

Learning path for patent administrators

Filing a European patent application: EPAC - entry level

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Introduction

This publication, "Filing a European patent application, 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:

- the definition of formal requirements on filing
- the different routes for filing an application
- how to file a European application at the EPO
- what are the minimum requirements on the date of filing
- which initial fees are due
- claiming a priority right
- the principle of representation
- what information is required for a designation of inventor

2. Claiming a priority right

A priority right, as defined by [Art. 87\(1\) EPC](#), is triggered by the first filing of an application for the protection of an invention and allows filing of a subsequent application for the same invention during the 12 months from the date of filing of the first application (= priority date).

The effect of a priority right, as mentioned in [Art. 89 EPC](#), is such that the priority date is considered as the "effective date of filing" of the European application for the assessment of novelty ([Art. 54\(2\), \(3\) EPC](#)) and right to a European application ([Art. 60 EPC](#)).

A priority can be claimed from first filings in Paris Convention states and member states of the World Trade Organisation. Such a priority claim can be added/corrected within 16 months of the earliest priority date (at least 4 months from the date of filing). Should an EP application not be filed within the 12-month priority period, re-establishment may be requested within 2 months of the expiry of said period.

Legal references:

[Art. 54\(2\), \(3\), 60, 87, \(1\), 89 EPC](#)
[GL A-III, 6; GL F-VI](#)

3. WIPO DAS (Digital Access Service)

The WIPO [Digital Access Service](#) (DAS) consists of an electronic exchange of priority documents which is available between participating offices.

The EPO as office of first filing (OFF) will automatically generate a DAS access code free of charge for every request for the grant of a European patent ([EPO Form 1001](#)). This DAS access code will allow the applicant to authorise an office of second filing (OSF) participating in DAS to retrieve a priority document via DAS.

When the EPO acts as office of first filing (OFF) and the request for the grant of a European patent is filed via the EPO online filing web (OLF) or case management system (CMS), the code is automatically generated and sent together with the acknowledgement of receipt to the applicant. The code is only valid if the application is accorded a date of filing.

When the EPO acts as office of second filing (OSF), at the request of the applicant the EPO as OSF obtains the priority document from the OFF via DAS free of charge. The scope of applications eligible are EP or Euro-PCT applications claiming priority from a previous application filed with one of the offices participating in DAS (including IP5, FI, UK, DK, ES, SE). The applicant may file the request by indicating the access code given by the OFF on [EPO Form 1001](#) or on the new [EPO Form 1013](#). Should the EPO not be able to retrieve the priority document from DAS or if no such request was submitted by the applicant, the EPO will automatically include the priority document should it be available.

More information on the participating offices can be found on [the WIPO website](#).

Legal references:

[OJ EPO 2018, A78; A79; 2020, A57; A58;](#)

4. Who can file an EP application?

An applicant for a European patent application can be any natural or legal person, or anybody equivalent to a legal person according to [Art. 58 EPC](#), irrespective of nationality and place of residence or business. For the purposes of proceedings before the EPO, the applicant is deemed to be entitled to exercise the right to the European patent as explained in [Art. 60\(3\) EPC](#).

The application may be filed in the name of one person or several persons named as joint applicants ([Art. 59 EPC](#)). The application may also be filed by two or more applicants designating different contracting states. It may arise that a first applicant designates a first group of contracting states and a second designates a different group of contracting states, while both applicants jointly designate a third group of contracting states. In such a case the applicants will be regarded as joint applicants for the purposes of the proceedings before the EPO ([Art. 118 EPC](#)).

Legal references:

[Art. 58, 59, 60\(3\), 118, 134 EPC](#)

[GL A-II, 2](#)

5. Ownership and inventorship

The applicant must designate the inventor(s) for each European application. Should the applicant not be the sole inventor, a designation of inventor has to be filed accordingly.

The designation must state the family name and given names, the country and place of residence of the inventor, include a statement indicating the origin of the right to the European Patent (as mentioned in [Art. 81 EPC](#)) and bear the signature of the applicant or their representative.

An inventor may waive their right to be mentioned as inventor. Consequently, provided that the request is received on time, their name will not be mentioned in the European patent specification or in the Register of European Patents (Rule 143(1)(g)). Neither will it be mentioned in the European Patent Bulletin. In this case, the designation of the inventor, the waiver request and all correspondence relating to it will be excluded from the file inspection (provisions according to [Art. 128\(4\) EPC](#) and [Rule 144 EPC](#)).

