EPO-EPC Guidelines for Examination (March 2022)

Major changes

Major changes

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A FORMALITIES EXAMINATION

A-I Introduction

A-I 1 Overview

This Part A of the Guidelines deals with the following:

(i) the requirements and procedure relevant to the examination as to formalities of European patent applications (Chapters A-II to VI);

(ii) formalities matters of a more general nature which can arise during the application procedure or the post-grant stage (Chapters A-VII and VIII),

(iii) the presentation and execution of drawings and figurative representations accompanying a European patent application (Chapter A-IX);

(iv) fee questions (Chapter A-X);

(v) inspection of files, communication of information contained in files, consultation of the Register of European Patents and issuance of certified copies (Chapter A-XI).

A-I 2 Responsibility for formalities examination

The matters covered by this Part A are directed to the formalities staff of the EPO whether they be in The Hague, Munich or Berlin. They are directed primarily to the Receiving Section which is specifically responsible under the EPC for ensuring that the formal requirements for European patent applications are adhered to. Once the application is transferred to the examining division, the latter accepts responsibility for the formalities of the application, although it should be understood that reference to the examining division is intended to cover the formalities officer to whom this work is entrusted (see the Decision of the President of the EPO dated 12 December 2013, OJ EPO 2014, A6, the Decision of the President of the EPO dated 23 November 2015, OJ EPO 2015, A104, and the Decision of the President of the EPO dated 14 June 2020, OJ EPO 2020, A80). Rule 10 Rule 11(3)

A-I 3 Purpose of Part A

The formalities staff should note that this Part A of the Guidelines is intended to provide them with the knowledge and background which it is felt will assist them in carrying out their functions in a uniform and expeditious manner. It does not, however, provide authority for ignoring the provisions of the EPC and in that regard specific attention is directed to paragraph 3 of the General Part of the Guidelines.

A-I 4 Other Parts relating to formalities

It is not the intention that the formalities staff should concern themselves with only this Part A of the Guidelines. It is expected that they will have to refer frequently to the other Parts and in particular Part E.

A-II Filing of applications and examination on filing

A-II 1 Where and how applications may be filed

European patent applications must be filed in writing. They may be filed by delivery by hand, by postal services (see A-II, 1.1) or by means of electronic communication (see A-II, 1.2). Rule 1 Rule 2(1)

A-II 1.1 Filing of applications by delivery by hand or by postal services

European patent applications may be filed by delivery by hand or by postal services at the EPO's filing offices in Munich, The Hague or Berlin. The EPO's sub-office in Vienna is not a filing office, nor is the Brussels Bureau. Art. 75(1) Rule 35(1)

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

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

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

C PROCEDURAL ASPECTS OF SUBSTANTIVE EXAMINATION

C-I Introduction

C-I 1 General remark

In this Part C of the Guidelines the term "examiner" is used to mean the examiner entrusted with substantive examination forming part of the examining division, which is responsible for the final decision. Art. 18

Chapters C-II to IX set out the general procedure for examination, together with guidance on particular matters where necessary. They do not provide detailed instructions on matters of internal administration.

C-I 2 The work of examiners

Under the "Early Certainty from Search" (ECfS) scheme, completing examination files already started is prioritised over beginning work on new files, and grants are expedited once a positive search opinion has been issued.

The attitude of examiners is very important. They should always try to be constructive and helpful. While it would of course be quite wrong for examiners to overlook any major deficiency in an application, they should have a sense of proportion and not pursue unimportant objections. They should bear in mind that, subject to the requirements of the EPC, the drafting of the description and claims of a European application is the responsibility of applicants or their authorised representatives.

The attention of examiners is particularly directed to the instruction in paragraph 4 of the General Part of the Guidelines. This applies not only in relation to other departments of the EPO. It also means, for example, that the other members of an examining division should not attempt to repeat the work of the primary examiner (see C-VIII, 4).

C-I 3 Overview

Part C of the Guidelines deals with matters of examination procedure (see Chapters C-II to IX).

Matters of substantive law, i.e. the requirements which a European application must fulfil, are dealt with in Parts F, G and H.

