 134. If you are acting through an employee (Article 133(3)), the address for correspondence still has to be one of your own addresses. To facilitate postal delivery or internal distribution of mail, the address may include a sub-division within a firm, provided it is not a separate legal person.

GL A-

4.2 Presenting your invention

Disclosing your invention

4.2.001 The European patent application must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

Art. 83, 84, 69(1)

The description and any accompanying drawings form the basis for the claims, which determine the extent of the protection conferred by the European patent. The description and the drawings are also used to interpret the claims.

GL F-II, 4.1
GL F-IV, 6.1

4.2.002 Once a European patent application has been filed, no amendments extending beyond its content as filed may be made to the description, the claims or the drawings. Hence you are not allowed to add examples or features to the application documents at a later date to remedy deficiencies in the disclosure. Nor are you allowed to extend the subject-matter of the claims, e.g. by omitting certain features, unless there is clear support for such amendment in the application as filed. You must therefore make sure that the claims as filed clearly and accurately identify the invention that you want to protect (see also point 5.4.021).

Art. 123(2)
GL H-IV, 2.1, 2.2
GL F-II, 4.3
GL F-III

Unity of invention

4.2.003 European patent applications must relate to a single invention only, or to a group of inventions so linked as to form a single general inventive concept. In the latter case, multiple independent claims in the same category are allowed as long as they comply with Rule 43(2); but the more usual scenario is multiple independent claims in different categories (see point 4.2.021).

Art. 82
R. 43(2), 44
GL F-V

Drafting the technical application documents

4.2.004 The requirements relating to the content of the description, claims, drawings and abstract are set out in Articles 83 to 85 and Rules 42, 43, 47 and 48.

Art. 83-85
R. 42-50
GL A-III, 3.2
GL A-VIII, 2
GL A-IX
OJ EPO 2022, A113

The formal requirements for these documents and documents filed subsequently are defined in Rules 49(2) and 50 in conjunction with the EPO President's decision dated 25 November 2022 on the presentation of application and other documents.

4.2.005 The following are the main provisions governing the form of application documents and documents filed subsequently:

Art. 78(1)
R. 49(2), 50
GL A-VIII, 2.1
OJ EPO 2022, A113

(a) The documents making up the European patent application (description, claims, drawings and abstract) must be filed in a single copy. The same applies to documents replacing these original documents.

(b) The documents making up the application must be of a quality so as to allow electronic and direct reproduction, in particular by scanning, photography, electrostatic processes, photo offset and microfilming, in an unlimited number of copies.

(c) In the case of paper filings, the documents must be on strong, pliable, white A4 paper (portrait format).

(d) Each document making up the application (request, description, claims, drawings and abstract) must begin on a new sheet.

(e) All the sheets must be numbered in consecutive Arabic numerals, which must be positioned top centre but not in the top margin.

(f) The following minimum margins (type area) must be left blank:

(g) The lines of each sheet of the description and the claims should be numbered in sets of five, the numbers appearing on the left side, to the right of the margin.

(h) The line spacing must be 1.5.

(i) The documents must be typed or printed, with a minimum character height of 0.21 cm for capital letters (normally font size 9 or 10).

(j) There must be no handwritten additions to the text.

The special requirements for drawings are dealt with in Article 1 of the EPO President's decision dated 25 November 2022 and the Guidelines for Examination.

OJ EPO 2022, A113
GL A-IX

4.2.006 Annex II gives three examples of how to draft a European patent application.

Description

4.2.007 In the description you must:

R. 42
GL F-II, 4

(a) Specify the technical field to which the invention relates. You may do this for example by reproducing the first ("prior art") portion of the independent claims in full or in substance or by simply referring to it.

R. 42(1)(a)

(b) Indicate the background art of which you are aware, to the extent that it is useful for understanding the invention, preferably citing source documents reflecting such art. This applies in particular to the background art corresponding to the prior art portion of the independent claims. Source document citations must be sufficiently complete to be verifiable: patent specifications by country and number; books by author, title, publisher, edition, place and year of publication and page numbers; periodicals by title, year, issue and page numbers.

R. 42(1)(b)
GL F-II, 4.3-4.4

(c) Disclose the invention as claimed.

R. 42(1)(c)
GL F-II, 4.5-4.6

The disclosure must indicate the technical problem that the invention is designed to solve (even if it does not state it expressly) and describe the solution.

To elucidate the nature of the solution according to the independent claims you can repeat or refer to the characterising portion of the independent claims or reproduce the substance of the features of the solution according to the relevant claims.

At this point in the description you need only give details of embodiments of the invention according to the dependent claims if you do not do so when describing ways of performing the claimed invention or describing what the drawings show.

You should state any advantageous effects your invention has compared with the prior art, but without making disparaging remarks about any specific previous product or process.

R. 48(1)(b)

(d) Briefly describe what is illustrated in any drawings, making sure you give their numbers.

R. 42(1)(d)
GL F-II, 4.7

(e) Describe in detail at least one way of carrying out the claimed invention, typically using examples and referring to any drawings and the reference signs used in them.

R. 42(1)(e)
GL F-II, 4.8
GL F-III, 1-3

(f) Indicate how the invention is susceptible of industrial application within the meaning of Article 57.

R. 42(1)(f)
GL F-II, 4.9

4.2.008 In exceptional cases you may arrange the description in a different manner and order if this affords a better understanding or a more economic presentation.

R. 42(2)
GL F-II, 4.10

4.2.009 Although the description must be clear and straightforward and avoid unnecessary technical jargon, the use of recognised terms of art is acceptable and often desirable. Little known or specially formulated technical terms may be allowed provided that they are adequately defined and that there are no generally recognised equivalents.

GL F-II, 4.11-4.14

You may use proper names or similar words to refer to a product only if they uniquely identify it. Even then, however, the product must be sufficiently identified, without reliance upon such terms, to enable the invention to be carried out by the skilled person. If such proper names or similar words are registered trade marks, that fact should be mentioned.

GL F-III, 7

Biotechnology applications

Nucleotide and amino acid sequences

4.2.010 If your European patent application discloses nucleotide or amino acid sequences, the description must include a sequence listing in XML format complying with WIPO Standard ST.26. You are advised to use the latest version of WIPO's free "WIPO Sequence" software for preparing a Standard ST.26 sequence listing. The sequence listing must not be filed on paper or in PDF or TXT format.

R. 30, 57
GL A-IV, 5
GL F-II, 6
OJ EPO 2021, A96, A97

Electronic sequence listings are usually filed online, using the EPO's Online Filing or Online Filing 2.0. Uploading to EPO Form 1001 is enabled if you indicate that the application includes a sequence listing by ticking the relevant check box ("Biology/Application details"

tab). The EPO Contingency Upload Service allows you to attach a sequence listing in XML format. Further advice is obtainable from the EPO by contacting User Services at *epo.org/en/service-support/contact-us*.

4.2.011 The standardised presentation of such nucleotide and amino acid sequences in electronic form is mandatory. If you do not comply with the requirements even following an invitation to do so, including payment of the late furnishing fee, your European patent application will be refused (but see point 5.10.007).

R. 30

Depositing biological material to supplement the description

4.2.012 If your invention involves the use of or concerns biological material that is not available to the public and cannot be described in your European patent application in such a way that it can be carried out by a skilled person, you must deposit a sample of this biological material with a recognised depositary institution no later than at the date of filing.

Art. 83
R. 31-34
GL A-IV, 4
GL F-III, 6
OJ EPO 2010, 498

The recognised depositary institutions are the international depositary authorities under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. A full list of recognised depositary institutions is published once a year in the EPO's Official Journal.

R. 33(6)

4.2.013 The application as filed must also give any relevant information that is available to you on the characteristics of the biological material.

R. 31(1)(b)
GL F-III, 6.3

If the biological material has been deposited by someone else, you must state the depositor's name and address in your application and submit a document satisfying the EPO that the depositor has authorised you to refer to the deposited biological material in your application and has given unreserved and irrevocable consent to the deposited material being made available to the public.

R. 31(1)(d), 33

4.2.014 Lastly you must state your chosen depositary institution and the accession number of the deposited biological material, as a rule within sixteen months after the date of filing or, if you have claimed priority, after the earliest priority date. If any of these requirements is not satisfied, the biological material in question cannot be considered as having been fully

disclosed by way of reference to the deposit. Please refer to the Guidelines for Examination for further details.

Art. 83
R. 31(1)(c), (2)
GL A-IV, 4
GL F-III, 6.3

4.2.015 You should also ensure that you complete the corresponding sections in the EPO's Online Filing or Online Filing 2.0 online filing tools ("Biology" tab), or in EPO Form 1001, sections 35 to 37 ("Biological material") (paper or EPO Contingency Upload Service). These sections are designed to alert the EPO that the application refers to biological material deposited under Rule 31 and to enable it to draw your attention to any deficiencies before the time limits laid down in Rule 31(2) expire.

GL A-IV, 4.2, 4.4

You are also strongly advised to file the deposit receipt issued by the depositary institution. This document shows the depositor, the chosen depositary institution and the accession number assigned to your deposit (see 4.2.013). This information enables the EPO to certify any requests for the issuance of a sample (see 4.2.017) and the examining division to establish whether the application satisfies the requirements of sufficient disclosure (see 4.2.012). A deposit receipt must be filed for each sample of biological material disclosed in the application and deposited at one of the recognised depositary institutions. The deposit receipt may be filed as long as proceedings before the EPO are pending.

4.2.016 From the date of publication of the European patent application (see point 5.3.001), the deposited material is available to anyone on request, but only if the requester makes certain undertakings to the applicant or proprietor regarding restrictions on the transmission and use of the material.

R. 33

Until the technical preparations for publication of your application are deemed to be completed (see point 5.3.001), you may inform the EPO that, for a certain period, the only way the biological material can be accessed is by the issue of a sample to an independent expert ("expert solution"). Any natural person may be nominated as an expert, provided that they fulfil the requirements and obligations laid down by the President of the EPO. The EPO must receive the information that you wish to choose the "expert solution" no later than about five weeks before the European patent application is published. You can select "expert solution" in the EPO's Online Filing and Online Filing 2.0 online filing tools ("Biology" tab) or in EPO Form 1001 (paper or EPO Contingency Upload Service) by ticking the corresponding check box.

R. 32
GL A-IV, 4.3
OJ EPO 2017, A60, A61

The "expert" option is mentioned in the published European patent application.

4.2.017 If you are interested in receiving a sample of biological material deposited in someone else's application, you must file a corresponding request with the EPO. Requests for the issue of samples of biological material deposited must be submitted on the requisite forms, which can be downloaded from the EPO website (*epo.org*). The completed forms must be sent to the EPO, which certifies them and transmits them to the competent depositary institution.

R. 33(4), (5)

Claims

4.2.018 The claims must define the matter for which protection is sought in terms of the technical features of the invention. They must be clear and concise and supported by the description.

Art. 84
R. 43
GL F-IV, 1

4.2.019 Wherever appropriate, claims should consist of two parts (see the examples in Annex II), a prior art portion and a characterising portion. In the first claim and all other independent claims, the prior art portion should designate the subject-matter of the invention and the technical features which are needed to define it but which, in combination, form part of the prior art. The characterising portion should state the technical features for which protection is sought in combination with the features in the prior art portion.

R. 43(1)
GL F-IV, 2

4.2.020 An "independent" claim must state all the essential features of the invention.

R. 43(3)
GL F-IV, 3.4, 3.7, 3.8, 4.5

4.2.021 A European patent application may not contain more than one independent claim in the same category (e.g. product and/or process) unless one of the exceptions applies. See point 5.2.011 for further information.

R. 43(2)

4.2.022 Each independent claim may be followed by one or more "dependent" claims concerning particular embodiments of the invention.

R. 43(3), (4)
GL F-IV, 3.4-3.6

Dependent claims should include all the features of the claim to which they relate. They must contain, if possible at the beginning, a reference to this other claim, which may also be dependent, and then state the additional features for which protection is sought.

As far as possible, all dependent claims referring back to one or more previous claims must be grouped together in the most appropriate way.

4.2.023 As Article 84 requires claims to be concise (a requirement that applies both to the claims in their entirety and to each claim individually), you must keep the number of claims reasonable in consideration of the nature of the invention you wish to protect. You should therefore avoid undue repetition resulting from the use of independent claims in the same category or a proliferation of dependent claims.