Legal references:

Art. 19, 81 EPC

Rule 20 EPC

GL A-III, 5.1 to 5.3

OJ EPO 2021, A12

6. Transfer of rights and assignments

A patent application or a patent itself may be transferred in whole or in part by the proprietor for one or more of the countries where the patent application/patent is valid. In this case the Legal Division will bear sole responsibility for it. The Legal Division will also bear sole responsibility for decisions in respect of suspension/interruption and resumption of proceedings as stated in Rule 14 EPC and Rule 142 EPC.

A request for a transfer of rights is not deemed to have been filed until an administrative fee has been paid in full (Rule 22(2) EPC) and the request must be supported by evidence (Rule 22(1) EPC).

Legal references:

Art. 71, 72 EPC

Rule 14, 22, 85, 142 EPC

GL E-XIV, 3

7. Where to file an EP application?

European patent applications can be filed in electronic form using the EPO Online Filing software, which can be obtained from the EPO free of charge (see epo.org). Filings using this software may be made online or on electronic data carriers admitted by the EPO. Alternatively, the web-based Online Filing 2.0 or the EPO Web-form filing service may be used, which are also provided free of charge via the EPO website (epo.org). Links to the online filing services are given in Annex III.

European patent applications can also be filed in electronic form with the competent national authorities of the contracting states which so permit. Divisional applications must, however, be filed directly with the EPO.

An EP application may be filed by delivery by hand, by post, by facsimile or electronically at the EPO's filing offices in Munich, The Hague or Berlin. It is not possible to file an application with the EPO's sub-office in Vienna, since it is not a filing office.

Upon receipt of the application and after performance of the check under Rule 35(2) EPC, the EPO issues a receipt to the applicant (see last page of [EPO Form 1001](#)).

Legal references:

Art. 75(1)(b) EPC

Rule 35 (1) EPC

GL A-II

8. Filing at a national patent office

Pursuant to [Art. 75\(1\)\(b\) EPC](#), if the law of a contracting state so permits, an EP application may be filed with the central industrial property office or other competent authority of that state.

However, the national law may require that nationals (natural persons) of that contracting state must file EP applications with a national authority and that "first filings" (applications without priority) are initially filed with a national authority. The national law of the contracting states lays down the details with regard to the filing of EP applications with a national authority (see the booklet "National Law relating to the EPC", [B-III](#) for further details).

Applications may be filed electronically (OJ EPO 2009, 182), by facsimile if allowable (see special edition No. 3 OJ EPO 2007, A.3), by delivery by hand or by post.

On receipt of an EP application, the national office will issue a receipt to the applicant which, among other things, contains the date of receipt and the allocated EP number ([Rule 35\(2\) EPC](#)) and will forward the application to the EPO within time limits set by [Art. 77\(1\) EPC](#) and [Rule 37\(1\)\(a\) EPC](#). Should, under national law, examination as to secrecy be required, the time limits set by [Rule 37\(1\)\(b\) EPC](#) and [Art. 77\(2\) EPC](#) may apply instead.

Legal references:

[Art. 75, 76, 77 EPC](#)

[Rule 35\(2\), 37 EPC](#)

9. Filing at the EPO: online filing

Applications can be filed online using Online Filing (OLF), Online Filing 2.0, New online filing (CMS) and Web-form filing (WFF).

Online filing replaces the traditional paper method and requires an electronic signature. This method can be used to file electronically with both the EPO and national offices and provides a confirmation thereof by means of an instant receipt. It is available free of charge from the EPO and national offices or accessible via [epo.org](#). The most common electronic forms for online filing are [Forms 1001](#), [1200](#) and [2300](#).

Legal references:

[Rule 2\(1\) EPC](#)

[OJ EPO 2021, A20; A21; A45](#)

[GL A-II, 1.2.1 and 1.2.2](#)

10. Filing at the EPO: other ways of filing

A European patent application may be filed by delivery by hand or by post at the EPO's filing offices in Munich, The Hague or Berlin. It is not possible to file an application at the Vienna sub-office since it is not a filing office. Applications may also be filed at a national industrial property office or other competent authority of a contracting state, provided that the national law of that state so allows.