C-I 4 Purpose of examination

The purpose of preparing the search opinion (see B-XI) and of the subsequent examination proceedings is to ensure that the application and the invention to which it relates meet the requirements set out in the relevant articles of the EPC and the rules of its Implementing Regulations. The prime task of the examining division is to deal with the substantive requirements; the criteria by which an examiner judges whether they have been met are dealt with in detail, in so far as appears necessary, in Parts F, G and H. As for the formal requirements (see Part A), these are initially the responsibility of the Receiving Section. Art. 94(1) Art. 164(1) Rule 62(1)

The examination is to be carried out in accordance with Art. 94(3) and (4), Art. 97, Rule 71(1) to 71(7), Rule 71a(1) to 71a(6) and Rule 72. The examiner's first step is to study the description, drawings (if any) and the claims of the application. However, as examiners will normally already have done this when they carried out the search (see B-XI, 3), they should concentrate on any amendments and/or comments filed by the applicant in response to the search opinion (see B-XI, 8). If amendments were made and these have not been identified and/or their basis in the application as filed not indicated by the applicant (see H-III, 2.1) and the application is one of those mentioned in H-III, 2.1.4, the examining division may send a communication according to Rule 137(4) requesting the applicant to provide this information (see H-III, 2.1.1). Rule 70(2)

C-II Formal requirements to be met before the division starts substantive examination

C-II 1 Request for examination

In order that examination of a European application can begin, applicants are required to file a request for examination, which, however, is not deemed to be filed until after the examination fee has been paid. The request for examination may be filed from the date on which the application is filed up to the end of six months after the date on which the European Patent Bulletin mentions the publication of the European search report (see A-VI, 2.1). If the request for examination is not filed within this period, the application is deemed to be withdrawn. However, in such a case, applicants have the possibility of filing a request for further processing pursuant to Art. 121. The amount of the further processing fee to be paid depends on how many and which of the actions required for a valid request for examination have been omitted (see E-VIII, 2). According to Rule 70(1), the request for examination may not be withdrawn. Art. 94 Rule 70 Art. 122(4) Rule 136(3)

Subject to certain exceptions, applicants must also respond to the search opinion within the above-mentioned period for filing the request for examination (see B-XI, 9, and C-II, 3.1), unless the EPO invites them to confirm an early request for examination according to Rule 70(2), in which case they must respond to the search opinion within the period provided for under Rule 70(2) (see C-II, 1.1). Rule 70a(1) and (3)

addressee must be made in accordance with the provisions applicable to that office in national proceedings. Rule 125(2) and (3)

E-II 2.3 Notification by postal services

All notifications by postal services must be by registered letter (see also OJ EPO 2019, A57). The President of the EPO has, so far, not named any other documents to be notified by registered letter with advice of delivery or equivalent. Rule 126

The letter is deemed to be delivered to the addressee on the tenth day following its handover to the postal service provider, unless the letter has failed to reach the addressee or has reached him at a later date; in the event of any dispute, it is incumbent on the EPO to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.

Notification is deemed to have been effected even if acceptance of the letter has been refused.

The law of the state on the territory of which the notification is made applies to other matters concerning notification, e.g. the question whether delivery to a person other than the addressee constitutes an effective notification to the latter.

E-II 2.4 Electronic notification

Where a user has agreed to receive communications electronically, the electronic document is deemed to be delivered to the addressee on the tenth day after its transmission unless it has failed to reach its destination or has reached it at a later date. Rule 127

Currently, notification may occur in electronic form to an activated Mailbox. Electronic notification comprises the decisions, summonses, notices and communications contained in a list published on the EPO website. For the Mailbox service, the date of transmission is the date indicated on the document, provided that the addressee has access to it in the Mailbox by that date. For further details, see the Decision of the President of the EPO dated 11 March 2015 concerning the pilot project to introduce new means of electronic communication in EPO proceedings (OJ EPO 2015, A28) and the Notice from the EPO dated 30 March 2015 (OJ EPO 2015, A36).

In the event that further means are introduced for electronic notification, the conditions and details will follow from the decisions governing the use of such means.

