

Learning path for patent administrators

The European patent system: EPAC - entry level

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Introduction

This publication, "The European patent system, EPAC - entry level", is part of the "Learning path for patent administrators" series is edited and published by the European Patent Academy. The series is intended for patent administrators who are taking part in training and certifications organised by the European Patent Office (EPO). It is also freely available to the public for independent learning.

Topics covered include: general aspects of the patent system; the European patent system and the European patent granting procedure; the International Patent System (PCT) and the PCT procedure; European and international publications; filing a European patent application and filing an international application; the formalities during the European and during the international search; the formalities during the European examination and during the international preliminary examination; the formalities during the appeal procedure after refusal (EPC), during the opposition procedure (EPC); national validation (EPC); entry into national/regional phases and entry into the European phase (PCT).

Each chapter focuses on one topic at entry, intermediate or advanced level, as appropriate. The series will be revised annually to ensure it remains up to date.

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All references to natural persons are to be understood as applying to all genders.

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1. Learning objectives

Participants in this course will learn:

- about the EPO as patent granting authority
- the legal framework of the European patent system (EPC)
- the definition of designated states, extension and validation states
- what are the relevant legal sources of information
- which are the EPO online databases and services
- the principle of representation before the EPO

2. The European Patent Office (EPO) as a granting authority

A 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 to this and under the EPC, the extent of the protection conferred by the European patent is determined uniformly for all the contracting states.

The European patent grant procedure consists of two stages. A first stage comprises an examination on filing, formalities examination, preparation of the European search report, opinion on patentability and publication of the application together with the search report. A second stage comprises the substantive examination.

After the grant of the patent there may be opposition (proceedings involving third parties such as the opponents), revocation or limitation (proceedings which are initiated by the patent proprietor) and appeal (may be filed by any party to the proceedings adversely affected by a decision). Decisions on appeals are taken by the boards of appeal. In certain cases, a petition for review by the Enlarged Board of Appeal may be filed.

3. The European Patent Convention (EPC)

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

Legal references:

Art. 87-89, 150-153 EPC

Art. 45(1) PCT

R. 157-165 EPC

GL E-IX

4. Member, extension and validation states (EPC)

The designated states are the [contracting states of the European Patent Organisation](#). 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.

All contracting states which are party to the EPC on the date of filing of the application are deemed to be designated states under [Art. 79\(1\) EPC](#) and a list of all these contracting states can be found on the EPO website. The designation of contracting states is subject to the payment of a "designation" fee under [Art. 79\(2\) EPC](#) and pursuant to [Rule 39 EPC](#).

Between 1993 and 2009, the European Patent Organisation signed [extension agreements with ten non-member states](#). The agreement with Bosnia and Herzegovina is still in force (October 2022).

Since 2010, the European Patent Organisation has signed [validation agreements with five non-member states](#). Validation agreements with four of these countries entered into force: Morocco, Republic of Moldova, Tunisia and Cambodia.

The basic time limits for payment of the designation fee(s) can be:

- six months after publication of the European search report (under [Rule 39\(1\) EPC](#) for EP files)
- six months after publication of the International search report or the filing date or earliest priority + 31 months, whichever expires later (under [Rule 159\(1\)\(d\) EPC](#) for Euro PCT files and in case of valid early entry into the European phase)

Legal references:

[Art. 59, 79\(1\), \(2\) EPC](#)

[Rule 39, 134, 159\(1\)\(d\) EPC](#)

[G 4/98](#) (annex I)

[Art. 7\(3\)\(a\) and \(b\) and \(4\) RFees](#)

5. Relevant sources of information (EPC)

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.

The EPO booklet 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.

The "[Euro-PCT Guide](#)" deals with this filing route in order to obtain patent protection in Europe on the basis of an international application filed under the PCT.

Legal references:

[Art. 52\(2\), 54\(3\), 82 EPC](#)

[Rule 43, 128 EPC](#)

[F-II, 4.2; G-IV, 5.3](#)

6. Overview of EPO online databases and services

The European Patent Office provides access to the following databases:

- [Espacenet](#) - a free online searchable database comprising more than 100 million patent documents from around the world
- [European Publication Server](#) - provides free access to all EP documents published on a weekly basis according to the decision of the President of the EPO dated 22 December 2004
- [European Patent Register](#) - provides direct access to all the publicly available information on European patent applications as they pass through the granting procedure

Furthermore, the following is accessible from the EPO website:

Public access databases:

- database of professional representatives
- EP bibliographic data
- Espacenet – patent search
- European Patent Register
- European Publication Server
- Linked open EP Data
- online training
- Open Patent Services
- oral proceedings calendar
- schedule of fees
- search patent-related events
- search in the boards of appeal decisions
- third-party observations

Password access services:

- credit card fee payment
- EP full-text search
- Open Patent Services
- raw data download
- shop
- web-form filing

Smart card access services:

- administration
- EP bibliographic data
- electronic mailbox
- My Files
- Online Fee Payment
- Online Filing
- Online Filing 2.0

Software downloads services:

- IPscore
- Multipay
- Online Filing
- sequence submission tools

- PatXML

Legal references:

Art. 52(2), 54(3), 82 EPC

Rule 43, 128 EPC

F-II, 4.2; G-IV, 5.3

7. Representation before the EPO

Applicants with residence or principal place of business in EPC contracting states do not need a representative but may be represented by an authorised employee, a professional representative or one EPC applicant that may act on behalf of all EPC applicants (common representative).

Any applicant not having their residence or principal place of business in a contracting state may file an application, appoint a representative (or withdraw authorisation). However, these applicants must for all further steps be represented by a professional representative.

Professional representatives have:

- names that appear on the public list maintained by the EPO (nationals of & with a place of business in a contracting state)
- passed EQE
- an EPI membership
- the need for an authorisation only in exceptional cases

Legal practitioners:

- are entitled to act as representative in patent matters in a contracting state and have a place of business in that state
- always need an authorisation (EPO Forms [1003/1004](#))

Employees of applicants:

- are legal persons
- have a place of business in a contracting state
- may only represent their direct employers
- always need an authorisation (EPO Forms [1003/1004](#))

Legal references:

Art. 133, 134, 134a EPC

Rule 41(3), 151, 152 EPC

GL A-III, 2; VIII

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