R. 43(5)
GL F-IV, 5

4.2.024 You must number your claims consecutively in Arabic numerals.

R. 43(5)

4.2.025 It is essential to formulate your claims clearly, as they define the matter that you want to protect.

Art. 84, 69
GL F-IV, 4.1

The wording you use in claims must leave no doubt as to their meaning and scope, and you must avoid any inconsistencies between the description and the claims.

GL F-IV, 4.2-4.9

The scope defined by the claims must be as precise as the invention allows. As a general rule, claims which attempt to define the invention in terms of the result to be achieved are not allowed. Where the invention relates to a chemical product, it may be defined by its chemical formula or as a product of a process or, exceptionally, in terms of its parameters.

GL F-IV, 4.10-4.16

Furthermore, references to the description or drawings, particularly in the form of "as described in part ... of the description" or "as illustrated in figure ... of the drawings", are not allowed unless they are absolutely indispensable.

R. 43(6)
GL F-IV, 4.17

4.2.026 However, in a European patent application containing drawings, reference signs linking the claims to the drawings should be placed in brackets after the technical features mentioned in the claims if this makes the claims easier to understand. Reference signs are not to be construed as limiting the claims.

R. 43(7)
GL F-IV, 4.18

4.2.027 In exceptional circumstances, a European patent application or patent may include separate sets of claims for specific designated states (see point 4.2.039).

Art. 139
R. 138

GL H-III, 4

Claims incurring fees

4.2.028 If your European patent application comprises more than 15 claims, you must pay a claims fee in respect of each claim over and above that number. For the 51st and each subsequent claim the amount of the claims fee is higher. You must pay claims fees within one month of filing the first set of claims.

R. 45(1), (2)
GL A-III, 9
Art. 2(1), item 15, RFees

If your application includes several sets of claims (see point 4.2.039), a fee is payable only in respect of each claim beyond the 15th in the set that contains the highest number of claims.

If you fail to pay the fees in due time, you may still validly pay them within a non-extendable period of one month after being notified of your failure to observe the time limit. If you do not pay the fees within this period, the claims for which you have not paid the fees are deemed to be abandoned, and you are notified accordingly (but see point 5.10.007).

R. 45(2), (3), 112(1)
GL A-III, 9

4.2.029 If your application contains more than 15 claims at the time of grant, claims fees are payable at this stage if they have not already been paid. If you do not pay them in due time, your application is deemed to be withdrawn (see points 5.4.011, 5.4.014).

R. 71(4)
GL C-V, 1.4

Drawings

4.2.030 The requirements governing the representation of your invention in the drawings are set out in Article 1 of the EPO President's decision dated 25 November 2022 on the presentation of application and other documents. Reference signs not mentioned in the description and claims must not be used in the drawings, and vice versa. The same features, when denoted by reference signs, must be denoted by the same signs throughout the application.

GL A-IX
GL F-II, 5
OJ EPO 2022, A113

4.2.031 Drawings must not contain text matter except, when absolutely indispensable, keywords such as "water", "steam", "open", "closed", "section on AB" and, on electric circuits and block schematics or flow sheet diagrams, short catchwords indispensable for understanding. Any such keywords must be placed in such a way that they can be replaced by their translations without interfering with any lines of the drawings.

GL A-IX, 8

4.2.032 Flow sheets and diagrams are considered to be drawings.

GL A-IX, 1

4.2.033 Good-quality drawings are very important for the correct disclosure of the invention. If the drawings are unreadable, e.g. completely black, you may not be allowed to file better-quality drawings at a later stage, disclosing more details than those originally filed.

Art. 123 (2)
GL A-III, 3.2
GL A-V, 2.1

Although the EPC has no express provisions for photographs, they are nevertheless allowed. Colour photographs are scanned and made available in the electronic file in black and white.

GL A-IX, 1.2

If you file the application in electronic form, you have the advantage that the original quality of the drawings will be available to the EPO, which in many cases may prevent you from receiving a deficiency communication.

Abstract

4.2.034 The abstract merely serves for use as technical information. It may not be taken into account for any other purpose, such as interpreting the scope of the protection sought or applying Article 54(3). It must be so drafted that it constitutes an efficient instrument for searching in the particular technical field and for evaluating whether it is worth considering the whole content of the application.

Art. 85
R. 47(5)
GL F-II, 2.1

4.2.035 The abstract, which must be preceded by the title of the invention, must contain a concise summary (preferably no more than 150 words long) of the disclosure as contained in the description, claims and drawings. It should indicate the technical field to which the

invention relates, unless that is already clear from the title, and should be so drafted as to allow a clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use of the invention.

R. 47(1)-(3)
GL F-II, 2.3

4.2.036 If your application contains drawings, you must indicate the figure or, exceptionally, figures which you suggest should accompany the published abstract. In this case each main feature mentioned in the abstract and illustrated in the drawing must be followed by the corresponding reference sign in parentheses.

R. 47(4)
GL A-III, 10.3

4.2.037 The definitive content of the abstract is determined by the examiner (see point 5.2.014). Once the abstract has been published as part of the European patent application (see point 5.3.001), it is not amended again.

R. 66
GL A-III, 10.2
GL F-II, 2.2, 2.7

Prohibited matter

4.2.038 Your application must not contain statements or drawings that are contrary to *ordre public* or morality. Nor should it contain statements disparaging the products or processes of any third party, or the merits or validity of any third party's applications or patents. Mere comparisons with the prior art are not considered disparaging *per se*. Furthermore, no statements should be made which are obviously irrelevant or unnecessary under the circumstances.

R. 48
GL A-III, 8
GL F-II, 7

Unitary character of European patent applications and patents

4.2.039 European patent applications and European patents have a unitary character, which means that the text and any drawings are uniform for all designated contracting states.

Art. 118
GL H-III, 4

The exceptions to this principle are as follows:

(a) If the EPO is informed of the existence of a prior right under Article 139(2), the European patent application or patent may, for such state or states, contain different claims and, if the examining division considers it necessary, different descriptions and drawings.

R. 138
GL H-III, 4.1, 4.2

(b) If it is adjudged by a final decision that a third party is entitled to be granted a European patent in respect of only one part of the matter disclosed in the European patent application, the original European patent application must, for the designated states in which the decision was taken or recognised, contain claims, descriptions and drawings which, where necessary, are different from those for the other designated contracting states.

R. 18
GL H-III, 4.3

4.2.040 National rights of earlier date do not form part of the state of the art for the purposes of the EPO's examination for patentability (see point 3.3.003, last paragraph).

GL H-III, 4.4

However, during substantive examination (see point 5.4.019) or opposition proceedings (see point 5.5.005) you may, on your own initiative, submit separate claims for each designated contracting state in which an earlier national right exists, provided that you supply evidence of its existence to the examining or opposition division as appropriate. In such cases the examining or opposition division examines only the admissibility of the separate claims; it does not have to judge whether you have adequately limited the scope of your application in relation to the earlier national right. What it does examine, however, is whether the invention identified in the separate claims meets the patentability requirements of the EPC.

4.3 Filing European patent applications

Where and how to file

4.3.001 You can file European patent applications in electronic form using the web-based Online Filing 2.0, which you can access from most browsers. Alternatively, you can use the EPO Online Filing software. Filings using this software may be made online or on electronic data carriers admitted by the EPO. If the main online filing services are not available, you can use the EPO Contingency Upload Service as a fallback.

GL A-II, 1.1.1
OJ EPO 2023, A48, A96

Online Filing 2.0 and the EPO Contingency Upload Service are available free of charge via the EPO website (*epo.org*), as is the EPO Online Filing software. Links to the online filing services are given in Annex III.

If you use Online Filing, you can also file European patent applications in electronic form with the competent national authorities of the contracting states which so permit. Divisional applications must, however, be filed with the EPO direct.

Art. 76(1)

4.3.002 The EPO's electronic filing services have a number of advantages. They offer a secure, reliable and efficient way of filing applications with the EPO. They enable fully electronic handling of filings, save you time and paper-handling costs and provide you with an instant acknowledgement of receipt. A further benefit of electronic filing is that the original quality of the documents is maintained. In addition, for applications filed in electronic form with either the EPO or a competent national authority, the filing fee is reduced.

In the event of the unavailability of, or a general breakdown in, any of the means of electronic communication permitted by the President of the EPO, the general safeguards under the EPC apply.

R. 134(1)
OJ EPO 2020, A120

On the EPO website you will find more information regarding the online services provided by the EPO.

4.3.003 You can also file European patent applications in person or by postal services

Art. 75
R. 35
GL A-II, 1.2
OJ EPO 2018, A18
OJ EPO 2017, A11

(a) with the EPO in Munich, its branch at The Hague or its sub-office in Berlin, but not at its sub-offices in Vienna and Brussels

(b) with the central industrial property office or other competent authority of a contracting state if the law of that state so permits or prescribes (with the exception of divisional applications)

If you decide not to file online, the EPO's addresses are given in Annex III. The addresses of the national patent authorities and national provisions of the contracting states governing compulsory or optional filing of European patent applications with such authorities are given in **National law relating to the EPC** (see point 2.1.004).

4.3.004 You cannot file European patent applications with the EPO by email.

GL A-II, 1.3
OJ EPO 2000, 458

4.3.005 If you file on paper, the quality of the documents may be reduced. As the EPO uses an optical character recognition system to capture European patent applications for printing, you are urged to use a machine-readable typeface for your applications (see point 4.2.005).

OJ EPO 2022, A113
OJ EPO 1993, 59

Date of filing

4.3.006 The date of filing accorded to applications filed in electronic form (using the EPO Online Filing software, EPO Online Filing 2.0 or the EPO Contingency Upload Service) or sent by post is the date on which the application documents are received at the EPO, provided the documents comply with the requirements of Article 80 and Rule 40 (see point 5.2.001).

Art. 80

R. 40

GL A-II, 4.1.5

Where applications are filed in person at the EPO, the corresponding date is the date on which they are handed in or posted in one of the EPO's automated mailboxes, which are available in Munich (PschorrHöfe building only, Zollstrasse) and Berlin.

Art. 80
R. 40
GL A-II, 1.1
OJ EPO 2018, A18
OJ EPO 2017, A11

The above rules similarly apply to applications filed with the competent national authorities of the contracting states.

Acknowledgement of receipt

4.3.007 Receipt of documents filed online using the EPO Online Filing software is acknowledged electronically during the submission session. If you file on electronic data carriers admitted by the EPO, receipt is acknowledged by post.

R. 35(2)
GL A-II, 3.1
OJ EPO 2023, A48

Similarly, receipt of documents filed via EPO Online Filing 2.0 is acknowledged electronically by the EPO via an acknowledgement of receipt.

The receipt of documents filed using the EPO Contingency Upload Service is confirmed electronically by the EPO in the service. An acknowledgement of receipt is also sent separately in accordance with the provisions governing the filing of documents on paper.

The acknowledgements of receipt provided by the EPO's online filing tools also inform you of the European patent application number.

If you file your application on paper, the authority with which you file it acknowledges receipt without delay by sending you page 9 of the request for grant, on which it notes the date it received the application documents and the number of the application.

Applications filed with national authorities and forwarded to the EPO

4.3.008 When you file a European patent application on paper with a national authority, the national authority issues the receipt for documents (page 9 of the request for grant). After checking the application for security or for other national requirements, it then forwards it to the EPO. The EPO then notifies you accordingly, indicating the date of receipt at the EPO, by sending you a copy of the receipt for documents (page 9 of the request for grant).

R. 35(3), (4)
GL A-II, 3.2

You are also sent an acknowledgement of receipt from the national authority concerned if you file European patent applications electronically with any of the national authorities that so permit. If you do not receive this acknowledgement, please contact the national authority.

If the national authority withholds your European application on account of the above-mentioned national requirements, you may pursue it as a national application.

4.3.009 In the very rare event that your application fails to reach the EPO before the end of the fourteenth month after filing or after the earliest priority date, it is deemed to be withdrawn, and any fees that you have paid are refunded. The EPO notifies you accordingly, and you can then convert your European patent application into a national application.

Art. 77, 135(1)(a)
R. 37, 112(1)
GL A-II, 1.6, 3.2

You must file the request for conversion with the central industrial property office of the contracting state in which you filed the application, and you must do so within three months after receiving notification from the EPO. For more details see **National law relating to the EPC** (see point 2.1.004).