E-II 2.5 Notification to representatives

If a representative has been appointed, notifications must be addressed to him. If several such representatives have been appointed for a single interested party, notification to any one of them is sufficient. If several persons are joint applicants for or proprietors of a patent or have acted in common in filing notice of opposition or intervention and have not appointed a common representative, notification of one person, viz. the person referred to in Rule 151, will again be sufficient. If several interested parties have a common representative, notification of a single document to the common representative is sufficient. Rule 130

E-II 2.6 Irregularities in the notification

Where a document has reached the addressee, if the EPO is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document is deemed to have been notified on the date established by the EPO as the date of receipt. In cases where the EPO is not able to prove the actual date of notification, a letter, for instance, sent by the addressees themselves and indicating the date of receipt, is accepted as proof. If it is evident from a reply from the addressees that they have received the document, although they do not mention the date of its notification, the date on which that reply was written is to be regarded as the date of notification. Rule 125(4)

E-III Oral proceedings

E-III 1 General

By "oral proceedings" is meant formal proceedings within the meaning of Art. 116. The term does not include consultations such as occur in examination proceedings and limitation/revocation proceedings (see C-VII, 2). In view of Rule 81(2), such consultations are not allowed in opposition proceedings in which more than one party is involved unless the consultations concern matters which do not affect the interests of other parties. An example is proceedings for examining the admissibility of opposition, provided this involves only the EPO and the opponent concerned.

Oral proceedings will take place before the competent body, e.g. within the Receiving Section before the appointed officer and during the examination and opposition procedure before the whole division. In matters lying within its competence, oral proceedings can be held before the Legal Division. The right to oral proceedings forms a substantial part of the right to be heard under Art. 113. Art. 18(2) Art. 19(2)

Oral proceedings can be held on the premises of the EPO or by videoconference, where so permitted. Oral proceedings by videoconference are equivalent to oral proceedings held on the premises of the European Patent Office (OJ EPO 2020, A134, Article 1(3); OJ EPO 2020, A121, Article 2(3)).

F-VI 2.4 Some examples of determining priority dates

Note: the dates used are merely illustrative; they do not take account of the fact that the filing offices of the EPO are closed on weekends and certain public holidays.

F-VI 2.4.1 Intermediate publication of the contents of the priority application

P is the application from which priority is claimed by EP, D is the disclosure of the subject-matter of P.

1.1.90 Filing P	1.5.90 Publication D	1.6.90 Filing EP

D is state of the art under Art. 54(2) if the priority claim of P is not valid.

F-VI 2.4.2 Intermediate publication of another European application

P1 is the application from which priority is claimed by EP1, P2 the one from which EP2 claims priority. EP1 and EP2 are filed by different applicants.

1.2.89 Filing P1 A + B	1.1.90 Filing P2 A + B	1.2.90 Filing EP1 A + B	1.8.90 Publication EP1 A + B	1.1.91 Filing EP2 A + B

EP1 is state of the art under Art. 54(3) if the respective priority claims of P1 and P2 are valid. This does not change if the publication of EP1 takes place after the filing date of EP2. The publication of EP1 is state of the art under Art. 54(2) if the priority claim of P2 is not valid.

F-VI 2.4.3 Multiple priorities claimed for different inventions in the application with an intermediate publication of one of the inventions

EP claims priority of P1 and P2, D is the disclosure of A+B.

1.1.90 Filing P1 A + B	1.2.90 Publication D A + B	1.3.90 Filing P2 A + B + C	1.6.90 Filing EP claim 1: A + B claim 2: A + B + C

Claim 1 has a valid priority of P1 for its subject-matter, thus publication D is not state of the art under Art. 54(2) against this claim. Claim 2 cannot benefit from the priority of P1, as it does not concern the same subject-matter. Thus publication D is state of the art under Art. 54(2) for this claim (see G 3/93). It is immaterial whether claim 2 is in the form of a dependent or an independent claim.

F-VI 2.4.4 A situation in which it has to be checked whether the application from which priority is actually claimed is the "first application" within the meaning of Art. 87(1)

P1 is the earliest application of the same applicant containing the invention. EP claims the priority of the later US application P2, which is a "continuation-in-part" of P1. D is a public disclosure of A+B.

