EPC2000

Consolidated, cross-referenced and compared with EPC1973

Important Notes:

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For any comments on how this might be improved, or to point out any errors or inaccuracies, and to be informed when any updated version is available, please contact the editor David Pearce at d.h.pearce@gmail.com.

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Decision of the President	12 July 2007	Electronic filing of patent applications and other documents	Special edition No. 3 OJ EPO 2007, A.4., pp 12-16
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Related Provisions

Agreement on the application of Article 65 of the Convention on the Grant of European Patents
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Decisions of the Enlarged Board of Appeal

Number	OJ Reference	Headwords	Date	Relevant Article / Rule
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G 1/05	-	Divisonal/ASTROPOWER	28.06.2007	Article 76
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EPC 2000	EPC 1973 (2006 Version)
European Patent Convention 2000 (EPC 2000) as adopted by decision of the Administrative Council of 28 June 2001	**Convention on the grant of European Patents (European Patent Convention) of 5 October 1973** **text as amended by the act revising Article 63 EPC of 17 December 1991 and by decisions of the Administrative Council of the European Patent Organisation of 21 December 1978, 13 December 1994, 20 October 1995, 5 December 1996, 10 December 1998 and 27 October 2005 and comprising the provisionally applicable provisions of the act revising the EPC of 29 November 2000**

PART I: GENERAL AND INSTITUTIONAL PROVISIONS

Chapter I: General provisions

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Article 1 - European law for the grant of patents A system of law, common to the Contracting States, for the grant of patents for invention is established by this Convention.	**Article 1 - European law for the grant of patents** A system of law, common to the Contracting States, for the grant of patents for invention is hereby established.
Article 2 - European patent (1) Patents granted under this Convention shall be called European patents. (2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless this Convention provides otherwise.	**Article 2 - European patent** (1) Patents granted by virtue of this Convention shall be called European patents. (2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless otherwise provided in this Convention.
Article 3 - Territorial effect The grant of a European patent may be requested for one or more of the Contracting States.	**Article 3 - Territorial effect** The grant of a European patent may be requested for one or more of the Contracting States.
Article 4 - European Patent Organisation (1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy. (2) The organs of the Organisation shall be: (a) the European Patent Office; (b) the Administrative Council. (3) The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.	**Article 4 - European Patent Organisation** (1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy. (2) The organs of the Organisation shall be: (a) a European Patent Office; (b) an Administrative Council. (3) The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.
Article 4a - Conference of ministers of the Contracting States A conference of ministers of the Contracting States responsible for patent matters shall meet at least every five years to discuss issues pertaining to the Organisation and to the European patent system.	

Chapter II: The European Patent Organisation

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Article 5 - Legal status (1) The Organisation shall have legal personality. (2) In each of the Contracting States, the Organisation shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State; it may in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.	**Article 5 - Legal status** (1) The Organisation shall have legal personality. (2) In each of the Contracting States, the Organisation shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State; it may in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.

(3) The President of the European Patent Office shall represent the Organisation.[1]	(3) The President of the European Patent Office shall represent the Organisation.
Article 6 - Headquarters (1) The Organisation shall have its headquarters in Munich. (2) The European Patent Office shall be located in Munich. It shall have a branch at The Hague.	**Article 6 - Seat** (1) The Organisation shall have its seat at Munich. (2) The European Patent Office shall be set up at Munich. It shall have a branch at The Hague.
Article 7 - Sub-offices of the European Patent Office By decision of the Administrative Council, sub-offices of the European Patent Office may be created, if need be, for the purpose of information and liaison, in the Contracting States and with intergovernmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.	**Article 7 - Sub-offices of the European Patent Office** By decision of the Administrative Council, sub-offices of the European Patent Office may be created if need be, for the purpose of information and liaison, in the Contracting States and with inter-governmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.
Article 8 - Privileges and immunities The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office, and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in each Contracting State, the privileges and immunities necessary for the performance of their duties.	**Article 8 - Privileges and immunities** The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in the territory of each Contracting State, the privileges and immunities necessary for the performance of their duties.
Article 9 - Liability (1) The contractual liability of the Organisation shall be governed by the law applicable to the contract in question. (2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the law of the Contracting State in which such branch or sub-office is located shall apply. (3) The personal liability of the employees of the European Patent Office towards the Organisation shall be governed by their Service Regulations or conditions of employment. (4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be: (a) for disputes under paragraph 1, the courts of the Federal Republic of Germany, unless the contract concluded between the parties designates a court of another State; (b) for disputes under paragraph 2, the courts of the Federal Republic of Germany, or of the State in which the branch or	**Article 9 - Liability** (1) The contractual liability of the Organisation shall be governed by the law applicable to the relevant contract. (2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the provisions of the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the provisions of the law of the Contracting State in which such branch or sub-office is located shall apply. (3) The personal liability of the employees of the European Patent Office towards the Organisation shall be laid down in their Service Regulations or conditions of employment. (4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be: (a) for disputes under paragraph 1, the courts of competent jurisdiction in the Federal Republic of Germany, unless the contract concluded between the parties designates the courts of another State; (b) for disputes under paragraph 2, either the courts of

[1] **G 5/88, 7/88, 8/88**: The capacity of the President of the European Patent Office to represent the European Patent Organisation by virtue of Article 5(3) EPC is one of his functions but is not one of his powers. The extent of the President's power is governed by the EPC, but not by Article 5(3) EPC.

sub-office is located.	competent jurisdiction in the Federal Republic of Germany, or the courts of competent jurisdiction in the State in which the branch or sub-office is located.

Chapter III: The European Patent Office

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Article 10 - Management	**Article 10 - Direction**
(1) The European Patent Office shall be managed by the President, who shall be responsible for its activities to the Administrative Council.	(1) The European Patent Office shall be directed by the President who shall be responsible for its activities to the Administrative Council.
(2) To this end, the President shall have in particular the following functions and powers: [2]	(2) To this end, the President shall have in particular the following functions and powers:
(a) he shall take all necessary steps to ensure the functioning of the European Patent Office, including the adoption of internal administrative instructions and information to the public; [3]	(a) he shall take all necessary steps, including the adoption of internal administrative instructions and the publication of guidance for the public, to ensure the functioning of the European Patent Office;
(b) unless this Convention provides otherwise, he shall prescribe which acts are to be performed at the European Patent Office in Munich and its branch at The Hague respectively;	(b) in so far as this Convention contains no provisions in this respect, he shall prescribe which transactions are to be carried out at the European Patent Office at Munich and its branch at The Hague respectively;
(c) he may submit to the Administrative Council any proposal for amending this Convention, for general regulations, or for decisions which come within the competence of the Administrative Council;	(c) he may place before the Administrative Council any proposal for amending this Convention and any proposal for general regulations or decisions which come within the competence of the Administrative Council;
(d) he shall prepare and implement the budget and any amending or supplementary budget;	(d) he shall prepare and implement the budget and any amending or supplementary budget;
(e) he shall submit a management report to the Administrative Council each year;	(e) he shall submit a management report to the Administrative Council each year;
(f) he shall exercise supervisory authority over the staff;	(f) he shall exercise supervisory authority over the personnel;
(g) subject to Article 11, he shall appoint the employees and decide on their promotion;	(g) subject to the provisions of Article 11, he shall appoint and promote the employees;
(h) he shall exercise disciplinary authority over the employees other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to employees referred to in Article 11, paragraphs 2 and 3;	(h) he shall exercise disciplinary authority over the employees other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to employees referred to in Article 11, paragraphs 2 and 3;
(i) he may delegate his functions and powers.	(i) he may delegate his functions and powers.
(3) The President shall be assisted by a number of Vice-Presidents. If the President is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.	(3) The President shall be assisted by a number of Vice-Presidents. If the President is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.

[2] see Decisions of the President of the European Patent Office dated 12 July 2007 concerning:
the designation of the EPO filing offices (Special edition No. 3 OJ EPO 2007, A.1., pp 3-4);
the filing of sequence listings (Special edition No. 3 OJ EPO 2007, C.1., pp26-29);
the completion of technical preparations for the publication of European patent applications (Special edition No. 3 OJ EPO 2007, L.1., pp128-129)

[3] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the completion of technical preparations for the publication of European patent applications (Special edition No. 3 OJ EPO 2007, D.1., p94)

Article 11 - Appointment of senior employees	**Article 11 - Appointment of senior employees**
(1) The President of the European Patent Office shall be appointed by the Administrative Council.	(1) The President of the European Patent Office shall be appointed by decision of the Administrative Council.
(2) The Vice-Presidents shall be appointed by the Administrative Council after the President of the European Patent Office has been consulted.	(2) The Vice-Presidents shall be appointed by decision of the Administrative Council after the President has been consulted.
(3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by the Administrative Council on a proposal from the President of the European Patent Office. They may be re-appointed by the Administrative Council after the President of the European Patent Office has been consulted. [Rule 13]	(3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by decision of the Administrative Council, taken on a proposal from the President of the European Patent Office. They may be re-appointed by decision of the Administrative Council after the President of the European Patent Office has been consulted.
(4) The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 to 3.	(4) The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 to 3.
(5) The Administrative Council, after consulting the President of the European Patent Office, may also appoint as members of the Enlarged Board of Appeal legally qualified members of the national courts or quasi-judicial authorities of the Contracting States, who may continue their judicial activities at the national level. They shall be appointed for a term of three years and may be re-appointed.	
Article 12 - Duties of office	**Article 12 - Duties of office**
Employees of the European Patent Office shall be bound, even after the termination of their employment, neither to disclose nor to make use of information which by its nature is a professional secret.	The employees of the European Patent Office shall be bound, even after the termination of their employment, neither to disclose nor to make use of information which by its nature is a professional secret.
Article 13 - Disputes between the Organisation and the employees of the European Patent Office	**Article 13 - Disputes between the Organisation and the employees of the European Patent Office**
(1) Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.	(1) Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organisation in the case of disputes with the European Patent Organisation in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.
(2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment.	(2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment, as the case may be.
Article 14 - Languages of the European Patent Office, European patent applications and other documents	**Article 14 - Languages of the European Patent Office**
(1) The official languages of the European Patent Office shall be English, French and German.	(1) The official languages of the European Patent Office shall be English, French and German. European patent applications must be filed in one of these languages.
(2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations [Rule 6]. Throughout the	(2) However, natural or legal persons having their residence or principal place of business within the territory of a Contracting State having a language other than English, French or German as an official language, and nationals of

proceedings before the European Patent Office, such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn. (3) The official language of the European Patent Office in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before the European Patent Office, unless the Implementing Regulations provide otherwise. (4) Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State [fee reduction: Rule 6(3)]. They shall, however, file a translation in an official language of the European Patent Office in accordance with the Implementing Regulations [Rule 3]. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed. [time limit: Rule 6(2)] (5) European patent applications shall be published in the language of the proceedings. (6) Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the other two official languages of the European Patent Office. (7) The following shall be published in the three official languages of the European Patent Office: (a) the European Patent Bulletin; (b) the Official Journal of the European Patent Office. (8) Entries in the European Patent Register shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic. [14(3) to (6): transitional category 1: applies to granted patents and applications pending on 13 December 2007]	that State who are resident abroad, may file European patent applications in an official language of that State. Nevertheless, a translation in one of the official languages of the European Patent Office must be filed within the time limit prescribed in the Implementing Regulations; throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the original text of the application. (3) The official language of the European Patent Office in which the European patent application is filed or, in the case referred to in paragraph 2, that of the translation, shall be used as the language of the proceedings in all proceedings before the European Patent Office concerning the application or the resulting patent, unless otherwise provided in the Implementing Regulations. (4) The persons referred to in paragraph 2 may also file documents which have to be filed within a time limit in an official language of the Contracting State concerned. They must however file a translation in the language of the proceedings within the time limit prescribed in the Implementing Regulations; in the cases provided for in the Implementing Regulations, they may file a translation in a different official language of the European Patent Office. (5) If any document, other than those making up the European patent application, is not filed in the language prescribed by this Convention, or if any translation required by virtue of this Convention is not filed in due time, the document shall be deemed not to have been received. (6) European patent applications shall be published in the language of the proceedings. (7) The specifications of European patents shall be published in the language of the proceedings; they shall include a translation of the claims in the two other official languages of the European Patent Office. (8) There shall be published in the three official languages of the European Patent Office: (a) the European Patent Bulletin; (b) the Official Journal of the European Patent Office. (9) Entries in the Register of European Patents shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic.
Article 15 - Departments entrusted with the procedure To carry out the procedures laid down in this Convention, the following shall be set up within the European Patent Office: (a) a Receiving Section; (b) Search Divisions; (c) Examining Divisions; (d) Opposition Divisions; (e) a Legal Division; (f) Boards of Appeal; (g) an Enlarged Board of Appeal.	**Article 15 - The departments charged with the procedure** For implementing the procedures laid down in this Convention, there shall be set up within the European Patent Office: (a) a Receiving Section; (b) Search Divisions; (c) Examining Divisions; (d) Opposition Divisions; (e) a Legal Division; (f) Boards of Appeal; (g) an Enlarged Board of Appeal.

Article 16 - Receiving Section The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of European patent applications. [Rule 10]	**Article 16 - Receiving Section** The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of European patent applications.
Article 17 - Search Divisions The Search Divisions shall be responsible for drawing up European search reports.	**Article 17 - Search Divisions** The Search Divisions shall be responsible for drawing up European search reports.
Article 18 - Examining Divisions (1) The Examining Divisions shall be responsible for the examination of European patent applications. (2) An Examining Division shall consist of three technically qualified examiners. However, before a decision is taken on a European patent application, its examination shall, as a general rule, be entrusted to one member of the Examining Division. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Examining Division shall be decisive. [Rule 10]	**Article 18 - Examining Divisions** (1) The Examining Divisions shall be responsible for the examination of European patent applications. (2) An Examining Division shall consist of three technically qualified examiners. However, before a decision is taken on a European patent application, its examination shall, as a general rule, be entrusted to one member of the Examining Division. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Examining Division shall be decisive.
Article 19 - Opposition Divisions (1) The Opposition Divisions shall be responsible for the examination of oppositions against any European patent. (2) An Opposition Division shall consist of three technically qualified examiners, at least two of whom shall not have taken part in the proceedings for grant of the patent to which the opposition relates. An examiner who has taken part in the proceedings for the grant of the European patent may not be the Chairman. Before a decision is taken on the opposition, the Opposition Division may entrust the examination of the opposition to one of its members. Oral proceedings shall be before the Opposition Division itself. If the Opposition Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner who shall not have taken part in the proceedings for grant of the patent. In the event of parity of votes, the vote of the Chairman of the Opposition Division shall be decisive.	**Article 19 - Opposition Divisions** (1) An Opposition Division shall be responsible for the examination of oppositions against any European patent. (2) An Opposition Division shall consist of three technical examiners, at least two of whom shall not have taken part in the proceedings for grant of the patent to which the opposition relates. An examiner who has taken part in the proceedings for the grant of the European patent shall not be the Chairman. Prior to the taking of a final decision on the opposition, the Opposition Division may entrust the examination of the opposition to one of its members. Oral proceedings shall be before the Opposition Division itself. If the Opposition Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner who shall not have taken part in the proceedings for grant of the patent. In the event of parity of votes, the vote of the Chairman of the Division shall be decisive.
Article 20 - Legal Division (1) The Legal Division shall be responsible for decisions in respect of entries in the Register of European Patents and in respect of registration on, and deletion from, the list of professional representatives.[4] (2) Decisions of the Legal Division shall be taken by one legally qualified member.	**Article 20 - Legal Division** (1) The Legal Division shall be responsible for decisions in respect of entries in the Register of European Patents and in respect of registration on, and deletion from, the list of professional representatives. (2) Decisions of the Legal Division shall be taken by one legally qualified member.

[4] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the responsibilities of the Legal Division (Special edition No. 3 OJ EPO 2007, G.1., pp113-114)

Article 21 - Boards of Appeal	**Article 21 Boards of Appeal**
(1) The Boards of Appeal shall be responsible for the examination of appeals from decisions of the Receiving Section, the Examining Divisions and Opposition Divisions, and the Legal Division.	(1) The Boards of Appeal shall be responsible for the examination of appeals from the decisions of the Receiving Section, Examining Divisions, Opposition Divisions and of the Legal Division.
(2) For appeals from decisions of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.	(2) For appeals from a decision of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.
(3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:	(3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:
(a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant, limitation or revocation of a European patent, and was taken by an Examining Division consisting of less than four members;	(a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant of a European patent and was taken by an Examining Division consisting of less than four members;
(b) three technically and two legally qualified members, when the decision was taken by an Examining Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires;	(b) three technically qualified members and two legally qualified members, when the decision was taken by an Examining Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires;
(c) three legally qualified members in all other cases.[5]	(c) three legally qualified members in all other cases.
(4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:	(4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:
(a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;	(a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;
(b) three technically and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires.	(b) three technically qualified members and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members or when the Board of Appeal considers that the nature of the appeal so requires.
Article 22 - Enlarged Board of Appeal	**Article 22 - Enlarged Board of Appeal**
(1) The Enlarged Board of Appeal shall be responsible for:	(1) The Enlarged Board of Appeal shall be responsible for:
(a) deciding on points of law referred to it by Boards of Appeal under Article 112;	(a) deciding points of law referred to it by Boards of Appeal;
(b) giving opinions on points of law referred to it by the President of the European Patent Office under Article 112;	(b) giving opinions on points of law referred to it by the President of the European Patent Office under the conditions laid down in Article 112.
(c) deciding on petitions for review of decisions of the Boards of Appeal under Article 112a.	(2) For giving decisions or opinions, the Enlarged Board of Appeal shall consist of five legally qualified members and two technically qualified members. One of the legally qualified members shall be the Chairman.
(2) In proceedings under paragraph 1(a) and (b), the Enlarged Board of Appeal shall consist of five legally and two technically qualified members. In proceedings under paragraph 1(c), the Enlarged Board of Appeal shall consist of three or five members as laid down in the Implementing	

[5] **G 2/90**:
1. Under Article 21(3)(c) EPC, the Legal Board of Appeal is competent only to hear appeals against decisions taken by an Examining Division consisting of fewer than four members when the decision does not concern the refusal of a European patent application or the grant of a European patent. In all other cases, i.e. those covered by Article 21(3)(a), (3)(b) and (4) EPC, the Technical Board of Appeal is competent.
2. The provisions relating to competence in Article 21(3) and (4) EPC are not affected by [Rule 11(3)] EPC.

Regulations. In all proceedings, a legally qualified member shall be the Chairman. [Rule 13]	
Article 23 - Independence of the members of the Boards (1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect. Notwithstanding sentence 1, the term of office of members of the Boards shall end if they resign or are retired in accordance with the Service Regulations for permanent employees of the European Patent Office. (2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or Legal Division. (3) In their decisions the members of the Boards shall not be bound by any instructions and shall comply only with the provisions of this Convention. (4) The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with the Implementing Regulations [Rules 12-13]. They shall be subject to the approval of the Administrative Council.	**Article 23 - Independence of the members of the Boards** (1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect. (2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or of the Legal Division. (3) In their decisions the members of the Boards shall not be bound by any instructions and shall comply only with the provisions of this Convention. (4) The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with the provisions of the Implementing Regulations. They shall be subject to the approval of the Administrative Council.
Article 24 - Exclusion and objection (1) Members of the Boards of Appeal or of the Enlarged Board of Appeal may not take part in a case in which they have any personal interest, or if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal. (2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly.[6] (3) Members of a Board of Appeal or of the Enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality[7]. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. An objection may not be based upon the nationality of members. (4) The Boards of Appeal and the Enlarged Board of Appeal shall decide as to the action to be taken in the cases specified	**Article 24 Exclusion and objection** (1) Members of the Boards of Appeal or of the Enlarged Board of Appeal may not take part in any appeal if they have any personal interest therein, if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal. (2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly. (3) Members of a Board of Appeal or of the Enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. No objection may be based upon the nationality of members. (4) The Boards of Appeal and the Enlarged Board of Appeal shall decide as to the action to be taken in the cases specified

[6] **G 1/05** (Interlocutory Decision):
1. If a member of a Board of Appeal in a notice of withdrawal gives a ground which may by its nature constitute a possible ground for an objection of partiality that ground should normally be respected by the decision on replacement of the Board member concerned (Reasons, point 7).
2. As regards proceedings before the Enlarged Board of Appeal and unless there are specific circumstances throwing doubt on the Board member's ability to approach the parties' submissions with an open mind on a later occasion there cannot be any objectively justified, i.e. reasonable suspicion of partiality against a member of the Enlarged Board of Appeal within the meaning of Article 24(3), first sentence, EPC for the reason that a position on the matter was adopted in a prior decision of a Board of Appeal in which the Board member concerned had participated (Reasons, point 27).

[7] **G 5/91**: Although Article 24 EPC applies only to members of the Boards of Appeal and of the Enlarged Board of Appeal, the requirement of impartiality applies in principle also to employees of the departments of the first instance of the EPO taking part in decision-making activities affecting the rights of any party. [see also A106(2)]

in paragraphs 2 and 3, without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate[8].	in paragraphs 2 and 3 without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate.
Article 25 - Technical opinion At the request of the competent national court hearing an infringement or revocation action, the European Patent Office shall be obliged, on payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for issuing such opinions.	**Article 25 - Technical opinion** At the request of the competent national court trying an infringement or revocation action, the European Patent Office shall be obliged, against payment of an appropriate fee, to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for the issue of such opinions.

Chapter IV: The Administrative Council

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Article 26 - Membership (1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council. (2) The members of the Administrative Council may, in accordance with the Rules of Procedure of the Administrative Council, be assisted by advisers or experts.	**Article 26 - Membership** (1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council. (2) The members of the Administrative Council may, subject to the provisions of its Rules of Procedure, be assisted by advisers or experts.
Article 27 - Chairmanship (1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman if he is prevented from carrying out his duties. (2) The terms of office of the Chairman and the Deputy Chairman shall be three years. They may be re-elected.	**Article 27 - Chairmanship** (1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman in the event of his being prevented from attending to his duties. (2) The duration of the terms of office of the Chairman and the Deputy Chairman shall be three years. The terms of office shall be renewable.
Article 28 - Board (1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members. (2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council. (3) The term of office of the members elected by the Administrative Council shall be three years. They may not be re-elected. (4) The Board shall perform the duties assigned to it by the Administrative Council in accordance with the Rules of Procedure.	**Article 28 - Board** (1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members. (2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council. (3) The term of office of the members elected by the Administrative Council shall be three years. This term of office shall not be renewable. (4) The Board shall perform the duties given to it by the Administrative Council in accordance with the Rules of Procedure.
Article 29 - Meetings (1) Meetings of the Administrative Council shall be	**Article 29 - Meetings** (1) Meetings of the Administrative Council shall be

[8] See Rules of Procedure of the Boards of Appeal, Article 3

convened by its Chairman.	convened by its Chairman.
(2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.	(2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.
(3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.	(3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.
(4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.	(4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.
(5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.	(5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.
Article 30 - Attendance of observers	**Article 30 - Attendance of observers**
(1) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with an agreement between the Organisation and the World Intellectual Property Organization.	(1) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with the provisions of an agreement to be concluded between the European Patent Organisation and the World Intellectual Property Organization.
(2) Other intergovernmental organisations entrusted with carrying out international procedures in the field of patents, with which the Organisation has concluded an agreement, shall be represented at the meetings of the Administrative Council, in accordance with such agreement.	(2) Any other intergovernmental organisation charged with the implementation of international procedures in the field of patents with which the Organisation has concluded an agreement shall be represented at the meetings of the Administrative Council, in accordance with any provisions contained in such agreement.
(3) Any other intergovernmental and international non-governmental organisations carrying out an activity of interest to the Organisation may be invited by the Administrative Council to be represented at its meetings during any discussion of matters of mutual interest.	(3) Any other intergovernmental and international non-governmental organisations exercising an activity of interest to the Organisation may be invited by the Administrative Council to arrange to be represented at its meetings during any discussion of matters of mutual interest.
Article 31 - Languages of the Administrative Council	**Article 31 - Languages of the Administrative Council**
(1) The languages used in the deliberations of the Administrative Council shall be English, French and German.	(1) The languages in use in the deliberations of the Administrative Council shall be English, French and German.
(2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages specified in paragraph 1.	(2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages mentioned in paragraph 1.
Article 32 - Staff, premises and equipment	**Article 32 - Staff, premises and equipment**
The European Patent Office shall place at the disposal of the Administrative Council, and of any committee established by it, such staff, premises and equipment as may be necessary for the performance of their duties.	The European Patent Office shall place at the disposal of the Administrative Council and any body established by it such staff, premises and equipment as may be necessary for the performance of their duties.
Article 33 - Competence of the Administrative Council in certain cases	**Article 33 - Competence of the Administrative Council in certain cases**
(1) The Administrative Council shall be competent to amend:	(1) The Administrative Council shall be competent to amend the following provisions of this Convention:
(a) the time limits laid down in this Convention;	(a) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 94 only in the conditions laid down in Article 95;
(b) Parts II to VIII and Part X of this Convention, to bring them into line with an international treaty relating to patents	

or European Community legislation relating to patents; (c) the Implementing Regulations. (2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend: (a) the Financial Regulations; (b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature of any supplementary benefits and the rules for granting them; (c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries; (d) the Rules relating to Fees; (e) its Rules of Procedure. (3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technically qualified examiner only. Such decision may be rescinded. (4) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, subject to its approval, to conclude agreements on behalf of the European Patent Organisation with States, with intergovernmental organisations and with documentation centres set up on the basis of agreements with such organisations. (5) The Administrative Council may not take a decision under paragraph 1(b): – concerning an international treaty, before its entry into force; – concerning European Community legislation, before its entry into force or, where that legislation lays down a period for its implementation, before the expiry of that period.	(b) the Implementing Regulations. (2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions: (a) the Financial Regulations; (b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature, and rules for the grant, of any supplementary benefits; (c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries; (d) the Rules relating to Fees; (e) its Rules of Procedure. (3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technical examiner. Such decision may be rescinded. (4) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, with its approval, to conclude agreements on behalf of the European Patent Organisation with States, with intergovernmental organisations and with documentation centres set up by virtue of agreements with such organisations.
Article 34 - Voting rights (1) The right to vote in the Administrative Council shall be restricted to the Contracting States. (2) Each Contracting State shall have one vote, except where Article 36 applies.	**Article 34 - Voting rights** (1) The right to vote in the Administrative Council shall be restricted to the Contracting States. (2) Each Contracting State shall have one vote, subject to the application of the provisions of Article 36.
Article 35 - Voting rules (1) The Administrative Council shall take its decisions, other than those referred to in paragraphs 2 and 3, by a simple majority of the Contracting States represented and voting. (2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 134a, Article 149a, paragraph 2, Article 152, Article	**Article 35 - Voting rules** (1) The Administrative Council shall take its decisions other than those referred to in paragraph 2 by a simple majority of the Contracting States represented and voting. (2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 87, Article 95, Article 134, Article 151, paragraph 3, Article 154, paragraph 2, Article 155,

153, paragraph 7, Article 166 and Article 172. (3) Unanimity of the Contracting States voting shall be required for the decisions which the Administrative Council is empowered to take under Article 33, paragraph 1(b). The Administrative Council shall take such decisions only if all the Contracting States are represented. A decision taken on the basis of Article 33, paragraph 1(b), shall not take effect if a Contracting State declares, within twelve months of the date of the decision, that it does not wish to be bound by that decision. (4) Abstentions shall not be considered as votes.	paragraph 2, Article 156, Article 157, paragraphs 2 to 4, Article 160, paragraph 1, second sentence, Article 162, Article 163, Article 166, Article 167 and Article 172. (3) Abstentions shall not be considered as votes.
Article 36 - Weighting of votes (1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot. (2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows: (a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five; (b) the number of votes thus given shall be rounded upwards to the next whole number; (c) five additional votes shall be added to this number; (d) nevertheless, no Contracting State shall have more than 30 votes.	**Article 36 - Weighting of votes** (1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot. (2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows: (a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five; (b) the number of votes thus given shall be rounded upwards to the next higher whole number; (c) five additional votes shall be added to this number; (d) nevertheless no Contracting State shall have more than 30 votes.