Art. 135(2)
R. 155(1)
GL A-IV, 6

Fees

4.3.010 The following basic fees are payable in respect of a European patent application:

Art. 2 RFees
GL A-X

(a) filing fee and any additional fee for the 36th and each subsequent page of the application (see point 4.3.014)

(b) search fee

(c) claims fee in respect of the 16th and each subsequent claim (where appropriate) (see points 4.2.028, 4.2.029)

(d) designation fee (see points 4.3.015, 5.3.004)

(e) extension fees (one for each extension state, see point 2.5.001)

(f) validation fees (one for each validation state, see point 2.5.001)

(g) examination fee (see points 4.3.015, 5.3.004, 5.4.002)

(h) fee for grant and publishing (see point 5.4.011)

(i) renewal fees in respect of the third and each subsequent year (see points 5.9.001-5.9.006)

Further fees may fall due in the course of the proceedings.

4.3.011 After filing the application you must pay the filing fee (and any additional fee) and the search fee (as well as any claims fees, where claims were filed together with the application) within one month of the date of filing. If you file the claims after the date of filing, any claims fees must be paid within one month of filing the first set of claims (see points 4.2.026, 5.2.002).

Art. 78(2)
R. 38, 45(2)
GL A-III, 9, 13.1, 13.2, 15
GL A-X, 5.2.1

You must pay the designation fee (and any extension and/or validation fees) within six months of the date on which the European Patent Bulletin mentions publication of the European search report.

Art. 79(2), 94(1)
R. 39
GL A-X, 5.2.2
GL A-III, 11.2.1, 12.2

The examination fee is payable within the same period.

R. 70(1)
GL A-X, 5.2.2
GL C-II, 1

An overview of important deadlines for filing a European patent application, including deadlines for the payment of fees, is contained in Annex IV to this Guide.

4.3.012 The EPO will not send you invoices or reminders to pay these fees in due time. If you receive invoices, please check their origin carefully.

OJ EPO 2024, A64

4.3.013 If you fail to pay the filing and search fees in due time, your European patent application is deemed to be withdrawn (but see points 4.3.016 and 5.10.007).

Art. 78(2)
GL A-III, 13.1

If you fail to pay the designation or examination fee in due time, the application is deemed to be withdrawn (but see points 4.3.016 and 5.10.007). If you fail to pay the extension fee in due time, the request for extension to this state is deemed to be withdrawn (but see point 4.3.016). The same applies to payment of the validation fee and the request for validation (but see point 4.3.016).

R. 39(2)
GL A-III, 11.2.3, 12.2

4.3.014 An additional fee as part of the filing fee is payable for European patent applications comprising more than 35 pages. The amount of the additional fee depends on the number of pages over 35 and 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. The reductions under Rule 7a apply if you as an applicant fulfil the relevant requirements (see point 4.1.009). The pages of the request for grant form (EPO Form 1001) are not counted, nor are any pages forming part of a sequence listing, provided that it complies with WIPO Standard ST.26 (see point 4.2.010). The additional fee is payable within one month of the date of filing. 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 of the first set of claims or the certified copy of the previously filed application (see points 4.1.022 and 5.2.002).

Art. 2(1), item 1a, RFees
GL A-III, 13.2

4.3.015 In the case of European divisional applications (see points 5.8.001-5.8.005), you must pay the filing fee, any additional fee for pages over 35 and the search fee (and any claims fees) within one month of filing. An additional fee is payable as part of the filing fee for divisional applications of second or subsequent generations. The amount of the fee depends on the generation to which the newly filed divisional application belongs.

R. 36(3), 38(4)
Art. 2(1), item 1b, RFees
GL A-IV, 1.4.1

Renewal fees which have fallen due in the parent application must also be paid for the divisional application. The period for payment of these fees is four months after the date of receipt of the divisional application. If you fail to pay the renewal fees due, they can still be paid within six months of the date of receipt of the divisional application, provided that a surcharge of 50% of the renewal fees is paid.

Art. 86(1)
R. 51(3)
GL A-IV, 1.4.3

You must pay the examination fee, the designation fees and any extension and/or validation fees within six months of the date on which the European Patent Bulletin mentions publication of the European search report on the divisional application (see point 4.3.011).

R. 39(1), 70(1)

4.3.016 You should note that, if you fail to observe the above-mentioned time limits for payment of the filing fee, additional fee(s), the search fee, the designation fee or the examination fee, further processing is available within two months of notification of a communication of loss of rights under Rule 112(1). To request further processing you must pay the outstanding fee(s) and the prescribed fee for further processing (see point 5.10.007).

Art. 121
R. 112(1), 135(1)
GL E-VIII, 1.9, 2

If you fail to pay the extension or validation fee in due time, the request for extension or validation in respect of the state concerned is deemed to be withdrawn. The EPO will not send a communication to that effect. However, the extension or validation fee can still be paid with a 50% surcharge within a period of two months of expiry of the basic period for payment.

GL A-III, 12.2

If a loss of rights has occurred due to non-payment of the designation fee, you will be informed of this in a communication noting the loss of rights under Rule 112(1). Together with the designation fee and the fee for further processing you will have the opportunity to pay any extension or validation fee within two months from notification of said communication together with a 50% surcharge on the respective extension or validation fee(s).

Fee amounts and payment methods

4.3.017 Fee amounts, payment methods and effective payment dates are governed by the Rules relating to Fees (RFees) and by measures adopted by the President of the EPO implementing certain provisions of those Rules.

Art. 2, 5, 7 RFees
Arrangements for deposit accounts (ADA)
GL A-X

Guidance on fee payment is published in each issue of the EPO's Official Journal and on the EPO's website at *epo.org*, so you should consult the latest issue to find out the current situation.

Fees due to the EPO, including those for a European patent application filed with a national authority, must be paid in euros direct to the EPO. You can do this by paying them into or transferring them to the bank account held by the EPO, by debiting a deposit account you have opened with the EPO, or by means of a credit card.

GL A-X, 2, 3
ADA
OJ EPO 2022, A18, A81
OJ EPO 2017, A72

Introduced on 11 September 2021, a new central service called Central Fee Payment provides users with a unique gateway for paying fees and claiming refunds across the entire patent grant procedure and via all permitted payment methods.

4.3.018 The following advice and recommendations on paying fees to the EPO should be noted:

(a) Depending on how you pay, the deemed date of payment is the day on which

Art. 7 RFees
GL A-X, 4

– the amount of the payment or transfer is actually credited to the bank account held by the EPO, or

– the order to debit a deposit account is received at the EPO, provided the deposit account contains sufficient funds, or

– the credit card transaction is approved by the contracting bank or other financial institution ("acquirer"), i.e. generally immediately.

(b) If you can prove to the EPO that:

Art. 7(3) RFees

in a contracting state, within the relevant period for payment

– you effected the payment through a banking establishment, or

– you duly gave an order to a banking establishment to transfer the relevant amount

you will be considered to have observed the period for payment even if the amount paid is received by the EPO after expiry of the period for payment.

The EPO may request you to produce evidence of the date on which you took one of the actions listed above within a period which it specifies. If you fail to comply with this request, or if you produce insufficient evidence, the period for payment is considered not to have been observed.

Art. 7(4) RFees

(c) If you pay fees through a banking establishment, the following account with the Commerzbank in Germany is available for payments and transfers:

OJ EPO 2022, A81

IBAN DE20 7008 0000 0333 8800 00
BIC DRESDEFF700
Commerzbank AG
Leopoldstrasse 230
80807 München
Germany

(d) The EPO only accepts debit orders filed in an electronically processable format (XML). Debit orders submitted in any other way, e.g. on paper, using the EPO Contingency Upload Service or using a different format such as a PDF attachment or the annotation field in the online forms, are invalid and thus will not be carried out. For more information on paying fees online, e.g. via Central Fee Payment or MyEPO Portfolio, go to Online services on the EPO website (*epo.org*).

Point 7.1.2, 7.1.3 ADA

(e) If you are an EPO deposit account holder, you also have the option of issuing an automatic debit order, which must likewise be filed in an electronically processable format and individually for every application.

Point 14 ADA
ADA, Annexes A.1 and A.2
GL A-X, 4.3

If an automatic debit order is filed in due time, any fee which must be paid in respect of your application within a time limit will be debited on the last day of that time limit unless special provisions apply. For more information, see the latest issue of the Arrangements for deposit accounts (ADA) and their annexes A.1 and A.2 on the EPO website (*epo.org*).

Payment by deposit account, using either an individual debit order or the automatic debiting procedure, reduces the risk of late payment and possible extra costs resulting therefrom.

Refund of fees

4.3.019 In principle, validly paid fees are not refunded except where specifically provided for (see also points 4.3.009, 5.4.002, 5.4.014). There are two conditions for a fee payment to be fully valid:

GL A-X, 5.1.1, 10.1

(i) the payment must relate to proceedings that are pending; and

(ii) the date of payment must be on or after the due date and before expiry of the respective time limit.

The examination fee is refunded in full if the European patent application is withdrawn, refused or deemed to be withdrawn before substantive examination has begun.

Art. 11(a) RFees
GL A-VI, 2.5

The examination fee is refunded at a rate of 50% if the European patent application is withdrawn after substantive examination has begun but before expiry of the time limit for replying to the first invitation under Article 94(3) issued by the examining division proper or, if no such invitation has been issued by the examining division, before the date of the communication under Rule 71(3) (see point 5.4.002).

Art. 11(b) RFees

Similarly, the search fee paid for a European search is refunded in full if the European patent application is withdrawn, refused or deemed to be withdrawn before the EPO has started drawing up the search report.

Art. 9(1) RFees
GL A-X, 10.2.1

The European search fee is refunded in full or in part if the European search report can be based on an earlier search report already prepared by the EPO on a national, European or international application whose priority is claimed or, in the case of divisional applications, where the search report is based on an earlier search report prepared by the EPO on the parent application. Refund of the search fee can be requested by selecting the corresponding option in the "Fee" tab of Online Filing or Online Filing 2.0, or by crossing the box in section 40 of the paper request for grant form (see also point 5.8.005).

Art. 9(2) RFees
GL A-X, 10.2.1
OJ EPO 2023, A4

The designation fee falls due on the date on which the publication of the European search report is mentioned in the European Patent Bulletin. It can only be refunded if the European patent application is withdrawn, refused or deemed to be withdrawn before that publication date. After that date the designation fee is deemed to have been validly paid and can therefore not be refunded.

R. 39(3)
GL A-X, 5.2.2

As a general rule, the EPO will make refunds to a deposit account held with it if you have instructed it to do so. Otherwise, it will invite you to claim any refund via its website (*fee-payment.epo.org/en*) and specify a bank account to which the refund is to be credited.

OJ EPO 2024, A23

4.4 Filing other documents

Where and how to file

4.4.001 After you have filed a European patent application, you may file other documents as referred to in Rule 50 with the EPO either electronically (via the EPO Online Filing software, EPO Online Filing 2.0 or the EPO Contingency Upload Service) or by hand or by postal services. Priority documents cannot be filed using the EPO Contingency Upload Service. Certain procedural acts may be filed electronically using the MyEPO Portfolio service (see point 4.4.002). For subsequently filed documents, it is recommended that you use the electronic filing tools, using EPO Form 1038E. For paper filings, the EPO provides a form which serves as a letter accompanying subsequently filed documents (EPO Form 1038), available for download free of charge from the EPO website (*epo.org*). Except during oral proceedings, documents may not be filed by email.

R. 50
GL A-VIII, 2.5
OJ EPO 2023, A48

4.4.002 A new online service called MyEPO Portfolio was launched on 1 June 2022. A secure, web-based online service for parties to proceedings before the EPO, it allows users to view their application portfolios, consult documents in the digital file, receive EPO Mailbox communications and perform selected procedural acts in response to communications from the EPO. It also provides for a shared area in which you can work on your application documents with the examiner in real time. The range of procedural acts which can be performed will be expanded progressively. You can use a secure two-factor verification method to access MyEPO Portfolio.

OJ EPO 2024, A20, A21

4.4.003 If you filed the application with a national authority, you may likewise file all other documents relating to the application with that authority, subject to any restrictions under national law, but only until the date on which you receive notification that the EPO has received your application. Once you have received this notification, you must file any documents with the EPO directly.