1.7.89 Filing P1 A + B	1.1.90 Filing P2 (cip) A + B A + B + C	1.6.90 Publication D A + B	1.12.90 Filing EP claim 1: A + B claim 2: A + B + C

The priority claim of P2 for claim 1 is not valid as P2 is not the "first application" for this subject-matter within the meaning of Art. 87(1), but P1 is, which has "left rights outstanding" in that P2 is a "continuation-in-part" thereof. Therefore Art. 87(4) does not apply and this is not altered by an abandonment, withdrawal, refusal or non-publication of P1. D is prior art pursuant to Art. 54(2) against claim 1, but not against claim 2, as the latter claim has the earlier priority of P2.

F-VI 3 Claiming priority

F-VI 3.1 General remarks

An applicant who wishes to claim priority must file a declaration of priority giving particulars of the previous filing, as specified in Rule 52(1), together with a certified copy of the previous application and, if necessary for the assessment of patentability, a translation of it into one of the EPO official languages (see A-III, 6.7 and A-III, 6.8). Art. 88(1) Rule 52(1) Rule 53(1) and Rule 53(3)

F-VI 3.2 Declaration of priority

A declaration of priority from an earlier filing should preferably be made at the time of filing the European application, although this can be done at any time within 16 months from the earliest priority date claimed (see A-III, 6.5.1). The declaration of priority must indicate the date of the priority application, the relevant state party to the Paris Convention or member of the WTO, and the file number. Rule 52(1) and Rule 52(2)

A declaration of priority may be corrected within 16 months from the earliest priority date. This time limit cannot expire earlier than four months after the filing date (see A-III, 6.5.2). Rule 52(3)

F-VI 3.3 Certified copy of the previous application (priority document)

G-V 1 General

There are two specific instances (and these are the only two) in which a prior disclosure of the invention is not taken into consideration as part of the state of the art, viz. where the disclosure was due to, or in consequence of: Art. 55(1)

(i) an evident abuse in relation to the applicant or that party's legal predecessor – e.g. the invention was derived from the applicant or that party's legal predecessor and disclosed against their wish; or Art. 55(1)(a)

(ii) the display of the invention by the applicant or that party's legal predecessor at an officially recognised international exhibition as defined in Art. 55(1)(b). Art. 55(1)(b)

G-V 2 Time limit

An essential condition, in both instances G-V, 1(i) and (ii), is that the disclosure in point must have taken place not earlier than six months preceding the filing of the application. For calculating the six-month period the relevant date is that of the actual filing date of the European patent application, not the priority date (G 3/98 and G 2/99).

G-V 3 Evident abuse

Regarding instance G-V, 1(i), the disclosure might be made in a published document or in any other way. As a particular instance, the disclosure might be made in a European application of earlier priority date. Thus, for example, a person B who has been told of A's invention in confidence, might apply for a patent for this invention. If so, the disclosure resulting from the publication of B's application will not prejudice A's rights provided that A has already made an application, or applies within six months of such publication. In any event, having regard to Art. 61, B may not be entitled to proceed with the application (see G-VI, 2).

For "evident abuse" to be established, there must be, on the part of the person disclosing the invention, either actual intent to cause harm or actual or constructive knowledge that harm would or could ensue from this disclosure (see T 585/92). This must be proven on the balance of probabilities (see T 436/92).

G-V 4 International exhibition

In instance G-V, 1(ii), the application must be filed within six months of the disclosure of the invention at the exhibition if the display is not to prejudice the application. Furthermore, the applicant must state, at the time of filing the application, that the invention has been so displayed, and must also file a supporting certificate within four months, giving the particulars required by Rule 25 (see A-IV, 3). The exhibitions recognised are published in the Official Journal. Art. 55(2) Rule 25

G-VI Novelty

G-VI 1 State of the art pursuant to Art. 54(2)

An invention is considered to be new if it does not form part of the state of the art. For a definition of "state of the art", see G-IV, 1. It is to be noted that in considering novelty (as distinct from inventive step; see G-VII, 6), it is not permissible to combine separate items of prior art together. It is also not permissible to combine separate items belonging to different embodiments described in one and the same document, unless such combination has specifically been suggested (see T 305/87). For the specific case of selection inventions see G-VI, 8.

Furthermore, any matter explicitly disclaimed (with the exception of disclaimers which exclude unworkable embodiments) and prior art acknowledged in a document, in so far as explicitly described therein, are to be regarded as incorporated in the document.

It is further permissible to use a dictionary or similar document of reference in order to interpret a special term used in a document.