Chapter V: Financial provisions

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Article 37 - Budgetary funding The budget of the Organisation shall be financed: (a) by the Organisation’s own resources; (b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States; (c) where necessary, by special financial contributions made by the Contracting States; (d) where appropriate, by the revenue provided for in Article 146; (e) where appropriate, and for tangible assets only, by third-	**Article 37 - Budgetary funding** The budget of the Organisation shall be financed: (a) by the Organisation's own resources; (b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States; (c) where necessary, by special financial contributions made by the Contracting States; (d) where appropriate, by the revenue provided for in Article 146; (e) where appropriate, and for tangible assets only, by third-

party borrowings secured on land or buildings; (f) where appropriate, by third-party funding for specific projects.	party borrowings secured on land or buildings; (f) where appropriate, by third-party funding for specific projects.
Article 38 - The Organisation's own resources The Organisation's own resources shall comprise: (a) all income from fees and other sources and also the reserves of the Organisation; (b) the resources of the Pension Reserve Fund, which shall be treated as a special class of asset of the Organisation, designed to support the Organisation's pension scheme by providing the appropriate reserves.	**Article 38 - The Organisation's own resources** The Organisation's own resources shall comprise: (a) all income from fees and other sources and also the reserves of the Organisation; (b) the resources of the Pension Reserve Fund, which shall be treated as a special class of asset of the Organisation, designed to support the Organisation's pension scheme by providing the appropriate reserves.
Article 39 - Payments by the Contracting States in respect of renewal fees for European patents (1) Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council[9]; the proportion shall not exceed 75% and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation. (2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of these payments. (3) The due dates for these payments shall be determined by the Administrative Council. (4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.	**Article 39 - Payments by the Contracting States in respect of renewal fees for European patents** (1) Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council; the proportion shall not exceed 75 per cent and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation. (2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of its payments. (3) The due dates for these payments shall be determined by the Administrative Council. (4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.
Article 40 - Level of fees and payments – Special financial contributions (1) The amounts of the fees referred to in Article 38 and the proportion referred to in Article 39 shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced. (2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting States shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question. (3) These special financial contributions shall be determined in respect of any Contracting State on the basis of the number of patent applications filed in the last year but one prior to that of entry into force of this Convention, and calculated in the following manner:	**Article 40 - Level of fees and payments - Special financial contributions** (1) The amounts of the fees referred to under Article 38 and the proportion referred to under Article 39 shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced. (2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting States shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question. (3) These special financial contributions shall be determined in respect of any Contracting State on the basis of the number of patent applications filed in the last year but one prior to that of entry into force of this Convention, and calculated in the following manner:

[9] Proportion fixed at 50% (OJ 1984, 296)

(a) one half in proportion to the number of patent applications filed in that Contracting State;	(a) one half in proportion to the number of patent applications filed in that Contracting State;
(b) one half in proportion to the second highest number of patent applications filed in the other Contracting States by natural or legal persons having their residence or principal place of business in that Contracting State. However, the amounts to be contributed by States in which the number of patent applications filed exceeds 25 000 shall then be taken as a whole and a new scale drawn up in proportion to the total number of patent applications filed in these States.	(b) one half in proportion to the second highest number of patent applications filed in the other Contracting States by natural or legal persons having their residence or principal place of business in that Contracting State. However, the amounts to be contributed by States in which the number of patent applications filed exceeds 25 000 shall then be taken as a whole and a new scale drawn up determined in proportion to the total number of patent applications filed in these States.
(4) Where the scale position of any Contracting State cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that State, decide its scale position.	(4) Where, in respect of any Contracting State, its scale position cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that State, decide its scale position.
(5) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the special financial contributions.	(5) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the special financial contributions.
(6) The special financial contributions shall be repaid with interest at a rate which shall be the same for all Contracting States. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting States in accordance with the scale referred to in paragraphs 3 and 4.	(6) The special financial contributions shall be repaid together with interest at a rate which shall be the same for all Contracting States. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting States in accordance with the scale mentioned in paragraphs 3 and 4 above.
(7) The special financial contributions remitted in any accounting period shall be repaid in full before any such contributions or parts thereof remitted in any subsequent accounting period are repaid.	(7) The special financial contributions remitted in any accounting period shall be wholly repaid before any such contributions or parts thereof remitted in any subsequent accounting period are repaid.
Article 41 - Advances	**Article 41 - Advances**
(1) At the request of the President of the European Patent Office, the Contracting States shall grant advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. The amount of such advances shall be determined in proportion to the amounts due from the Contracting States for the accounting period in question.	(1) At the request of the President of the European Patent Office, the Contracting States shall make advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. Such advances shall be apportioned in proportion to the amounts due by the Contracting States for the accounting period in question.
(2) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.	(2) Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.
Article 42 - Budget	**Article 42 - Budget**
(1) The budget of the Organisation shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets.	(1) The budget of the Organisation shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets.
(2) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.	(2) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.
Article 43 - Authorisation for expenditure	**Article 43 - Authorisation for expenditure**
(1) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless the Financial Regulations provide otherwise.	(1) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless any provisions to the contrary are contained in the Financial Regulations.
(2) In accordance with the Financial Regulations, any	

appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period. (3) Appropriations shall be set out under different headings according to type and purpose of the expenditure and subdivided, as far as necessary, in accordance with the Financial Regulations.	(2) Subject to the conditions to be laid down in the Financial Regulations, any appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period. (3) Appropriations shall be set out under different headings according to type and purpose of the expenditure and subdivided, as far as necessary, in accordance with the Financial Regulations.
Article 44 - Appropriations for unforeseeable expenditure (1) The budget of the Organisation may contain appropriations for unforeseeable expenditure. (2) The employment of these appropriations by the Organisation shall be subject to the prior approval of the Administrative Council.	**Article 44 - Appropriations for unforeseeable expenditure** (1) The budget of the Organisation may contain appropriations for unforeseeable expenditure. (2) The employment of these appropriations by the Organisation shall be subject to the prior approval of the Administrative Council.
Article 45 - Accounting period The accounting period shall commence on 1 January and end on 31 December.	**Article 45 - Accounting period** The accounting period shall commence on 1 January and end on 31 December.
Article 46 - Preparation and adoption of the budget (1) The President of the European Patent Office shall submit the draft budget to the Administrative Council no later than the date prescribed in the Financial Regulations. (2) The budget and any amending or supplementary budget shall be adopted by the Administrative Council.	**Article 46 - Preparation and adoption of the budget** (1) The President of the European Patent Office shall lay the draft budget before the Administrative Council not later than the date prescribed in the Financial Regulations. (2) The budget and any amending or supplementary budget shall be adopted by the Administrative Council.
Article 47 - Provisional budget (1) If, at the beginning of the accounting period, the budget has not been adopted by the Administrative Council, expenditures may be effected on a monthly basis per heading or other division of the budget, in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the President of the European Patent Office shall not exceed one-twelfth of those provided for in the draft budget. (2) The Administrative Council may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations. (3) The payments referred to in Article 37(b), shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates. (4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2. Article 39, paragraph 4, shall apply mutatis mutandis to these contributions.	**Article 47 - Provisional budget** (1) If, at the beginning of the accounting period, the budget has not been adopted by the Administrative Council, expenditures may be effected on a monthly basis per heading or other division of the budget, according to the provisions of the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the President of the European Patent Office shall not exceed one-twelfth of those provided for in the draft budget. (2) The Administrative Council may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations. (3) The payments referred to in Article 37, sub-paragraph (b), shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates. (4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary to ensure implementation of paragraphs 1 and 2 above. Article 39, paragraph 4, shall apply mutatis mutandis to these contributions.
Article 48 - Budget implementation (1) The President of the European Patent Office shall	**Article 48 - Budget implementation** (1) The President of the European Patent Office shall

implement the budget and any amending or supplementary budget on his own responsibility and within the limits of the allocated appropriations.	implement the budget and any amending or supplementary budget on his own responsibility and within the limits of the allocated appropriations.
(2) Within the budget, the President of the European Patent Office may, in accordance with the Financial Regulations, transfer funds between the various headings or sub-headings.	(2) Within the budget, the President of the European Patent Office may, subject to the limits and conditions laid down in the Financial Regulations, transfer funds as between the various headings or sub-headings.
Article 49 - Auditing of accounts	**Article 49 - Auditing of accounts**
(1) The income and expenditure account and a balance sheet of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.	(1) The income and expenditure account and a balance sheet of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.
(2) The audit shall be based on vouchers and shall take place, if necessary, in situ. The audit shall ascertain whether all income has been received and all expenditure effected in a lawful and proper manner and whether the financial management is sound. The auditors shall draw up a report containing a signed audit opinion after the end of each accounting period.	(2) The audit, which shall be based on vouchers and shall take place, if necessary, in situ, shall ascertain that all income has been received and all expenditure effected in a lawful and proper manner and that the financial management is sound. The auditors shall draw up a report after the end of each accounting period.
(3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.	(3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.
(4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall discharge the President of the European Patent Office in respect of the implementation of the budget.	(4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall give the President of the European Patent Office a discharge in respect of the implementation of the budget.
Article 50 - Financial Regulations	**Article 50 - Financial Regulations**
The Financial Regulations shall lay down in particular:	The Financial Regulations shall lay down in particular:
(a) the arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;	(a) the arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;
(b) the method and procedure whereby the payments and contributions provided for in Article 37 and the advances provided for in Article 41 are to be made available to the Organisation by the Contracting States;	(b) the method and procedure whereby the payments and contributions provided for in Article 37 and the advances provided for in Article 41 are to be made available to the Organisation by the Contracting States;
(c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision;	(c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision;
(d) the rates of interest provided for in Articles 39, 40 and 47;	(d) the rates of interest provided for in Articles 39, 40 and 47;
(e) the method of calculating the contributions payable by virtue of Article 146;	(e) the method of calculating the contributions payable by virtue of Article 146;
(f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council;	(f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council;
(g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.	(g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.

Article 51 - Fees (1) The European Patent Office may levy fees for any official task or procedure carried out under this Convention. (2) Time limits for the payment of fees other than those fixed by this Convention shall be laid down in the Implementing Regulations. (3) Where the Implementing Regulations provide that a fee shall be paid, they shall also lay down the legal consequences of failure to pay such fee in due time. (4) The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 51 - Rules relating to Fees** The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid.

PART II: SUBSTANTIVE PATENT LAW

Chapter I: Patentability

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Article 52 - Patentable inventions

(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

(3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]

Article 52 - Patentable inventions

(1) European patents shall be granted for any inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:

(a) discoveries, scientific theories and mathematical methods;

(b) aesthetic creations;

(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;

(d) presentations of information.

(3) The provisions of paragraph 2 shall exclude patentability of the subject-matter or activities referred to in that provision only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

(4) Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods. [→Article 53(c)]

Article 53 - Exceptions to patentability	**Article 53 - Exceptions to patentability**
European patents shall not be granted in respect of:	European patents shall not be granted in respect of:
(a) inventions the commercial exploitation of which would be contrary to "ordre public" or morality; such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;	(a) inventions the publication or exploitation of which would be contrary to "ordre public" or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;
(b) plant or animal varieties or essentially biological processes for the production of plants or animals[10]; this provision shall not apply to microbiological processes or the products thereof;	(b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof.
(c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body[11]; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods. [12]	
[transitional category 1: applies to granted patents and applications pending on 13 December 2007] [Rule 30(3): late furnishing of sequence listings]	

[10] **G 1/98**:
I. A claim wherein specific plant varieties are not individually claimed is not excluded from patentability under Article 53(b) EPC even though it may embrace plant varieties.
II. When a claim to a process for the production of a plant variety is examined, Article 64(2) EPC is not to be taken into consideration.
III. The exception to patentability in Article 53(b), first half-sentence, EPC applies to plant varieties irrespective of the way in which they were produced. Therefore, plant varieties containing genes introduced into an ancestral plant by recombinant gene technology are excluded from patentability.

[11] **G 1/04**:
1. In order that the subject-matter of a claim relating to a diagnostic method practised on the human or animal body falls under the prohibition of [Article 53(c) EPC], the claim is to include the features relating to:
(i) the diagnosis for curative purposes *stricto sensu* representing the deductive medical or veterinary decision phase as a purely intellectual exercise,
(ii) the preceding steps which are constitutive for making that diagnosis, and
(iii) the specific interactions with the human or animal body which occur when carrying those out among these preceding steps which are of a technical nature.
2. Whether or not a method is a diagnostic method within the meaning of [Article 53(c) EPC] may neither depend on the participation of a medical or veterinary practitioner, by being present or by bearing the responsibility, nor on the fact that all method steps can also, or only, be practised by medical or technical support staff, the patient himself or herself or an automated system. Moreover, no distinction is to be made in this context between essential method steps having diagnostic character and non-essential method steps lacking it.
3. In a diagnostic method under [Article 53(c) EPC], the method steps of a technical nature belonging to the preceding steps which are constitutive for making the diagnosis for curative purposes stricto sensu must satisfy the criterion "practised on the human or animal body".
4. [Article 53(c) EPC] does not require a specific type and intensity of interaction with the human or animal body; a preceding step of a technical nature thus satisfies the criterion "practised on the human or animal body" if its performance implies any interaction with the human or animal body, necessitating the presence of the latter.

[12] **G 1/83, 5/83, 6/83**:
I. A European Patent with claims directed to the use may not be granted for the use of a substance or composition for the treatment of the human or animal body by therapy.
II. A European patent may be granted with claims directed to the use of a substance or composition for the manufacture of a medicament for a specified new and inventive therapeutic application. [Swiss-type use claims; now not necessary due to new Article 54(5)]

Article 54 - Novelty[13]	**Article 54 - Novelty**
(1) An invention shall be considered to be new if it does not form part of the state of the art.[14]	(1) An invention shall be considered to be new if it does not form part of the state of the art.
(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.[15]	(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
(3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	(3) Additionally, the content of European patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published under Article 93 on or after that date, shall be considered as comprised in the state of the art.
(4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	(4) Paragraph 3 shall be applied only in so far as a Contracting State designated in respect of the later application, was also designated in respect of the earlier application as published. [transitional provisions: continues to apply to granted patents] [Rule 23(a) to be deleted]
(5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in a method referred to in Article 53(c), provided that such use is not comprised in the state of the art. [transitional category 3: applies to applications pending on 13 December 2007, before decision on grant is made]	(5) The provisions of paragraphs 1 to 4 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 52, paragraph 4, provided that its use for any method referred to in that paragraph is not comprised in the state of the art.
[Rule 165: EuroPCTs prior art if filing fee paid]	

[13] **G 1/03 & 2/03**: A disclaimer which is not disclosed in the application as filed [see A123(2)] may be allowable in order to:
- restore novelty by delimiting a claim against state of the art under Article 54(3) and (4) EPC;
- restore novelty by delimiting a claim against an accidental anticipation under Article 54(2) EPC; an anticipation is accidental if it is so unrelated to and remote from the claimed invention that the person skilled in the art would never have taken it into consideration when making the invention; and
- disclaim subject-matter which, under Articles 52 to 57 EPC, is excluded from patentability for non-technical reasons.

[14] **G 2/88 & 6/88**: A claim to the use of a known compound for a particular purpose, which is based on a technical effect which is described in the patent, should be interpreted as including that technical effect as a functional technical feature, and is accordingly not open to objection under Article 54(1) EPC provided that such technical feature has not previously been made available to the public.

[15] **G 1/92**:
1. The chemical composition of a product is state of the art when the product as such is available to the public and can be analysed and reproduced by the skilled person, irrespective of whether or not particular reasons can be identified for analysing the composition.
2. The same principle applies mutatis mutandis to any other product.

G 3/93:
1. A document published during the priority interval, the technical contents of which correspond to that of the priority document, constitutes prior art citable under Article 54(2) EPC against a European patent application claiming that priority, to the extent such priority is not validly claimed.
2. This also applies if a claim to priority is invalid due to the fact that the priority document and the subsequent European application do not concern the same invention because the European application claims subject-matter not disclosed in the priority document.

Article 55 - Non-prejudicial disclosures	**Article 55 - Non-prejudicial disclosures**
(1) For the application of Article 54, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application[16] and if it was due to, or in consequence of:	(1) For the application of Article 54 a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:
(a) an evident abuse in relation to the applicant or his legal predecessor, or	(a) an evident abuse in relation to the applicant or his legal predecessor, or
(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.	(b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.
(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Implementing Regulations [Rule 25].	(2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the period and under the conditions laid down in the Implementing Regulations.
Article 56 - Inventive step	**Article 56 - Inventive step**
An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents shall not be considered in deciding whether there has been an inventive step.	An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents are not to be considered in deciding whether there has been an inventive step.
Article 57 - Industrial application	**Article 57 - Industrial application**
An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.	An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

[16] **G 3/98 & 2/99**: For the calculation of the six-month period referred to in Article 55(1) EPC, the relevant date is the date of the actual filing of the European patent application; the date of priority is not to be taken account of in calculating this period.

Chapter II: Persons entitled to apply for and obtain a European patent – Mention of the inventor

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Article 58 - Entitlement to file a European patent application	**Article 58 - Entitlement to file a European patent application**
A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it.	A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it.
Article 59 - Multiple applicants	**Article 59 - Multiple applicants**
A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.	A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.
Article 60 - Right to a European patent	**Article 60 - Right to a European patent**
(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee, the right to a European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has the place of business to which the employee is attached.	(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee the right to the European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his place of business to which the employee is attached.
(2) If two or more persons have made an invention independently of each other, the right to a European patent therefor shall belong to the person whose European patent application has the earliest date of filing, provided that this first application has been published.	(2) If two or more persons have made an invention independently of each other, the right to the European patent shall belong to the person whose European patent application has the earliest date of filing; however, this provision shall apply only if this first application has been published under Article 93 and shall only have effect in respect of the Contracting States designated in that application as published.
(3) In proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to a European patent.	(3) For the purposes of proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to the European patent.

Article 61 - European patent applications filed by non-entitled persons	**Article 61 - European patent applications by persons not having the right to a European patent**
(1) If by a final decision it is adjudged that a person other than the applicant is entitled to the grant of the European patent, that person may, in accordance with the Implementing Regulations:	(1) If by a final decision it is adjudged that a person referred to in Article 60, paragraph 1, other than the applicant, is entitled to the grant of a European patent, that person may, within a period of three months after the decision has become final, provided that the European patent has not yet been granted, in respect of those Contracting States designated in the European patent application in which the decision has been taken or recognised, or has to be recognised on the basis of the Protocol on Recognition annexed to this Convention:
(a) prosecute the European patent application as his own application in place of the applicant;	(a) prosecute the application as his own application in place of the applicant,
(b) file a new European patent application in respect of the same invention[17]; or	(b) file a new European patent application in respect of the same invention, or
(c) request that the European patent application be refused.	(c) request that the application be refused.
(2) Article 76, paragraph 1, shall apply mutatis mutandis to a new European patent application filed under paragraph 1(b).	(2) The provisions of Article 76, paragraph 1, shall apply mutatis mutandis to a new application filed under paragraph 1.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007] [Rules 14 & 78: stay of proceedings; Rule 16 : procedure under A61(1); Rule 17 : filing a new application; Rule 18 : partial transfer]	(3) The procedure to be followed in carrying out the provisions of paragraph 1, the special conditions applying to a new application filed under paragraph 1 and the time limit for paying the filing, search and designation fees on it are laid down in the Implementing Regulations.
Article 62 - Right of the inventor to be mentioned	**Article 62 - Right of the inventor to be mentioned**
The inventor shall have the right, visà-vis the applicant for or proprietor of a European patent, to be mentioned as such before the European Patent Office.	The inventor shall have the right, vis-à-vis the applicant for or proprietor of a European patent, to be mentioned as such before the European Patent Office.

[17] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of priority documents for European divisional applications and for new European patent applications under Article 61(1)(b) EPC (Special edition No. 3 OJ EPO 2007, B.2., pp24-25).

G 3/92: When it has been adjudged by a final decision of a national court that a person other than the applicant is entitled to the grant of a European patent, and that person, in compliance with the specific requirements of Article 61(1) EPC, files a new European patent application in respect of the same invention under Article 61(1) (b) EPC, it is not a pre-condition for the application to be accepted that the earlier original usurping application is still pending before the EPO at the time the new application is filed.

Chapter III: Effects of the European patent and the European patent application

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Article 63 - Term of the European patent	**Article 63 Term of the European patent**
(1) The term of the European patent shall be 20 years from the date of filing of the application.	(1) The term of the European patent shall be 20 years as from the date of filing of the application.
(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent, or to grant corresponding protection which follows immediately on expiry of the term of the patent, under the same conditions as those applying to national patents:	(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent, or to grant corresponding protection which follows immediately on expiry of the term of the patent, under the same conditions as those applying to national patents:
(a) in order to take account of a state of war or similar emergency conditions affecting that State;	(a) in order to take account of a state of war or similar emergency conditions affecting that State;
(b) if the subject-matter of the European patent is a product or a process for manufacturing a product or a use of a product which has to undergo an administrative authorisation procedure required by law before it can be put on the market in that State.	(b) if the subject-matter of the European patent is a product or a process of manufacturing a product or a use of a product which has to undergo an administrative authorisation procedure required by law before it can be put on the market in that State.
(3) Paragraph 2 shall apply mutatis mutandis to European patents granted jointly for a group of Contracting States in accordance with Article 142.	(3) Paragraph 2 shall apply mutatis mutandis to European patents granted jointly for a group of Contracting States in accordance with Article 142.
(4) A Contracting State which makes provision for extension of the term or corresponding protection under paragraph 2(b) may, in accordance with an agreement concluded with the Organisation, entrust to the European Patent Office tasks associated with implementation of the relevant provisions.	(4) A Contracting State which makes provision for extension of the term or corresponding protection under paragraph 2(b) may, in accordance with an agreement concluded with the Organisation, entrust to the European Patent Office tasks associated with implementation of the relevant provisions.
Article 64 - Rights conferred by a European patent	**Article 64 - Rights conferred by a European patent**
(1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.	(1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date of publication of the mention of its grant, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.
(2) If the subject-matter of the European patent is a process, the protection conferred by the patent shall extend to the products directly obtained by such process.	(2) If the subject-matter of the European patent is a process, the protection conferred by the patent shall extend to the products directly obtained by such process.
(3) Any infringement of a European patent shall be dealt with by national law.	(3) Any infringement of a European patent shall be dealt with by national law.
Article 65 - Translation of the European patent[18]	**Article 65 - Translation of the specification of the European patent**
(1) Any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant, maintenance in	(1) Any Contracting State may prescribe that if the text, in which the European Patent Office intends to grant a European patent or maintain a European patent as amended for that State, is not drawn up in one of its official languages, the applicant for or proprietor of the patent shall supply to its central industrial property office a translation of this text in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying

[18] See Agreement on the application of Article 65 of the Convention on the Grant of European Patents (London Agreement)

amended form or limitation of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

[transitional category 2: applies to granted patents and applications pending on 13 December 2007]

the translation shall end three months after the date on which the mention of the grant of the European patent or of the maintenance of the European patent as amended is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant for or proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

Article 66 - Equivalence of European filing with national filing

A European patent application which has been accorded a date of filing shall, in the designated Contracting States, be equivalent to a regular national filing, where appropriate with the priority claimed for the European patent application.

Article 66 - Equivalence of European filing with national filing

A European patent application which has been accorded a date of filing shall, in the designated Contracting States, be equivalent to a regular national filing, where appropriate with the priority claimed for the European patent application.

Article 67 - Rights conferred by a European patent application after publication

(1) A European patent application shall, from the date of its publication, provisionally confer upon the applicant the protection provided for by Article 64, in the Contracting States designated in the application.

(2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64.

However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, each State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in that State in circumstances where that person would be liable under national law for infringement of a national patent.

(3) Any Contracting State which does not have as an official language the language of the proceedings may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language:

(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 the said State.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 when it

Article 67 - Rights conferred by a European patent application after publication

(1) A European patent application shall, from the date of its publication under Article 93, provisionally confer upon the applicant such protection as is conferred by Article 64, in the Contracting States designated in the application as published.