R. 35(4)
GL A-II, 3.2

Subsequently filed documents replacing parts of the European patent application, i.e. the description, claims or drawings, must also meet the formal requirements of Rule 49 and must be filed in typed form.

R. 49, 50(1)
OJ EPO 2022, A113
GL A-VIII, 2.1, 2.2

Signature

4.4.004 With the exception of annexes, any documents filed after filing of the European patent application in grant, post-grant or appeal proceedings must be validly signed. In

Online Filing the signature may be in the form of a facsimile signature, a text-string signature or an enhanced electronic signature.

R. 2(2), 50(3)
GL A-VIII, 3.1, 3.3
OJ EPO 2023, A48,
OJ EPO 2024, A20

The signature on documents filed using EPO Online Filing 2.0 or the EPO Contingency Upload Service 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.

On paper filings the signature must be a handwritten signature. The name and position of that person must be clear from the signature.

If the signature is omitted from a document, the EPO will invite the party concerned to sign within a fixed time limit. If signed in due time, the document retains its original date of receipt; otherwise it is deemed not to have been received.

GL A-VIII, 3.1

Date of receipt

4.4.005 The rules governing the filing of the European patent application set out in point 4.3.006 apply *mutatis mutandis* to the filing of other documents.

OJ EPO 2023, A48

Acknowledgement of receipt

4.4.006 For electronic filings (see point 4.3.007), an acknowledgement of receipt is generated immediately. For paper filings, the EPO indicates receipt of subsequently filed items on EPO Form 1038 and makes this form and the associated documents available for viewing in the European Patent Register.

OJ EPO 2023, A48
OJ EPO 2023, A108

Chapter 5 – The European patent grant procedure

5.1 General survey

5.1.001 The European patent grant procedure is an examination procedure beginning with a formalities examination and a mandatory search.

The first stage ends with the publication of the European patent application and the search report on the EPO publication server.

At the applicant's request this is followed by the second stage, substantive examination.

After the patent has been granted, there may be a further procedure in the form of opposition proceedings or, upon request of the patentee, limitation or revocation proceedings.

5.1.002 The **first stage of the procedure** comprises an examination on filing, formalities examination, preparation of the European search report and a preliminary opinion on patentability, and publication of the application and the search report. Responsibility for this stage rests with the Receiving Section and a search division.

Art. 16, 17, 90-93
R. 55-69
GL A, B

5.1.003 The **second stage** comprises substantive examination and grant. Examining divisions are made up of three technically qualified examiners, who may if necessary be joined by a legally qualified examiner. Until a decision has to be taken on the application, its examination is as a rule entrusted to one of the technically qualified examiners. This examiner is responsible for issuing the requisite communications and for discussing the application with the applicant in writing, on the telephone or by videoconference.

Art. 18, 94-98
R. 71-74
GL C

If oral proceedings are requested by the applicant or arranged at the EPO's initiative, they are held before the full examining division by videoconference. The final decision on the grant of the patent or refusal of the application is also a matter for the full examining division.

Art. 116
GL E-III
OJ EPO 2022, A103, A106

5.1.004 After the grant of the patent, opposition proceedings may be initiated by third parties. Responsibility for examining oppositions rests with the opposition divisions, which are composed in the same way as the examining divisions, except that only one member of the opposition division may have been involved in the earlier grant proceedings, and that member is not allowed to chair the division. More details about opposition proceedings can be found in points 5.5.001-5.5.012.

Art. 19, 99-105
R. 75-89
GL D

5.1.005 After the grant of the patent, patent proprietors themselves may initiate revocation or limitation proceedings. The request for revocation or limitation may be filed at any time after the grant of the patent but not while opposition proceedings in respect of the European

patent are pending. Decisions on the revocation or limitation of European patents are taken by the examining divisions. More details about revocation and limitation proceedings can be found in points 5.6.001-5.6.008.

Art. 105a-105c
R. 90-96
GL D-X

5.1.006 Appeal proceedings constitute a **special procedure**.[3] Appeals may be filed against decisions taken by the Receiving Section, the examining divisions, the opposition divisions or the Legal Division. A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows separate appeal.

Art. 106-112a
R. 99-103
GL E-XII
Supplementary publication 1, OJ EPO 2024

Decisions on appeals are taken by the independent judicial body of the boards of appeal of the EPO.

Art. 21

5.1.007 In certain cases it may be possible to file a petition for review by the Enlarged Board of Appeal. For further details, see point 5.7.012.

Art. 22, 112a
R. 104-110

[3]The EPO publishes information from the boards of appeal in an annual supplement to the Official Journal.

5.2 Procedure up to publication of the application

Examination on filing

5.2.001 On receiving an application the Receiving Section examines whether it can be accorded a date of filing. This is the case if the application documents contain:

Art. 80, 90(1)
R. 40
GL A-II, 4.1

–an indication that a European patent is sought

–information identifying the applicant

–a description or a reference to a previously filed application

5.2.002 It is not necessary to file any claims in order to obtain a date of filing. You may file claims after the date of filing on your own initiative or within two months from an invitation requesting you to do so. However, you should take care that the late-filed claims do not contain subject-matter which extends beyond the content of the application as originally filed.

Art. 90(3), 123(2)
R. 57(c), 58
GL A-III, 15

5.2.003 If any of the requirements mentioned in point 5.2.001 have not been fulfilled, a date of filing cannot be accorded. The Receiving Section will inform you accordingly and invite you to remedy the deficiencies found within a non-extendable time limit of two months. If you file a timely response and remedy the deficiencies, the date of receipt of your response will be the date of filing of the application. If you do not file a (timely) response, the application will not be dealt with as a European patent application. The EPO will notify you under Rule 112(1), and you may then apply for a decision under Rule 112(2) or request re-establishment of rights under Article 122 and Rule 136.

Art. 80, 90(1)
R. 55
GL A-II, 4.1.4, 4.1.5
GL E-VIII, 1.9.3, 3

For a date of filing to be accorded, the documents do not have to meet any particular requirements as to form or presentation. It is essential, however, that they be sufficiently legible to enable the information to be discerned.

Examination as to formal and other requirements

5.2.004 Once the date of filing has been accorded, the Receiving Section examines whether the filing fee, any additional fees and the search fee have been paid in due time (see points 4.3.010 and 4.3.011). If the filing fee or the search fee has not been paid in due time, the European patent application is deemed to be withdrawn (see point 4.3.013). However, see point 5.10.007 for the possibility of further processing.

Art. 78(2), 90(3)
R. 38
GL A-III, 13

5.2.005 If the application has been accorded a date of filing and is not deemed to be withdrawn, the Receiving Section checks for compliance with the provisions governing

Art. 14(2), 90(3)-(5)
R. 57-60
GL A-III, 2-6, 10, 14-16

GL A-IV, 4, 5
GL A-V, 1, 2.2

– translations (see points 4.1.006-4.1.010)

– the content of the request for grant (see point 4.1.013)

– the presence of claims (see points 4.2.018-4.2.028, 5.2.002)

– the filing of the abstract (see points 4.1.012 and 4.2.034-4.2.037)

– representation (see points 4.1.023- 4.1.031)

– physical requirements of the application documents including any sequence listings and disclosure of biological material (see points 4.2.004-4.2.005, 4.2.010-4.2.012)

– any priority claimed (see points 4.1.017-4.1.021)

– the designation of the inventor (see points 4.1.014-4.1.016)

– the filing of any drawings (see points 4.2.030-4.2.033)

If the Receiving Section finds any deficiencies, it invites you to remedy them in accordance with the Implementing Regulations; if you fail to do so, the legal consequences provided for in the EPC take effect, i.e. the application is deemed to be withdrawn or is refused.

5.2.006 If the file number or the certified copy of the application whose priority is claimed is missing, you will be invited to file the missing item(s) within a specified time limit. If you fail to do so, you will lose your priority right (but see points 5.10.008-5.10.010).

Art. 90(5)
R. 59
GL A-III, 6.5.3

5.2.007 If formal examination reveals that parts of the description or drawings referred to in the description or in the claims appear to be missing, the Receiving Section will invite you under Rule 56(1) to file the missing parts within a non-extendable time limit of two months. You can also file any missing parts of the description or drawings of your own motion within two months from the date of filing. In both cases the date of filing will then be re-dated to the day on which the missing parts are received at the EPO. Please be aware that a change of the date of filing may result in losing your priority right, namely if the newly accorded date of filing lies outside the 12-month priority period (see point 4.1.017).

R. 56(1), (2)
GL A-II, 5
GL C-III, 1.1.1

If you do not file a reply to the invitation under Rule 56(1), all references to the missing parts are deemed to be deleted and the original date of filing will be kept.

R. 56(4)

The original date of filing will be kept if you declare and provide evidence within the applicable time limit that the late-filed missing parts of the description or drawings are completely contained in the earlier application whose priority is claimed. To this end, a certified copy of the priority application, unless already available to the EPO, and, if required, its translation into one of the EPO's official languages must be filed. You must furthermore specify where in the priority application the missing parts are contained.

R. 56(3)

The EPO will inform you of the date of filing accorded once the Receiving Section has taken a decision.

The examining division may review the decision of the Receiving Section.

5.2.008 The procedure for filing missing parts as described above essentially applies to erroneously filed application documents too. If formal examination reveals that the description, claims or drawings (or parts of them) appear to have been erroneously filed, you will be invited to file correct application documents within a time limit of two months. You can also file correct application documents of your own motion within two months. The date of filing will be re-dated to the date on which you file the correct application documents or parts, unless the correct application documents are completely contained in the priority document.

R. 56a
GL A-II, 6

If you realise on the filing date (or earlier if a date of filing cannot yet be accorded) that you filed incorrect application documents and file the correct documents on the same day, the documents will be exchanged without changing the date of filing.

R. 56a(2)

If the EPO has started to draw up the search report before you file correct application documents, you will be invited to pay a further search fee. However, if the EPO detects the error during formal examination and sends a corresponding invitation, the search will not start as long as it is still possible to file correct application documents.

R. 56a(8)

5.2.009 With regard to the requirements governing documents filed after the filing of the European patent application see points 4.4.001-4.4.006 and 5.4.017-5.4.022.

European search report

5.2.010 As soon as the initial formal examination is concluded, the European search is initiated. The EPO normally issues the European search report within five months of the filing of the application.

Art. 92
R. 61
GL B

The search report serves to provide information on the relevant prior art to the applicant, to the examining division and, by means of its publication, to the public.

R. 68(1)

The search report is drawn up on the basis of the claims, with due regard to the description and any drawings. It mentions the prior-art documents available to the EPO when it is drawn up which may be taken into consideration in assessing novelty and inventive step.

R. 61(1)
GL B-II, 2

The search report is accompanied by an opinion on whether the application and the invention to which it relates meet the requirements of the EPC.

R. 62
GL B-XI

This opinion will not be issued if you have filed a request for examination, paid the examination fee and waived your right to receive the communication under Rule 70(2) (see point 5.4.004) before the search report has been communicated to you. In this situation you will receive a first communication from the examining division instead.

GL B-XI, 7

The non-binding opinion is not published together with the search report but is available to the public by way of file inspection after publication of the application.

Art. 128
R. 62(2)

5.2.011 If the application contains more than one independent claim in the same category (see point 4.2.021) and none of the exceptions listed under Rule 43(2) applies, you will be invited to indicate, within a two-month period, the basis on which the search is to be carried out. If you fail to do so, the search will be carried out on the basis of the first independent claim in each category.

R. 62a
R. 137(5)
GL B-VIII, 4

Similarly, if it is impossible to carry out a meaningful search on the basis of all or some of the subject-matter claimed, you will be invited to file, again within a two-month period, a statement indicating the subject-matter to be searched. Should your statement not be sufficient to overcome the deficiency, the EPO will issue a partial search report or a declaration that no meaningful search can be carried out.

R. 63
GL B-VIII, 3

You should note that, in response to such an invitation for clarification, you may not amend the application documents.

R. 137(1)

When the examining division assumes responsibility, it will invite you to delete the unsearched subject-matter from the application unless it finds that the objection was unjustified.

R. 137(5)

5.2.012 Immediately after it has been drawn up, the European search report is transmitted to you together with copies of any cited documents.[4] If you require additional copies of the cited documents, you can indicate this in the appropriate box in the request for grant form (section 39 of the paper form) when filing the application.