An unclear term cannot be used to distinguish the invention from the prior art and is not allowable under Art. 84 (see F-IV, 4.6.1).

G-VI 2 Implicit features or well-known equivalents

A document takes away the novelty of any claimed subject-matter derivable directly and unambiguously from that document including any features implicit to a person skilled in the art in what is expressly mentioned in the document, e.g. a disclosure of the use of rubber in circumstances where clearly its elastic properties are used even if this is not explicitly stated takes away the novelty of the use of an elastic material. The limitation to subject-matter "derivable directly and unambiguously" from the document is important. Thus, when considering novelty, it is not correct to interpret the teaching of a document as embracing well-known equivalents which are not disclosed in the documents; this is a matter of obviousness.

G-VI 3 Relevant date of a prior-art document

In determining novelty, a prior-art document is to be read as it would have been read by a person skilled in the art on the relevant date of the document. By "relevant" date is meant the publication date in the case of a previously published document and the date of filing (or priority date, where appropriate) in the case of a document according to Art. 54(3) (see G-IV, 5.1).

G-VI 4 Enabling disclosure of a prior-art document

LIST OF SECTIONS AMENDED IN 2022 REVISION

MAJOR AMENDMENTS

PART A	A-II, 1.2.2	Updated in view of OJ EPO 2021, A42
	A-III, 5.3; A-III, 5.4	Updated in view amended Rule 19 [former subsection A-III, 5.4 has been deleted]
	A-III, 6.7	Updated in view of the termination of the PDX Agreements concerning the electronic exchange of priority documents with the USPTO, KIPO and CNIPA (OJ EPO 2021, A83 and OJ EPO 2021, A84)
	A-III, 6.12	Applicants from the People's Republic of China and Sweden are exempted from filing a copy of search results under Rule 141(1)
	A-X, 4.2.3; A-X, 4.4	Amended in view of the new Central Fee Payment online service (OJ EPO 2021, A61)
PART E	E-III, 8.3.1	Updated practice regarding checking the identity of the participants to oral proceedings by videoconference
	E-III, 8.6; E-VI, 2; E-VI, 2.1; E-VI, 2.2; E-VI, 2.2.1; E-VI, 2.2.2; E-VI, 2.2.3; E-VI, 2.2.4; E-VI, 2.2.5; E-X, 2.10	Updated to include further details about the practice regarding late-filed submissions, and restructured by moving subsections to E-VI, 2
	E-XIV, 3	Updated in view of OJ EPO 2021, A86 – electronic signatures on assignment documents
PART F	F-VI, 1.5	Subsection updated by integrating the teaching of G 1/15 about partial priorities
PART G	G-II, 1; G-II, 2; G-II, 3.3; G-II, 3.3.2; G-II, 3.5.1; G-II, 3.5.2; G-II, 3.6; G-II, 3.6.2; G-II, 3.6.3; G-VII, 5.4; G-VII, 5.4.1; G-VII, 5.4.2; G-VII, 5.4.2.4	Updated in view of decision G 01/19
	G-II, 4.1	Updated in view of decision G 01/03
	G-IV, 5.4	Updated in view of decision G 04/19

MINOR AMENDMENTS

General Part		
PART A	A-II, 4.1.4	Clarified application of Rule 40(1)(a), Rule 40(1)(b) and Rule 40(1)(c)
	A-III, 3.2.2	Clarified practice when deficiencies in the physical requirements are communicated
	A-III, 6.1	Clarified practice concerning claiming priority from an application with joint applicants
	A-III, 6.7	Amended in view of new online filing tools Outdated information deleted Clarified practice regarding missing copy of the priority document
	A-III, 9	Clarified practice regarding the possibility of filing a divisional for pursuing any feature of a claim that is deemed abandoned due to non-payment of the claims fee
	A-III, 13.2	Clarified practice regarding the calculation of the additional fee for application documents comprising more than 35 pages
	A-IV, 1.1.3	Clarified practice regarding the persons entitled to file a divisional application
	A-IV, 4.1	Clarified practice regarding the applicability of Rule 31(1)(d) EPC – depositor of biological material – in respect of Euro-PCT applications

ALPHABETICAL KEYWORD INDEX

Indexed Unitary Patent Guide (Apr 2022)

Major changes

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17 The **Rules relating to Fees for Unitary Patent Protection** ("RFeesUPP") set out the amounts of all the fees and expenses payable to the EPO by Unitary Patent proprietors and how they can be paid (see OJ EPO 2022, A42). They also provide for the amount of compensation for translation costs which eligible proprietors can receive from the EPO. You should note that the most important provisions of the Rules relating to Fees under the EPC will equally apply to the Unitary Patent, in particular those governing how to pay fees to the EPO.