When filing applications on paper, the application documents (description, claims, drawings, abstract) need no longer be filed in triplicate. In accordance with the decision of the President of the EPO dated 15 November 2001 (OJ EPO 2001, 563), only one set of application documents is necessary for applications filed as from 2 January 2002.

Filing by fax is possible with the filing office of the EPO or with certain national authorities. Illegible or incomplete documents are treated as not having been received. Written confirmation of the fax is only required where the documents are of poor quality.

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

Legal references:

Rule 2 EPC

GL A-II, 1.2.1 and 1.2.2

11. The content of an EP application

All requests must be duly signed. They may be signed by the representative if one has been appointed. Where the request is signed on behalf of a legal person, the signatory's position within the legal entity must also be indicated.

In the case of co-applicants and not an appointed European representative, the request for grant must be signed by all of the applicants. If filed on paper, one copy of the request itself must be filed. The receipt of documents (page 9 of the request for grant form) must be filed in triplicate, or in quadruplicate if filed with a national authority. If the application is filed electronically, no additional copies are necessary.

The documents making up the European patent application consist of a description, claims, drawings and abstract. These documents must be filed in a single copy and, in the case of paper filings, must be on strong, pliable, white A4 paper (portrait format). The documents must begin on a new sheet and must be numbered on all sheets in consecutive Arabic numerals, which must be positioned top centre but not in the top margin. In addition to this, all documents must contain minimum blank margins (type area of top: 2 cm, left: 2.5 cm, right: 2 cm, bottom: 2 cm).

Additionally, 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 with a line spacing of 1.5. 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). There must be no handwritten additions to the text.

Legal references:

Art. 83-85 EPC

Rule 42-50 EPC

GL A-VIII, 2; IX

12. Time limits for filing an EP

If an application for a patent, a utility model or a utility certificate has been filed in or for any state party to the Paris Convention for the Protection of Industrial Property or any member of the World Trade Organization, it may be claimed as priority when filing a European patent application in respect of the same invention.

The European patent application must be filed no later than twelve months after filing the first application. The earlier application whose priority is claimed may also be a European or an international (PCT) application.

Legal references:

Art. 87 EPC

13. Time limit for forwarding a nationally-filed EP application to the EPO

The central industrial property office of a contracting state is obliged to forward to the EPO, in the shortest time compatible with national law concerning the secrecy of inventions, the applications filed with that office or with other competent authorities in that state. The time limit to forward to the EPO is within 6 weeks of filing or 4 months from filing or, if priority is claimed, within 14 months of the date of priority, where further examination as to its liability to secrecy is required.

Legal references:

GL A-II, 1.5, 1.6, 3.2

14. Fees due at the filing stage

Status: July 2022

The due filing fee is EUR 130 for online filing and EUR 270 for paper filing. There is also an additional fee of EUR 16 for the 36th and each subsequently filed page. These fees are due within one month of the filing date. A search fee of EUR 1390 is payable for an extended European search report.

Within one month of the date of receipt of the claims, other fees are due, such as claims fees of EUR 250 (for the 16th and each subsequent claim up to 50) or EUR 630 (for the 51st and each subsequent claim).

Legal references:

Art. 78(2), 79(2) EPC

Rule 38, 39 EPC

15. Languages, translations and fee reductions

The official language in which the application is filed or translated serves as the procedural language in proceedings before the EPO. This language cannot be subsequently changed.

If the application is filed in any non-EPO language, a translation into English, German or French is to be provided within two months of filing. If it is not filed, the EPO invites the applicant to submit a translation within two months of notification. If the translation is still not filed after this period, the application is deemed to be withdrawn (re-establishment of rights available).

Applicants with a residence/principal place of business in an EPC contracting state with an official language other than DE, EN, FR (admissible non-EPO language) and nationals of such states living abroad who wish to benefit from the 30% reduction of the filing or examination fee, according to the provisions of Rule 6 EPC, must expressly declare that they fall into one of the categories of Rule 6(4) EPC in addition to filing the application / the request for examination in an admissible non-EPO language (according to Art. 14(4) EPC). In the case of multiple applicants, all must fulfil the requirements of Rule 6 EPC, but only one applicant needs to fulfil the requirements of Article 14(4) EPC.