(2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, every State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in the said State in circumstances where that person would be liable under national law for infringement of a national patent.

(3) Any Contracting State which does not have as an official language the language of the proceedings, may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language:

(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 the said State.

(4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 above

has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application in a Contracting State the designation of which is withdrawn or deemed to be withdrawn.	when it has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application in a Contracting State the designation of which is withdrawn or deemed to be withdrawn.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007]	
Article 68 - Effect of revocation or limitation of the European patent	**Article 68 - Effect of revocation of the European patent**
The European patent application and the resulting European patent shall be deemed not to have had, from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked or limited in opposition, limitation or revocation proceedings.	The European patent application and the resulting patent shall be deemed not to have had, as from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked in opposition proceedings.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007]	
Article 69 - Extent of protection	**Article 69 - Extent of protection**
(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims.	(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.
(2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the claims contained in the application as published. However, the European patent as granted or as amended in opposition, limitation or revocation proceedings shall determine retroactively the protection conferred by the application, in so far as such protection is not thereby extended.	(2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the latest filed claims contained in the publication under Article 93. However, the European patent as granted or as amended in opposition proceedings shall determine retroactively the protection conferred by the European patent application, in so far as such protection is not thereby extended.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007] [see Protocol on Article 69]	
Article 70 - Authentic text of a European patent application or European patent	**Article 70 - Authentic text of a European patent application or European patent**
(1) The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State.	(1) The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State.
(2) If, however, the European patent application has been filed in a language which is not an official language of the European Patent Office, that text shall be the application as filed within the meaning of this Convention.	(2) However, in the case referred to in Article 14, paragraph 2, the original text shall, in proceedings before the European Patent Office, constitute the basis for determining whether the subject-matter of the application or patent extends beyond the content of the application as filed.
(3) Any Contracting State may provide that a translation into one of its official languages, as prescribed by it according to this Convention, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the European patent application or European patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.	(3) Any Contracting State may provide that a translation, as provided for in this Convention, in an official language of that State, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the application or patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.
(4) Any Contracting State which adopts a provision under paragraph 3:	(4) Any Contracting State which adopts a provision under paragraph 3:

(a) shall allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, or Article 67, paragraph 3, have been complied with;	(a) must allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, and Article 67, paragraph 3, have been complied with mutatis mutandis;
(b) may prescribe that any person who, in that State, in good faith has used or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation, may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.	(b) may prescribe that any person who, in that State, in good faith is using or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007]	

Chapter IV: The European patent application as an object of property

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Article 71 - Transfer and constitution of rights	**Article 71 - Transfer and constitution of rights**
A European patent application may be transferred or give rise to rights for one or more of the designated Contracting States.	A European patent application may be transferred or give rise to rights for one or more of the designated Contracting States.
Article 72 - Assignment	**Article 72 - Assignment**
An assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.	An assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.
Article 73 - Contractual licensing	**Article 73 - Contractual licensing**
A European patent application may be licensed in whole or in part for the whole or part of the territories of the designated Contracting States.	A European patent application may be licensed in whole or in part for the whole or part of the territories of the designated Contracting States.
Article 74 - Law applicable	**Article 74 - -Law applicable**
Unless this Convention provides otherwise, the European patent application as an object of property shall, in each designated Contracting State and with effect for such State, be subject to the law applicable in that State to national patent applications.	Unless otherwise specified in this Convention, the European patent application as an object of property shall, in each designated Contracting State and with effect for such State, be subject to the law applicable in that State to national patent applications.

PART III: THE EUROPEAN PATENT APPLICATION

Chapter I: Filing and requirements of the European patent application

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Article 75 - Filing of a European patent application	**Article 75 - Filing of the European patent application**
(1) A European patent application may be filed:	(1) A European patent application may be filed:
(a) with the European Patent Office [see Decision of the President of the European Patent Office dated 12 July 2007 concerning the designation of the EPO filing offices, Article 1], or	(a) at the European Patent Office at Munich or its branch at The Hague, or
(b) if the law of a Contracting State so permits, and subject to Article 76, paragraph 1, with the central industrial property office or other competent authority of that State. Any application filed in this way shall have the same effect as if it had been filed on the same date with the European Patent Office. [Rule 35]	(b) if the law of a Contracting State so permits, at the central industrial property office or other competent authority of that State. An application filed in this way shall have the same effect as if it had been filed on the same date at the European Patent Office.
(2) Paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:	(2) The provisions of paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:
(a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorisation of the competent authorities of that State, or	(a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorisation of the competent authorities of that State, or
(b) prescribe that any application is to be filed initially with a national authority, or make direct filing with another authority subject to prior authorisation.	(b) prescribe that each application is to be filed initially with a national authority or make direct filing with another authority subject to prior authorisation.
	(3) No Contracting State may provide for or allow the filing of European divisional applications with an authority referred to in paragraph 1(b).
Article 76 - European divisional applications	**Article 76 - European divisional applications**
(1) A European divisional application shall be filed directly with the European Patent Office in accordance with the Implementing Regulations. It may be filed only in respect of subject matter which does not extend beyond the content of the earlier application as filed[19]; in so far as this requirement is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall enjoy any right of priority.	(1) A European divisional application must be filed directly with the European Patent Office at Munich or its branch at The Hague. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this provision is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall have the benefit of any right to priority.
(2) All the Contracting States designated in the earlier application at the time of filing of a European divisional application shall be deemed to be designated in the divisional application.	(2) The European divisional application shall not designate Contracting States which were not designated in the earlier application.
[Rule 36: filing divisionals]	(3) The procedure to be followed in carrying out the provisions of paragraph 1, the special conditions to be complied with by a divisional application and the time limit for paying the filing, search and designation fees are laid down in the Implementing Regulations.
Article 77 - Forwarding of European patent applications	**Article 77 - Forwarding of European patent applications**

[19] **G 1/05**: A divisional application which at its actual date of filing contains subject-matter extending beyond the content of the earlier application as filed can be amended later in order that its subject-matter no longer extends, even at a time when the earlier application is no longer pending. Furthermore, the same limitations apply to these amendments as to amendments to any other (non-divisional) applications.
G 1/06: In the case of a sequence of applications consisting of a root (originating) application followed by divisional applications, each divided from its predecessor, it is a necessary and sufficient condition for a divisional application of that sequence to comply with Article 76(1), second sentence, EPC that anything disclosed in that divisional application be directly and unambiguously derivable from what is disclosed in each of the preceding applications as filed.

(1) The central industrial property office of a Contracting State shall forward to the European Patent Office any European patent application filed with it or any other competent authority in that State, in accordance with the Implementing Regulations. (2) A European patent application the subject of which has been made secret shall not be forwarded to the European Patent Office. (3) A European patent application not forwarded to the European Patent Office in due time shall be deemed to be withdrawn. [Rule 37]	(1) The central industrial property office of a Contracting State shall be obliged to forward to the European Patent Office, in the shortest time compatible with the application of national law concerning the secrecy of inventions in the interests of the State, any European patent applications which have been filed with that office or with other competent authorities in that State. (2) The Contracting States shall take all appropriate steps to ensure that European patent applications, the subject of which is obviously not liable to secrecy by virtue of the law referred to in paragraph 1, shall be forwarded to the European Patent Office within six weeks after filing. (3) European patent applications which require further examination as to their liability to secrecy shall be forwarded in such manner as to reach the European Patent Office within four months after filing, or, where priority has been claimed, fourteen months after the date of priority. (4) A European patent application, the subject of which has been made secret, shall not be forwarded to the European Patent Office. (5) European patent applications which do not reach the European Patent Office before the end of the fourteenth month after filing or, if priority has been claimed, after the date of priority, shall be deemed to be withdrawn. The filing, search and designation fees shall be refunded.
Article 78 - Requirements of a European patent application (1) A European patent application shall contain: (a) a request for the grant of a European patent; (b) a description of the invention; (c) one or more claims; (d) any drawings referred to in the description or the claims; (e) an abstract, and satisfy the requirements laid down in the Implementing Regulations. (2) A European patent application shall be subject to the payment of the filing fee and the search fee[20]. If the filing fee or the search fee is not paid in due time, the application shall be deemed to be withdrawn. [Rule 38: filing and search fees within 1 month; Rule 57 : examination as to formal requirements; Rule 159: Requirements for regional phase entry]	**Article 78 - Requirements of the European patent application** (1) A European patent application shall contain: (a) a request for the grant of a European patent; (b) a description of the invention; (c) one or more claims; (d) any drawings referred to in the description or the claims; (e) an abstract. (2) A European patent application shall be subject to the payment of the filing fee and the search fee within one month after the filing of the application. (3) A European patent application must satisfy the conditions laid down in the Implementing Regulations.
Article 79 - Designation of Contracting States (1) All the Contracting States party to this Convention at the time of filing of the European patent application shall be	**Article 79 - Designation of Contracting States** (1) The request for the grant of a European patent shall contain the designation of the Contracting State or States in

[20] See Decision of the President of the European Patent Office dated 14 July 2007 concerning the refund of search fees under Article 9(2) of the Rules relating to Fees (Special edition No. 3 OJ EPO 2007, M.2., pp134-137)

deemed to be designated in the request for grant of a European patent. (2) The designation of a Contracting State may be subject to the payment of a designation fee. (3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. [Rule 39: designation fees]	which protection for the invention is desired. (2) The designation of a contracting state shall be subject to the payment of the designation fee. The designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report. (3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the European patent application. Designation fees shall not be refunded.
Article 80 - Date of filing The date of filing of a European patent application shall be the date on which the requirements laid down in the Implementing Regulations are fulfilled. [Rule 40: Date of filing requirements; Rule 45(2) : claims fees Current Rule 36(4) deleted see Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile, Article 5]	**Article 80 - Date of filing** The date of filing of a European patent application shall be the date on which documents filed by the applicant contain: (a) an indication that a European patent is sought; (b) the designation of at least one Contracting State; (c) information identifying the applicant; (d) a description and one or more claims in one of the languages referred to in Article 14, paragraphs 1 and 2, even though the description and the claims do not comply with the other requirements of this Convention.
Article 81 - Designation of the inventor The European patent application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the European patent. [Rule 19]	**Article 81 - Designation of the inventor** The European patent application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the European patent.
Article 82 - Unity of invention The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept. [Rule 64]	**Article 82 - Unity of invention** The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
Article 83 - Disclosure of the invention The European patent application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art. [Rule 31: biological material deposit]	**Article 83 - Disclosure of the invention** 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.
Article 84 - Claims The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description. [Rule 43: form and content of claims]	**Article 84 - The claims** The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.
Article 85 - Abstract The abstract shall serve the purpose of technical information only; it may not be taken into account for any other purpose,	**Article 85 - The abstract** The abstract shall merely serve for use as technical information; it may not be taken into account for any other

in particular for interpreting the scope of the protection sought or applying Article 54, paragraph 3.	purpose, in particular not for the purpose of interpreting the scope of the protection sought nor for the purpose of applying Article 54, paragraph 3.
Article 86 - Renewal fees for the European patent application (1) Renewal fees for the European patent application shall be paid to the European Patent Office in accordance with the Implementing Regulations. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application. If a renewal fee is not paid in due time, the application shall be deemed to be withdrawn. (2) The obligation to pay renewal fees shall terminate with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published in the European Patent Bulletin. [Rule 51: payment of renewal fees] [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 86 - Renewal fees for European patent applications** (1) Renewal fees shall be paid to the European Patent Office in accordance with the Implementing Regulations in respect of European patent applications. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application. (2) When a renewal fee has not been paid on or before the due date, the fee may be validly paid within six months of the said date, provided that the additional fee is paid at the same time. [→Rule 51] (3) If the renewal fee and any additional fee have not been paid in due time the European patent application shall be deemed to be withdrawn. The European Patent Office alone shall be competent to decide this. (4) The obligation to pay renewal fees shall terminate with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published.

Chapter II: Priority

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Article 87 - Priority right (1) Any person who has duly filed, in or for (a) any State party to the Paris Convention for the Protection of Industrial Property or (b) any Member of the World Trade Organization, an application for a patent, a utility model or a utility certificate, or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention[21], a right of priority during a period of twelve months from the date of filing of the first application. (2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority. (3) A regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be. (4) A subsequent application in respect of the same subject-matter as a previous first application and filed in or for the	**Article 87 - Priority right** (1) A person who has duly filed in or for any State party to the Paris Convention for the Protection of Industrial Property, an application for a patent or for the registration of a utility model or for a utility certificate or for an inventor's certificate, or his successors in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.[22] (2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority. (3) By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application. (4) A subsequent application for the same subject-matter as a previous first application and filed in or in respect of the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application

[21] **G 2/98**: The requirement for claiming priority of "the same invention", referred to in Article 87(1) EPC, means that priority of a previous application in respect of a claim in a European patent application in accordance with Article 88 EPC is to be acknowledged only if the skilled person can derive the subject-matter of the claim directly and unambiguously, using common general knowledge, from the previous application as a whole.

[22] **G 2/02 & 3/02**: The TRIPs Agreement does not entitle the applicant for a European patent application to claim priority from a first filing in a State which was not at the relevant dates a member of the Paris Convention but was a member of the WTO/TRIPs Agreement. [only applies to old form of Article 87(1)]

same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

(5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the European Patent Office, recognises that a first filing made with the European Patent Office gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention. [Rule 52]

has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

(5) If the first filing has been made in a State which is not a party to the Paris Convention for the Protection of Industrial Property, paragraphs 1 to 4 shall apply only in so far as that State, according to a notification published by the Administrative Council, and by virtue of bilateral or multilateral agreements, grants on the basis of a first filing made at the European Patent Office as well as on the basis of a first filing made in or for any Contracting State and subject to conditions equivalent to those laid down in the Paris Convention, a right of priority having equivalent effect.

Article 88 - Claiming priority

(1) An applicant desiring to take advantage of the priority of a previous application shall file a declaration of priority and any other document required, in accordance with the Implementing Regulations. [Rule 52]

(2) Multiple priorities may be claimed in respect of a European patent application, notwithstanding the fact that they originated in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which run from the date of priority shall run from the earliest date of priority.

(3) If one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed.

(4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]
[Rule 53: priority documents]

Article 88 - Claiming priority

(1) An applicant for a European patent desiring to take advantage of the priority of a previous application shall file a declaration of priority, a copy of the previous application and, if the language of the latter is not one of the official languages of the European Patent Office, a translation of it in one of such official languages [→deleted]. The procedure to be followed in carrying out these provisions is laid down in the Implementing Regulations.

(2) Multiple priorities may be claimed in respect of a European patent application, notwithstanding the fact that they originated in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which run from the date of priority shall run from the earliest date of priority.

(3) If one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed.

(4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.

Article 89 - Effect of priority right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2.

Article 89 - Effect of priority right

The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2.

PART IV: PROCEDURE UP TO GRANT

Article 90 - Examination on filing and examination as to formal requirements

(1) The European Patent Office shall examine, in accordance with the Implementing Regulations, whether the application satisfies the requirements for the accordance of a date of filing. [Rules 55, 56, 57]

(2) If a date of filing cannot be accorded following the examination under paragraph 1, the application shall not be dealt with as a European patent application.

(3) If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with the Implementing Regulations, whether the requirements in Articles 14, 78 and 81, and, where applicable, Article 88, paragraph 1, and Article 133, paragraph 2, as well as any other requirement laid down in the Implementing Regulations, have been satisfied. [Rule 57]

(4) Where the European Patent Office in carrying out the examination under paragraphs 1 or 3 notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them.

(5) If any deficiency noted in the examination under paragraph 3 is not corrected, the European patent application shall be refused unless a different legal consequence is provided for by this Convention. Where the deficiency concerns the right of priority, this right shall be lost for the application. [see Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile, Article 7]

[transitional category 1]

Article 90 - Examination on filing

(1) The Receiving Section shall examine whether:

(a) the European patent application satisfies the requirements for the accordance of a date of filing;

(b) the filing fee and the search fee have been paid in due time;

(c) in the case provided for in Article 14, paragraph 2, the translation of the European patent application in the language of the proceedings has been filed in due time.

(2) If a date of filing cannot be accorded, the Receiving Section shall give the applicant an opportunity to correct the deficiencies in accordance with the Implementing Regulations. If the deficiencies are not remedied in due time, the application shall not be dealt with as a European patent application.

(3) If the filing fee and the search fee have not been paid in due time or, in the case provided for in Article 14, paragraph 2, the translation of the application in the language of the proceedings has not been filed in due time, the application shall be deemed to be withdrawn.

Article 91 - Examination as to formal requirements

[deleted]

Article 91 - Examination as to formal requirements

(1) If a European patent application has been accorded a date of filing, and is not deemed to be withdrawn by virtue of Article 90, paragraph 3, the Receiving Section shall examine whether:

(a) the requirements of Article 133, paragraph 2, have been satisfied;

(b) the application meets the physical requirements laid down in the Implementing Regulations for the implementation of this provision;

(c) the abstract has been filed;

(d) the request for the grant of a European patent satisfies the mandatory provisions of the Implementing Regulations concerning its content and, where appropriate, whether the requirements of this Convention concerning the claim to priority have been satisfied;

(e) the designation fees have been paid;

	(f) the designation of the inventor has been made in accordance with Article 81; (g) the drawings referred to in Article 78, paragraph 1(d), were filed on the date of filing of the application. [→Article 90(3)] (2) Where the Receiving Section notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them in accordance with the Implementing Regulations. [→Article 90(4)] (3) If any deficiencies noted in the examination under paragraph 1(a) to (d) are not corrected in accordance with the Implementing Regulations, the application shall be refused; where the provisions referred to in paragraph 1(d) concern the right of priority, this right shall be lost for the application. [→Article 90(5)] (4) Where, in the case referred to in paragraph 1(e), the designation fee has not been paid in due time in respect of any designated State, the designation of that State shall be deemed to be withdrawn. (5) Where, in the case referred to in paragraph 1(f), the omission of the designation of the inventor is not, in accordance with the Implementing Regulations and subject to the exceptions laid down therein, corrected within 16 months after the date of filing of the European patent application or, if priority is claimed, after the date of priority, the application shall be deemed to be withdrawn. [→Article 90(5); Rule 60] (6) Where, in the case referred to in paragraph 1(g), the drawings were not filed on the date of filing of the application and no steps have been taken to correct the deficiency in accordance with the Implementing Regulations, either the application shall be re-dated to the date of filing of the drawings or any reference to the drawings in the application shall be deemed to be deleted, according to the choice exercised by the applicant in accordance with the Implementing Regulations.
Article 92 - Drawing up of the European search report The European Patent Office shall, in accordance with the Implementing Regulations, draw up and publish a European search report in respect of the European patent application on the basis of the claims, with due regard to the description and any drawings. [transitional category 1: applies to granted patents and applications pending on 13 December 2007] [Rule 65]	**Article 92 - The drawing up of the European search report** (1) If a European patent application has been accorded a date of filing and is not deemed to be withdrawn by virtue of Article 90, paragraph 3, the Search Division shall draw up the European search report on the basis of the claims, with due regard to the description and any drawings, in the form prescribed in the Implementing Regulations. (2) Immediately after it has been drawn up, the European search report shall be transmitted to the applicant together with copies of any cited documents. [→Rule 65]
Article 93 - Publication of the European patent application (1) The European Patent Office shall publish the European patent application as soon as possible (a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date	**Article 93 - Publication of a European patent application** (1) A European patent application shall be published as soon as possible after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, as from the date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. It shall be published

of priority, or

(b) at the request of the applicant, before the expiry of that period.
[Rule 52(4): cannot make or correct a declaration of priority after request]

(2) The European patent application shall be published at the same time as the specification of the European patent when the decision to grant the patent becomes effective before the expiry of the period referred to in paragraph 1(a).

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]
[Rule 68]

simultaneously with the publication of the specification of the European patent when the grant of the patent has become effective before the expiry of the period referred to above.

(2) The publication shall contain the description, the claims and any drawings as filed and, in an annex, the European search report and the abstract, in so far as the latter are available before the termination of the technical preparations for publication. If the European search report and the abstract have not been published at the same time as the application, they shall be published separately. [→Rule 68]

Article 94 - Examination of the European patent application

(1) The European Patent Office shall, in accordance with the Implementing Regulations, examine on request whether the European patent application and the invention to which it relates meet the requirements of this Convention. The request shall not be deemed to be filed until the examination fee has been paid.

(2) If no request for examination has been made in due time [Rule 70(1): 6 months from mention of publication of SR], the application shall be deemed to be withdrawn.

(3) If the examination reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, as often as necessary, to file his observations and, subject to Article 123, paragraph 1, to amend the application. [Rule 71][23]

(4) If the applicant fails to reply in due time to any communication from the Examining Division, the application shall be deemed to be withdrawn.

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]
[refunds according to Fees Article 11]

Article 94 - Request for examination

(1) The European Patent Office shall examine, on written request, whether a European patent application and the invention to which it relates meet the requirements of this Convention.

(2) A request for examination may be filed by the applicant up to the end of six months after the date on which the European Patent Bulletin mentions the publication of the European search report. The request shall not be deemed to be filed until after the examination fee has been paid. The request may not be withdrawn. [→Rule 70]

(3) If no request for examination has been filed by the end of the period referred to in paragraph 2, the application shall be deemed to be withdrawn. [→Rule 70]

[deleted]

Article 95 - Extension of the period within which requests for examination may be filed

(1) The Administrative Council may extend the period within which requests for examination may be filed if it is established that European patent applications cannot be examined in due time.

(2) If the Administrative Council extends the period, it may decide that third parties will be entitled to make requests for examination. In such cases, it shall determine the appropriate rules in the Implementing Regulations.

(3) Any decision of the Administrative Council to extend the period shall apply only in respect of applications filed after the publication of such decision in the Official Journal of the European Patent Office.

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[23] See Notice from the European Patent Office dated 14 July 2007 concerning the programme for accelerated prosecution of European patent applications – "PACE" (Special edition No. 3 OJ EPO 2007, F.1., pp102-105)

	(4) If the Administrative Council extends the period, it must lay down measures with a view to restoring the original period as soon as possible.
[deleted]	**Article 96 - Examination of the European patent application** (1) If the applicant for a European patent has filed the request for examination before the European search report has been transmitted to him, the European Patent Office shall invite him after the transmission of the report to indicate, within a period to be determined, whether he desires to proceed further with the European patent application. [→Rule 70(2)] (2) If the examination of a European patent application reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, in accordance with the Implementing Regulations and as often as necessary, to file his observations within a period to be fixed by the Examining Division. [→Article 94(3)] (3) If the applicant fails to reply in due time to any invitation under paragraph 1 or paragraph 2, the application shall be deemed to be withdrawn. [→Article 94(4)]
Article 97 - Grant or refusal (1) If the Examining Division is of the opinion that the European patent application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant a European patent, provided that the conditions laid down in the Implementing Regulations are fulfilled. (2) If the Examining Division is of the opinion that the European patent application or the invention to which it relates does not meet the requirements of this Convention, it shall refuse the application unless this Convention provides for a different legal consequence. (3) The decision to grant a European patent shall take effect on the date on which the mention of the grant is published in the European Patent Bulletin. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 97 - Refusal or grant** (1) The Examining Division shall refuse a European patent application if it is of the opinion that such application or the invention to which it relates does not meet the requirements of this Convention, except where a different sanction is provided for by this Convention. (2) If the Examining Division is of the opinion that the application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant the European patent for the designated Contracting States provided that: (a) it is established, in accordance with the provisions of the Implementing Regulations, that the applicant approves the text in which the Examining Division intends to grant the patent; (b) the fees for grant and printing are paid within the time limit prescribed in the Implementing Regulations; (c) the renewal fees and any additional fees already due have been paid. (3) If the fees for grant and printing are not paid in due time, the application shall be deemed to be withdrawn. (4) The decision to grant a European patent shall not take effect until the date on which the European Patent Bulletin mentions the grant. This mention shall be published at least two months after the start of the time limit referred to in paragraph 2(b). (5) Provision may be made in the Implementing Regulations for the applicant to file a translation, in the two official languages of the European Patent Office other than the

	language of the proceedings, of the claims appearing in the text in which the Examining Division intends to grant the patent. In such case, the period laid down in paragraph 4 shall be at least three months. If the translation has not been filed in due time, the application shall be deemed to be withdrawn. (6) At the request of the applicant, mention of grant of the European patent shall be published before expiry of the time limit under paragraph 4 or 5. Such request may only be made if the requirements pursuant to paragraphs 2 and 5 are met.
Article 98 - Publication of the specification of the European patent The European Patent Office shall publish the specification of the European patent as soon as possible after the mention of the grant of the European patent has been published in the European Patent Bulletin. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 98 - Publication of a specification of the European patent** At the same time as it publishes the mention of the grant of the European patent, the European Patent Office shall publish a specification of the European patent containing the description, the claims and any drawings.

PART V: OPPOSITION AND LIMITATION PROCEDURE

Article 99 - Opposition

(1) Within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the European Patent Office of opposition to that patent[24], in accordance with the Implementing Regulations. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid[25].

(2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.

(3) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent. [26]

(4) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. Notwithstanding Article 118, the previous proprietor and the person making the request shall not be regarded as joint proprietors unless both so request.

[transitional category 2: applies to granted patents and applications pending on 13 December 2007]
[Rules 75-78]

Article 99 - Opposition

(1) Within nine months from the publication of the mention of the grant of the European patent, any person may give notice to the European Patent Office of opposition to the European patent granted. Notice of opposition shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid.

(2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.

(3) An opposition may be filed even if the European patent has been surrendered or has lapsed for all the designated States. [→Rule 75]

(4) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent.

(5) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. By derogation from Article 118, the previous proprietor and the person making the request shall not be deemed to be joint proprietors unless both so request.