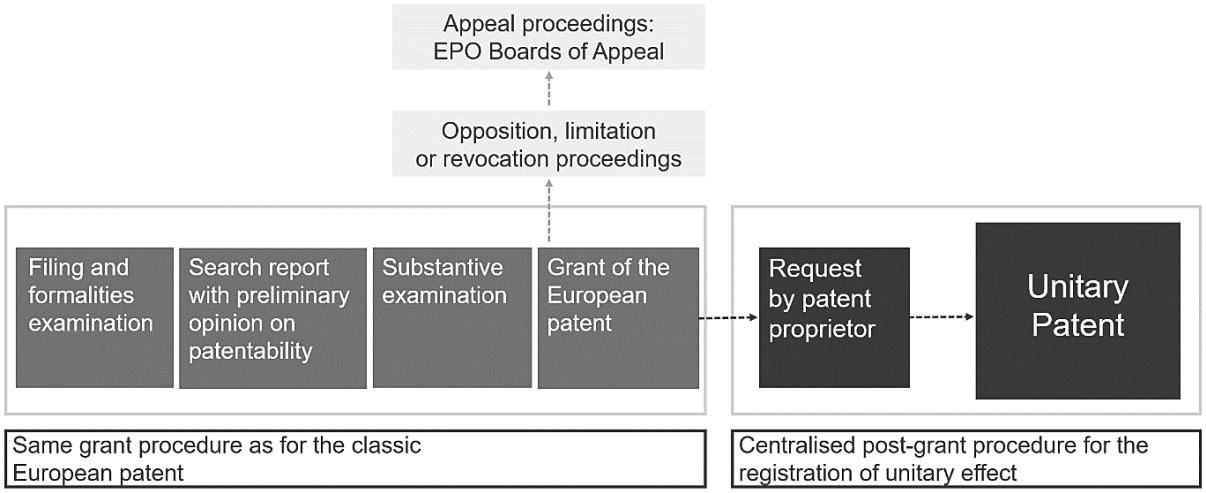
III. Unitary Patents: the concept

The Unitary Patent architecture

18 A 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 participating Member States at its proprietor's request.

19 The Unitary Patent system builds on the EPC. This means that the pre-grant phase is exactly the same as for European patents. Applicants file a European patent application seeking the grant of a European patent for some or all of the EPC contracting states with the EPO. It examines their application in accordance with the EPC and, if all formal and substantive requirements for patentability are met, grants a European patent.

20 The EPO has been entrusted by the participating Member States with certain administrative tasks relating to Unitary Patents, in particular the administration of requests for a Unitary Patent (requests for unitary effect). Accordingly, once a European patent has been granted, a separate, post-grant procedure can be initiated at the EPO with a view to obtaining a Unitary Patent (see point 44 onwards). This procedure is less complex and significantly cheaper than the existing system of national validation and so offers an attractive new alternative for proprietors of European patents.



Uniform protection and equal effect

21 If all the requirements are met, the EPO will register a Unitary Patent ("unitary effect") for the European patent concerned. A Unitary Patent has unitary character, meaning it provides uniform protection and has equal effect in all the participating Member States. It may only be limited, transferred or revoked, or lapse, in respect of all the participating Member States. It may be licensed in respect of the whole or part of the territories of the participating Member States.

Article 4(2) Regulation (EU) No 1257/2012 Article 5 Regulation (EU) No 1257/2012

When and for which European patents can a Unitary Patent be requested?

22 A Unitary Patent may be requested for any European patent granted on or after the date of application of Regulations (EU) No 1257/2012 and (EU) No 1260/2012. These regulations will apply from the date of entry into force of the UPCA. The EPO will announce this date on its website.

Article 18(6) Regulation (EU) No 1257/2012

The territorial scope of a Unitary Patent

23 A Unitary Patent covers the territories of those participating Member States in which the UPCA has taken effect at the date of registration of unitary effect by the EPO.