Art. 92
R. 65
GL B-X, 11, 12

After receiving the search report, you may withdraw the application if you think it has no chance of success. If you decide to pursue the patent grant procedure (see point 5.4.001), you will, in the next step, be invited to pay the examination fee, if you have not yet done so, or to declare that you wish to proceed further with the application. At the same time you are invited to file a reply to any objections raised in the search opinion within the same time limit (see points 5.4.001 et seq.).

R. 70, 70a, 137
GL C-II
GL A-VI, 2

[4]As of 1 October 2024, the EPO will no longer send paper copies of cited patent literature (see OJ EPO 2024, A68).

Lack of unity of invention

5.2.013 If the search division considers that the application does not comply with the requirement of unity of invention (see point 4.2.003), it draws up a partial European search report on those parts which relate to the invention first mentioned in the claims. It informs you that, if the search report is to cover the other inventions, you must pay a further search fee in respect of each of them within a non-extendable period of two months.

Art. 82
R. 64

GL B-VII
GL F-V, 4

If you do not respond to this invitation, and if the examining division considers the search division's objection justified, you are deemed to want the application to proceed in respect of the invention for which the (partial) search report has been drawn up. If you pay further search fees, the European search report is drawn up for those inventions for which further search fees have been paid.

A provisional opinion on the patentability of the invention or unitary group of inventions first mentioned in the claims is provided together with the reasons for any non-unity findings and the invitation to pay further search fees. The provisional opinion is for information only. A reply addressing the points raised in the provisional opinion is not required and is not taken into account when the extended European search report is issued.

GL B-VII, 1.2

The application must not include claims for subject-matter for which a further search fee has not been paid. You may however file divisional applications for such subject-matter (see points 5.8.001-5.8.005).

Any further search fees paid will be refunded on request if it emerges during examination proceedings that the search division's findings concerning lack of unity of invention was not justified.

GL B-VII, 2.1
GL C-III, 3.4

5.2.014 Upon drawing up the European search report, the search division determines the definitive content of the abstract and transmits it to you together with the search report.

R. 66
GL A-III, 10.2
GL F-II, 2

5.3 Publication of the European patent application

5.3.001 The European patent application is published as soon as possible after the expiry of eighteen months from the date of filing or the earliest priority date. You may however request that it be published earlier.

Art. 93(1)
GL A-VI, 1

The publication contains the description, the claims and any drawings, all as filed, plus the abstract. If the European search report is available in time, it is annexed (A1 publication); if not, it is published separately (A3 publication). If the European patent application was not filed in English, French or German, its translation will be published.

R. 68(1)
GL A-VI, 1.3, 1.5

All European patent applications, European search reports and European patent specifications are published in electronic form only, on the EPO's publication server. The publication server is accessible via the EPO website (*epo.org*).

GL A-VI, 1.4

5.3.002 If you amend the claims after receiving the European search report but before completion of the technical preparations for publication (see point 5.4.018), the amended claims will be published in addition to the claims as filed. The technical preparations are deemed to have been completed five weeks before expiry of the eighteenth month after the date of filing or, if priority is claimed, after the date of the earliest priority.

R. 68(4)
GL A-VI, 1.1, 1.3

5.3.003 The European patent application is not published if it has been finally refused or withdrawn or is deemed withdrawn before completion of the technical preparations for publication.

R. 67(2)
GL A-VI, 1.2

5.3.004 The EPO informs you of the date on which the European Patent Bulletin mentions the publication of the European search report, and it draws your attention to the period for filing the request for examination (paying the fee for examination), which begins on that date (see points 5.2.012 and 5.4.001). It also informs you that the designation fee must be paid within six months of the date on which the European Patent Bulletin mentions publication of the European search report and that the same period applies to the payment of any extension and validation fees.

R. 69
GL A-VI, 2.1

5.3.005 For the provisional protection that the application confers after publication see the fourth paragraph of point 2.2.001.

Art. 67

A contracting state not having the language of the proceedings as an official language may prescribe that provisional protection does not take effect until a translation of the claims into one of its official languages at your option or, where that state has prescribed the use of one specific official language, in that language:

Art. 67(3)

(a) has been made available to the public in the manner prescribed by national law, or

(b) has been communicated to the person using the invention in that state.

The contracting states may make provisional protection conditional upon a translation of the claims. The same applies to the extension and validation states (see point 2.5.001). For more information you are referred to **National law relating to the EPC** (Table III).

5.3.006 Once the European patent application has been published, files relating to it are available for public inspection by way of the European Patent Register, which can be accessed via the EPO website (*epo.org*).

Art. 128(4)
R. 143, 144

From that time, too, the public has access to the application's bibliographic data and to information about the state of the proceedings by means of the European Patent Register, which can be accessed via the EPO website (see Annex VI).

Art. 127
R. 143
GL A-XI
OJ EPO 2014, A86

The European Patent Register also allows you to monitor patent applications for updates using the Register Alert Service.

Additional information about the form in which European patent applications and patents are published and about periodical EPO publications is given in Annex VI.

Art. 129

5.4 Examination procedure

Request for examination

5.4.001 You need to file the request for examination within six months of the date on which the European Patent Bulletin mentions the publication of the European search report (see point 5.3.004). The request, which you must submit in writing, is contained in the request for grant form (see point 4.1.013), but it is not deemed to be filed until you have paid the examination fee. Once filed, it cannot be withdrawn.

Art. 94(1)
R. 70
GL A-VI, 2.2
Art. 2(1), item 6, RFees

If you do not validly file the request for examination within the time limit, the application is deemed to be withdrawn. However, the opportunity to request further processing is available (see point 5.10.007).

Art. 94(2)
GL A-VI, 2.3

5.4.002 You also have the option of paying the examination fee when you file the application. No disadvantages can accrue from this, as the examination fee is refunded in full if the application is withdrawn, refused or deemed to be withdrawn before substantive examination has begun. The examination fee is refunded at a rate of 50% if the application is withdrawn after substantive examination has begun but before expiry of the time limit for replying to the first communication from the examining division (see point 4.3.019).

Art. 11 RFees
GL A-VI, 2.2, 2.5

5.4.003 If you validly file the request for examination before receiving the European search report, pursuant to Rule 70(2) the Receiving Section invites you to indicate, within six months of the date when the European Patent Bulletin mentions the publication of the search report, whether you wish to proceed further with the application. If you do not reply to this invitation in due time, the application is deemed to be withdrawn.

R. 70(2), (3)
GL A-VI, 2.3
GL C-II, 1.1

In this case, too, further processing is available (see point 5.10.007).

5.4.004 To speed up proceedings, you can also, for example in the request for grant form, simply waive your right to the invitation to confirm the request for examination. In that case, when you receive the search report you are deemed to have indicated that you wish to proceed further with the application, and the examining division then assumes responsibility for the procedure (see point 5.2.010).

Art. 18(1)
R. 70(2)
GL C-VI, 3

With a request for accelerated examination under the programme for accelerated prosecution of European patent applications ("PACE") you can speed up the proceedings at the examination stage.

GL E-VIII, 4.2

5.4.005 You will be invited to comment on the extended European search report and/or to correct any deficiencies noted in the opinion accompanying it, and to amend the description, claims and drawings as appropriate, within the same six-month time limit as applies to filing or confirming the request for examination. If you fail to comply with the invitation in due time, the application will be deemed withdrawn (for further processing, see point 5.10.007).

R. 70a, 137

However, if no objections were raised in the opinion accompanying the European search report, no invitation will be issued. Instead, you will be informed about the possibility of filing comments or making amendments within the same period (see point 5.4.018).

Stages of the procedure

5.4.006 Once you have filed the request for examination, the EPO examines, in the light of the search report, the preliminary opinion on patentability (search opinion) and your response to them, whether the application and the invention to which it relates meet the requirements of the Convention, and in particular whether the invention is patentable (see points 3.1.001-3.4.002).

Art. 94(1)
GL C-III

After receiving the search report and before receiving the examiner's first communication, you must file substantive observations on any objections raised in the search opinion; you may also amend the description, claims and drawings (see points 5.4.005 and 5.4.018).

R. 70a, 137(2), (3)
GL C-III, 2

In exceptional situations where despite your reply to the search opinion no possibility of a grant can be envisaged, the examining division may issue a summons to oral proceedings as the first action in examination, with at least six months' notice. You may take the opportunity to submit any arguments and amendments by expiry of the deadline set with the summons. Should your submissions contain a genuine effort to overcome the examining division's objections, oral proceedings may be cancelled or postponed. Otherwise, a decision will be taken during the oral proceedings, even if you do not attend them.

GL C-III, 5

5.4.007 If the examiner responsible within the examining division has objections to the application, they will send you a first reasoned communication inviting you to file your observations and, if necessary, to submit amendments to the description, claims and drawings (see points 5.4.017-5.4.022).

Art. 94(3)
R. 71(1), 137(3)
GL C-III, 4
GL H-II

If you fail to reply in due time to this or any further communication, the application is deemed to be withdrawn (but see point 5.10.007).

Art. 94(4)

You might also be invited to provide information on prior art taken into consideration in the examination of national or regional patent applications and concerning an invention to which

the European patent application relates. If you do not provide this information within a specified time limit, the application is deemed withdrawn (but see point 5.10.007). It is recommended that you file any search results relating to a previous application from which priority is claimed as soon as they are available (see point 4.1.019).

Art. 124
R. 141
GL C-III, 6

5.4.008 You must try to deal with all the examiner's objections, the guiding principle of the examination procedure being that the decision to grant a patent or refuse the application should be reached in as few actions as possible.

GL C-IV, 3

If, after examining your response, the examiner considers that a patent cannot yet be granted, they will continue with the examination procedure by issuing a further written communication or consulting you by videoconference or, exceptionally, by telephone. If you have access to your patent application via MyEPO Portfolio, informal consultations may also take place in the shared area there.

GL C-IV
GL C-VII, 2
OJ EPO 2022, A106
OJ EPO 2023, A59

A consultation may also be used as the first action replacing the first communication in examination under Article 94(3) and Rule 71(1), (2), provided that specific requirements are met, namely: (a) minutes are issued, (b) the minutes present the matters discussed with the same level of information and structure as a written communication from the examining division and (c) the time limit set for reply is not shorter than four months, unless agreed otherwise with the applicant.

GL C-VII, 2.5

You may at any time request oral proceedings. As a rule, oral proceedings before examining divisions are held by videoconference.

Art. 116
GL E-III
OJ EPO 2022, A103, A106

Email is an admissible filing means only for the submission of subsequently filed documents during consultations and during oral proceedings. Other than in the aforementioned cases, email has no legal effect in proceedings under the EPC.

R. 50
GL C-VII, 3
GL E-III, 8.5.2

5.4.009 The examiner may seek the advice of other members of the examining division whenever appropriate. The application will be referred to them at the latest when a decision has to be taken.

GL C-VIII

If the examining division is of the opinion that a European patent cannot be granted, it will refuse the application. The decision is issued by the examining division as a whole, and the grounds of refusal must be stated. Refusals may be based only on grounds on which you have had an opportunity to comment.

Art. 97(2), 113(1)
GL C-V, 14
GL C-VIII, 6

5.4.010 If the application and the invention to which it relates meet the requirements of the Convention, the examining division will proceed to the grant stage.

Art. 97(1)
R. 71(3)-(7)
GL C-V

5.4.011 The examining division informs you of the text in which it intends to grant the European patent, and invites you to pay the fee for grant and publishing and any claims fees for claims in excess of 15 which have not yet been paid, as well as to file a translation of the claims into the two official languages of the EPO other than the language of the proceedings within a non-extendable period of four months. You are also invited to verify the bibliographic data at this stage.

R. 71(3)
GL C-V, 1

If you pay the prescribed fees and file the necessary translations of the claims in due time, you are deemed to have approved the text intended for grant. If you do not respond to the invitation, the application is deemed to be withdrawn (but see point 5.10.007).

R. 71(5), (7)
GL C-V, 2, 3

5.4.012 Upon reviewing the proposed text for grant, you may wish to make minor amendments, and/or you may discover mistakes. In that case you have an opportunity to file amendments or corrections within the period set under Rule 71(3) (see point 5.4.011). If the examining division consents to the amendments or corrections, it will issue a new communication under Rule 71(3). It can then proceed to grant, provided you file the translations of the claims and pay the fees for grant and publishing within the time limit set.