[24] **G 9/93**: A European patent cannot be opposed by its own proprietor (overturns ruling in G 1/84).
G 4/97:
1(a): An opposition is not inadmissible purely because the person named as opponent according to [Rule 76(2)(a)] EPC is acting on behalf of a third party.
1(b): Such an opposition is, however, inadmissible if the involvement of the opponent is to be regarded as circumventing the law by abuse of process.
1(c): Such a circumvention of the law arises, in particular, if:
- the opponent is acting on behalf of the patent proprietor;
- the opponent is acting on behalf of a client in the context of activities which, taken as a whole, are typically associated with professional representatives, without possessing the relevant qualifications required by Article 134 EPC.
1(d): However, a circumvention of the law by abuse of process does not arise purely because:
- a professional representative is acting in his own name on behalf of a client;
- an opponent with either a residence or principal place of business in one of the EPC contracting states is acting on behalf of a third party who does not meet this requirement.
2: In determining whether the law has been circumvented by abuse of process, the principle of the free evaluation of evidence is to be applied. The burden of proof is to be borne by the person alleging that the opposition is inadmissible. The deciding body has to be satisfied on the basis of clear and convincing evidence that the law has been circumvented by abuse of process.
3: The admissibility of an opposition on grounds relating to the identity of an opponent may be challenged during the course of the appeal, even if no such challenge had been raised before the opposition division.
[25] **G 3/99**: An opposition filed in common by two or more persons, which otherwise meets the requirements of Article 99 EPC and [Rules 3 and 76 EPC], is admissible on payment of only one opposition fee.
[26] **G 4/88**: An opposition pending before the European Patent Office may be transferred or assigned to a third party as part of the opponent's business assets together with the assets in the interests of which the opposition was filed.
G 2/04:
I. (a) The status as an opponent cannot be freely transferred.
(b) A legal person who was a subsidiary of the opponent when the opposition was filed and who carries on the business to which the opposed patent relates cannot acquire the status as opponent if all its shares are assigned to another company.
II. If, when filing an appeal, there is a justifiable legal uncertainty as to how the law is to be interpreted in respect of the question of who the correct party to the proceedings is, it is legitimate that the appeal is filed in the name of the person whom the person acting considers, according to his interpretation, to be the correct party, and at the same time, as an auxiliary request, in the name of a different person who might, according to another possible interpretation, also be considered the correct party to the proceedings.

Article 100 - Grounds for opposition[27]	**Article 100 - Grounds for opposition**
Opposition may only be filed on the grounds[28] that:	Opposition may only be filed on the grounds that:
(a) the subject-matter of the European patent is not patentable under Articles 52 to 57;	(a) the subject-matter of the European patent is not patentable within the terms of Articles 52 to 57;
(b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;	(b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
(c) the subject-matter of the European patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed.	(c) the subject-matter of the European patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 61, beyond the content of the earlier application as filed.

[27] **G 1/95 & 7/95**: In a case where a patent has been opposed on the grounds set out in Article 100(a) EPC, but the opposition has only been substantiated on the grounds of lack of novelty and lack of inventive step, the ground of unpatentable subject-matter based upon Articles 52(1) and (2) EPC is a fresh ground for opposition and accordingly may not be introduced into the appeal proceedings without the agreement of the patentee.

[28] **G 10/91**:
1. An Opposition Division or a Board of Appeal is not obliged to consider all the grounds for opposition referred to in Article 100 EPC, going beyond the grounds covered by the statement under [Rule 76(2)(c)] EPC.
2. In principle, the Opposition Division shall examine only such grounds for opposition which have been properly submitted and substantiated in accordance with Article 99(1) in conjunction with [Rule 76(2)(c)] EPC. Exceptionally, the Opposition Division may in application of Article 114(1) EPC consider other grounds for opposition which, prima facie, in whole or in part would seem to prejudice the maintenance of the European patent.
3. Fresh grounds for opposition may be considered in appeal proceedings only with the approval of the patentee.

Article 101 - Examination of the opposition – Revocation or maintenance of the European patent

(1) If the opposition is admissible, the Opposition Division shall examine, in accordance with the Implementing Regulations, whether at least one ground for opposition under Article 100 prejudices the maintenance of the European patent.[29] During this examination, the Opposition Division shall invite the parties, as often as necessary, to file observations on communications from another party or issued by itself. [Rule 81(2)-(3)]

(2) If the Opposition Division is of the opinion that at least one ground for opposition prejudices the maintenance of the European patent, it shall revoke the patent. Otherwise, it shall reject the opposition.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the European patent during the opposition proceedings, the patent and the invention to which it relates

(a) meet the requirements of this Convention, it shall decide to maintain the patent as amended[30], provided that the conditions laid down in the Implementing Regulations are fulfilled;

(b) do not meet the requirements of this Convention, it shall revoke the patent.

[transitional category 2: applies to granted patents and applications pending on 13 December 2007]
[Rule 81: examination of opposition]

Article 101 - Examination of the opposition

(1) If the opposition is admissible, the Opposition Division shall examine whether the grounds for opposition laid down in Article 100 prejudice the maintenance of the European patent.

(2) In the examination of the opposition, which shall be conducted in accordance with the provisions of the Implementing Regulations, the Opposition Division shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Opposition Division, on communications from another party or issued by itself.

[deleted]

Article 102 - Revocation or maintenance of the European patent

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 prejudice the maintenance of the European patent, it shall revoke the patent. [→Article 101(2)]

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 do not prejudice the maintenance of the patent unamended, it shall reject the opposition. [→Article 101(2)]

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the patent and the invention to which it relates meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that:

(a) it is established, in accordance with the provisions of the Implementing Regulations, that the proprietor of the patent

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[29] **G 9/91**: The power of an Opposition Division or a Board of Appeal to examine and decide on the maintenance of a European patent under [Article 101] EPC depends upon the extent to which the patent is opposed in the notice of opposition pursuant to [Rule 76(2)(c)] EPC. However, subject-matters of claims depending on an independent claim, which falls in opposition or appeal proceedings, may be examined as to their patentability even if they have not been explicitly opposed, provided their validity is prima facie in doubt on the basis of already available information.

[30] **G 1/91**: Unity of invention (Article 82 EPC) does not come under the requirements that a European patent and the invention to which it relates must meet under [Article 101(3) EPC] when the patent is maintained in amended form. It is consequently irrelevant in opposition proceedings that the European patent as granted or amended does not meet the requirement of unity.

	approves the text in which the Opposition Division intends to maintain the patent; (b) the fee for the printing of a new specification of the European patent is paid within the time limit prescribed in the Implementing Regulations. [→Article 101(3)] (4) If the fee for the printing of a new specification is not paid in due time, the patent shall be revoked. [→Rule 82(3)] (5) Provision may be made in the Implementing Regulations for the proprietor of the patent to file a translation of any amended claims in the two official languages of the European Patent Office other than the language of the proceedings. If the translation has not been filed in due time the patent shall be revoked.
Article 103 - Publication of a new specification of the European patent If the European patent is maintained as amended under Article 101, paragraph 3(a), the European Patent Office shall publish a new specification of the European patent as soon as possible after the mention of the opposition decision has been published in the European Patent Bulletin. [transitional category 2: applies to granted patents and applications pending on 13 December 2007]	**Article 103 - Publication of a new specification of the European patent** If a European patent is amended under Article 102, paragraph 3, the European Patent Office shall, at the same time as it publishes the mention of the opposition decision, publish a new specification of the European patent containing the description, the claims and any drawings, in the amended form.
Article 104 - Costs (1) Each party to the opposition proceedings shall bear the costs it has incurred, unless the Opposition Division, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs.[31] (2) The procedure for fixing costs shall be laid down in the Implementing Regulations. (3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in which enforcement is to take place. Verification of such decision shall be limited to its authenticity. [transitional category 2: applies to granted patents and applications pending on 13 December 2007]	**Article 104 - Costs** (1) Each party to the proceedings shall meet the costs he has incurred unless a decision of an Opposition Division or Board of Appeal, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs incurred during taking of evidence or in oral proceedings. (2) On request, the registry of the Opposition Division shall fix the amount of the costs to be paid under a decision apportioning them. The fixing of the costs by the registry may be reviewed by a decision of the Opposition Division on a request filed within the period laid down in the Implementing Regulations. (3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given by a civil court of the State in the territory of which enforcement is to be carried out. Verification of such decision shall be limited to its authenticity.

[31] See Rules of Procedure of the Boards of Appeal, Article 16

Article 105 - Intervention of the assumed infringer[32]	**Article 105 - Intervention of the assumed infringer**
(1) Any third party may, in accordance with the Implementing Regulations [Rule 89], intervene in opposition proceedings after the opposition period has expired[33], if the third party proves that (a) proceedings for infringement of the same patent have been instituted against him, or (b) following a request of the proprietor of the patent to cease alleged infringement, the third party has instituted proceedings for a ruling that he is not infringing the patent. (2) An admissible intervention shall be treated as an opposition. [opposition fee applies] [transitional category 2: applies to granted patents and applications pending on 13 December 2007] [Rule 79: communications and notices may be dispensed with]	(1) In the event of an opposition to a European patent being filed, any third party who proves that proceedings for infringement of the same patent have been instituted against him may, after the opposition period has expired, intervene in the opposition proceedings, if he gives notice of intervention within three months of the date on which the infringement proceedings were instituted. The same shall apply in respect of any third party who proves both that the proprietor of the patent has requested that he cease alleged infringement of the patent and that he has instituted proceedings for a court ruling that he is not infringing the patent. (2) Notice of intervention shall be filed in a written reasoned statement. It shall not be deemed to have been filed until the opposition fee has been paid. Thereafter the intervention shall, subject to any exceptions laid down in the Implementing Regulations, be treated as an opposition. [→Rule 89; Articles 105a-c]
Article 105a - Request for limitation or revocation (1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to have been filed until the limitation or revocation fee has been paid. (2) The request may not be filed while opposition proceedings in respect of the European patent are pending. [transitional category 2: applies to granted patents and applications pending on 13 December 2007] [Rules 90-96: procedure] [Rule 6(2) applies]	[not present]
Article 105b - Limitation or revocation of the European patent (1) The European Patent Office shall examine whether the requirements laid down in the Implementing Regulations for limiting or revoking the European patent have been met. (2) If the European Patent Office considers that the request for limitation or revocation of the European patent meets these requirements, it shall decide to limit or revoke the European patent in accordance with the Implementing Regulations. Otherwise, it shall reject the request. (3) The decision to limit or revoke the European patent shall apply to the European patent in all the Contracting States in	[not present]

[32] **G 1/94**: Intervention of the assumed infringer under Article 105 EPC is admissible during pending appeal proceedings and may be based on any ground for opposition under Article 100 EPC.

[33] **G 4/91**:

1. It is a prerequisite for intervention in opposition proceedings by an assumed infringer pursuant to Article 105 EPC that there are opposition proceedings in existence at the point in time when a notice of intervention is filed.
2. A decision by an Opposition Division which decides upon the issues raised by the opposition is a final decision in the sense that thereafter the Opposition Division has no power to change its decision.
3. Proceedings before an Opposition Division are terminated upon issue of such a final decision, regardless of when such decision takes legal effect.
4. In a case where, after issue of a final decision by an Opposition Division, no appeal is filed by a party to the proceedings before the Opposition Division, a notice of intervention which is filed during the two-month period for appeal provided by Article 108 EPC has no legal effect.

respect of which it has been granted. It shall take effect on the date on which the mention of the decision is published in the European Patent Bulletin.

[transitional category 2: applies to granted patents and applications pending on 13 December 2007]

Article 105c - Publication of the amended specification of the European patent

[not present]

If the European patent is limited under Article 105b, paragraph 2, the European Patent Office shall publish the amended specification of the European patent as soon as possible after the mention of the limitation has been published in the European Patent Bulletin.

[transitional category 2: applies to granted patents and applications pending on 13 December 2007]

PART VI: APPEALS PROCEDURE

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Article 106 - Decisions subject to appeal	**Article 106 - Decisions subject to appeal**
(1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.	(1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.
(2) 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 a separate appeal.[34]	(2) An appeal may be filed against the decision of the Opposition Division even if the European patent has been surrendered or has lapsed for all the designated States. [→Rule 98]
(3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.	(3) 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.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007] [Rule 97; Rule 98]	(4) The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal. [→Rule 97]
	(5) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount is in excess of that laid down in the Rules relating to Fees. [→Rule 97]
Article 107 - Persons entitled to appeal and to be parties to appeal proceedings	**Article 107 - Persons entitled to appeal and to be parties to appeal proceedings**
Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.[35]	Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

[34] **G 5/91**: There is no legal basis under the EPC for any separate appeal against an order of a director of a department of the first instance such as an Opposition Division rejecting an objection to a member of the division on the ground of suspected partiality. However, the composition of the Opposition Division may be challenged on such a ground of appeal against the final decision of the division or against an interlocutory decision under [Article 106(2)] EPC allowing separate appeal.

[35] **G 2/91**:
1. A person who is entitled to appeal but does not do so and instead confines himself to being a party to the appeal proceedings under Article 107, second sentence, EPC, has no independent right to continue the proceedings if the appellant withdraws the appeal.
2. Appeal fees cannot be reimbursed simply because several parties to proceedings before the EPO have validly filed an appeal against the same decision.

G 9/92 & 4/93:
1. If the patent proprietor is the sole appellant against an interlocutory decision maintaining a patent in amended form, neither the Board of Appeal nor the non-appealing opponent as a party to the proceedings as of right under Article 107, second sentence, EPC, may challenge the maintenance of the patent as amended in accordance with the interlocutory decision.
2.If the opponent is the sole appellant against an interlocutory decision maintaining a patent in amended form, the patent proprietor is primarily restricted during the appeal proceedings to defending the patent in the form in which it was maintained by the Opposition Division in its interlocutory decision. Amendments proposed by the patent proprietor as a party to the proceedings as of right under Article 107, second sentence, EPC, may be rejected as inadmissible by the Board of Appeal if they are neither appropriate nor necessary.

G 3/99:
If the opposing party consists of a plurality of persons, an appeal must be filed by the common representative under [Rule 151 EPC]. Where the appeal is filed by a non-entitled person, the Board of Appeal shall consider it not to be duly signed and consequently invite the common representative to sign it within a given time limit. The non-entitled person who filed the appeal shall be informed of this invitation. If the previous common representative is no longer participating in the proceedings, a new common representative shall be determined pursuant to [Rule 151 EPC].
In order to safeguard the rights of the patent proprietor and in the interests of procedural efficiency, it has to be clear throughout the procedure who belongs to the group of common opponents or common appellants. If either a common opponent or appellant (including the common representative) intends to withdraw from the proceedings, the EPO shall be notified accordingly by the common representative or by a new common representative determined under [Rule 151(1)] EPC in order for the withdrawal to take effect.

G 3/04: After withdrawal of the sole appeal, the proceedings may not be continued with a third party who intervened during the appeal proceedings.

Article 108 - Time limit and form	**Article 108 - Time limit and form of appeal**
Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within two months of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid[36]. Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations. [further processing not available: Article 121(4), only re-establishment of rights: Rule 136(3)] [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	Notice of appeal must be filed in writing at the European Patent Office within two months after the date of notification of the decision appealed from. The notice shall not be deemed to have been filed until after the fee for appeal 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.
Article 109 - Interlocutory revision	**Article 109 - Interlocutory revision**
(1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.[37] (2) If the appeal is not allowed within three months of receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.	(1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings. (2) If the appeal is not allowed within three months after receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.
Article 110 - Examination of appeals	**Article 110 - Examination of appeals**
If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable[38]. The examination of the appeal shall be conducted in accordance with the Implementing Regulations [Rules 100-103]. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	(1) If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable. (2) In the examination of the appeal, which shall be conducted in accordance with the provisions of the Implementing Regulations, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Board of Appeal, on communications from another party or issued by itself. [→Rule 100(2)] (3) If the applicant fails to reply in due time to an invitation under paragraph 2, the European patent application shall be deemed to be withdrawn, unless the decision under appeal was taken by the Legal Division. [→Rule 100(3)]

[36] **G 2/97**: The principle of good faith does not impose any obligation on the boards of appeal to notify an appellant that an appeal fee is missing when the notice of appeal is filed so early that the appellant could react and pay the fee in time, if there is no indication - either in the notice of appeal or in any other document filed in relation to the appeal - from which it could be inferred that the appellant would, without such notification, inadvertently miss the time limit for payment of the appeal fee.

[37] **G 3/03**:
1. In the event of interlocutory revision under Article 109(1) EPC, the department of the first instance whose decision has been appealed is not competent to refuse a request of the appellant for reimbursement of the appeal fee.
2. The board of appeal which would have been competent under Article 21 EPC to deal with the substantive issues of the appeal if no interlocutory revision had been granted is competent to decide on the request.

[38] **G 1/97**:
I. In the context of the European Patent Convention, the jurisdictional measure to be taken in response to requests based on the alleged violation of a fundamental procedural principle and aimed at the revision of a final decision of a board of appeal having the force of res judicata should be the refusal of the requests as inadmissible.
II. The decision on inadmissibility is to be issued by the board of appeal which took the decision forming the subject of the request for revision. The decision may be issued immediately and without further procedural formalities.
III. This jurisdictional measure applies only to requests directed against a decision of a board of appeal bearing a date after that of the present decision.
IV. If the Legal Division of the EPO is asked to decide on the entry in the Register of European Patents of a request directed against a decision of a board of appeal, it must refrain from ordering that the entry be made if the request, in whatever form, is based on the alleged violation of a fundamental procedural principle and aimed at the revision of a final decision of a board of appeal. [see new procedure for petition to Enlarged Board, Article 112a]

Article 111 - Decision in respect of appeals	**Article 111 - Decision in respect of appeals**
(1) Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.[39]	(1) Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.
(2) If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same. If the decision under appeal was taken by the Receiving Section, the Examining Division shall also be bound by the ratio decidendi of the Board of Appeal.	(2) If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same. If the decision which was appealed emanated from the Receiving Section, the Examining Division shall similarly be bound by the ratio decidendi of the Board of Appeal.
Article 112 - Decision or opinion of the Enlarged Board of Appeal	**Article 112 - Decision or opinion of the Enlarged Board of Appeal**
(1) In order to ensure uniform application of the law, or if a point of law of fundamental importance arises:	(1) In order to ensure uniform application of the law, or if an important point of law arises:
(a) the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;[40]	(a) the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;
(b) the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.[41]	(b) the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.
(2) In the cases referred to in paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the Enlarged Board of Appeal.	(2) In the cases covered by paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the Enlarged Board of Appeal.
(3) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.	(3) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.

[39] **G 1/99**:
In principle, an amended claim, which would put the opponent and sole appellant in a worse situation than if it had not appealed, must be rejected. However, an exception to this principle may be made in order to meet an objection put forward by the opponent/appellant or the Board during the appeal proceedings, in circumstances where the patent as maintained in amended form would otherwise have to be revoked as a direct consequence of an inadmissible amendment held allowable by the Opposition Division in its interlocutory decision. In such circumstances, in order to overcome the deficiency, the patent proprietor/respondent may be allowed to file requests, as follows:
– in the first place, for an amendment introducing one or more originally disclosed features which limit the scope of the patent as maintained;
– if such a limitation is not possible, for an amendment introducing one or more originally disclosed features which extend the scope of the patent as maintained, but within the limits of Article 123(3) EPC;
– finally, if such amendments are not possible, for deletion of the inadmissible amendment, but within the limits of Article 123(3) EPC.
G 10/93: In an appeal from a decision of an examining division in which a European patent application was refused the board of appeal has the power to examine whether the application or the invention to which it relates meets the requirements of the EPC. The same is true for requirements which the examining division did not take into consideration in the examination proceedings or which it regarded as having been met. If there is reason to believe that such a requirement has not been met, the board shall include this ground in the proceedings.

[40] **T 390/90**: Even if a serious question does arise in relation to an important question of law, it is still open to the Board not to refer the matter to the Enlarged Board (point 2.1)

[41] **G 3/95**:
1. In decision T 356/93 (OJ EPO 1995, 545) it was held that a claim defining genetically modified plants having a distinct, stable, herbicide-resistance genetic characteristic was not allowable under Article 53(b) EPC because the claimed genetic modification itself made the modified or transformed plant a "plant variety" within the meaning of Article 53(b) EPC.
2. This finding is not in conflict with the findings in either of decisions T 49/83 (OJ EPO 1984, 112) or T 19/90 (OJ EPO 1990, 476).
3. Consequently, the referral of the question: "Does a claim which relates to plants or animals but wherein specific plant or animal varieties are not individually claimed contravene the prohibition on patenting in Article 53(b) EPC if it embraces plant or animal varieties?" to the Enlarged Board of Appeal by the President of the EPO is inadmissible under Article 112(1) (b) EPC.

[not present]

Article 112a - Petition for review by the Enlarged Board of Appeal

(1) Any party to appeal proceedings adversely affected by the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.

(2) The petition may only be filed on the grounds that:

(a) a member of the Board of Appeal took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;

(b) the Board of Appeal included a person not appointed as a member of the Boards of Appeal;

(c) a fundamental violation of Article 113 occurred;

(d) any other fundamental procedural defect defined in the Implementing Regulations [Rule 104] occurred in the appeal proceedings [Rule 106]; or

(e) a criminal act established under the conditions laid down in the Implementing Regulations [Rule 105] may have had an impact on the decision.

(3) The petition for review shall not have suspensive effect.

(4) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 2(a) to (d), the petition shall be filed within two months of notification of the decision of the Board of Appeal. If based on paragraph 2(e), the petition shall be filed within two months of the date on which the criminal act has been established and in any event no later than five years from notification of the decision of the Board of Appeal. The petition shall not be deemed to have been filed until after the prescribed fee has been paid. [further processing not available: Article 121(4)]

(5) The Enlarged Board of Appeal shall examine the petition for review in accordance with the Implementing Regulations. If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision and shall re-open proceedings before the Boards of Appeal in accordance with the Implementing Regulations.

(6) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the decision of the Board of Appeal and publication in the European Patent Bulletin of the mention of the decision of the Enlarged Board of Appeal on the petition, may without payment continue such use in the course of his business or for the needs thereof.

[Relevant Rules: 104-110
Rule 107 : Contents
Rule 108 : Examination
Rule 109 : Procedure]
[Transitional provisions (Article 1(4)): applies to decisions of the Boards of Appeal taken as from 13 December 2007]

PART VII: COMMON PROVISIONS

Chapter I: Common provisions governing procedure

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Article 113 - Right to be heard and basis of decisions	**Article 113 - Basis of decisions**
(1) The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.[42]	(1) The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.
(2) The European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.	(2) The European Patent Office shall consider and decide upon the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant for or proprietor of the patent.
Article 114 - Examination by the European Patent Office of its own motion	**Article 114 - Examination by the European Patent Office of its own motion**
(1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.[43]	(1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.
(2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.	(2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.
Article 115 - Observations by third parties	**Article 115 - Observations by third parties**
In proceedings before the European Patent Office, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations [Rule 114], present observations concerning the patentability of the invention to which the application or patent relates. That person shall not be a party to the proceedings. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	(1) Following the publication of the European patent application, any person may present observations concerning the patentability of the invention in respect of which the application has been filed. Such observations must be filed in writing and must include a statement of the grounds on which they are based. That person shall not be a party to the proceedings before the European Patent Office. (2) The observations referred to in paragraph 1 shall be communicated to the applicant for or proprietor of the patent who may comment on them. [→Rule 114]

[42] **G 4/92**:
1. A decision against a party who has been duly summoned but who fails to appear at oral proceedings may not be based on facts put forward for the first time during those oral proceedings.
2. Similarly, new evidence may not be considered unless it has been previously notified and it merely supports the assertions of the party who submits it, whereas new arguments may in principle be used to support the reasons for the decision.

[43] **G 8/93**: The filing by an opponent, who is sole appellant, of a statement withdrawing his opposition immediately and automatically terminates the appeal proceedings, irrespective of whether the patent proprietor agrees to termination of those proceedings and even if in the Board of Appeal's view the requirements under the EPC for maintaining the patent are not satisfied.

Article 116 - Oral proceedings	**Article 116 - Oral proceedings**
(1) Oral proceedings[44] shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings before the same department where the parties and the subject of the proceedings are the same.	(1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings before the same department where the parties and the subject of the proceedings are the same.
(2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it intends to refuse the European patent application.	(2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it envisages refusing the European patent application.
(3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.	(3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.
(4) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also before the Opposition Divisions, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.	(4) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also before the Opposition Divisions, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

[44] **G 2/94**:
1. A board of appeal has a discretion to allow an accompanying person (who is not entitled under Article 134(1) or [(8)] EPC to represent parties to proceedings before the EPO) to make submissions during oral proceedings in ex parte proceedings, in addition to the complete presentation of a party's case by the professional representative.
2. (a) In ex parte proceedings a professional representative should request permission for the making of such oral submissions in advance of the day appointed for oral proceedings. The request should state the name and qualifications of the person for whom permission is requested, and should specify the subject-matter of the proposed oral submissions.
The board of appeal should exercise its discretion in accordance with the circumstances of each individual case. The main criterion to be considered is that the board should be fully informed of all relevant matters before deciding the case. The board should be satisfied that the oral submissions are made by the accompanying person under the continuing responsibility and control of the professional representative.
(b) During either ex parte or inter partes proceedings, a board of appeal should refuse permission for a former member of the boards of appeal to make oral submissions during oral proceedings before it, unless it is completely satisfied that a sufficient period of time has elapsed following termination of such former member's appointment to the boards of appeal, so that the board of appeal could not reasonably be suspected of partiality in deciding the case if it allowed such oral submissions to be made.
A board of appeal should normally refuse permission for a former member of the boards of appeal to make oral submissions during oral proceedings before it, until at least three years have elapsed following termination of the former member's appointment to the boards of appeal. After three years have elapsed, permission should be granted except in very special circumstances.
G 4/95:
1. During oral proceedings under Article 116 EPC in the context of opposition or opposition appeal proceedings, a person accompanying the professional representative of a party may be allowed to make oral submissions on specific legal or technical issues on behalf of that party, otherwise than under Article 117 EPC, in addition to the complete presentation of the party's case by the professional representative.
2. (a) Such oral submissions cannot be made as a matter of right, but only with the permission of and under the discretion of the EPO.
(b) The following main criteria should be considered by the EPO when exercising its discretion to allow the making of oral submissions by an accompanying person in opposition or opposition appeal proceedings:
(i) The professional representative should request permission for such oral submissions to be made. The request should state the name and qualifications of the accompanying person, and should specify the subject-matter of the proposed oral submissions.
(ii) The request should be made sufficiently in advance of the oral proceedings so that all opposing parties are able properly to prepare themselves in relation to the proposed oral submissions.
(iii) A request which is made shortly before or at the oral proceedings should in the absence of exceptional circumstances be refused, unless each opposing party agrees to the making of the oral submissions requested.
(iv) The EPO should be satisfied that oral submissions by an accompanying person are made under the continuing responsibility and control of the professional representative.
(c) No special criteria apply to the making of oral submissions by qualified patent lawyers of countries which are not contracting states to the EPC.