Article 2(a) and 18(2) Regulation (EU) No 1257/2012

24 This means that, although 25 EU Member States are currently participating in the Unitary Patent scheme, Unitary Patents registered at the outset will not cover all 25 of their territories because some of them have not yet ratified the UPCA. You will find a list of the EU Member States in which the UPCA has taken effect on the EPO's website. You can also check the UPCA's status of ratification on the *website of the Council of the European Union*.

which is the average lifetime of a patent – amount to less than EUR 5 000. Moreover, patent proprietors who file a statement on a licence of right with the EPO can obtain a 15% reduction on the renewal fees.

38 A comparison of the costs of a Unitary Patent with those of a classic European patent should take into account not only the level of the renewal fees but also the costs associated with the validation and maintenance of a classic European patent. Based on such a comparison, a Unitary Patent will be significantly less expensive than a European patent validated and maintained in four countries. Consequently, the more countries a classic European patent would have been validated in, the more cost-effective a Unitary Patent will be.

Renewal fees for the Unitary Patent

	EUR		EUR
2nd year	35	11th year	1 460
3rd year	105	12th year	1 775
4th year	145	13th year	2 105
5th year	315	14th year	2 455
6th year	475	15th year	2 830
7th year	630	16th year	3 240
8th year	815	17th year	3 640
9th year	990	18th year	4 055
10th year	1 175	19th year	4 455
		20th year	4 855

- Additional fee for belated payment of a renewal fee = 50% of the belated renewal fee (Article 2(1), item 2, RFeesUPP) Article 2(1), item 2, RFeesUPP
- 15% reduction in renewal fee in cases the proprietor filed a statement with the EPO offering a licence of right (Articles 8(1) and 11(3) Regulation (EU) No 1257/2012, Rule 12(1) UPR, Article 3 RFeesUPP) Articles 8 and 11(3) Regulation (EU) 1257/2012, Rule 12(1) UPR, Article 3 RFeesUPP

39 A Unitary Patent offers small and medium-sized enterprises (SMEs) and other small entities, which typically have only limited resources available, a simpler and more cost-effective route to broad and uniform protection for their inventions. A particular advantage of a Unitary Patent for these entities is the **compensation scheme**, which reduces translation costs for SMEs, natural persons, non-profit organisations, universities and public research organisations by providing for a lump-sum payment of EUR 500 (see point 75 onwards).

40 Finally, as regards the **management of a Unitary Patent**, transfers, licences and other rights no longer have to be registered country by country in the national patent registers. Instead, a single registration entered in the Register for unitary patent protection centrally administered by the EPO is sufficient (see points 114 and 118). The same applies to statements regarding licences of right (see point 123). This considerably reduces administrative complexity, as the EPO operates under a single legal regime, also with regard to the kind of documents and evidence required. It also reduces the associated costs such as administrative fees or costs incurred in hiring multiple local agents.

VI. The EPO's Unitary Patent Protection Division

Introduction

41 A "**Unitary Patent Protection Division**" has been set up at the EPO as a special department to deal with Unitary Patents. It is responsible for all the EPO's additional tasks relating to Unitary Patents referred to in Article 9(1) Regulation (EU) No 1257/2012 and entrusted to it by the participating Member States under Rule 1(1) UPR. Article 143(2) EPC Rule 4 UPR

42 The EPO departments entrusted with the procedures laid down in the EPC, namely the search, examining and opposition divisions and the Boards of Appeal, will have no responsibilities in relation to Unitary Patents. In particular, actions against decisions of the Unitary Patent Protection Division must be brought before the Unified Patent Court (see Articles 32(1)(i) and 47(7) UPCA) and not before the EPO Boards of Appeal. Article 32(1)(i) UPCA Article 47(7) UPCA

Decisions of the Unitary Patent Protection Division

43 Decisions of the Unitary Patent Protection Division are taken by one legally qualified member. The President of the EPO may, however, entrust employees who are not legally qualified members with carrying out duties of the Unitary Patent Protection Division that involve no legal difficulties. Rule 4(3) UPR Rule 4(4) UPR