R. 71(6), 137(3), 139
GL C-V, 4
GL H-II, 2.5

5.4.013 If the examining division does not consent to the requested amendments or corrections, it will resume the examination proceedings. Depending on the circumstances of the individual case, the examining division may for example issue a communication under Article 94(3), summon you to oral proceedings or refuse the application.

R. 71(6)
GL C-V, 4.7
GL H-II, 2.5

5.4.014 If you fail to meet the objections raised, the examining division will refuse the application under Article 97(2) because it does not meet the requirements of the Convention. If you fail to pay the fee for grant and publishing or any claims fees due, the application is deemed to be withdrawn (but see point 5.10.007). If you have paid said fees but ultimately no patent is granted, the fee for grant and publishing will be refunded.

Art. 97(2)
R. 71(7)
GL C-V, 4.7, 9

Before a patent can be granted, you must also have paid any renewal fee and, if applicable, any additional fee due (see point 5.9.001 et seq.). If a renewal fee falls due before the expected date of publication of the mention of grant of the European patent, you will be informed accordingly. The mention of grant will not be published until you have paid the renewal fee. If you fail to pay the renewal fee and any additional fee in due time, the application is deemed to be withdrawn.

Art. 86(1)
R. 71a(4)
GL C-V, 2

5.4.015 If you overrun the period set under Rule 71(3), you may request further processing under Article 121 (see point 5.10.007).

Art. 121
R. 135
GL C-V, 3

5.4.016 The grant does not take effect until the date on which it is mentioned in the European Patent Bulletin. At the same time as it publishes this mention, the EPO publishes a European patent specification containing the description, the claims and any drawings. The European patent specification and the European Patent Bulletin are published electronically on the EPO's publication server (*epo.org*).

Art. 97(3), 98
GL C-V, 10

If you have activated the Mailbox service, you will receive the certificate for a European patent as a digital file for download from the Mailbox. Otherwise, the certificate will be sent to you in paper form. If there is more than one proprietor, a certificate will be issued to each of

them. Certified copies of the certificate with the specification annexed will be issued to the proprietor upon request and payment of an administrative fee. However, no fee is due if the request is submitted using MyEPO Portfolio.

R. 74
GL C-V, 12

OJ EPO 2024, A5

Amending applications before and during examination proceedings

5.4.017 You are not allowed to amend the description, claims or drawings before you receive the European search report. You should always indicate any amendments made and identify their basis in the application as filed.

R. 137(1)
GL A-V, 2
GL H-II, 2
GL H-III
GL H-IV, 2, 5.2

5.4.018 Within the time limit for requesting examination or confirming that request (i.e. when replying to the invitation to comment on the objections raised in the search opinion), you may of your own volition amend the description, claims and drawings (see points 5.3.002, 5.4.005, 5.4.006 and 5.4.021).

R. 137(2)
GL B-XI, 8
GL C-II, 3
GL C-III, 2

5.4.019 No further amendments are allowed without the examining division's consent. Amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention to form a single general inventive concept. In deleting subject-matter from an application, you should avoid any statement which could be interpreted as abandonment of that subject-matter. Otherwise the subject-matter cannot be reinstated.

R. 137(3), (5)
GL H-II, 2
GL H-IV, 4

5.4.020 The Guidelines for Examination provide information about the limits to the amendments that you can make to the description, claims and drawings after receiving the communication under Rule 71(3). If you file amendments or corrections in reply to the communication under Rule 71(3) concerning the claims, you should consider whether this necessitates any adaptation of the description. To avoid potential delays in cases where adaptation is necessary, you should preferably provide an adapted description when filing amended claims. If you do not file an adapted description, the examining division may carry

out the adaptation itself and propose these amendments in a second communication under Rule 71(3). Alternatively, it may resume examination and issue a communication pursuant to Article 94(3) requesting you to provide the adapted description before issuing a second communication under Rule 71(3). Once you have received the text communicated to you pursuant to Rule 71(3) (including minor amendments and/or corrections of errors, see point 5.4.011), further amendments will only be allowed under the discretionary power given to the examining division by Rule 137(3).

R. 137(3), 71(6)
GL C-V, 4.5, 4.7.2
GL H-II, 2.5, 2.6
GL F-IV, 4.3

5.4.021 The application may on no account be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (which does not include the priority document). However, subsequently filed examples or statements of advantage may be considered by the examiner as evidence in support of the invention's patentability.

Art. 123(2)
GL H-IV, 2

This technical information is generally added to the part of the file that is open to public inspection (see point 5.3.006). From the date on which it is added, it forms part of the state of the art within the meaning of Article 54(2) (see point 3.3.001). A note is printed on the cover page of the patent specification to alert the public that information submitted after the application was filed is not included in the specification (see point 5.4.016).

GL H-V, 2.3

5.4.022 You can make amendments to the European patent application in one of the following ways:

GL H-III, 2

(a) by filing replacement pages. You should use this method only if the amendments are extensive and complicated. If it is not immediately clear how or why an amendment is to be made, you should provide explanatory notes in the margin of the replacement pages or on separate sheets. You must comply with the provisions governing application document presentation (see point 4.2.004).

(b) by annotating a copy of the relevant page(s) of the application. This is the preferred method if the amendments are not too extensive, as it simplifies checking. The amendments must be typewritten. Amendments should preferably be identified using functions available in a text editor to clearly indicate deletions and insertions in the amended text. Pages with such indications should be submitted in addition to clean copies. If you are asked to identify the amendments and indicate the basis for them under Rule 137(4), the handwritten form is appropriate, provided that clean copies are free from handwritten amendments.

R. 49(2)
GL A-III, 3.2

(c) by indicating the changes in a letter. This method is suitable if, for example, you wish to delete whole pages, paragraphs or drawings.

National requirements governing translations of European patents

5.4.023 Any contracting state may make the protection conferred by a European patent granted (or amended or limited) in a language that is not one of its official languages contingent upon your filing a translation into one of its official languages or its prescribed official language. It may also require you to bear some or all of the cost of publishing the translation. The same applies to extension and validation states.

Art. 65
OJ EPO 2008, 123
OJ EPO 2001, 549

For more details on the legal position in the contracting states, see **National law relating to the EPC** (Table IV) and the key points of the London Agreement, which can be found on the EPO website at *epo.org/en/legal/london-agreement*.

You should take great care to comply with these requirements, especially those governing time limits for filing translations, so as not to undermine the protection conferred by the patent in the designated contracting states. The same applies to extension and validation states.

Note: all those states which require a translation of the European patent specification have prescribed that, in the event of failure to observe the relevant national provisions, the European patent will be deemed to be void from the beginning.

Art. 65(3)

5.5 Opposition procedure

Opposition period

5.5.001 Up to nine months after publication of the mention that a European patent has been granted, anyone may give the EPO notice of opposition to the patent, except for the proprietor, who is not allowed to oppose their own patent. Notice of opposition must be filed direct with the EPO.

Art. 99
GL D-I, 4

Notice of opposition is not deemed to have been filed until the opposition fee has been paid.

Art. 2(1), item 10, RFees

Grounds for opposition

5.5.002 Opposition may only be filed on the grounds that:

- the patent's subject-matter is not patentable within the terms of Articles 52-57
- the patent does not disclose the invention clearly and completely enough for it to be carried out by a person skilled in the art
- the patent's subject-matter extends beyond the content of the application as filed.

Art. 100
GL D-III, 5

Form and content of the notice of opposition

5.5.003 Notice of opposition must be filed within the opposition period in a reasoned statement. That means that the opponent must state at least one ground for opposition under Article 100 and indicate the facts, evidence and arguments presented in support of the ground(s). Otherwise the notice of opposition will be rejected as inadmissible. It is advisable to use the EPO opposition form (EPO Form 2300), which provides all the information needed to ensure that an opposition is admissible. This form is integrated in the permitted electronic filing tools. It is also available on the EPO website (*epo.org*).

Art. 99(1)
R. 76
GL D-III, 3, 6

Notice of opposition may be filed electronically via the EPO Online Filing software, EPO Online Filing 2.0 or the EPO Contingency Upload Service (see points 4.4.001-4.4.006). It may also be filed by post or by hand.

R. 2
GL D-III, 3.2

Examination of the notice of opposition for admissibility

5.5.004 Immediately after receiving the notice of opposition, the EPO will forward it to the proprietor. Then the admissibility of the opposition is checked. Deficiencies in the notice are communicated to the opponent. Deficiencies under Rule 77(1) must be remedied within the opposition period. Other remediable deficiencies must be corrected within a period specified by the EPO (generally two months). If the deficiencies noted are not corrected in due time, the notice of opposition is rejected as inadmissible.

R. 77
GL D-IV, 1.2

Documents cited in support of the opposition or as evidence must be specified in the notice of opposition and should be filed at the same time. If not filed with the initial notice of

opposition, all cited documents will be requested from the opponent within an additional time limit of two months. If the opponent fails to do so in due time, the opposition division may decide not to take any arguments based on them into account.

R. 83
GL D-IV, 1.2.2.1
OJ EPO 2016, A42

5.5.005 Immediately after expiry of the opposition period or the period laid down for remedying deficiencies or presenting evidence, the patent proprietor is invited to file observations and, where appropriate, amendments within a period specified by the EPO (generally four months). Amendments are allowed only if they are occasioned by grounds for opposition under Article 100, including grounds not invoked by the opponent.

R. 79, 80
GL D-IV, 5.2, 5.3

5.5.006 The EPO communicates notices of opposition and any letters filed during opposition proceedings to the other parties for information. However, the EPO does not automatically transmit copies of any documents annexed to notices of opposition or to letters which are available for inspection and download in the European Patent Register.

R. 79, 81
OJ EPO 2022, A28

Substantive examination of the opposition

5.5.007 Once these preliminaries have been completed, the opposition division examines whether the grounds for opposition prejudice the maintenance of the European patent. If necessary it will invite the parties to file observations on its or other parties' communications within a period which it specifies.

Art. 101
R. 81
GL D-V, VI
GL E-VIII, 1.2

Upon receipt of a communication sent in this way, the proprietor may file the description, claims and drawings in amended form where necessary. Late-filed proposals for amendment might not be considered.

R. 81(3)
GL D-VI, 4.2

If oral proceedings have to be arranged at the request of a party or at the instance of the EPO where it considers them expedient, the summonses are issued as soon as possible. Oral proceedings in opposition are held by videoconference.

Art. 116(1)
R. 115
GL D-VI, 1
OJ EPO 2022, A103, A106

In a note annexed to the summons, the opposition division lists and explains the points that in its view need to be discussed for the purpose of the decision that has to be taken. The note generally also includes the opposition division's provisional and non-binding opinion on the positions adopted by the parties, and in particular on amendments to the patent filed by its proprietor. At the same time, the opposition division fixes a final date for filing written submissions or amendments in preparation for the oral proceedings. New facts and evidence presented after that date might not be considered, unless admitted on the grounds that the subject of the proceedings has changed.

R. 116
GL D-VI, 3.2
GL E-III, 8.6

5.5.008 If the opposition division finds that the grounds for opposition prejudice the maintenance of the European patent, it revokes the patent. If it finds that the grounds do not prejudice the maintenance of the patent as granted, it rejects the opposition.

Art. 101
R. 81
GL D-VIII, 1.2, 1.3

5.5.009 If the opposition division finds that the patent can be maintained in amended form, it delivers an interlocutory decision stating that, with the amendments made by the proprietor, the patent and the invention to which it relates meet the requirements of the EPC. A separate appeal is allowed against such an interlocutory decision.

Art. 101(3)(a)
R. 82
GL D-VIII, 1.4

5.5.010 Once the interlocutory decision under point 5.5.009 becomes final, the proprietor is given three months in which to file a translation of any amended claims in the two official languages other than the language of the proceedings.

R. 82(2)
GL D-VI, 7.2.3

If the proprietor has filed handwritten amendments during oral proceedings, they will be invited to file the amended text in a form compliant with Rule 49(2) within the above-mentioned three-month period.

R. 82(2)
GL D-VI, 7.2.3

5.5.011 If these acts are not performed in due time, they may still be validly performed within two months of notification of a communication pointing out the failure to observe the time limit, provided that a surcharge is paid within this period. If any of these acts is not performed within this period either, the patent will be revoked.

