



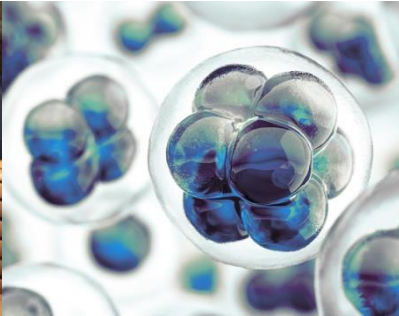
Europäisches
Patentamt
European
Patent Office
Office européen
des brevets

Guidelines2day

Overview of the revised Guidelines (revision cycle)
Main changes in the 2021 edition



Heli Pihlajamaa



Director Patent Law



18 February 2021

EPC GL 2021 - first edition under the new revision cycle

More user involvement:

- Public user consultation on the GL2019 edition (02.03.-15.04.2020)
- Three meetings with the members of the SACEPO Working Party on Guidelines
- Two extraordinary SACEPO WPG meetings with experts in the field of CII and BIO

Intensive meetings of EPO CII and BIO working groups:

- Add further illustrative examples
- Clarify the practice in light of G 3/19
- Add/clarify topics in focus of the users' interest, e.g. inventions disclosing antibodies

Gender-neutral language

Editorial exercise to apply gender-neutral language throughout the Guidelines in EN / DE / FR

Outlook: Guidelines 2022

Preview-version of the EPO Guidelines available as of **February 2021**

Publication of the EPO Guidelines 2021: **1 March 2021**

Launch of a new user consultation on 1 March 2021:

- Lasting until 12 April 2021
- Users are invited to comment on the GL2021
- The anonymised contributions are discussed with the SACEPO WPG in May 2021
- The consultation is open for external and internal users of the EPO Guidelines
- After evaluation: a statistical summary of the results will be published on the EPO website

New ad-hoc working group on **Artificial Intelligence**

Changes relating to oral proceedings and consultations

- **Oral proceedings before the ED or OD by videoconference:** [OJ EPO 2020, A121](#), [A122](#), [OJ EPO 2020, A134](#); update of [Parts C-VII, 5](#), [D-VI, 3.2](#), subsections to [E-III, 1, 6](#), and [8](#), and [E-IV, 1.11.2](#)
- **Requests to hold oral proceedings on EPO premises (ED):** new section added in [Part E-III, 2.2](#)
- **Informal consultation by videoconference (new!):** Update of [Part C-VII, 2](#)
- **Filing of documents during telephone consultations, interviews or oral proceedings held by videoconference:** Requirement to file such documents by e-mail ([OJ EPO 2020, A71](#)); update of [C-VII, 3](#)

Changes relating to oral proceedings and consultations

- **Request for a decision according to the state of the file:**
Considered as withdrawal of the request for oral proceedings ([OJ EPO 2020, A124](#)) – [Part C-V, 15.1](#); corresponding update on attendance of oral proceedings: [Part E-III, 7.2.2](#)
- **Amended Rules 117 and 118 EPC (taking of evidence):**
Update of [Part E-IV, 1.3-1.5, 1.6.1, 1.10.1](#)
- Clarified practice concerning **computer-generated slideshows** during oral proceedings on the EPO premises – [Part E-III, 8.5.1](#)

Changes relating to biotechnology

- **Requirements regarding essential features for claims towards plants or animals:** amendment of [Part F-IV, 4.5.2](#)
- **Implementation of Opinion G 3/19:** Update of [Parts F-IV, 4.12](#) and [G-II, 5.2, 5.3, 5.4, 5.4.1, 5.4.2.1](#) and [5.5.1](#)
- **Interpretation of the terms “identity” and “similarity” relating to amino or nucleic acid sequences:** New subsection [F-IV, 4.24](#)
- **Applications pertaining to pluripotent stem cells:** update to explain EPO practice regarding their patentability; [Part G-II, 5.3](#)
- **Inventions involving antibodies:** New section added to [Part G-II, 5.6](#)
- Limitation of the exceptions to patentability (Art. 53(c) EPC)
 - **adding positive examples** for
 - Surgery – [Part G-II, 4.2.1.1](#)
 - Therapy – [Part G-II, 4.2.1.2](#)