Article 117 - Means and taking of evidence

(1) In proceedings before the European Patent Office the means of giving or obtaining evidence shall include the following:

(a) hearing the parties;

(b) requests for information;

(c) production of documents;

(d) hearing witnesses;

(e) opinions by experts;

(f) inspection;

(g) sworn statements in writing.

(2) The procedure for taking such evidence shall be laid down in the Implementing Regulations.

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]

Article 117 - Taking of evidence

(1) In any proceedings before an Examining Division, an Opposition Division, the Legal Division or a Board of Appeal the means of giving or obtaining evidence shall include the following:

(a) hearing the parties;

(b) requests for information;

(c) the production of documents;

(d) hearing the witnesses;

(e) opinions by experts;

(f) inspection;

(g) sworn statements in writing.

(2) The Examining Division, Opposition Division or Board of Appeal may commission one of its members to examine the evidence adduced. [→Rule 119]

(3) If the European Patent Office considers it necessary for a party, witness or expert to give evidence orally, it shall either:

(a) issue a summons to the person concerned to appear before it, or

(b) request, in accordance with the provisions of Article 131, paragraph 2, the competent court in the country of residence of the person concerned to take such evidence.

(4) A party, witness or expert who is summoned before the European Patent Office may request the latter to allow his evidence to be heard by a competent court in his country of residence. On receipt of such a request, or if there has been no reply to the summons by the expiry of a period fixed by the European Patent Office in the summons, the European Patent Office may, in accordance with the provisions of Article 131, paragraph 2, request the competent court to hear the person concerned. [→Rule 120]

(5) If a party, witness or expert gives evidence before the European Patent Office, the latter may, if it considers it advisable for the evidence to be given on oath or in an equally binding form, request the competent court in the country of residence of the person concerned to re-examine his evidence under such conditions. [→Rule 120]

(6) When the European Patent Office requests a competent court to take evidence, it may request the court to take the evidence on oath or in an equally binding form and to permit a member of the department concerned to attend the hearing and question the party, witness or expert either through the intermediary of the court or directly. [→Rule 120]

Article 118 - Unity of the European patent application or European patent

Article 118 - Unity of the European patent application or European patent

Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of proceedings before the European Patent Office. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States, unless this Convention provides otherwise.	Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of proceedings before the European Patent Office. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States unless otherwise provided for in this Convention.
Article 119 - Notification Decisions, summonses, notices and communications shall be notified by the European Patent Office of its own motion in accordance with the Implementing Regulations. Notification may, where exceptional circumstances so require, be effected through the intermediary of the central industrial property offices of the Contracting States. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 119 - Notification** The European Patent Office shall, as a matter of course, notify those concerned of decisions and summonses, and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under other provisions of this Convention, or of which notification has been ordered by the President of the European Patent Office. Notifications may, where exceptional circumstances so require, be given through the intermediary of the central industrial property offices of the Contracting States.
Article 120 - Time limits The Implementing Regulations shall specify: (a) the time limits which are to be observed in proceedings before the European Patent Office and are not fixed by this Convention; (b) the manner of computation of time limits and the conditions under which time limits may be extended; (c) the minima and maxima for time limits to be determined by the European Patent Office. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 120 - Time limits** The Implementing Regulations shall specify: (a) the manner of computation of time limits and the conditions under which such time limits may be extended, either because the European Patent Office or the authorities referred to in Article 75, paragraph 1(b), are not open to receive documents or because mail is not delivered in the localities in which the European Patent Office or such authorities are situated or because postal services are generally interrupted or subsequently dislocated; (b) the minima and maxima for time limits to be determined by the European Patent Office.
Article 121 - Further processing of the European patent application (1)If an applicant fails to observe a time limit vis-à-vis the European Patent Office, he may request further processing of the European patent application. (2) The European Patent Office shall grant the request, provided that the requirements laid down in the Implementing Regulations [Rule 135] are met. Otherwise, it shall reject the request. (3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued. (4) Further processing shall be ruled out in respect of the time limits in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 4, as well as the time limits for requesting further processing or re-establishment of rights. The Implementing Regulations may rule out further processing for other time limits. [Rule 135(2)] [transitional category 5: applies to pending and granted, provided time limit has not expired] [Rule 135]	**Article 121 - Further processing of the European patent application** (1) If the European patent application is to be refused or is refused or deemed to be withdrawn following failure to reply within a time limit set by the European Patent Office, the legal consequence provided for shall not ensue or, if it has already ensued, shall be retracted if the applicant requests further processing of the application. (2) The request shall be filed in writing within two months of the date on which either the decision to refuse the application or the communication that the application is deemed to be withdrawn was notified. The omitted act must be completed within this time limit. The request shall not be deemed to have been filed until the fee for further processing has been paid. [→Rule 135] (3) The department competent to decide on the omitted act shall decide on the request. [→Rule 135]

Article 122 - Re-establishment of rights[45]

(1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall have his rights re-established upon request [Rule 136(1)] if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application or of a request, or the deeming of the application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The European Patent Office shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other time limits. [Rule 136(3)]

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the loss of rights referred to in paragraph 1 and publication in the European Patent Bulletin of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

[transitional category 5 applies to pending and granted, provided time limit has not expired]
[Rule 136]

Article 122 - Restitutio in integrum

(1) The applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of this Convention, of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The application must be filed in writing within two months from the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiry of the unobserved time limit. In the case of non-payment of a renewal fee, the period specified in Article 86, paragraph 2, shall be deducted from the period of one year. [→Rule 136]

(3) The application must state the grounds on which it is based, and must set out the facts on which it relies. It shall not be deemed to be filed until after the fee for re-establishment of rights has been paid. [→Rule 136]

(4) The department competent to decide on the omitted act shall decide upon the application. [→Rule 136]

(5) The provisions of this Article shall not be applicable to the time limits referred to in paragraph 2 of this Article, Article 61, paragraph 3, Article 76, paragraph 3, Article 78, paragraph 2, Article 79, paragraph 2, Article 87, paragraph 1, and Article 94, paragraph 2. [→Rule 136]

(6) Any person who, in a designated Contracting State, in good faith has used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the course of the period between the loss of rights referred to in paragraph 1 and publication of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(7) Nothing in this Article shall limit the right of a Contracting State to grant restitutio in integrum in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

[45] **G 1/86**: Article 122 EPC is not to be interpreted as being applicable only to the applicant and patent proprietor. An appellant as opponent may have his rights re-established under Article 122 EPC if he has failed to observe the time limit for filing the statement of grounds of appeal.

Article 123 - Amendments

(1) The European patent application or European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any event, the applicant shall be given at least one opportunity to amend the application of his own volition.

(2) The European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.[46]

(3) The European patent may not be amended in such a way as to extend the protection it confers.[47]

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]

Article 123 - Amendments

(1) The conditions under which a European patent application or a European patent may be amended in proceedings before the European Patent Office are laid down in the Implementing Regulations. In any case, an applicant shall be allowed at least one opportunity of amending the description, claims and drawings of his own volition.

(2) A European patent application or a European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.

(3) The claims of the European patent may not be amended during opposition proceedings in such a way as to extend the protection conferred.

[46] **G 1/93**:
1. If a European patent as granted contains subject-matter which extends beyond the content of the application as filed within the meaning of Article 123(2) EPC and which also limits the scope of protection conferred by the patent, such patent cannot be maintained in opposition proceedings unamended, because the ground for opposition under Article 100(c) EPC prejudices the maintenance of the patent. Nor can it be amended by deleting such limiting subject-matter from the claims, because such amendment would extend the protection conferred, which is prohibited by Article 123(3) EPC. Such a patent can, therefore, only be maintained if there is a basis in the application as filed for replacing such subject-matter without violating Article 123 (3) EPC.
2. A feature which has not been disclosed in the application as filed but which has been added to the application during examination and which, without providing a technical contribution to the subject-matter of the claimed invention, merely limits the protection conferred by the patent as granted by excluding protection for part of the subject-matter of the claimed invention as covered by the application as filed, is not to be considered as subject-matter which extends beyond the content of the application as filed within the meaning of Article 123(2) EPC. The ground for opposition under Article 100(c) EPC therefore does not prejudice the maintenance of a European patent which includes such a feature.
G 1/03 & 2/03:
1. An amendment to a claim by the introduction of a disclaimer may not be refused under Article 123(2) EPC for the sole reason that neither the disclaimer nor the subject-matter excluded by it from the scope of the claim have a basis in the application as filed. A disclaimer which is or becomes relevant for the assessment of inventive step or sufficiency of disclosure adds subject-matter contrary to Article 123(2) EPC.
2. The following criteria are to be applied for assessing the allowability of a disclaimer which is not disclosed in the application as filed:
2.1 A disclaimer may be allowable in order to:
- restore novelty by delimiting a claim against state of the art under Article 54(3) and (4) EPC;
- restore novelty by delimiting a claim against an accidental anticipation under Article 54(2) EPC; an anticipation is accidental if it is so unrelated to and remote from the claimed invention that the person skilled in the art would never have taken it into consideration when making the invention; and
- disclaim subject-matter which, under Articles 52 to 57 EPC, is excluded from patentability for nontechnical reasons.

2.2 A disclaimer should not remove more than is necessary either to restore novelty or to disclaim subject-matter excluded from patentability for non-technical reasons.
2.3 A disclaimer which is or becomes relevant for the assessment of inventive step or sufficiency of disclosure adds subject-matter contrary to Article 123(2) EPC.
2.4 A claim containing a disclaimer must meet the requirements of clarity and conciseness of Article 84 EPC.

[47] **G 2/88**:
1. A change of category of granted claims in opposition proceedings is not open to objection under Article 123(3) EPC, if it does not result in extension of the protection conferred by the claims as a whole, when they are interpreted in accordance with Article 69 EPC and its Protocol. In this context, the national laws of the Contracting States relating to infringement should not be considered.
2. An amendment of granted claims directed to "a compound" and to "a composition including such compound", so that the amended claims are directed to "the use of that compound in a composition" for a particular purpose, is not open to objection under Article 123(3) EPC.

Article 124 - Information on prior art (1) The European Patent Office may, in accordance with the Implementing Regulations [Rule 141], invite the applicant to provide information on prior art taken into consideration in national or regional patent proceedings and concerning an invention to which the European patent application relates. (2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 124 - Information concerning national patent applications** (1) The Examining Division or the Board of Appeal may invite the applicant to indicate, within a period to be determined by it, the States in which he has made applications for national patents for the whole or part of the invention to which the European patent application relates, and to give the reference numbers of the said applications. (2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.
Article 125 - Reference to general principles In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.	**Article 125 - Reference to general principles** In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.
[deleted]	**Article 126 - Termination of financial obligations** (1) Rights of the Organisation to the payment of a fee to the European Patent Office shall be extinguished after four years from the end of the calendar year in which the fee fell due. (2) Rights against the Organisation for the refunding by the European Patent Office of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose. (3) The period laid down in paragraphs 1 and 2 shall be interrupted in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgment enters into force.

Chapter II: Information to the public or to official authorities

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Article 127 - European Patent Register The European Patent Office shall keep a European Patent Register, in which the particulars specified in the Implementing Regulations shall be recorded. No entry shall be made in the European Patent Register before the publication of the European patent application. The European Patent Register shall be open to public inspection. [Rule 143: Entries in the Register] [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	**Article 127 - Register of European Patents** The European Patent Office shall keep a register, to be known as the Register of European Patents, which shall contain those particulars the registration of which is provided for by this Convention. No entry shall be made in the Register prior to the publication of the European patent application. The Register shall be open to public inspection.
Article 128 - Inspection of files (1) Files relating to European patent applications which have not yet been published shall not be made available for	**Article 128 - Inspection of files** (1) The files relating to European patent applications, which have not yet been published, shall not be made available for

inspection without the consent of the applicant.

(2) Any person who can prove that the applicant has invoked the rights under the European patent application against him may obtain inspection of the files before the publication of that application and without the consent of the applicant.

(3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application before the publication of that application and without the consent of the applicant.

(4) After the publication of the European patent application, the files relating to the application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations. [Rules 143-147][48]

(5) Even before the publication of the European patent application, the European Patent Office may communicate to third parties or publish the particulars specified in the Implementing Regulations.

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]

inspection without the consent of the applicant.

(2) Any person who can prove that the applicant for a European patent has invoked the rights under the application against him may obtain inspection of the files prior to the publication of that application and without the consent of the applicant.

(3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application prior to the publication of that application and without the consent of the relevant applicant.

(4) Subsequent to the publication of the European patent application, the files relating to such application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations.

(5) Even prior to the publication of the European patent application, the European Patent Office may communicate the following bibliographic data to third parties or publish them:

(a) the number of the European patent application;

(b) the date of filing of the European patent application and, where the priority of a previous application is claimed, the date, State and file number of the previous application;

(c) the name of the applicant;

(d) the title of the invention;

(e) the Contracting States designated.

Article 129 - Periodical publications

The European Patent Office shall periodically publish:

(a) a European Patent Bulletin containing the particulars the publication of which is prescribed by this Convention, the Implementing Regulations or the President of the European Patent Office;

(b) an Official Journal containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]

Article 129 - Periodical publications

The European Patent Office shall periodically publish:

(a) a European Patent Bulletin containing entries made in the Register of European Patents, as well as other particulars the publication of which is prescribed by this Convention;

(b) an Official Journal of the European Patent Office, containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.

Article 130 - Exchange of information

(1) Unless this Convention or national laws provide otherwise, the European Patent Office and the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding European or national patent applications and

Article 130 - Exchanges of information

(1) The European Patent Office and, subject to the application of the legislative or regulatory provisions referred to in Article 75, paragraph 2, the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding

[48] See Decision of the President of the European Patent Office dated 12 July 2007 concerning documents excluded from file inspection (Special edition No. 3 OJ EPO 2007, J.3., pp125-126)

patents and any proceedings concerning them. (2) Paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and (a) the central industrial property offices of other States; (b) any intergovernmental organisation entrusted with the task of granting patents; (c) any other organisation. (3) Communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned treats the information communicated as confidential until the European patent application has been published.	the filing of European or national patent applications and regarding any proceedings concerning such applications and the resulting patents. (2) The provisions of paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and: (a) the central industrial property office of any State which is not a party to this Convention; (b) any intergovernmental organisation entrusted with the task of granting patents; (c) any other organisation. (3) The communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned shall treat the information communicated as confidential until the European patent application has been published.
Article 131 - Administrative and legal co-operation (1) Unless this Convention or national laws provide otherwise, the European Patent Office and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office makes files available for inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128. (2) At the request of the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of the Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.	**Article 131 - Administrative and legal co-operation** (1) Unless otherwise provided in this Convention or in national laws, the European Patent Office and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office lays files open to inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128. (2) Upon receipt of letters rogatory from the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of that Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.
Article 132 - Exchange of publications (1) The European Patent Office and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge. (2) The European Patent Office may conclude agreements relating to the exchange or supply of publications.	**Article 132 - Exchange of publications** (1) The European Patent Office and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge. (2) The European Patent Office may conclude agreements relating to the exchange or supply of publications.

Chapter III: Representation

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Article 133 - General principles of representation (1) Subject to paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention. (2) Natural or legal persons not having their residence or principal place of business in a Contracting State shall be represented by a professional representative and act through him in all proceedings established by this Convention, other	**Article 133 - General principles of representation** (1) Subject to the provisions of paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention. (2) Natural or legal persons not having either a residence or their principal place of business within the territory of one of the Contracting States must be represented by a professional

than in filing a European patent application; the Implementing Regulations may permit other exceptions. [Rule 57: formal requirements]	representative and act through him in all proceedings established by this Convention, other than in filing the European patent application; the Implementing Regulations may permit other exceptions.
(3) Natural or legal persons having their residence or principal place of business in a Contracting State may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who shall be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of a legal person may also represent other legal persons which have their principal place of business in a Contracting State and which have economic connections with the first legal person.	(3) Natural or legal persons having their residence or principal place of business within the territory of one of the Contracting States may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who must be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of such a legal person may also represent other legal persons which have their principal place of business within the territory of one of the Contracting States and which have economic connections with the first legal person.
(4) The Implementing Regulations may lay down special provisions concerning the common representation of parties acting in common.	(4) The Implementing Regulations may prescribe special provisions concerning the common representation of parties acting in common.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007]	
Article 134 - Representation before the European Patent Office	**Article 134 Professional representatives**
(1) Representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.	(1) Professional representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.
(2) Any natural person who	(2) Any natural person who fulfils the following conditions may be entered on the list of professional representatives:
(a) is a national of a Contracting State,	(a) he must be a national of one of the Contracting States;
(b) has his place of business or employment in a Contracting State and	(b) he must have his place of business or employment within the territory of one of the Contracting States;
(c) has passed the European qualifying examination may be entered on the list of professional representatives.	(c) he must have passed the European qualifying examination.
(3) During a period of one year from the date on which the accession of a State to this Convention takes effect, entry on that list may also be requested by any natural person who	(3) Entry shall be effected upon request, accompanied by certificates which must indicate that the conditions laid down in paragraph 2 are fulfilled.
(a) is a national of a Contracting State,	(4) Persons whose names appear on the list of professional representatives shall be entitled to act in all proceedings established by this Convention.
(b) has his place of business or employment in the State having acceded to the Convention and	(5) For the purpose of acting as a professional representative, any person whose name appears on the list referred to in paragraph 1 shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.
(c) is entitled to represent natural or legal persons in patent matters before the central industrial property office of that State. Where such entitlement is not conditional upon the requirement of special professional qualifications, the person shall have regularly so acted in that State for at least five years.	(6) The President of the European Patent Office may, in
(4) Entry shall be effected upon request, accompanied by certificates indicating that the conditions laid down in paragraph 2 or 3 are fulfilled.	
(5) Persons whose names appear on the list of professional representatives shall be entitled to act in all proceedings established by this Convention.	

(6) For the purpose of acting as a professional representative, any person whose name appears on the list of professional representatives shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.

(7) The President of the European Patent Office may grant exemption from:

(a) the requirement of paragraphs 2(a) or 3(a) in special circumstances;

(b) the requirement of paragraph 3(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.

(8) Representation in proceedings established by this Convention may also be undertaken, in the same way as by a professional representative, by any legal practitioner qualified in a Contracting State and having his place of business in that State, to the extent that he is entitled in that State to act as a professional representative in patent matters. Paragraph 6 shall apply mutatis mutandis.

special circumstances, grant exemption from the requirement of paragraph 2(a).

(7) Professional representation in proceedings established by this Convention may also be undertaken, in the same way as by a professional representative, by any legal practitioner qualified in one of the Contracting States and having his place of business within such State, to the extent that he is entitled, within the said State, to act as a professional representative in patent matters. Paragraph 5 shall apply mutatis mutandis.

(8) The Administrative Council may adopt provisions governing:

(a) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;

(b) the establishment or recognition of an institute constituted by the persons entitled to act as professional representatives by virtue of either the European qualifying examination or the provisions of Article 163, paragraph 7;

(c) any disciplinary power to be exercised by that institute or the European Patent Office on such persons. [→Article 134a]

Article 134a - Institute of Professional Representatives before the European Patent Office

(1) The Administrative Council shall be competent to adopt and amend provisions governing:

(a) the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;

(b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;

(c) the disciplinary power exercised by the Institute or the European Patent Office in respect of professional representatives;

(d) the obligation of confidentiality on the professional representative and the privilege from disclosure in proceedings before the European Patent Office in respect of communications between a professional representative and his client or any other person.

(2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute.

[not present]

PART VIII: IMPACT ON NATIONAL LAW

Chapter I: Conversion into a national patent application

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Article 135 - Request for conversion

(1) The central industrial property office of a designated Contracting State shall, at the request of the applicant for or proprietor of a European patent, apply the procedure for the grant of a national patent in the following circumstances:

(a) where the European patent application is deemed to be withdrawn under Article 77, paragraph 3;

(b) in such other cases as are provided for by the national law, in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.

(2) In the case referred to in paragraph 1(a), the request for conversion shall be filed with the central industrial property office with which the European patent application has been filed. That office shall, subject to the provisions governing national security, transmit the request directly to the central industrial property offices of the Contracting States specified therein.

(3) In the cases referred to in paragraph 1(b), the request for conversion shall be submitted to the European Patent Office in accordance with the Implementing Regulations [Rules 155-156]. It shall not be deemed to be filed until the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein.

(4) The effect of the European patent application referred to in Article 66 shall lapse if the request for conversion is not submitted in due time.

[transitional category 1: applies to granted patents and applications pending on 13 December 2007]

Article 135 - Request for the application of national procedure

(1) The central industrial property office of a designated Contracting State shall apply the procedure for the grant of a national patent only at the request of the applicant for or proprietor of a European patent, and in the following circumstances:

(a) when the European patent application is deemed to be withdrawn pursuant to Article 77, paragraph 5, or Article 162, paragraph 4;

(b) in such other cases as are provided for by the national law in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.

(2) The request for conversion shall be filed within three months after the European patent application has been withdrawn or after notification has been made that the application is deemed to be withdrawn, or after a decision has been notified refusing the application or revoking the European patent. The effect referred to in Article 66 shall lapse if the request is not filed in due time. [→Rule 155]

[deleted]

Article 136 - Submission and transmission of the request

(1) A request for conversion shall be filed with the European Patent Office and shall specify the Contracting States in which application of the procedure for the grant of a national patent is desired. The request shall not be deemed to be filed until the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein, accompanied by a copy of the files relating to the European patent application or the European patent.

(2) However, if the applicant is notified that the European patent application has been deemed to be withdrawn pursuant to Article 77, paragraph 5, the request shall be filed with the central industrial property office with which the application has been filed. That office shall, subject to the provisions of national security, transmit the request, together with a copy of the European patent application, directly to the central industrial property offices of the Contracting States specified by the applicant in the request. The effect

	referred to in Article 66 shall lapse if such transmission is not made within twenty months after the date of filing or, if a priority has been claimed, after the date of priority. [→Article 135(2), (4)]
Article 137 - Formal requirements for conversion	**Article 137 - Formal requirements for conversion**
(1) A European patent application transmitted in accordance with Article 135, paragraph 2 or 3, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.	(1) A European patent application transmitted in accordance with Article 136 shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.
(2) Any central industrial property office to which the European patent application is transmitted may require that the applicant shall, within a period of not less than two months:	(2) Any central industrial property office to which the application is transmitted may require that the applicant shall, within not less than two months:
(a) pay the national application fee; and	(a) pay the national application fee;
(b) file a translation of the original text of the European patent application in an official language of the State in question and, where appropriate, of the text as amended during proceedings before the European Patent Office which the applicant wishes to use as the basis for the national procedure.	(b) file a translation in one of the official languages of the State in question of the original text of the European patent application and, where appropriate, of the text, as amended during proceedings before the European Patent Office, which the applicant wishes to submit to the national procedure.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007]	

Chapter II: Revocation and prior rights

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Article 138 - Revocation of European patents	**Article 138 - Grounds for revocation**
(1) Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the grounds that:	(1) Subject to the provisions of Article 139, a European patent may only be revoked under the law of a Contracting State, with effect for its territory, on the following grounds:
(a) the subject-matter of the European patent is not patentable under Articles 52 to 57;	(a) if the subject-matter of the European patent is not patentable within the terms of Articles 52 to 57;
(b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;	(b) if the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
(c) the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;	(c) if the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed in accordance with Article 61, beyond the content of the earlier application as filed;
(d) the protection conferred by the European patent has been extended; or	(d) if the protection conferred by the European patent has been extended;
(e) the proprietor of the European patent is not entitled under Article 60, paragraph 1.	(e) if the proprietor of the European patent is not entitled under Article 60, paragraph 1.
(2) If the grounds for revocation affect the European patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part.	(2) If the grounds for revocation only affect the European patent in part, revocation shall be pronounced in the form of a corresponding limitation of the said patent. If the national law so allows, the limitation may be effected in the form of an amendment to the claims, the description or the drawings.
(3) In proceedings before the competent court or authority relating to the validity of the European patent, the proprietor of the patent shall have the right to limit the patent by	

amending the claims. The patent as thus limited shall form the basis for the proceedings.

[transitional category 2: applies to granted patents and applications pending on 13 December 2007]

Article 139 - Prior rights and rights arising on the same date	**Article 139 - Rights of earlier date or the same date**
(1) In any designated Contracting State a European patent application and a European patent shall have with regard to a national patent application and a national patent the same prior right effect as a national patent application and a national patent.	(1) In any designated Contracting State a European patent application and a European patent shall have with regard to a national patent application and a national patent the same prior right effect as a national patent application and a national patent.
(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent designating that Contracting State the same prior right effect as if the European patent were a national patent.	(2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent in which that Contracting State is designated the same prior right effect as they have with regard to a national patent.
(3) Any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.	(3) Any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

Chapter III: Miscellaneous effects

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Article 140 - National utility models and utility certificates	**Article 140 - National utility models and utility certificates**
Articles 66, 124, 135, 137 and 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates. [conversion fee applies]	Article 66, Article 124, Articles 135 to 137 and Article 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.
Article 141 - Renewal fees for European patents	**Article 141 - Renewal fees for European patents**
(1) Renewal fees for a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 2.	(1) Renewal fees in respect of a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 4.
(2) Any renewal fees falling due within two months of the publication in the European Patent Bulletin of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.	(2) Any renewal fees falling due within two months after the publication of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.
[transitional category 1: applies to granted patents and applications pending on 13 December 2007]	

PART IX: SPECIAL AGREEMENTS

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Article 142 - Unitary patents

(1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.