B. HOW TO OBTAIN A UNITARY PATENT

I. The requirements

44 In order to be eligible for registration as a Unitary Patent, a European patent must have been granted with the **same set of claims in respect of all the 25 participating Member States** (Article 3(1) in conjunction with Recital 7 Regulation (EU) No 1257/2012; Rule 5(2) UPR). This condition must be met irrespective of the number of participating Member States in which the UPCA will have taken effect at the date of registration of unitary effect by the EPO (see point 23). It is therefore important not to withdraw the designation of any of the 25 participating Member States because this would rule out obtaining a Unitary Patent. Moreover, a European patent should not contain a different set of claims for any of the participating Member States (see Rule 138 EPC), as this too would also prevent the EPO from registering a Unitary Patent (Rule 5(2) UPR). Article 3(1) Regulation (EU) No 1257/2012 Rule 5(2) UPR Rule 138 EPC

II. The request for unitary effect

Form and time limit

45 As regards the procedure for obtaining a Unitary Patent, the proprietor of a European patent must file a formal "request for unitary effect" in writing with the EPO (Rule 5(1) UPR). It is strongly recommended that the dedicated **EPO Form 7000** be used to file the request. **The request must be filed no later than one month after the mention of the grant of the European patent is published in the European Patent Bulletin** (see Article 9(1)(g) Regulation (EU) No 1257/2012; Rule 6(1) UPR; Article 97(3) EPC). It is important to bear in mind that this is a non-extendable period (see point 67 for the legal remedy available if it is not observed). The requester must be the proprietor mentioned in the European Patent Register at the date of filing of the request for unitary effect or, at the latest, at the date of registration of unitary effect. Article 9(1)(g) Regulation (EU) No 1257/2012 Rule 6(1) UPR Article 97(3) EPC

46 The request must be **duly signed**. It may be signed by the representative if one has been appointed. Where it is signed on behalf of a legal person, the signatory's position within that legal entity must also be indicated. If it is filed using Online Filing, the signature may be in the form of a facsimile, text string or enhanced electronic signature. If it is filed using Online Filing 2.0 or the web-form filing service, the signature may take the form of a facsimile signature or a text string signature. If it is filed on paper, it may be a handwritten signature or a reproduction of the filer's signature (on faxes). Rule 20(2)(c) UPR Rule 50(3) EPC

47 Where the request for unitary effect is filed on paper, one copy of the request itself must be filed; the receipt for documents (page 4 of the form for filing the request for unitary effect) must however be filed in triplicate. If it is filed online, no additional copies are necessary.

48 A Unitary Patent can also be requested for a European patent granted to multiple proprietors in respect of the same or different participating Member States as long as it was granted with the same set of claims in respect of all those participating Member States.

49 If there is more than one proprietor, the request for unitary effect should preferably **appoint one proprietor or representative as common representative**. If it does not name a common representative, the first-named requester will be deemed to be the common representative. However, if one of the requesters is obliged to appoint a professional representative, that representative is deemed to be the common representative unless the first-named requester has appointed a professional representative (see Rule 151(1) EPC, which applies *mutatis mutandis* under Rule 20(2)(l) UPR). Rule 20(2)(l) UPR Rule 151(1) EPC

50 Only, however, if the request for unitary effect has been duly **signed** by all the proprietors (or their representative(s)) is their common representative entitled to act for them all. Multiple proprietors need not be listed in the request for unitary effect in the same order as in the request for grant (EPO Form 1001) or in the European patent specification.

51 Please note that a co-proprietor of a European patent who owns that patent exclusively in respect of one or more EPC contracting states not territorially covered by the Unitary Patent scheme (see point 23) cannot request unitary effect or be designated as common representative. For instance, this will apply where the European patent is granted to a co-proprietor either exclusively for one or more EPC contracting states that are not participating Member States (e.g. Switzerland or the United Kingdom) or exclusively for one or more participating Member States in which the UPCA has not taken effect. Such a co-proprietor should therefore not be listed in the request for unitary effect.

Mandatory information to be provided in the request for unitary effect

52 The request for unitary effect must contain the following information (Rule 6(2) UPR): Rule 6(2) UPR

- **(a)** particulars of the proprietor of the European patent making the request as provided for in Rule 41(2)(c) EPC;
- **(b)** the number of the European patent to which unitary effect is to be attributed;