R. 82(3)

5.5.012 The contracting states make the amended text subject to the same translation requirements as the patent specification (see point 5.4.023).

Art. 65

5.6 Limitation and revocation procedure

5.6.001 As patent proprietor you may request the revocation or limitation of your own patent. You can file the request at any time after grant, after opposition proceedings or even after expiry of the patent. However, a request for revocation or limitation filed while opposition proceedings in respect of the European patent are pending is deemed not to have been filed, since the opposition proceedings have precedence. In case of revocation, the requester will be informed that the request will be handled in the pending opposition proceedings without payment of a fee. Subsequently, the Article 105a proceedings will be terminated. If a revocation request is pending at the time of filing an opposition, the revocation procedure will be continued for reasons of procedural efficiency. If limitation proceedings are pending at the time of filing an opposition, the limitation proceedings are terminated and the limitation fee is reimbursed. Opposition proceedings will be continued.

Art. 105a
R. 93
GL D-X, 7.1

5.6.002 Requests must be filed direct with the EPO. Requests may be filed electronically via the EPO Online Filing software, EPO Online Filing 2.0 or the EPO Contingency Upload Service (see points 4.4.001-4.4.006). They may also be filed by post or by hand. Although not mandatory, it is recommended to use the dedicated EPO Form 2380, which is available on the EPO website (*epo.org*). The general provisions for filing a European patent application (see Rules 35 ff) and the need for professional representation for non-resident patent proprietors apply (see points 4.1.023-4.1.024). Furthermore, the request is deemed to be filed only when the limitation or revocation fee is paid.

Art. 105a(1)
R. 35 ff
Art. 2(1), item 10a, RFees

5.6.003 The subject of limitation or revocation proceedings is the European patent as granted or as amended in opposition or (earlier) limitation proceedings. Since limitation is effected by means of amendment of the claims, the request must include a complete set of the amended claims (and the description and drawings if applicable). If these or the general requirements regarding languages and representation (see points 4.1.006-4.1.010 and

4.1.023-4.1.031) are not met, the EPO invites you to correct any deficiencies within a period to be specified, normally of two months. If you do not correct the deficiencies within this period, the request is rejected as inadmissible. Re-establishment of rights is however available. The decision rejecting the request is open to appeal.

R. 90, 92(2), 94
GL D-X, 2
Art. 122

5.6.004 If the request is for **revocation** and is admissible, the examining division revokes the patent and communicates this to the requester.

Art. 105b(2)
R. 95(1)
GL D-X, 3

The decision takes effect on the date on which it is published in the European Patent Bulletin. It applies *ab initio* to all contracting states in respect of which the patent was granted. It is not possible for the patent to be revoked for some contracting states and not for others.

Art. 105b(3), 64

5.6.005 If the request for **limitation** is admissible, the examining division proceeds with its examination of the request. The basis for the examination is the patent as granted or amended in opposition or limitation proceedings. Where there have already been both opposition and limitation proceedings, then the basis for the examination is the patent as amended in the most recent of the procedures. The examining division only examines whether the amended claims constitute a limitation with respect to the claims as granted or amended and whether they are clear and concise and supported by the description and do not contain subject-matter which extends beyond the application as filed.

Art. 84, 123(2), (3)
R. 90
GL D-X, 4

5.6.006 The term ‘limitation' means a reduction in the scope of protection of the claims. Clarifications or changes made simply to protect different subject-matter are not considered to be limitations. If there are any deficiencies, you will be invited to correct them within a period generally set to two months.

Art. 105b(1)
R. 95(2)
GL D-X, 4.3-4.5

5.6.007 If the request for limitation is allowable, you will be informed accordingly and invited to file a translation of the amended limited claims into the other two official languages within a non-extendable period of three months. If considered necessary, the description and drawings have to be adapted additionally. If these acts are not performed in due time, they

may still be validly performed within two months of notification of a communication pointing out the failure to observe the time limit, provided that a surcharge is paid within this period.

Art. 105b(2)
R. 95(3), (4), 82(3)
GL D-X, 5

The procedure for this is the same as in opposition proceedings. If you file the translations as set out above in due time, then the examining division will limit the patent. Subsequently an amended specification as limited will be published and a new certificate will be issued. If not, the request will be refused.

Art. 105c
R. 96, 74

5.6.008 The decision to limit the European patent takes effect on the date on which it is published in the European Patent Bulletin. Its effect is to limit the patent *ab initio*.

Art. 105b(3), 68

5.7 Appeals procedure

Filing an appeal

5.7.001 Appeals may be filed against decisions of the Receiving Section, the examining divisions, the opposition divisions and the Legal Division. An appeal has suspensive effect, which means that the contested decision is not yet final (no formal *res judicata*) and its effects are suspended.

Art. 106

5.7.002 Notice of appeal must be filed in written form within two months after the date of notification of the contested decision. It is not deemed to have been filed until the appeal fee has been paid. Within four months after the date of notification of the decision, a written statement setting out the grounds of appeal must be filed. The above time limits cannot be extended. Further processing under Article 121 is excluded.

Art. 108
Art. 2(1), item 11, RFees

5.7.003 A reduced fee for appeal applies to appeals filed by natural persons and by small and medium-sized enterprises, non-profit organisations, universities and public research organisations.

R. 7a(2)
GL E-XII, 6

5.7.004 The notice of appeal and the statement of grounds may be filed in electronic form using the EPO Online Filing software, EPO Online Filing 2.0 or the EPO Contingency Upload Service. They may also be filed by post or by hand. A valid electronic signature may take the form of a facsimile signature, a text string signature or an enhanced electronic signature (see point 4.4.004).

R. 2
OJ EPO 2023, A48

5.7.005 The notice of appeal must contain:

R. 99(1)

(a) the name and address of the appellant

(b) an indication of the appealed decision

(c) a request defining the subject of the appeal

5.7.006 In the statement of grounds the appellant should indicate the reasons why the decision should be set aside, or the extent to which it is to be amended. Similarly, the facts and evidence on which the appeal is based should also be filed. All arguments should be presented in writing and not reserved for possible oral proceedings.

R. 99(2)

The Registry gives each appeal its own reference number, which must be used throughout the appeal proceedings.

Interlocutory revision

5.7.007 If the department whose decision is contested considers an appeal to be admissible and well founded, it must rectify its decision within three months of receiving the statement of grounds. If the appeal is not allowed within that period, it must be remitted to the board of appeal without delay.

Art. 109
GL E-XII, 7

Interlocutory revision is not possible where the appellant is opposed by another party to the proceedings (in particular in opposition proceedings).

Stages of the procedure before the boards of appeal

5.7.008 The boards of appeal of the EPO decide on appeals as a judicial and final instance. The members of the boards are independent in their decision-making and bound to comply with the EPC. The Rules of Procedure of the Boards of Appeal are published in the Official Journal and on the EPO website.

Art. 23(3)
Supplementary publication 1, OJ EPO 2024

The technical boards of appeal are responsible for appeals against decisions of the examining divisions concerning the refusal of European patent applications or the granting of European patents and for appeals against decisions of the opposition divisions.

Art. 21(3), (4)

The technical boards normally consist of three members (two technically qualified and one legally qualified). This is increased to five (three technically qualified and two legally qualified) if a legally qualified member was involved in taking the decision or if the board considers that the nature of the appeal so requires (enlarged composition).

Art. 21(3)(a), (b)

Where the technical boards of appeal are not competent – particularly in the case of appeals against decisions of the Receiving Section or the Legal Division – a legal board of appeal consisting of three legally qualified members deals with such procedures.

Art. 21(2), (3)(c)

5.7.009 To ensure uniform application of the law or if an important point of law arises, referrals may be submitted to the Enlarged Board of Appeal. During proceedings on a case and either of its own motion or following a request from a party, a board of appeal may refer any question to the Enlarged Board if it considers that a decision is required for the above purposes. The Enlarged Board's decision is binding on the referring board. The President of the EPO may refer a point of law to the Enlarged Board if two boards of appeal have given different decisions on the issue.

Art. 22, 112

5.7.010 The provisions relating to proceedings before the department which took the appealed decision are essentially applicable *mutatis mutandis* to appeal proceedings and proceedings for petition for review. In the examination of the appeal, the board of appeal invites the parties to file, within a specified period, observations on communications issued by itself or observations submitted by another party.

Art. 110
R. 100

Oral proceedings may be held at the request of a party or at the instance of the board of appeal.

Art. 116

5.7.011 In deciding on the appeal, the board may either exercise any power within the competence of the department which took the appealed decision or remit the case to that department for further prosecution. In the latter case, the department is bound by the board's decision, in so far as the facts are the same.

Art. 111

Petition for review

5.7.012 Any party to appeal proceedings adversely affected by the decision of the board of appeal can file a petition for review of the decision by the Enlarged Board of Appeal. Such petitions may be filed on the grounds either that the composition of the board was not correct, or that a fundamental violation of the right to be heard or any other fundamental procedural defect had occurred, or that a criminal act may have had an impact on the decision. The objections must have been brought up during the appeal proceedings.

Art. 112a, 113
R. 104-107

As a rule, petitions must be filed within two months of notification of the decision of the board of appeal. A petition is not deemed to be filed until the prescribed fee has been paid.

Art. 112a(4)
Art. 2(1), item 11a, RFees

If a petition for review is admissible and allowable, the Enlarged Board sets aside the decision of the board of appeal and orders re-opening of the proceedings before the responsible board of appeal as well as the reimbursement of the fee for petition for review.

Art. 112a(5)
R. 108(3), 110

5.8 Divisional applications

5.8.001 The usual reason for filing a European divisional application is that the parent application does not satisfy the requirements as to unity of invention (see point 4.2.003) and the applicant wishes to obtain a patent for all the inventions.

Art. 76, 82
R. 36
GL A-IV, 1
GL C-IX, 1

5.8.002A divisional application may be filed only for subject-matter which does not extend beyond the content of the parent application as filed. If it complies with this provision and with the formal requirements for according a date of filing (see point 5.2.001 et seq.), it is deemed to have the same date of filing as the parent application. A valid divisional application also enjoys the priority right(s) of the parent application.

Art. 76(1), 80
GL A-IV, 1.2
GL C-IX, 1.1

All the states designated in the parent application at the time of filing of the divisional application are deemed to be designated in the latter. However, contracting states the designations of which have been withdrawn or are deemed to be 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 same applies to extension and validation states.

Art. 76(2)
GL A-IV, 1.3.4

5.8.003A divisional application may be filed in respect of any pending earlier European patent application. An application is pending up to (but not including) the date on which the European Patent Bulletin mentions the grant of the European patent. It ceases to be pending if it is finally refused or if it is withdrawn or deemed to be withdrawn. If an application has been refused, a divisional application may still be validly filed until the expiry of the appeal period, regardless of whether an appeal has been filed or not.

R. 36(1)
GL A-IV, 1.1.1

5.8.004 Divisional applications must be filed direct with the EPO. They can be filed in electronic form (see point 4.3.001). The language of the proceedings is always the same as for the earlier (parent) application. If the parent application was filed in a language other than the language of the proceedings, the divisional application may also be filed in this other language. Then, however, a translation into the language of the proceedings of the parent application must be filed within two months.

R. 36(2)
R. 57(a)
GL A-IV, 1.3

5.8.005 For the fees payable in respect of a European divisional application, and also for the time limits for payment and the legal consequences of missing them, see points 4.3.015-4.3.018.

The search fee is refunded in full or in part, depending on the extent to which the search can be based on the search report for the parent (or, in the case of a sequence of applications, any preceding) application.

Art. 9 RFees

If the divisional application is filed more than two years after the date of filing of the parent application, the accumulated renewal fee(s) (see points 5.9.001-5.9.004) are due on filing of the divisional application but can be validly paid without any additional fee within four months of this filing. If not paid within this period, the accumulated renewal fees may still be validly paid within six months of the due date, provided they are paid together with an additional fee (see point 5.9.003).

Art. 86(1)
R. 51(3)

After filing, each divisional application is treated as an independent patent application.

5.9 Renewal fees

5.9.001 You are required to pay renewal fees to the EPO in respect of your European patent application. These are due in respect of the third and each subsequent year, calculated from the date of filing.