(2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

Article 142 - Unitary patents

(1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.

(2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

Article 143 - Special departments of the European Patent Office

(1) The group of Contracting States may give additional tasks to the European Patent Office.

(2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply mutatis mutandis.

Article 143 - Special departments of the European Patent Office

(1) The group of Contracting States may give additional tasks to the European Patent Office.

(2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply mutatis mutandis.

Article 144 - Representation before special departments

The group of Contracting States may lay down special provisions to govern representation of parties before the departments referred to in Article 143, paragraph 2.

Article 144 - Representation before special departments

The group of Contracting States may lay down special provisions to govern representation of parties before the departments referred to in Article 143, paragraph 2.

Article 145 - Select committee of the Administrative Council

(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.

Article 145 - Select committee of the Administrative Council

(1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be responsible for the activities of the special departments to the select committee of the Administrative Council.

(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.

Article 146 - Cover for expenditure for carrying out special tasks

Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply mutatis mutandis.

Article 146 - Cover for expenditure for carrying out special tasks

Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply mutatis mutandis.

Article 147 - Payments in respect of renewal fees for

Article 147 - Payments in respect of renewal fees for

unitary patents	**unitary patents**
If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents, the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis.	If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis.
Article 148 - The European patent application as an object of property	**Article 148 - The European patent application as an object of property**
(1) Article 74 shall apply unless the group of Contracting States has specified otherwise.	(1) Article 74 shall apply unless the group of Contracting States has specified otherwise.
(2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.	(2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.
Article 149 - Joint designation	**Article 149 - Joint designation**
(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.	(1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.
(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.	(2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.
Article 149a - Other agreements between the Contracting States	[not present]
(1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting States to conclude special agreements on any matters concerning European patent applications or European patents which under this Convention are subject to and governed by national law, such as, in particular	
(a) an agreement establishing a European patent court common to the Contracting States party to it;	
(b) an agreement establishing an entity common to the Contracting States party to it to deliver, at the request of national courts or quasijudicial authorities, opinions on issues of European or harmonised national patent law;	
(c) an agreement under which the Contracting States party to it dispense fully or in part with translations of European patents under Article 65;	
(d) an agreement under which the Contracting States party to	

it provide that translations of European patents as required under Article 65 may be filed with, and published by, the European Patent Office.

(2) The Administrative Council shall be competent to decide that:

(a) the members of the Boards of Appeal or the Enlarged Board of Appeal may serve on a European patent court or a common entity and take part in proceedings before that court or entity in accordance with any such agreement;

(b) the European Patent Office shall provide a common entity with such support staff, premises and equipment as may be necessary for the performance of its duties, and the expenses incurred by that entity shall be borne fully or in part by the Organisation.

PART X: INTERNATIONAL APPLICATIONS UNDER THE PATENT COOPERATION TREATY – EURO-PCT APPLICATIONS

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Article 150 - Application of the Patent Cooperation Treaty

(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the PCT, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the PCT may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of the PCT and its Regulations shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the PCT or its Regulations shall prevail.

[transitional category 6: applies to pending international applications, but with old articles 154(3) and 155(3) applying]

Article 150 - Application of the Patent Cooperation Treaty

(1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the Cooperation Treaty, shall be applied in accordance with the provisions of this Part.

(2) International applications filed under the Cooperation Treaty may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the Cooperation Treaty shall prevail. In particular, for an international application the time limit within which a request for examination must be filed under Article 94, paragraph 2, of this Convention shall not expire before the time prescribed by Article 22 or Article 39 of the Cooperation Treaty as the case maybe.

(3) An international application, for which the European Patent Office acts as designated Office or elected Office, shall be deemed to be a European patent application.

(4) Where reference is made in this Convention to the Cooperation Treaty, such reference shall include the Regulations under that Treaty.

Article 151 - The European Patent Office as a receiving Office

The European Patent Office shall act as a receiving Office within the meaning of the PCT, in accordance with the Implementing Regulations [Rule 157]. Article 75, paragraph 2, shall apply.

[transitional category 6]

Article 151 - The European Patent Office as a receiving Office

(1) The European Patent Office may act as a receiving Office within the meaning of Article 2(xv) of the Cooperation Treaty if the applicant is a resident or national of a Contracting State to this Convention in respect of which the Cooperation Treaty has entered into force. [→Rule 157]

(2) The European Patent Office may also act as a receiving Office if the applicant is a resident or national of a State which is not a Contracting State to this Convention, but which is a Contracting State to the Cooperation Treaty and which has concluded an agreement with the Organisation whereby the European Patent Office acts as a receiving Office, in accordance with the provisions of the Cooperation Treaty, in place of the national office of that State.

(3) Subject to the prior approval of the Administrative Council, the European Patent Office may also act as a receiving Office for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

Article 152 - The European Patent Office as an International Searching Authority or International Preliminary Examining Authority

The European Patent Office shall act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT, in accordance with an agreement between the Organisation and

Article 152 - Filing and transmittal of the international application

(1) If the applicant chooses the European Patent Office as a receiving Office for his international application, he shall file it directly with the European Patent Office. Article 75, paragraph 2, shall nevertheless apply mutatis mutandis.

the International Bureau of the World Intellectual Property Organization, for applicants who are residents or nationals of a State party to this Convention. This agreement may provide that the European Patent Office shall also act for other applicants. [Rule 158] [transitional category 6]	(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Cooperation Treaty. (3) Each international application shall be subject to the payment of the transmittal fee, which shall be payable within one month after receipt of the application. [→Rule 157]
Article 153 - The European Patent Office as designated Office or elected Office (1) The European Patent Office shall be (a) a designated Office for any State party to this Convention in respect of which the PCT is in force, which is designated in the international application and for which the applicant wishes to obtain a European patent, and (b) an elected Office, if the applicant has elected a State designated pursuant to letter (a). (2) An international application for which the European Patent Office is a designated or elected Office, and which has been accorded an international date of filing, shall be equivalent to a regular European application (Euro-PCT application). (3) The international publication of a Euro-PCT application in an official language of the European Patent Office shall take the place of the publication of the European patent application and shall be mentioned in the European Patent Bulletin. (4) If the Euro-PCT application is published in another language, a translation into one of the official languages shall be filed with the European Patent Office, which shall publish it. Subject to Article 67, paragraph 3, the provisional protection under Article 67, paragraphs 1 and 2, shall be effective from the date of that publication. (5) The Euro-PCT application shall be treated as a European patent application and shall be considered as comprised in the state of the art under Article 54, paragraph 3, if the conditions laid down in paragraph 3 or 4 and in the Implementing Regulations [Rule 159] are fulfilled. (6) The international search report drawn up in respect of a Euro-PCT application or the declaration replacing it, and their international publication, shall take the place of the European search report and the mention of its publication in the European Patent Bulletin. (7) A supplementary European search report shall be drawn up in respect of any Euro-PCT application under paragraph	**Article 153 - The European Patent Office as a designated Office** (1) The European Patent Office shall act as a designated Office within the meaning of Article 2(xiii) of the Cooperation Treaty for those Contracting States to this Convention in respect of which the Cooperation Treaty has entered into force and which are designated in the international application if the applicant informs the receiving Office in the international application that he wishes to obtain a European patent for these States. The same shall apply if, in the international application, the applicant designates a Contracting State of which the national law provides that designation of that State shall have the effect of the application being for a European patent. (2) When the European Patent Office acts as a designated Office, the Examining Division shall be competent to take decisions which are required under Article 25, paragraph 2(a), of the Cooperation Treaty. [→Rule 159]

5. The Administrative Council may decide that the supplementary search report is to be dispensed with[49] or that the search fee is to be reduced.[50]

[Rule 159]
[transitional category 6: applies to pending international applications, but with old articles 154(3) and 155(3) applying]

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Article 154 - The European Patent Office as an International Searching Authority

(1) The European Patent Office shall act as an International Searching Authority within the meaning of Chapter I of the Cooperation Treaty for applicants who are residents or nationals of a Contracting State in respect of which the Cooperation Treaty has entered into force, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Searching Authority for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 17, paragraph 3(a), of the Cooperation Treaty.
[transitional provisions: continues to apply to patents in force]
[→Article 152]

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Article 155 - The European Patent Office as an International Preliminary Examining Authority

(1) The European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Cooperation Treaty for applicants who are residents or nationals of a Contracting State bound by that Chapter, subject to the conclusion of an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization.

(2) Subject to the prior approval of the Administrative Council, the European Patent Office shall also act as an International Preliminary Examining Authority for any other applicant, in accordance with an agreement concluded between the Organisation and the International Bureau of the World Intellectual Property Organization.

(3) The Boards of Appeal shall be responsible for deciding on a protest made by an applicant against an additional fee charged by the European Patent Office under the provisions of Article 34, paragraph 3(a), of the Cooperation Treaty.
[transitional provisions: continues to apply to patents in

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[49] No supplementary search if the ISR was drawn up by the EPO: OJ EPO 1979, 4, Corr. 50, OJ EPO 1979, 248 and OJ EPO 1995, 511.
[50] Search fee reduced by 170 Euro for applications filed on or after 1 July 2005 where ISR was drawn up by US, Korean, Chinese, Russian or Australian Offices: OJ EPO 2005 548.
Search fee reduced by 810 Euro for applications filed on or after 1 April 2005 (FI) or 1 July 2005 (AT, ES, SE) where ISR was drawn up by Austrian, Finnish, Spanish or Swedish Offices (applies until 30 June 2008): OJ EPO 2005, 422, amended by OJ EPO 2005, 546

force]
[→Article 152]

[deleted]	**Article 156 - The European Patent Office as an elected Office** The European Patent Office shall act as an elected Office within the meaning of Article 2(xiv) of the Cooperation Treaty if the applicant has elected any of the designated States referred to in Article 153, paragraph 1, or Article 149, paragraph 2, for which Chapter II of that Treaty has become binding. Subject to the prior approval of the Administrative Council, the same shall apply where the applicant is a resident or national of a State which is not a party to that Treaty or which is not bound by Chapter II of that Treaty, provided that he is one of the persons whom the Assembly of the International Patent Cooperation Union has decided to allow, pursuant to Article 31, paragraph 2(b), of the Cooperation Treaty, to make a demand for international preliminary examination. [→Article 153(1)]
[deleted]	**Article 157 - International search report** (1) Without prejudice to the provisions of paragraphs 2 to 4, the international search report under Article 18 of the Cooperation Treaty or any declaration under Article 17, paragraph 2(a), of that Treaty and their publication under Article 21 of that Treaty shall take the place of the European search report and the mention of its publication in the European Patent Bulletin. [→Article 153(6),(7)] (2) Subject to the decisions of the Administrative Council referred to in paragraph 3: (a) a supplementary European search report shall be drawn up in respect of all international applications; (b) the applicant shall pay the search fee, which shall be paid at the same time as the national fee provided for in Article 22, paragraph 1, or Article 39, paragraph 1, of the Cooperation Treaty. If the search fee is not paid in due time the application shall be deemed to be withdrawn. [→Article 153(6),(7)] (3) The Administrative Council may decide under what conditions and to what extent: (a) the supplementary European search report is to be dispensed with; (b) the search fee is to be reduced. [→Article 153(6),(7)] (4) The Administrative Council may at any time rescind the decisions taken pursuant to paragraph 3.
[deleted]	**Article 158 - Publication of the international application and its supply to the European Patent Office** (1) Publication under Article 21 of the Cooperation Treaty of an international application for which the European Patent Office is a designated Office shall, subject to paragraph 3, take the place of the publication of a European patent application and shall be mentioned in the European Patent Bulletin. Such an application shall not however be considered as comprised in the state of the art in accordance

with Article 54, paragraph 3, if the conditions laid down in paragraph 2 are not fulfilled.

(2) The international application shall be supplied to the European Patent Office in one of its official languages. The applicant shall pay to the European Patent Office the national fee provided for in Article 22, paragraph 1, or Article 39, paragraph 1, of the Cooperation Treaty.

(3) If the international application is published in a language other than one of the official languages of the European Patent Office, that Office shall publish the international application, supplied as specified in paragraph 2. Subject to the provisions of Article 67, paragraph 3, the provisional protection in accordance with Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.
[→Article 153(3),(4),(5)]

PART XI: TRANSITIONAL PROVISIONS

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Article 159 - Administrative Council during a transitional period

(1) The States referred to in Article 169, paragraph 1, shall appoint their representatives to the Administrative Council; on the invitation of the Government of the Federal Republic of Germany, the Administrative Council shall meet no later than two months after the entry into force of this Convention, particularly for the purpose of appointing the President of the European Patent Office.

(2) The duration of the term of office of the first Chairman of the Administrative Council appointed after the entry into force of this Convention shall be four years.

(3) The term of office of two of the elected members of the first Board of the Administrative Council set up after the entry into force of this Convention shall be five and four years respectively.

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Article 160 - Appointment of employees during a transitional period

(1) Until such time as the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office have been adopted, the Administrative Council and the President of the European Patent Office, each within their respective powers, shall recruit the necessary employees and shall conclude short-term contracts to that effect. The Administrative Council may lay down general principles in respect of recruitment.

(2) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office, may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities. They may be appointed for a term of less than five years, though this shall not be less than one year, and may be reappointed.
[→Article 11(5)]

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Article 161 - First accounting period

(1) The first accounting period of the Organisation shall extend from the date of entry into force of this Convention to 31 December of the same year. If that date falls within the second half of the year, the accounting period shall extend until 31 December of the following year.

(2) The budget for the first accounting period shall be drawn up as soon as possible after the entry into force of this Convention. Until contributions provided for in Article 40 due in accordance with the first budget are received by the Organisation, the Contracting States shall, upon the request of and within the limit of the amount fixed by the Administrative Council, make advances which shall be deducted from their contributions in respect of that budget.

The advances shall be determined in accordance with the scale referred to in Article 40. Article 39, paragraphs 3 and 4, shall apply mutatis mutandis to the advances.

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Article 162 - Progressive expansion of the field of activity of the European Patent Office

(1) European patent applications may be filed with the European Patent Office from the date fixed by the Administrative Council on the recommendation of the President of the European Patent Office.

(2) The Administrative Council may, on the recommendation of the President of the European Patent Office, decide that, as from the date referred to in paragraph 1, the processing of European patent applications may be restricted. Such restriction may be in respect of certain areas of technology. However, examination shall in any event be made as to whether European patent applications can be accorded a date of filing.

(3) If a decision has been taken under paragraph 2, the Administrative Council may not subsequently further restrict the processing of European patent applications.

(4) Where, as a result of the procedure being restricted under paragraph 2, a European patent application cannot be further processed, the European Patent Office shall communicate this to the applicant and shall point out that he may make a request for conversion. The European patent application shall be deemed to be withdrawn on receipt of such communication.

[deleted]

Article 163 - Professional representatives during a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, notwithstanding the provisions of Article 134, paragraph 2, any natural person who fulfils the following conditions may be entered on the list of professional representatives:

(a) he must be a national of a Contracting State;

(b) he must have his place of business or employment within the territory of one of the Contracting States;

(c) he must be entitled to represent natural or legal persons in patent matters before the central industrial property office of the Contracting State in which he has his place of business or employment. [→Article 134(3),(4),(7)]

(2) Entry shall be effected upon request, accompanied by a certificate, furnished by the central industrial property office, which must indicate that the conditions laid down in paragraph 1 are fulfilled. [→Article 134(3),(4),(7)]

(3) When, in any Contracting State, the entitlement referred to in paragraph 1(c) is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act in patent matters before the central industrial property office of the said State must have habitually so acted for at least five years. However, persons whose professional qualification to represent natural or legal persons in patent matters before the central industrial

property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate furnished by the central industrial property office must indicate that the applicant satisfies one of the conditions referred to in the present paragraph. [→Article 134(3),(4),(7)]

(4) The President of the European Patent Office may grant exemption from:

(a) the requirement of paragraph 3, first sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way;

(b) the requirement of paragraph 1(a) in special circumstances. [→Article 134(3),(4),(7)]

(5) The President of the European Patent Office shall grant exemption from the requirement of paragraph 1(a) if on 5 October 1973 the applicant fulfilled the requirements of paragraph 1(b) and (c). [→deleted]

(6) Persons having their places of business or employment in a State which acceded to this Convention less than one year before the expiry of the transitional period referred to in paragraph 1 or after the expiry of the transitional period may, under the conditions laid down in paragraphs 1 to 5, during a period of one year calculated from the date of entry into force of the accession of that State, be entered on the list of professional representatives. [→Article 134(3),(4),(7)]

(7) After the expiry of the transitional period, any person whose name was entered on the list of professional representatives during that period shall, without prejudice to any disciplinary measures taken under Article 134, paragraph 8(c), remain thereon or, on request, be restored thereto, provided that he then fulfils the requirement of paragraph 1(b). [→deleted]

PART XII: FINAL PROVISIONS

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Article 164 - Implementing Regulations and Protocols	**Article 164 - Implementing Regulations and Protocols**
(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation, the Protocol on the Interpretation of Article 69 and the Protocol on Staff Complement shall be integral parts of this Convention.	(1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation and the Protocol on the Interpretation of Article 69 shall be integral parts of this Convention.
(2) In case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.	(2) In the case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.
Article 165 - Signature – Ratification	**Article 165 - Signature - Ratification**
(1) This Convention shall be open for signature until 5 April 1974 by the States which took part in the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents or were informed of the holding of that conference and offered the option of taking part therein.	(1) This Convention shall be open for signature until 5 April 1974 by the States which took part in the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents or were informed of the holding of that conference and offered the option of taking part therein.
(2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.	(2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.
Article 166 - Accession	**Article 166 - Accession**
(1) This Convention shall be open to accession by:	(1) This Convention shall be open to accession by:
(a) the States referred to in Article 165, paragraph 1;	(a) the States referred to in Article 165, paragraph 1;
(b) any other European State at the invitation of the Administrative Council.	(b) any other European State at the invitation of the Administrative Council.
(2) Any State which has been a party to the Convention and has ceased to be so as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.	(2) Any State which has been a party to the Convention and has ceased so to be as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.
(3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.	(3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.
[deleted]	**Article 167 - Reservations**
	(1) Each Contracting State may, at the time of signature or when depositing its instrument of ratification or accession, make only the reservations specified in paragraph 2.
	(2) Each Contracting State may reserve the right to provide that:
	(a) European patents, in so far as they confer protection on chemical, pharmaceutical or food products, as such, shall, in accordance with the provisions applicable to national patents, be ineffective or revocable; this reservation shall not affect protection conferred by the patent in so far as it involves a process of manufacture or use of a chemical product or a process of manufacture of a pharmaceutical or food product;
	(b) European patents, in so far as they confer protection on agricultural or horticultural processes other than those to

	which Article 53, sub-paragraph (b), applies, shall, in accordance with the provisions applicable to national patents, be ineffective or revocable; (c) European patents shall have a term shorter than twenty years, in accordance with the provisions applicable to national patents; (d) it shall not be bound by the Protocol on Recognition. (3) Any reservation made by a Contracting State shall have effect for a period of not more than ten years from the entry into force of this Convention. However, where a Contracting State has made any of the reservations referred to in paragraph 2(a) and (b), the Administrative Council may, in respect of such State, extend the period by not more than five years for all or part of any reservation made, if that State submits, at the latest one year before the end of the ten-year period, a reasoned request which satisfies the Administrative Council that the State is not in a position to dispense with that reservation by the expiry of the ten-year period. (4) Any Contracting State that has made a reservation shall withdraw this reservation as soon as circum-stances permit. Such withdrawal shall be made by notification addressed to the Government of the Federal Republic of Germany and shall take effect one month from the date of receipt of such notification. (5) Any reservation made in accordance with paragraph 2(a), (b) or (c) shall apply to European patents granted on European patent applications filed during the period in which the reservation has effect. The effect of the reservation shall continue for the term of the patent. (6) Without prejudice to paragraphs 4 and 5, any reservation shall cease to have effect on expiry of the period referred to in paragraph 3, first sentence, or, if the period is extended, on expiry of the extended period.
Article 168 - Territorial field of application (1) Any Contracting State may declare in its instrument of ratification or accession, or may inform the Government of the Federal Republic of Germany by written notification at any time thereafter, that this Convention shall be applicable to one or more of the territories for the external relations of which it is responsible. European patents granted for that Contracting State shall also have effect in the territories for which such a declaration has taken effect. (2) If the declaration referred to in paragraph 1 is contained in the instrument of ratification or accession, it shall take effect on the same date as the ratification or accession; if the declaration is notified after the deposit of the instrument of ratification or accession, such notification shall take effect six months after the date of its receipt by the Government of the Federal Republic of Germany. (3) Any Contracting State may at any time declare that the Convention shall cease to apply to some or to all of the territories in respect of which it has given notification pursuant to paragraph 1. Such declaration shall take effect one year after the date on which the Government of the	**Article 168 - Territorial field of application** (1) Any Contracting State may declare in its instrument of ratification or accession, or may inform the Government of the Federal Republic of Germany by written notification any time thereafter, that this Convention shall be applicable to one or more of the territories for the external relations of which it is responsible. European patents granted for that Contracting State shall also have effect in the territories for which such a declaration has taken effect. (2) If the declaration referred to in paragraph 1 is contained in the instrument of ratification or accession, it shall take effect on the same date as the ratification or accession; if the declaration is made in a notification after the deposit of the instrument of ratification or accession, such notification shall take effect six months after the date of its receipt by the Government of the Federal Republic of Germany. (3) Any Contracting State may at any time declare that the Convention shall cease to apply to some or to all of the territories in respect of which it has given a notification pursuant to paragraph 1. Such declaration shall take effect one year after the date on which the Government of the

Federal Republic of Germany received notification thereof.	Federal Republic of Germany received notification thereof.
Article 169 - Entry into force	**Article 169 - Entry into force**
(1) This Convention shall enter into force three months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180 000 for all the said States.	(1) This Convention shall enter into force three months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180 000 for all the said States.
(2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the third month after the deposit of the instrument of ratification or accession.	(2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the third month after the deposit of the instrument of ratification or accession.
Article 170 - Initial contribution	**Article 170 - Initial contribution**
(1) Any State which ratifies or accedes to this Convention after its entry into force shall pay to the Organisation an initial contribution, which shall not be refunded.	(1) Any State which ratifies or accedes to this Convention after its entry into force shall pay to the Organisation an initial contribution, which shall not be refunded.
(2) The initial contribution shall be 5% of an amount calculated by applying the percentage obtained for the State in question, on the date on which ratification or accession takes effect, in accordance with the scale provided for in Article 40, paragraphs 3 and 4, to the sum of the special financial contributions due from the other Contracting States in respect of the accounting periods preceding the date referred to above.	(2) The initial contribution shall be 5% of an amount calculated by applying the percentage obtained for the State in question, on the date on which ratification or accession takes effect, in accordance with the scale provided for in Article 40, paragraphs 3 and 4, to the sum of the special financial contributions due from the other Contracting States in respect of the accounting periods preceding the date referred to above.
(3) In the event that special financial contributions were not required in respect of the accounting period immediately preceding the date referred to in paragraph 2, the scale of contributions referred to in that paragraph shall be the scale that would have been applicable to the State concerned in respect of the last year for which financial contributions were required.	(3) In the event that special financial contributions were not required in respect of the accounting period immediately preceding the date referred to in paragraph 2, the scale of contributions referred to in that paragraph shall be the scale that would have been applicable to the State concerned in respect of the last year for which financial contributions were required.
Article 171 - Duration of the Convention	**Article 171 - Duration of the Convention**
The present Convention shall be of unlimited duration.	The present Convention shall be of unlimited duration.
Article 172 - Revision	**Article 172 - Revision**
(1) This Convention may be revised by a Conference of the Contracting States.	(1) This Convention may be revised by a Conference of the Contracting States.
(2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be validly constituted unless at least three-quarters of the Contracting States are represented at it. Adoption of the revised text shall require a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.	(2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be deemed to be validly constituted unless at least three-quarters of the Contracting States are represented at it. In order to adopt the revised text there must be a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.
(3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.	(3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.
(4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.	(4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.
Article 173 - Disputes between Contracting States	**Article 173 - Disputes between Contracting States**

(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.	(1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.
(2) If such agreement is not reached within six months from the date when the dispute was referred to the Administrative Council, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.	(2) If such agreement is not reached within six months from the date when the Administrative Council was seized of the dispute, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.
Article 174 - Denunciation	**Article 174 - Denunciation**
Any Contracting State may at any time denounce this Convention. Denunciation shall be notified to the Government of the Federal Republic of Germany. It shall take effect one year after the date of receipt of such notification.	Any Contracting State may at any time denounce this Convention. Notification of denunciation shall be given to the Government of the Federal Republic of Germany. Denunciation shall take effect one year after the date of receipt of such notification.
Article 175 - Preservation of acquired rights	**Article 175 - Preservation of acquired rights**
(1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174, rights already acquired pursuant to this Convention shall not be impaired.	(1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174, rights already acquired pursuant to this Convention shall not be impaired.
(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, as far as that State is concerned, as if the Convention in force thereafter were applicable to that State.	(2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, in so far as that State is concerned, as if the Convention in force thereafter were applicable to that State.
(3) Paragraph 2 shall apply to European patents in respect of which, on the date mentioned in that paragraph, an opposition is pending or the opposition period has not expired.	(3) The provisions of paragraph 2 shall apply to European patents in respect of which, on the date mentioned in that paragraph, an opposition is pending or the opposition period has not expired.
(4) Nothing in this Article shall affect the right of any State that has ceased to be a party to this Convention to treat any European patent in accordance with the text to which it was a party.	(4) Nothing in this Article shall affect the right of any State that has ceased to be a party to this Convention to treat any European patent in accordance with the text to which it was a party.
Article 176 - Financial rights and obligations of former Contracting States	**Article 176 - Financial rights and obligations of a former Contracting State**
(1) Any State which has ceased to be a party to this Convention in accordance with Article 172, paragraph 4, or Article 174 shall have the special financial contributions which it has paid pursuant to HYPERLINK \l "a40" Article 40, paragraph 2, refunded to it by the Organisation only at the time when and under the conditions whereby the Organisation refunds special financial contributions paid by other States during the same accounting period.	(1) Any State which has ceased to be a party to this Convention in accordance with Article 172, paragraph 4, or Article 174, shall have the special financial contributions which it has paid pursuant to Article 40, paragraph 2, refunded to it by the Organisation only at the time and under the conditions whereby the Organisation refunds special financial contributions paid by other States during the same accounting period.
(2) The State referred to in paragraph 1 shall, even after ceasing to be a party to this Convention, continue to pay the proportion pursuant to Article 39 of renewal fees in respect of European patents remaining in force in that State, at the rate current on the date on which it ceased to be a party.	(2) The State referred to in paragraph 1 shall, even after ceasing to be a party to this Convention, continue to pay the proportion pursuant to Article 39 of renewal fees in respect of European patents remaining in force in that State, at the rate current on the date on which it ceased to be a party.
Article 177 - Languages of the Convention	**Article 177 - Languages of the Convention**
(1) This Convention, drawn up in a single original, in the	(1) This Convention, drawn up in a single original, in the

English, French and German languages, shall be deposited in the archives of the Government of the Federal Republic of Germany, the three texts being equally authentic.	English, French and German languages, shall be deposited in the archives of the Government of the Federal Republic of Germany, the three texts being equally authentic.
(2) The texts of this Convention drawn up in official languages of Contracting States other than those specified in paragraph 1 shall, if they have been approved by the Administrative Council, be considered as official texts. In the event of disagreement on the interpretation of the various texts, the texts referred to in paragraph 1 shall be authentic.	(2) The texts of this Convention drawn up in official languages of Contracting States other than those referred to in paragraph 1 shall, if they have been approved by the Administrative Council, be considered as official texts. In the event of conflict on the interpretation of the various texts, the texts referred to in paragraph 1 shall be authentic.
Article 178 - Transmission and notifications	**Article 178 - Transmission and notifications**
(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States.	(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States.
(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:	(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:
(a) the deposit of any instrument of ratification or accession;	(a) any signature;
(b) any declaration or notification received pursuant to Article 168;	(b) the deposit of any instrument of ratification or accession;
(c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force.	(c) any reservation or withdrawal of reservation pursuant to the provisions of Article 167;
(3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations.	(d) any declaration or notification received pursuant to the provisions of Article 168;
	(e) the date of entry into force of this Convention;
	(f) any denunciation received pursuant to the provisions of Article 174 and the date on which such denunciation comes into force.
	(3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations.