According to Rule 6 EPC, in order to obtain a 30% reduction of the filing fee (and any additional (page) fee / additional fee for divisional applications) or examination fee, all applicants have to declare that they belong to one of the following categories under Rule 6(4) EPC: small and medium-sized enterprises (SMEs), natural persons, non-profit organisations or universities or public research organisations.

On top of this, at least one applicant must fulfil the requirements of Art. 14(4) EPC, meaning that they must have their residence or principal place of business within a contracting state of the EPC which has an official language other than English, French or German (admissible non-EPO language). They can also be a national of such a state who is resident abroad. The residence/principal place of business/nationality of the other applicants is irrelevant.

In addition to the previous requirements, the application or the examination request has to be filed in an admissible non-EPO language.

Legal references:

Art. 14(1), (3) EPC

Rule 6 EPC

GL A-VII

16. Requirements for the accordance of a date of filing

After the applicant prepares a description of the invention, one or more claims, an abstract and drawings (optional), the EPO checks the documentation for compliance as well as the method of filing. Only after this is the application accorded a date of filing.

A minimum number of requirements are needed for the accordance of a date of filing, such as an indication that a European patent is sought (R. 40(1)(a) EPC), information identifying the applicant or allowing the applicant to be contacted (R. 40(1)(b) EPC) and a description which may be in any language or a reference to a previously-filed application which may also be in any language (R. 40(1)(c) EPC).

Legal references:

Art. 80, 90(1), (3) EPC

Rule 35(2), 40 EPC

GL A-II, 4.1

17. Legal effect of a filing date

According a date of filing generates the legal existence of a European patent application and is relevant for the patent grant procedure e.g. for establishing the state of the art.

Important time limits are calculated on the basis of the date of filing, such as the 20-year term of a European patent or the due date of renewal fees.

The date of filing of the application is the date on which the European patent application meets the minimum requirements of Rule 40 EPC. If, on receipt, the application meets the above minimum requirements for according a date of filing, the date of receipt of the application will be the date of filing. The date of receipt can either be the date of receipt of the application at the national office or the date of receipt at the EPO.

Legal references:

Rule 40 EPC

GL A-II, 4.1.5

18. Examination of further formal requirements

The EPO checks that the application meets the requirements under the EPC in order to give the applicant the chance to correct deficiencies and ensure a valid basis for the patent grant process.

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 translations, the content of the request for grant, the presence of claims, the filing of the abstract, representation, physical requirements of the application documents (including any sequence listings and disclosure of biological material), any priority claimed, the designation of the inventor and the filing of any drawings.

If the Receiving Section finds any deficiencies, it invites the applicant to remedy them in accordance with the Implementing Regulations.

Legal references:

Art. 80, 90(2), (4), (5) EPC

Rule 55 EPC

GL A-II, 4.1.4; 4.1.5

19. Correction of defects

In the event that the application does not meet the minimum requirements, it cannot be dealt with as an EP application unless the deficiencies are remedied under Rule 55 EPC. Consequently, the applicant is invited to remedy the deficiency within a non-extendable period of two months from

notification via [EPO Form 1042](#). The date on which the deficiency is remedied is accorded as the date of filing.

If the deficiencies are not remedied in a timely manner, the application will not be treated as a European patent application. A noting of loss of rights pursuant to [Rule 112 EPC](#) (EPO Form 1043) is issued to inform the applicant accordingly. Once the loss of rights takes legal effect, any fees paid in respect of the application will be refunded.

Legal references:

[Rule 55](#), [112 EPC](#)

20. Remedies at the filing stage

If an application is filed without any claims, the applicant is invited with EPO Form 1061 to file one or more claims.

Should an application be filed without an abstract, the applicant is invited with EPO Form 1050A to file one. The definitive content of the abstract is the responsibility of the EPO.

For any physical deficiencies or missing numbering, EPO Form 1050 is sent to the applicant.

If the applicant files the certified copy of the earlier application (EAPP) within the period set in the invitation pursuant to [Rule 55 EPC](#) ([EPO Form 1042](#)), the application maintains its original date of filing, provided that all other requirements for the accordance of a date of filing are met.

Legal references:

[Rule 55](#), [112 EPC](#)

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