Changes relating to computer-implemented inventions

- **Exclusions from patentability (Art. 52(2) EPC)** – clarification concerning
 - mathematical methods – [Part G-II, 3.3](#)
 - artificial intelligence and machine learning – [Part G-II, 3.3.1](#)
 - data retrievals, formats and structures – [Part G-II, 3.6.3](#)
 - user interfaces – [Part G-II, 3.7.1](#)
- **Examination of database management systems and information retrieval:** New section added - [Part G-II, 3.6.4](#)
- Updated **definitions** of several **(SI) units** – [F-II, Annex 2](#)
- Clarification regarding method steps defining **additional devices and/or specific data processing means** – [Part F-IV, 3.9.2](#)

Changes relating to other patentability criteria

- **Claims (clarity (Art. 84 EPC) and formal requirements):**
 - Clarification regarding “**claim-like clauses**” – [Part F-IV, 4.4](#)
 - Clarification regarding **product claims with process features** – [Part IV, 4.12.1](#)
 - Clarification of sections concerning the **interpretation of expressions stating a purpose** – updates in subsections of [Part F-IV-4.13](#)
- **Novelty:** Adding a definition for “substance or composition” – [Part G-VI, 7.1.1](#)
- **Non-unity objections:** updating subsections to [Part F-V, 2](#) and [F-V, 3](#) to align with the joint recommendation for convergence of practice (“minimum reasoning”)

Further procedural aspects

1. Resulting from amended legal provisions

- **New Rule 20.5*bis* PCT:** Updates in [Parts A, C and E](#) in view of the notice of incompatibility with Rule 20.5*bis*(d) PCT
- **Amended Rule 142 EPC:** Update of Part [E-VII, 1.4](#)
- Adjusted practice in view of **amended Art. 7(3) and 7(4) RFEEs** – [Part A-X, 6.2](#)

Further procedural aspects

2. Clarification of practice related to the Implementing Regulations

- **Abolition of the Rule 71(3) waiver:** Update of [Part C-V, 2](#) and [C-V, 4](#).
- **Application of Rule 134 EPC:** Three new subsections added to [Part E-VIII, 1.6.2](#)
- Clarification of the practice under **Rule 77(1) EPC** – notice of opposition not adequately substantiated – [Part D-IV, 1.2.2.1](#)

Further procedural aspects

- Clarification concerning the drawing up of a **supplementary European search report** – Part [B-II, 4.3.2](#)
- Approach of the search and the examining division regarding the **adaptation of the description to the claims** – [Part B-XI, 3.7, 3.8, Part C-II, 3.1, 3.2, C-III, 2, C-VI, 1.1, F-II, 4.2, F-IV, 4.3](#)
- **Bringing the description into line with the claims** – new section in [Part H-V, 2.7](#)

Further procedural aspects

- **Requests to adjourn opposition proceedings:** New subsection in [Part D-VI, 8](#)
- Clarification concerning the **statement of the grounds for intervention** – [Part D-VII, 6](#)
- The decision to **stay the proceedings** is not separately appealable – [E-VII, 3](#)
- Correction of formatting/editing errors: **two examples added** – [Part H-VI, 4](#)
- Further clarifications concerning **amendments:** [Part H-II, 2.3.1.1](#), [H-III, 3.3.1](#), [H-V, 3](#); [H-V, 3.3](#) and [H-VI, 3.2](#)

Further procedural aspects

- Scope of communications that can be **electronically notified to the EPO Mailbox** – [Part E-II, 2.4](#)
- **Biological material:** new subsection on requests for the issuance of biological material samples ([Part A-IV, 4.4](#)); adding information about the deposit receipt ([Part A-IV, 4.1, 4.2](#))
- Biological material – **issue of a sample to the expert:** scope of the experts' undertaking and obligations regarding their declared independence – [Part A-IV, 4.3](#)
- Clarification of multiple formal aspects in relation to **divisional applications** – [Part A-IV, 1.1, 1.2, 1.3.1](#)