Protocol on the Interpretation of Article 69 EPC

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Article 1 - General principles Article 69 should not be interpreted as meaning that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Nor should it be taken to mean that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patent proprietor has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patent proprietor with a reasonable degree of legal certainty for third parties.	Article 69 should not be interpreted in the sense that the extent of the protection conferred by a European patent is to be understood as that defined by the strict, literal meaning of the wording used in the claims, the description and drawings being employed only for the purpose of resolving an ambiguity found in the claims. Neither should it be interpreted in the sense that the claims serve only as a guideline and that the actual protection conferred may extend to what, from a consideration of the description and drawings by a person skilled in the art, the patentee has contemplated. On the contrary, it is to be interpreted as defining a position between these extremes which combines a fair protection for the patentee with a reasonable degree of certainty for third parties.
Article 2 - Equivalents For the purpose of determining the extent of protection conferred by a European patent, due account shall be taken of any element which is equivalent to an element specified in the claims. [transitional category 1: applies to granted patents and applications pending on 13 December 2007]	

Implementing regulations to the European Patent Convention 2000	Implementing regulations to the Convention on the grant of European Patents of 5 October 1973
as adopted by decision of the Administrative Council of 7 December 2006.	as last amended by Decision of the Administrative Council of the European Patent Organisation of 9 December 2004

PART I: IMPLEMENTING REGULATIONS TO PART I OF THE CONVENTION

Chapter I: General Provisions	Chapter I: Languages of the European Patent Office
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Rule 1 - Written proceedings In written proceedings before the European Patent Office, the requirement to use the written form shall be satisfied if the content of the documents can be reproduced in a legible form on paper.	
Rule 2 - Filing of and formal requirements for documents (1) In proceedings before the European Patent Office, documents may be filed by delivery by hand, by post or by technical means of communication. The President of the European Patent Office shall lay down the details and conditions and, where appropriate, any special formal or technical requirements for the filing of documents. In particular, he may specify that confirmation must be supplied. If such confirmation is not supplied in due time, the European patent application shall be refused; documents filed subsequently shall be deemed not to have been received. [51] (2) Where the Convention provides that a document must be signed, the authenticity of the document may be confirmed by handwritten signature or other appropriate means the use of which has been permitted by the President of the European Patent Office[52]. A document authenticated by such other means shall be deemed to meet the legal requirements of signature in the same way as a document bearing a handwritten signature which has been filed in paper form.	
Rule 3 - Language in written proceedings (1) In written proceedings before the European Patent Office, any party may use any official language of the European Patent Office. The translation referred to in Article 14, paragraph 4, may be filed in any official language of the European Patent Office. (2) Amendments to a European patent application or European patent shall be filed in the language of the proceedings. (3) Documentary evidence and, in particular, publications may be filed in any language. The European Patent Office may, however, require that a translation in one of its official languages be filed, within a period to be specified [Rule	**Rule 1 - Derogations from the provisions concerning the language of the proceedings in written proceedings** (1) In written proceedings before the European Patent Office any party may use any official language of the European Patent Office. The translation referred to in Article 14, paragraph 4, may be filed in any official language of the European Patent Office. (2) Amendments to a European patent application or European patent must be filed in the language of the proceedings. (3) Documents to be used for purposes of evidence before the European Patent Office, and particularly publications, may be filed in any language. The European Patent Office

[51] See Decisions of the President of the European Patent Office dated 12 July 2007 concerning:
i) the designation of the EPO filing offices (Special edition No. 3 OJ EPO 2007, A.1., pp 3-4);
ii) the filing of patent applications and other documents by facsimile (Special edition No. 3 OJ EPO 2007, A.3., pp 7-11);
iii) the electronic filing of patent applications and other documents (Special edition No. 3 OJ EPO 2007, A.4., pp12-16);
iv) the electronic signatures, data carriers and software to be used for the electronic filing of patent applications and other documents (Special edition No. 3 OJ EPO 2007, A.5., pp17-18);
v) the filing of sequence listings (Special edition No. 3 OJ EPO 2007, C.1., pp26-29)

[52] See Article 4 of the Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile (Special edition No. 3 OJ EPO 2007, A.3., pp 7-11)

132]. If a required translation is not filed in due time, the European Patent Office may disregard the document in question.	may, however, require that a translation be filed, within a given time limit of not less than one month, in one of its official languages.
Rule 4 - Language in oral proceedings (1) Any party to oral proceedings before the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings, if such party gives notice to the European Patent Office at least one month before the date of such oral proceedings or provides for interpretation into the language of the proceedings.[53] Any party may use an official language of a Contracting State, if he provides for interpretation into the language of the proceedings. The European Patent Office may permit derogations from these provisions. (2) In the course of oral proceedings, employees of the European Patent Office may use an official language of the European Patent Office other than the language of the proceedings. (3) Where evidence is taken, any party, witness or expert to be heard who is unable to express himself adequately in an official language of the European Patent Office or of a Contracting State may use another language. Where evidence is taken upon request of a party, parties, witnesses or experts expressing themselves in a language other than an official language of the European Patent Office shall be heard only if that party provides for interpretation into the language of the proceedings. The European Patent Office may, however, permit interpretation into one of its other official languages. (4) If the parties and the European Patent Office agree, any language may be used. (5) The European Patent Office shall, if necessary, provide at its own expense interpretation into the language of the proceedings, or, where appropriate, into its other official languages, unless such interpretation is the responsibility of one of the parties. (6) Statements by employees of the European Patent Office, parties, witnesses or experts, made in an official language of the European Patent Office, shall be entered in the minutes in that language. Statements made in any other language shall be entered in the official language into which they are translated. Amendments to a European patent application or European patent shall be entered in the minutes in the language of the proceedings.	**Rule 2 - Derogations from the provisions concerning the language of the proceedings in oral proceedings** (1) Any party to oral proceedings before the European Patent Office may, in lieu of the language of the proceedings, use one of the other official languages of the European Patent Office, on condition either that such party gives notice to the European Patent Office at least one month before the date laid down for such oral proceedings or makes provision for interpreting into the language of the proceedings. Any party may likewise use one of the official languages of the Contracting States, on condition that he makes provision for interpretation into the language of the proceedings. The European Patent Office may permit derogations from the provisions of this paragraph. (2) In the course of oral proceedings, the employees of the European Patent Office may, in lieu of the language of the proceedings, use one of the other official languages of the European Patent Office. (3) In the case of taking of evidence, any party to be heard, witness or expert who is unable to express himself adequately in one of the official languages of the European Patent Office or the Contracting States may use another language. Should the taking of evidence be decided upon following a request by a party to the proceedings, parties to be heard, witnesses or experts who express themselves in languages other than the official languages of the European Patent Office may be heard only if the party who made the request makes provision for interpretation into the language of the proceedings; the European Patent Office may, however, authorise interpretation into one of its other official languages. (4) If the parties and the European Patent Office agree, any language may be used in oral proceedings. (5) The European Patent Office shall, if necessary, make provision at its own expense for interpretation into the language of the proceedings, or, where appropriate, into its other official languages, unless this interpretation is the responsibility of one of the parties to the proceedings. (6) Statements by employees of the European Patent Office, by parties to the proceedings and by witnesses and experts, made in one of the official languages of the European Patent Office during oral proceedings shall be entered in the minutes in the language employed. Statements made in any other language shall be entered in the official language into which they are translated. Amendments to the text of the description or claims of a European patent application or European patent shall be entered in the minutes in the language of the proceedings.
	Rule 4 - Language of a European divisional application European divisional applications or, in the case referred to in

[53] See Communication from the Vice-President of Directorate-General 3 of the European Patent Office dated 16 July 2007 concerning the obligation to give notice pursuant to Rule 4(1), first sentence, EPC in proceedings before the boards of appeal of the EPO (use of an alternative official language in oral proceedings) (Special edition No. 3 OJ EPO 2007 H.3. p118).

	Article 14, paragraph 2, the translations thereof, must be filed in the language of the proceedings for the earlier European patent application. [→Rule 36(2)]
Rule 5 - Certification of translations Where the translation of a document is required, the European Patent Office may require that a certificate that the translation corresponds to the original text be filed within a period to be specified [Rule 132]. If the certificate is not filed in due time, such document shall be deemed not to have been filed, unless otherwise provided.	**Rule 5 - Certification of translations** When a translation of any document must be filed, the European Patent Office may require the filing of a certificate that the translation corresponds to the original text within a period to be determined by it. Failure to file the certificate in due time shall lead to the document being deemed not to have been received unless the Convention provides otherwise.
Rule 6 - Filing of translations and reduction of fees (1) A translation under Article 14, paragraph 2, shall be filed within two months of filing the European patent application. [further processing not available: Rule 135(2)] (2) A translation under Article 14, paragraph 4, shall be filed within one month of filing the document. This shall also apply to requests under Article 105a. Where the document is a notice of opposition or appeal, or a statement of grounds of appeal, or a petition for review, the translation may be filed within the period for filing such a notice or statement or petition, if that period expires later. (3) Where a person referred to in Article 14, paragraph 4, files a European patent application, a request for examination, an opposition, an appeal, a petition for review or a request for limitation or revocation in a language admitted in that provision, the filing fee, examination fee, opposition fee, appeal fee, fee for the petition for review or the limitation or revocation fee shall be reduced in accordance with the Rules relating to Fees [Article 14(1)].[54]	**Rule 6 - Time limits and reduction of fees** (1) The translation referred to in Article 14, paragraph 2, must be filed within three months after the filing of the European patent application, but no later than thirteen months after the date of priority. Nevertheless, if the translation concerns a European divisional application or a new European patent application under Article 61, paragraph 1(b), the translation may be filed at any time within one month of the filing of such application. (2) The translation referred to in Article 14, paragraph 4, must be filed within one month of the filing of the document. Where the document is a notice of opposition or an appeal, this period shall be extended where appropriate to the end of the opposition period or appeal period. (3) A reduction in the filing fee, examination fee, opposition fee or appeal fee shall be allowed an applicant, proprietor or opponent, as the case may be, who avails himself of the options provided in Article 14, paragraphs 2 and 4. The reduction shall be fixed in the Rules relating to Fees at a percentage of the total of the fees.
Rule 7 - Legal authenticity of the translation of the European patent application Unless evidence is provided to the contrary, the European Patent Office shall assume, for the purpose of determining whether the subject-matter of the European patent application or European patent extends beyond the content of the application as filed, that the translation filed under Article 14, paragraph 2, or Rule 40, paragraph 3, is in conformity with the original text of the application.	**Rule 7 - Legal authenticity of the translation of the European patent application** Saving proof to the contrary, the European Patent Office may, for the purposes of determining whether the subject-matter of the European patent application or European patent extends beyond the content of the European patent application as filed, assume that the translation referred to in Article 14, paragraph 2, is in conformity with the original text of the application.

Chapter II - Organisation of the European Patent Office

Section 1 - General matters	
Rule 8 - Patent classification The European Patent Office shall use the classification referred to in Article 1 of the Strasbourg Agreement concerning the International Patent Classification of 24	**Rule 8 - Patent classification** (1) The European Patent Office shall use: (a) the classification referred to in Article 1 of the European

[54] **G 6/91**:
1. The persons referred to in [Article 14(4) EPC] are entitled to the fee reduction under Rule 6(3) EPC if they file the essential item of the first act in filing, examination or appeal proceedings in an official language of the State concerned other than English, French or German, and supply the necessary translation no earlier than simultaneously.
2. The essential item of the first act in appeal proceedings is the notice of appeal, so to secure entitlement to the reduction in the appeal fee it suffices that said document be filed in a Contracting State official language which is not an official language of the European Patent Office and translated into one of the latter languages, even if subsequent items such as the statement of grounds of appeal are filed only in an EPO official language.

March 1971, hereinafter referred to as the international classification.	Convention on the International Classification of Patents for Invention of 19 December 1954 until the entry into force of the Strasbourg Agreement concerning the International Patent Classification of 24 March 1971; (b) the classification referred to in Article 1 of the aforementioned Strasbourg Agreement, after the entry into force of that Agreement. (2) The classification referred to in paragraph 1 is hereinafter referred to as the international classification.
Rule 9 - Administrative structure of the European Patent Office (1) The European Patent Office shall be divided administratively into Directorates-General, to which the departments specified in Article 15, and the services set up to deal with legal matters and the internal administration of the Office, shall be assigned. (2) Each Directorate-General shall be directed by a Vice-President. The assignment of a Vice-President to a Directorate-General shall be decided by the Administrative Council, after the President of the European Patent Office has been consulted.	
Rule 10 - Responsibility of the Receiving Section and the Examining Division (1) The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of a European patent application up to the time when the Examining Division becomes responsible for the examination of the European patent application under Article 94, paragraph 1. (2) Subject to paragraphs 3 and 4, the Examining Division shall be responsible for the examination of a European patent application under Article 94, paragraph 1, from the time when a request for examination is filed. (3) If a request for examination is filed before the European search report has been transmitted to the applicant, the Examining Division shall, subject to paragraph 4, be responsible from the time when the European Patent Office receives the indication under Rule 70, paragraph 2. (4) If a request for examination is filed before the European search report has been transmitted to the applicant, and if the applicant has waived the right under Rule 70, paragraph 2, the Examining Division shall be responsible from the time when the search report is transmitted to the applicant.	
Rule 11 - Allocation of duties to the departments of first instance (1) Technically qualified examiners acting as members of Search, Examining or Opposition Divisions shall be assigned to Directorates. The President of the European Patent Office shall allocate duties to these Directorates by reference to the international classification. (2) The President of the European Patent Office may	**Rule 9 - Allocation of duties to the departments of the first instance** (1) The President of the European Patent Office shall determine the number of Search Divisions, Examining Divisions and Opposition Divisions. He shall allocate duties to these departments by reference to the international classification and shall decide where necessary on the classification of a European patent application or a European patent in accordance with that classification.

allocate further duties to the Receiving Section, the Search, Examining and Opposition Divisions, and the Legal Division, in addition to the responsibilities vested in them under the Convention.[55]	(2) In addition to the responsibilities vested in them under the Convention, the President of the European Patent Office may allocate further duties to the Receiving Section, Search Divisions, Examining Divisions, Opposition Divisions and the Legal Division.
(3) The President of the European Patent Office may entrust to employees who are not technically or legally qualified examiners the execution of duties falling to the Search, Examining or Opposition Divisions and involving no technical or legal difficulties.[56]	(3) The President of the European Patent Office may entrust to employees who are not technically or legally qualified examiners the execution of individual duties falling to the Examining Divisions or Opposition Divisions and involving no technical or legal difficulties.
	(4) The President of the European Patent Office may grant exclusive responsibilities to one of the registries of the Opposition Divisions for fixing the amount of costs as provided for in Article 104, paragraph 2.

Section 2 - Organisation of the Boards of Appeal and the Enlarged Board of Appeal

Rule 12 - Presidium of the Boards of Appeal	**Rule 10 - Presidium of the Boards of Appeal**
(1) The autonomous authority within the organisational unit comprising the Boards of Appeal (the "Presidium of the Boards of Appeal") shall consist of the Vice-President in charge of the Boards of Appeal, who shall act as chairman, and twelve members of the Boards of Appeal, six being Chairmen and six being other members.[57]	(1) The autonomous authority within the organisational unit comprising the Boards of Appeal (the "Presidium of the Boards of Appeal") shall consist of the Vice-President in charge of the Boards of Appeal, who shall act as chairman, and twelve members of the Boards of Appeal, six being Chairmen and six being other members.
(2) All members of the Presidium shall be elected by the Chairmen and members of the Boards of Appeal for two working years. If the full composition of the Presidium cannot be reached, the vacancies shall be filled by designating the most senior Chairmen and members.	(2) All members of the Presidium shall be elected by the Chairmen and members of the Boards of Appeal for one working year. If the full composition of the Presidium cannot be reached, the vacancies shall be filled by designating the most senior Chairmen and members.
(3) The Presidium shall adopt the Rules of Procedure of the Boards of Appeal and the Rules of Procedure for the election and designation of its members. The Presidium shall further advise the Vice-President in charge of the Boards of Appeal with regard to matters concerning the functioning of the Boards of Appeal in general.	(3) The Presidium shall adopt the Rules of Procedure of the Boards of Appeal and the Rules of Procedure for the election and designation of its members. The Presidium shall further advise the Vice-President in charge of the Boards of Appeal with regard to matters concerning the functioning of the Boards of Appeal in general.
(4) Before the beginning of each working year, the Presidium, extended to include all Chairmen, shall allocate duties to the Boards of Appeal[58]. In the same composition, it shall decide on conflicts regarding the allocation of duties between two or more Boards of Appeal. The extended Presidium shall designate the regular and alternate members of the various Boards of Appeal. Any member of a Board of Appeal may be designated as a member of more than one Board of Appeal. These measures may, where necessary, be amended during the course of the working year in question.	(4) Before the beginning of each working year the Presidium, extended to include all Chairmen, shall allocate duties to the Boards of Appeal. In the same composition, it shall decide on conflicts regarding the allocation of duties between two or more Boards of Appeal. The extended Presidium shall designate the regular and alternate members of the various Boards of Appeal. Any member of a Board of Appeal may be designated as a member of more than one Board of Appeal. These measures may, where necessary, be amended during the course of the working year in question.
(5) The Presidium may only take a decision if at least five of its members are present; these must include the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of two Boards of Appeal. Where the tasks mentioned in paragraph 4 are concerned, nine members must	(5) The Presidium may only take a decision if at least five of its members are present; these must include the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of two Boards of Appeal. Where the tasks mentioned in paragraph 4 are concerned, nine members must

[55] See: Decision of the President of the European Patent Office dated 24 June 2007 providing for review panels for the implementation of the protest procedure under the PCT (Special edition No. 3 OJ EPO 2007, N.1., p139); and Decision of the President of the European Patent Office dated 12 July 2007 concerning the responsibilities of the Legal Division (Special edition No. 3 OJ EPO 2007, G.1., pp113-114)
[56] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the entrustment to non-examining staff of certain duties normally the responsibility of the examining or opposition divisions (Special edition No. 3 OJ EPO 2007, F.2., pp106-112)
[57] See Rules of Procedure of the Boards of Appeal, Article 6
[58] See Rules of Procedure of the Boards of Appeal, Article 1

be present, including the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of three Boards of Appeal. Decisions shall be taken by a majority vote; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.	be present, including the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of three Boards of Appeal. Decisions shall be taken by a majority vote; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes. (6) The Administrative Council may allocate duties under Article 134, paragraph 8(c), to the Boards of Appeal.
Rule 13 - Business distribution scheme for the Enlarged Board of Appeal and adoption of its Rules of Procedure (1) Before the beginning of each working year, the members of the Enlarged Board of Appeal appointed under Article 11, paragraph 3, shall designate the regular and alternate members of the Enlarged Board of Appeal in proceedings under Article 22, paragraph 1(a) and (b), and the regular and alternate members in proceedings under Article 22, paragraph 1(c). (2) The members of the Enlarged Board of Appeal appointed under Article 11, paragraph 3, shall adopt the Rules of Procedure of the Enlarged Board of Appeal. (3) Decisions on matters mentioned in paragraphs 1 and 2 may only be taken if at least five members are present, including the Chairman of the Enlarged Board of Appeal or his deputy; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.	**Rule 11 - Business distribution scheme for the Enlarged Board of Appeal and adoption of its Rules of Procedure** (1) Before the beginning of each working year, the members of the Enlarged Board of Appeal who have not been appointed under Article 160, paragraph 2, shall designate the regular and alternate members of the Enlarged Board of Appeal. (2) The members of the Enlarged Board of Appeal who have not been appointed under Article 160, paragraph 2, shall adopt the Rules of Procedure of the Enlarged Board of Appeal. (3) Decisions on matters mentioned in paragraphs 1 and 2 may only be taken if at least five members are present, including the Chairman of the Enlarged Board of Appeal or his deputy; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.
	Rule 12 - Administrative structure of the European Patent Office (1) The Examining Divisions and the Opposition Divisions shall be grouped together administratively so as to form Directorates, the number of which shall be laid down by the President of the European Patent Office. (2) The Directorates, the Legal Division, the Boards of Appeal and the Enlarged Board of Appeal, and the administrative services of the European Patent Office shall be grouped together administratively so as to form Directorates-General. The Receiving Section and the Search Divisions shall be grouped together administratively so as to form a Directorate-General. (3) Each Directorate-General shall be directed by a Vice-President. The appointment of a Vice-President to a Directorate-General shall be decided upon by the Administrative Council, after the President of the European Patent Office has been consulted. [→Rule 9]

PART II - IMPLEMENTING REGULATIONS TO PART II OF THE CONVENTION

Chapter I - Procedure where the applicant is not entitled	Chapter I - Procedure where the applicant or proprietor is not entitled

Rule 14 - Stay of proceedings

(1) If a third party provides evidence that he has instituted proceedings against the applicant seeking a decision within the meaning of Article 61, paragraph 1, the proceedings for grant shall be stayed unless the third party communicates to the European Patent Office in writing his consent to the continuation of such proceedings. Such consent shall be irrevocable. However, proceedings for grant shall not be stayed before the publication of the European patent application.

(2) Where evidence is provided that a final decision within the meaning of Article 61, paragraph 1, has been taken, the European Patent Office shall inform the applicant and any other party that the proceedings for grant shall be resumed as from the date stated in the communication, unless a new European patent application under Article 61, paragraph 1(b), has been filed for all the designated Contracting States. If the decision is in favour of the third party, the proceedings may not be resumed earlier than three months after the decision has become final, unless the third party requests the resumption.

(3) Upon staying the proceedings for grant, or thereafter, the European Patent Office may set a date on which it intends to resume the proceedings for grant, regardless of the stage reached in the national proceedings instituted under paragraph 1. It shall communicate this date to the third party, the applicant and any other party. If no evidence has been provided by that date that a final decision has been taken, the European Patent Office may resume proceedings.

(4) All periods other than those for the payment of renewal fees, running at the date of the stay of proceedings, shall be interrupted by such stay. The time which has not yet elapsed shall begin to run from the date on which proceedings are resumed. However, the time still to run after such resumption shall not be less than two months.

Rule 13 - Suspension of proceedings

(1) If a third party provides proof to the European Patent Office that he has opened proceedings against the applicant for the purpose of seeking a judgment that he is entitled to the grant of the European patent, the European Patent Office shall stay the proceedings for grant unless the third party consents to the continuation of such proceedings. Such consent must be communicated in writing to the European Patent Office; it shall be irrevocable. However, proceedings for grant may not be stayed before the publication of the European patent application.

(2) Where proof is provided to the European Patent Office that a decision which has become final has been given in the proceedings concerning entitlement to the grant of the European patent, the European Patent Office shall communicate to the applicant and any other party that the proceedings for grant shall be resumed as from the date stated in the communication unless a new European patent application pursuant to Article 61, paragraph 1(b), has been filed for all the designated Contracting States. If the decision is in favour of the third party, the proceedings may only be resumed after a period of three months of that decision becoming final unless the third party requests the resumption of the proceedings for grant.

(3) When giving a decision on the suspension of proceedings or thereafter the European Patent Office may set a date on which it intends to continue the proceedings pending before it regardless of the stage reached in the proceedings referred to in paragraph 1 opened against the applicant. The date is to be communicated to the third party, the applicant and any other party. If no proof has been provided by that date that a decision which has become final has been given, the European Patent Office may continue proceedings.