Art. 86
R. 51
Art. 2(1), item 4, RFees

5.9.002 Renewal fees in respect of the coming year are due on the last day of the month in which the anniversary of the date of filing falls. For fee amounts and payment methods see points 4.3.017 and 4.3.018.

R. 51(1)

5.9.003 Payment may still be validly made up to six months after the due date, provided that an additional fee equal to 50% of the belated renewal fee is paid within the same period. The EPO will normally send you an information letter if the renewal fee has not been paid by the due date; however, you are not entitled to base any claims on the omission of this courtesy service. Renewal fees may not be validly paid more than three months in advance of the date on which they fall due. The sole exception is the renewal fee for the third year, which may not be validly paid more than six months before it falls due.

R. 51(2)
Art. 2(1), item 5, RFees
GL A-X, 5.2.4

5.9.004 If you fail to pay the renewal fee and any additional fee in due time, the application is deemed to be withdrawn. As a means of redress you may request re-establishment of rights under Article 122 (see also point 5.10.008). Further processing under Article 121 is not available.

Art. 86(1)
R. 135, 136

5.9.005 The last renewal fee payable to the EPO in respect of a European patent application covers the patent year in which the mention of the grant of the patent is published (see point 5.4.014 ff).

Art. 86(2)

5.9.006 Renewal fees falling due between the date of grant of the European patent and the expiry of its term are payable to the central industrial property offices of the designated states in which you have validated it. For more details refer to **National law relating to the EPC** (see point 2.1.004).

Art. 63, 141

5.10 General provisions governing periods

5.10.001 Annex IV contains charts illustrating actions applicants have to take within periods laid down in the EPC.

Art. 120-122
R. 131-136
GL E-VIII

A period is calculated from the day after the date on which the relevant event occurred. In the case of a notification, the event considered is the deemed receipt of the document notified, subject to the provisions governing notification. The generally applicable procedure for notifications is indicated below. Period expiry is regulated in Rule 131(3) to (5). Under Rule 134(1) a period expiring on a day on which the EPO is closed or on which mail is not delivered is extended to the next day on which it is open and on which mail is delivered (for example, if a period expires on a Saturday or Sunday, the next day on which it is open is Monday). The provisions in Rule 134(2) and (5) also permit extension of a period in certain special cases.

R. 131, 134
GL E-VIII, 1.4, 1.6.2

A period will be deemed to have been observed if a document received late was posted, or delivered to a delivery service recognised by the President of the EPO (Chronopost, DHL, Federal Express, flexpress, TNT, SkyNet, UPS or Transworld), at least five calendar days before the relevant period expired, unless the document was received later than three months after the period expired.

R. 133
OJ EPO 2015, A29

5.10.002A period set by the EPO may also be extended provided that a request for extension is submitted before that period expires. However, a request for extension which would make the total period over six months long will be allowed only in exceptional cases.

R. 132(2)
GL E-VIII, 1.2, 1.6.1

If an extension of a time limit is requested in applications which, at the request of the applicant, are being processed under the programme for accelerated prosecution of European patent applications (PACE), the application(s) will be removed from the PACE programme.

GL E-VIII, 4

In opposition proceedings, requests to extend time limits over and above the normal period of four months for communications from an opposition division raising matters of substance or two months for other communications will be granted only in exceptional, duly substantiated cases.

GL E-VIII, 1.6.1

5.10.003 All decisions, summonses, notices and communications from which a period is calculated are delivered as notifications.

Art. 119
R. 125-129

If you have agreed to receive communications electronically, notification may be effected by means of electronic communication. The electronic document is deemed to be delivered to the addressee on the date it bears, unless it fails to reach its destination.

R. 127
GL E-II, 2.3

Notification may be effected by registered letter, which is deemed to be delivered on the date it bears, unless it fails to reach the addressee or reaches them at a later date.

R. 126
GL E-II, 2.4

Missed time limits

5.10.004 If you miss a time limit, **legal sanctions** are applied, such as refusal of the application, deemed withdrawal of the application or a (partial) loss of rights, for example a loss of the right of priority due to late filing of the priority document.

GL E-VIII, 1.8

5.10.005 Where the sanction applied is the refusal of the European patent application, this is communicated to you in a decision by the competent department. Whenever the EPO finds that rights have been lost, it will inform you in a communication noting this loss of rights.

R. 112(1)
GL E-VIII, 1.9.1, 1.9.2
GL E-X, 1

If you consider that the EPO's finding is inaccurate, you may, within two months after receiving the communication noting the loss of rights, file a request for a decision on the matter. A decision will be taken only if the EPO stands by its opinion. Any such decision is open to appeal. If the request is allowed, no decision will be taken and the EPO will inform you that the loss of rights has been set aside.

R. 112(2)
GL E-VIII, 1.9.3

Completion of an omitted act

5.10.006 The EPC makes provision for omitted acts to be completed, depending on the nature of the missed time limit.

5.10.007 If you miss a time limit vis-à-vis the EPO, it is in most cases sufficient to request further processing of the application. Further processing must be requested within two months of the date on which the communication concerning either the failure to observe a time limit or a loss of rights is notified. Further processing must be requested by payment of the prescribed fee. The omitted act must be completed within the period for making the request. No reasons for failing to observe the time limit need to be given. Further processing is ruled out in respect of certain time limits as listed in Article 121(4) and Rule 135(2).

Art. 121
R. 135
Art. 2(1), item 12, RFees
GL E-VIII, 2

5.10.008 Re-establishment of rights (*restitutio in integrum*) is available for those time limits for which further processing is ruled out. However, a request for re-establishment of rights can be granted only if you were unable to meet the time limit despite taking all due care required by the circumstances.

Art. 122
R. 136
GL E-VIII, 3

If you act through a representative, your application for re-establishment can be granted only if the representative has also exercised all due care demanded of the applicant under Article 122(1).

5.10.009 Re-establishment of rights is excluded in respect of those time limits for which further processing is available and in respect of the period for requesting re-establishment of rights. Re-establishment of rights is however available if you missed the time limit for requesting further processing. Further processing and re-establishment of rights are not available if you missed the time limit for paying extension and/or validation fees, as these are not EPC periods (see, however, point 4.3.016).

Art. 122(4)
R. 136(3)
GL E-VIII, 3.1.1

5.10.010 Requests for re-establishment of rights must be filed within two months from the removal of the cause of non-compliance with the time limit, but at the latest within one year of expiry of the unobserved time limit. The omitted act must be completed within the same

period. Requests for re-establishment of rights in respect of any of the periods specified in Article 87(1) and in Article 112a(4) must however be filed within two months of expiry of that period.

R. 136(1)
GL E-VIII, 3.1.3

The request must state the grounds on which it is based and must set out the facts on which it relies. It must set forth the precise cause of non-compliance with the time limit concerned (i.e. the fact or obstacle which prevented the required action from being taken within the time limit), specify how and when it was removed, and present the core facts.

R. 136(2)
GL E-VIII, 3.1.4

The request is not deemed to have been filed until the fee for re-establishment of rights has been paid. Where several independent procedural acts have been omitted, each resulting in the application being deemed withdrawn, a fee for re-establishment is due for each omitted act.

R. 136(1)
Art. 2(1), item 13, RFees
GL E-VIII, 3.1.3

Where re-establishment of rights has to be requested in respect of the time limit(s) for requesting further processing, the number of unobserved time limits, each resulting in the application being deemed withdrawn and requiring a request for further processing, determines the number of requests for re-establishment and the corresponding number of fees for re-establishment.

5.11 How to register transfers, changes of name, licences and other rights

Transfer of rights

5.11.001 A European patent application or patent may be assigned as a whole or in part for one or more of the designated contracting states.

Art. 71-72, 74
R. 22, 85

5.11.002 On request, the EPO will register the transfer of rights in respect of a pending European patent application in the European Patent Register, upon fulfilment of certain requirements. The transfer of a European patent can only be registered during the opposition period or as long as opposition proceedings are pending before the EPO. After

expiry of the opposition period or termination of the opposition proceedings, transfers are to be registered in the registers maintained by the national authorities of the contracting states and in the Unitary Patent Register.

R. 22, 85, 143(1)(w)
GL E-XIV, 3, 4

5.11.003 In order for a transfer of rights to be entered in the European Patent Register, the following requirements have to be met:

(a) Filing of a request for registration of a transfer of rights in respect of one or more European patent applications or patents. The request can be filed via MyEPO Portfolio or by using EPO Form 5050, which is available on the EPO website (*epo.org*).

R. 22(1)

(b) Where applicable, payment of the corresponding administrative fee for each European patent application or patent concerned. No fee is due if the request is filed via MyEPO Portfolio. Where a fee is due, the request is deemed not to have been filed until this fee has been paid. The amount of the fee is determined by the latest schedule of fees and expenses of the EPO. The only way to simultaneously pay fees for multiple applications or patents is to use the batch payment functionality in Central Fee Payment.

R. 22(2)

OJ EPO 2024, A22

(c) Filing of documents providing evidence of the transfer.

R. 22(3)

5.11.004 Any kind of written evidence suitable for proving the transfer is admissible. This includes formal documentary proof such as the instrument of transfer itself (the original or a copy thereof) or other official documents or extracts from them, provided that they immediately verify the transfer. The signatures of the parties to the contract must appear on the documents submitted as evidence. Contracts and declarations may bear handwritten, facsimile, text-string or digital signatures under the conditions specified by the EPO. For more details on the signatures accepted by the EPO, please refer to the Guidelines for Examination. Where the original document is not in one of the EPO's three official languages, the EPO may require a certified translation in one of those languages. A declaration signed by the parties to the contract verifying the transfer is also sufficient, e.g. EPO Form 5055, which is available on the EPO website (*epo.org*).

Art. 72
R. 5
GL E-XIV, 3

5.11.005 Where a document is signed on behalf of a legal person, only such persons as are entitled to sign by law, by the legal person's articles of association or equivalent or by a special mandate may do so. National law applies in that respect.

GL E-XIV, 3

5.11.006 If the evidence is found to be unsatisfactory, the EPO will inform the party requesting the transfer accordingly and invite it to remedy the stated deficiencies. If the request complies with the requirements of Rule 22, the transfer will be registered with effect from the date on which the request, the supporting evidence or, where applicable, the fee was received at the EPO, whichever is the latest. In case of a minor deficiency, i.e. if all requirements were complied with but not to the full extent required (e.g. the request was signed but the name and/or position of the person signing were missing), the date of receipt of the original request for registration will be considered the effective date once the deficiency has been rectified.

Changes of name

5.11.007 On request, a change of the applicant's or proprietor's name will be entered in the European Patent Register as long as proceedings are pending before the EPO and so long as it does not involve any change to the legal identity of the applicant/proprietor. Relevant documentary evidence enabling the EPO to verify the change must be produced. Registration of a change of name is free of charge.

R. 143(1)(f)
GL E-XIV, 5

Licences and other rights

5.11.008 A European patent application may be licensed or give rise to rights in rem and may be the subject of legal means of execution in respect of the whole or part of the territories of the designated contracting states.

Art. 73, 74
R. 23, 24

5.11.009 Rule 22 applies to the registration of the grant or transfer of a licence, the establishment or transfer of a right in rem and any legal means of execution affecting such an application (see point 5.11.003). The above standard of proof applies to the registration of licences and rights in rem. For the registration of legal means of execution, however, the instrument itself (the original or a copy thereof) must be filed. Registration is subject to the payment of an administrative fee, except where the associated request was filed via MyEPO Portfolio.

R. 23(1)
GL E-XIV, 6

5.11.010 Licences, rights in rem and legal means of execution are registered only in respect of pending European patent applications. No such rights are entered in the European Patent Register after a European patent has been granted.

Art. 73
GL E-XIV, 6.1

5.11.011 A licence will be recorded as an exclusive licence if the applicant and the licensee so request. A licence will be recorded as a sub-licence where it is granted by a licensee whose licence is recorded in the European Patent Register. The terms and conditions of the licences are governed by the national law applicable in each case.

R. 24

5.11.012 Upon request and, where applicable, subject to payment of the prescribed administrative fee, a registration of a licence or other right will be cancelled, subject to submission of documents providing evidence that the right has lapsed or of a declaration by the proprietor of the right that they consent to its cancellation.

R. 23(2)
GL E-XIV, 6.2