(4) If a third party provides proof to the European Patent Office during opposition proceedings or during the opposition period that he has opened proceedings against the proprietor of the European patent for the purpose of seeking a judgment that he is entitled to the European patent, the European Patent Office shall stay the opposition proceedings unless the third party consents to the continuation of such proceedings. Such comment must be communicated in writing to the European Patent Office; it shall be irrevocable. However, the suspension of the proceedings may not be ordered until the Opposition Division has deemed the opposition admissible. Paragraphs 2 and 3 shall apply mutatis mutandis. [→Rule 78]

(5) The time limits in force at the date of suspension other than time limits for payment of renewal fees shall be interrupted by such suspension. The time which has not yet elapsed shall begin to run as from the date on which proceedings are resumed; however, the time still to run after

	the resumption of the proceedings shall not be less than two months.
Rule 15 - Limitation on withdrawals From the date on which a third party provides evidence that he has instituted national proceedings under Rule 14, paragraph 1, and up to the date on which the proceedings for grant are resumed, neither the European patent application nor the designation of any Contracting State may be withdrawn.	**Rule 14 - Limitation of the option to withdraw the European patent application** As from the time when a third party proves to the European Patent Office that he has initiated proceedings concerning entitlement and up to the date on which the European Patent Office resumes the proceedings for grant, neither the European patent application nor the designation of any Contracting State may be withdrawn.
Rule 16 - Procedure under Article 61, paragraph 1 (1) A person entitled to the grant of a European patent may only avail himself of the remedies under Article 61, paragraph 1, if: (a) he does so no later than three months after the decision recognising his entitlement has become final [further processing not available: Rule 135(2)], and (b) the European patent has not yet been granted. (2) Such remedies shall only apply in respect of Contracting States designated in the European patent application in which the decision has been taken or recognised or must be recognised on the basis of the Protocol on Recognition.	
Rule 17 - Filing of a new European patent application by the entitled person (1) Where the person adjudged by a final decision to be entitled to the grant of the European patent files a new European patent application under Article 61, paragraph 1(b), the original application shall be deemed to be withdrawn on the date of filing the new application for the Contracting States designated therein in which the decision has been taken or recognised or must be recognised on the basis of the Protocol on Recognition. (2) The filing fee and search fee shall be paid within one month of filing the new application. If the filing fee or search fee is not paid in due time, the application shall be deemed to be withdrawn. (3) The designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the new application. Rule 39, paragraphs 2 and 3, shall apply.	**Rule 15 - Filing of a new European patent application by the person entitled to apply** (1) Where the person adjudged by a final decision to be entitled to the grant of the European patent files a new European patent application pursuant to Article 61, paragraph 1(b), the original European patent application shall be deemed to be withdrawn on the date of filing of the new application for the Contracting States designated therein in which the decision has been taken or recognised. (2) The filing fee and search fee shall be payable in respect of the new European patent application within one month after the filing thereof. The designation fees shall be payable within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the new European patent application. (3) The time limits for forwarding European patent applications provided for in Article 77, paragraphs 3 and 5, shall, for the new European patent application, be four months as from the actual filing date of that application. [→deleted]
Rule 18 - Partial transfer of the right to the European patent (1) If a final decision determines that a third party is entitled to the grant of a European patent in respect of only part of the subject-matter disclosed in the original European patent application, Article 61 and Rules 16 and 17 shall apply to such part. (2) Where appropriate, the original European patent application shall contain, for the designated Contracting	**Rule 16 - Partial transfer of right by virtue of a final decision** (1) If by a final decision it is adjudged that a third party is entitled to the grant of a European patent in respect of only part of the matter disclosed in the European patent application, Article 61 and Rule 15 shall apply mutatis mutandis to such part. (2) Where appropriate, the original European patent application shall contain, for the designated Contracting States in which the decision was taken or recognised, claims,

States in which the decision was taken or recognised or must be recognised on the basis of the Protocol on Recognition, claims, a description and drawings which are different from those for the other designated Contracting States.	a description and drawings which are different from those for the other designated Contracting States. (3) Where a third party has, in accordance with Article 99, paragraph 5, replaced the previous proprietor for one or some of the designated Contracting States, the patent as maintained in opposition proceedings may contain for these States claims, a description and drawings which are different from those for the other designated Contracting States. [→Rule 78]

Chapter II - Mention of the inventor

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Rule 19 - Designation of the inventor (1) The request for grant of a European patent shall contain the designation of the inventor. However, if the applicant is not the inventor or is not the sole inventor, the designation shall be filed in a separate document. The designation shall state the family name, given names and full address of the inventor, contain the statement referred to in Article 81 and bear the signature of the applicant or his representative. (2) The European Patent Office shall not verify the accuracy of the designation of the inventor. (3) If the applicant is not the inventor or is not the sole inventor, the European Patent Office shall communicate to the designated inventor the information in the document designating him and the following data: (a) the number of the European patent application; (b) the date of filing of the European patent application and, if priority has been claimed, the date, State and file number of the previous application; (c) the name of the applicant; (d) the title of the invention; (e) the Contracting States designated. (4) The applicant and the inventor may invoke neither the omission of the communication under paragraph 3 nor any errors contained therein.	**Rule 17 - Designation of the inventor** (1) The designation of the inventor shall be filed in the request for the grant of a European patent. However, if the applicant is not the inventor or is not the sole inventor, the designation shall be filed in a separate document; the designation must state the family name, given names and full address of the inventor and the statement referred to in Article 81 and shall bear the signature of the applicant or his representative. (2) The European Patent Office shall not verify the accuracy of the designation of the inventor. (3) If the applicant is not the inventor or is not the sole inventor, the European Patent Office shall inform the designated inventor of the data in the document designating him and the further data mentioned in Article 128, paragraph 5. (4) The applicant and the inventor may invoke neither the omission of the notification under paragraph 3 nor any errors contained therein.
Rule 20 - Publication of the mention of the inventor (1) The designated inventor shall be mentioned in the published European patent application and the European patent specification, unless he informs the European Patent Office in writing that he has waived his right to be thus mentioned. (2) Paragraph 1 shall apply where a third party files with the European Patent Office a final decision determining that the applicant for or proprietor of a European patent is required to designate him as an inventor.	**Rule 18 - Publication of the mention of the inventor** (1) The person designated as the inventor shall be mentioned as such in the published European patent application and the European patent specification, unless the said person informs the European Patent Office in writing that he waives his right to be thus mentioned. (2) In the event of a third party filing with the European Patent Office a final decision whereby the applicant for or proprietor of a patent is required to designate him as the inventor, the provisions of paragraph 1 shall apply.
Rule 21 - Rectification of the designation of an inventor (1) An incorrect designation of an inventor shall be rectified	**Rule 19 - Rectification of the designation of an inventor** (1) An incorrect designation of an inventor may not be

upon request and only with the consent of the wrongly designated person and, where such a request is filed by a third party, the consent of the applicant for or proprietor of the patent. Rule 19 shall apply mutatis mutandis.[59] (2) Where an incorrect designation of the inventor has been recorded in the European Patent Register or published in the European Patent Bulletin, its rectification or cancellation shall also be recorded or published therein.	rectified save upon request, accompanied by the consent of the wrongly designated person and, in the event of such request not being filed by the applicant for or proprietor of the European patent, by the consent of that party. The provisions of Rule 17 shall apply mutatis mutandis. (2) In the event of an incorrect mention of the inventor having been entered in the Register of European Patents or published in the European Patent Bulletin such entry or publication shall be corrected. (3) Paragraph 2 shall apply mutatis mutandis to the cancellation of an incorrect designation of the inventor.
Chapter III - Registration of transfers, licences and other rights	**Chapter III - Registering transfers, licences and other rights**
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Rule 22 - Registration of transfers (1) The transfer of a European patent application shall be recorded in the European Patent Register at the request of an interested party, upon production of documents providing evidence of such transfer. (2) The request shall not be deemed to have been filed until an administrative fee[60] has been paid. It may be rejected only if paragraph 1 has not been complied with. (3) A transfer shall have effect vis-à-vis the European Patent Office only at the date when and to the extent that the documents referred to in paragraph 1 have been produced.	**Rule 20 - Registering a transfer** (1) A transfer of a European patent application shall be recorded in the Register of European Patents at the request of an interested party and on production of documents satisfying the European Patent Office that the transfer has taken place. (2) The request shall not be deemed to have been filed until such time as an administrative fee has been paid. It may be rejected only in the event of failure to comply with the conditions laid down in paragraph 1. (3) A transfer shall have effect vis-à-vis the European Patent Office only when and to the extent that the documents referred to in paragraph 1 have been produced.
Rule 23 - Registration of licences and other rights (1) Rule 22, paragraphs 1 and 2, shall apply mutatis mutandis to the registration of the grant or transfer of a licence, the establishment or transfer of a right in rem in respect of a European patent application and any legal means of execution affecting such an application. (2) A registration under paragraph 1 shall be cancelled upon request, supported by documents providing evidence that the right has lapsed, or by the written consent of the proprietor of the right to the cancellation of the registration. Rule 22, paragraph 2, shall apply mutatis mutandis.	**Rule 21 - Registering of licences and other rights** (1) Rule 20, paragraphs 1 and 2, shall apply mutatis mutandis to the registration of the grant or transfer of a licence, the establishment or transfer of a right in rem in respect of a European patent application and any legal means of execution of such an application. (2) The registration referred to in paragraph 1 shall be cancelled upon request, which shall not be deemed to have been filed until an administrative fee has been paid. Such request shall be supported either by documents establishing that the right has lapsed, or by a declaration whereby the proprietor of the right consents to the cancellation of the registration; it may be rejected only if these conditions are not fulfilled.
Rule 24 - Special entries for licence registrations A licence in respect of a European patent application shall be recorded (a) as an exclusive licence if the applicant and the licensee so request;	**Rule 22 - Special indications for the registration of a licence** (1) A licence in respect of a European patent application shall be recorded in the Register of European Patents as an exclusive licence if the applicant and the licensee so require. (2) A licence in respect of a European patent application

[59] **J 8/82**: a person already named whose name is not to be cancelled from the designation is not a "wrongly designated" person within the meaning of the Rule and his consent to the addition of the name of another person is not required.

[60] See Decision of the President of the European Patent Office dated 14 July 2007 revising the Office's fees and expenses (Special edition No. 3 OJ EPO 2007, M.1., pp130-133)

(b) as a sub-licence where it is granted by a licensee whose licence is recorded in the European Patent Register.	shall be recorded in the Register of European Patents as a sub-licence where it is granted by a licensee whose licence is recorded in the said Register.

Chapter IV - Certificate of exhibition

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Rule 25 - Certificate of exhibition Within four months of filing the European patent application, the applicant shall file the certificate referred to in Article 55, paragraph 2, which: (a) is issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition; (b) states that the invention was in fact displayed there; (c) states the opening date of the exhibition and, where the invention was disclosed later than on that date, the date on which the invention was first disclosed; and (d) is accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.	**Rule 23 - Certificate of exhibition** The applicant must, within four months of the filing of the European patent application, file the certificate referred to in Article 55, paragraph 2, issued at the exhibition by the authority responsible for the protection of industrial property at that exhibition, and stating that the invention was in fact exhibited there. This certificate shall also state the opening date of the exhibition and, where the first disclosure of the invention did not coincide with the opening date of the exhibition, the date of the first disclosure. This certificate must be accompanied by an identification of the invention, duly authenticated by the above-mentioned authority.
	Rule 23a - Prior application as state of the art A European patent application shall be considered as comprised in the state of the art under Article 54, paragraphs 3 and 4, only if the designation fees under Article 79, paragraph 2, have been validly paid. [→deleted]

Chapter V - Biotechnological inventions

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Rule 26 - General and definitions (1) For European patent applications and patents concerning biotechnological inventions, the relevant provisions of the Convention shall be applied and interpreted in accordance with the provisions of this Chapter. Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions shall be used as a supplementary means of interpretation. (2) "Biotechnological inventions" are inventions which concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used. (3) "Biological material" means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system. (4) "Plant variety" means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be: (a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes, (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics, and	**Rule 23b - General and definitions** (1) For European patent applications and patents concerning biotechnological inventions, the relevant provisions of the Convention shall be applied and interpreted in accordance with the provisions of this chapter. Directive 98/44/EC of 6 July 1998 on the legal protection of biotechnological inventions shall be used as a supplementary means of interpretation. (2) "Biotechnological inventions" are inventions which concern a product consisting of or containing biological material or a process by means of which biological material is produced, processed or used. (3) "Biological material" means any material containing genetic information and capable of reproducing itself or being reproduced in a biological system. (4) "Plant variety" means any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a plant variety right are fully met, can be: (a) defined by the expression of the characteristics that results from a given genotype or combination of genotypes, (b) distinguished from any other plant grouping by the expression of at least one of the said characteristics, and

(c) considered as a unit with regard to its suitability for being propagated unchanged. (5) A process for the production of plants or animals is essentially biological if it consists entirely of natural phenomena such as crossing or selection. (6) "Microbiological process" means any process involving or performed upon or resulting in microbiological material.	(c) considered as a unit with regard to its suitability for being propagated unchanged. (5) A process for the production of plants or animals is essentially biological if it consists entirely of natural phenomena such as crossing or selection. (6) "Microbiological process" means any process involving or performed upon or resulting in microbiological material.
Rule 27 - Patentable biotechnological inventions Biotechnological inventions shall also be patentable if they concern: (a) biological material which is isolated from its natural environment or produced by means of a technical process even if it previously occurred in nature; (b) plants or animals if the technical feasibility of the invention is not confined to a particular plant or animal variety; (c) a microbiological or other technical process, or a product obtained by means of such a process other than a plant or animal variety.	**Rule 23c - Patentable biotechnological inventions** Biotechnological inventions shall also be patentable if they concern: (a) biological material which is isolated from its natural environment or produced by means of a technical process even if it previously occurred in nature; (b) plants or animals if the technical feasibility of the invention is not confined to a particular plant or animal variety; (c) a microbiological or other technical process, or a product obtained by means of such a process other than a plant or animal variety.
Rule 28 - Exceptions to patentability (a) processes for cloning human beings; (b) processes for modifying the germ line genetic identity of human beings; (c) uses of human embryos for industrial or commercial purposes; (d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.	**Rule 23d - Exceptions to patentability** Under Article 53(a), European patents shall not be granted in respect of biotechnological inventions which, in particular, concern the following: (a) processes for cloning human beings; (b) processes for modifying the germ line genetic identity of human beings; (c) uses of human embryos for industrial or commercial purposes; (d) processes for modifying the genetic identity of animals which are likely to cause them suffering without any substantial medical benefit to man or animal, and also animals resulting from such processes.
Rule 29 - The human body and its elements (1) The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions. (2) An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element. (3) The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.	**Rule 23e - The human body and its elements** (1) The human body, at the various stages of its formation and development, and the simple discovery of one of its elements, including the sequence or partial sequence of a gene, cannot constitute patentable inventions. (2) An element isolated from the human body or otherwise produced by means of a technical process, including the sequence or partial sequence of a gene, may constitute a patentable invention, even if the structure of that element is identical to that of a natural element. (3) The industrial application of a sequence or a partial sequence of a gene must be disclosed in the patent application.

	[for Rules 24-27 see Rules 35, 36, 41 & 42]
Rule 30 - Requirements of European patent applications relating to nucleotide and amino acid sequences (1) If nucleotide or amino acid sequences are disclosed in the European patent application, the description shall contain a sequence listing conforming to the rules laid down by the President of the European Patent Office for the standardised representation of nucleotide and amino acid sequences.[61] (2) A sequence listing filed after the date of filing shall not form part of the description. (3) Where the applicant has not filed a sequence listing complying with the requirements under paragraph 1 at the date of filing, the European Patent Office shall invite the applicant to furnish such a sequence listing and pay the late furnishing fee. If the applicant does not furnish the required sequence listing and pay the required late furnishing fee within a period of two months after such an invitation, the application shall be refused.	**Rule 27a - Requirements of European patent applications relating to nucleotide and amino acid sequences** (1) If nucleotide or amino acid sequences are disclosed in the European patent application the description shall contain a sequence listing conforming to the rules laid down by the President of the European Patent Office for the standardised representation of nucleotide and amino acid sequences. (2) The President of the European Patent Office may require that, in addition to the written application documents, a sequence listing in accordance with paragraph 1 be submitted on a data carrier prescribed by him accompanied by a statement that the information recorded on the data carrier is identical to the written sequence listing. (3) If a sequence listing is filed or corrected after the date of filing, the applicant shall submit a statement that the sequence listing so filed or corrected does not include matter which goes beyond the content of the application as filed. (4) A sequence listing filed after the date of filing shall not form part of the description.
Rule 31 - Deposit of biological material (1) If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the European patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed as prescribed in Article 83 if: (a) a sample of the biological material has been deposited with a recognised depositary institution on the same terms as those laid down in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977 not later than the date of filing of the application; (b) the application as filed gives such relevant information as is available to the applicant on the characteristics of the biological material; (c) the depositary institution and the accession number of the deposited biological material are stated in the application[62], and (d) where the biological material has been deposited by a person other than the applicant, the name and address of the depositor are stated in the application and a document is submitted to the European Patent Office providing evidence that the depositor has authorised the applicant to refer to the deposited biological material in the application and has given his unreserved and irrevocable consent to the deposited material being made available to the public in accordance with Rule 33.	**Rule 28 - Deposit of biological material** (1) If an invention involves the use of or concerns biological material which is not available to the public and which cannot be described in the European patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed as prescribed in Article 83 if: (a) a sample of the biological material has been deposited with a recognised depositary institution not later than the date of filing of the application; (b) the application as filed gives such relevant information as is available to the applicant on the characteristics of the biological material; (c) the depositary institution and the accession number of the deposited biological material are stated in the application, and (d) where the biological material has been deposited by a person other than the applicant, the name and address of the depositor are stated in the application and a document is submitted satisfying the European Patent Office that the latter has authorised the applicant to refer to the deposited biological material in the application and has given his unreserved and irrevocable consent to the deposited material being made available to the public in accordance with this Rule. (2) The information referred to in paragraph 1(c) and, where applicable, (d) may be submitted

[61] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of sequence listings (Special edition No. 3 OJ EPO 2007, C.1., pp26-29)

[62] **G 2/93**: The information concerning the file number of a culture deposit according to [Rule 31(1)(c) EPC] may not be submitted after expiry of the time limit set out in [Rule 31(2)(a) EPC].

(2) The information referred to in paragraph 1(c) and (d) may be submitted

(a) within sixteen months after the date of filing of the application or, if priority has been claimed, after the priority date, this period being deemed to have been observed if the information is communicated before completion of the technical preparations for publication of the European patent application;

(b) up to the date of submission of a request under Article 93, paragraph 1(b);

(c) within one month after the European Patent Office has communicated to the applicant that the right to inspect the files under Article 128, paragraph 2, exists.

The ruling period shall be the one which is the first to expire. The communication of this information shall be considered as constituting the unreserved and irrevocable consent of the applicant to the deposited biological material being made available to the public in accordance with Rule 33.
[further processing not available: Rule 135(2)]

(a) within a period of sixteen months after the date of filing of the application or, if priority is claimed, after the priority date, this time limit being deemed to have been met if the information is communicated before completion of the technical preparations for publication of the European patent application;

(b) up to the date of submission of a request for early publication of the application;

(c) within one month after the European Patent Office has communicated to the applicant that a right to inspect the files pursuant to Article 128, paragraph 2, exists.

The ruling period shall be the one which is the first to expire. The communication of this information shall be considered as constituting the unreserved and irrevocable consent of the applicant to the deposited biological material being made available to the public in accordance with this Rule.

(3) The deposited biological material shall be available upon request to any person from the date of publication of the European patent application and to any person having the right to inspect the files pursuant to Article 128, paragraph 2, prior to that date. Subject to paragraph 4, such availability shall be effected by the issue of a sample of the biological material to the person making the request (hereinafter referred to as "the requester").

Said issue shall be made only if the requester has undertaken vis-à-vis the applicant for or proprietor of the patent not to make the biological material or any biological material derived therefrom available to any third party and to use that material for experimental purposes only, until such time as the patent application is refused or withdrawn or deemed to be withdrawn, or before the expiry of the patent in the designated State in which it last expires, unless the applicant for or proprietor of the patent expressly waives such an undertaking.

The undertaking to use the biological material for experimental purposes only shall not apply in so far as the requester is using that material under a compulsory licence. The term "compulsory licence" shall be construed as including ex officio licences and the right to use patented inventions in the public interest. [→Rule 33]

(4) Until completion of the technical preparations for publication of the application, the applicant may inform the European Patent Office that

(a) until the publication of the mention of the grant of the European patent or, where applicable,

(b) for twenty years from the date of filing if the application has been refused or withdrawn or deemed to be withdrawn,

the availability referred to in paragraph 3 shall be effected only by the issue of a sample to an expert nominated by the requester. [→Rule 32]

(5) The following may be nominated as an expert:

(a) any natural person provided that the requester furnishes

	evidence, when filing the request, that the nomination has the approval of the applicant; (b) any natural person recognised as an expert by the President of the European Patent Office. The nomination shall be accompanied by a declaration from the expert vis-à-vis the applicant in which he enters into the undertaking given pursuant to paragraph 3 until either the date on which the patent expires in all the designated States or, where the application has been refused, withdrawn or deemed to be withdrawn, until the date referred to in paragraph 4(b), the requester being regarded as a third party. [→Rule 32] (6) For the purposes of paragraph 3, derived biological material shall mean any material which still exhibits those characteristics of the deposited material which are essential to carrying out the invention. The undertaking referred to in paragraph 3 shall not impede any deposit of derived biological material necessary for the purpose of patent procedure. [→Rule 33] (7) The request provided for in paragraph 3 shall be submitted to the European Patent Office on a form recognised by that Office. The European Patent Office shall certify on the form that a European patent application referring to the deposit of the biological material has been filed, and that the requester or the expert nominated by him is entitled to the issue of a sample of that material. After grant of the European patent, the request shall also be submitted to the European Patent Office. [→Rule 33] (8) The European Patent Office shall transmit a copy of the request, with the certification provided for in paragraph 7, to the depositary institution as well as to the applicant for or the proprietor of the patent. [→Rule 33] (9) The President of the European Patent Office shall publish in the Official Journal of the European Patent Office the list of depositary institutions and experts recognised for the purpose of this Rule. [→Rule 33]
Rule 32 - Expert solution (1) Until completion of the technical preparations for publication of the European patent application, the applicant may inform the European Patent Office that, (a) until the publication of the mention of the grant of the European patent or, where applicable, (b) for twenty years from the date of filing, if the application is refused or withdrawn or deemed to be withdrawn, the availability referred to in Rule 33 shall be effected only by the issue of a sample to an expert nominated by the requester. (2) The following may be nominated as an expert: (a) any natural person, provided that the requester furnishes evidence, when filing the request, that the nomination has the approval of the applicant;	

(b) any natural person recognised as an expert by the President of the European Patent Office.

The nomination shall be accompanied by a declaration from the expert vis-à-vis the applicant in which he enters into the undertaking given under Rule 33 until either the date on which the patent expires in all the designated States or, where the application is refused, withdrawn or deemed to be withdrawn, the date referred to in paragraph 1(b), the requester being regarded as a third party.

Rule 33 - Availability of biological material

(1) Biological material deposited in accordance with Rule 31 shall be available upon request to any person from the date of publication of the European patent application and to any person having the right to inspect the files under Article 128, paragraph 2, prior to that date. Subject to Rule 32, such availability shall be effected by the issue of a sample of the biological material to the person making the request (hereinafter referred to as "the requester").

(2) Said issue shall be made only if the requester has undertaken vis-à-vis the applicant for or proprietor of the patent not to make the biological material or any biological material derived there from available to any third party and to use that material for experimental purposes only, until such time as the patent application is refused or withdrawn or deemed to be withdrawn, or before the European patent has expired in all the designated States, unless the applicant for or proprietor of the patent expressly waives such an undertaking.

The undertaking to use the biological material for experimental purposes only shall not apply in so far as the requester is using that material under a compulsory licence. The term "compulsory licence" shall be construed as including ex officio licences and the right to use patented inventions in the public interest.

(3) For the purposes of paragraph 2, derived biological material shall mean any material which still exhibits those characteristics of the deposited material which are essential to carrying out the invention. The undertaking under paragraph 2 shall not impede any deposit of derived biological material necessary for the purpose of patent procedure.

(4) The request referred to in paragraph 1 shall be submitted to the European Patent Office on a form recognised by that Office. The European Patent Office shall certify on the form that a European patent application referring to the deposit of the biological material has been filed, and that the requester or the expert nominated by him under Rule 32 is entitled to the issue of a sample of that material. After grant of the European patent, the request shall also be submitted to the European Patent Office.

(5) The European Patent Office shall transmit a copy of the request, with the certification provided for in paragraph 4, to the depositary institution and to the applicant for or the proprietor of the patent.

(6) The European Patent Office shall publish in its Official

Journal the list of depositary institutions and experts recognised for the purpose of Rules 31 to 34.	
Rule 34 - New deposit of biological material If biological material deposited in accordance with Rule 31 ceases to be available from the recognised depositary institution, an interruption in availability shall be deemed not to have occurred if a new deposit of that material is made with a recognised depositary institution on the same terms as those laid down in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977, and if a copy of the receipt of the new deposit issued by the depositary institution is forwarded to the European Patent Office within four months of the date of the new deposit, stating the number of the European patent application or of the European patent.	**Rule 28a - New deposit of biological material** (1) If biological material deposited in accordance with Rule 28, paragraph 1, ceases to be available from the institution with which it was deposited because: (a) the biological material is no longer viable, or (b) for any other reason the depositary institution is unable to supply samples, and if no sample of the biological material has been transferred to another depositary institution recognised for the purposes of Rule 28, from which it continues to be available, an interruption in availability shall be deemed not to have occurred if a new deposit of the biological material originally deposited is made within a period of three months from the date on which the depositor was notified of the interruption by the depositary institution and if a copy of the receipt of the deposit issued by the institution is forwarded to the European Patent Office within four months from the date of the new deposit stating the number of the application or of the European patent. (2) In the case provided for in paragraph 1(a), the new deposit shall be made with the depositary institution with which the original deposit was made; in the cases provided for in paragraph 1(b), it may be made with another depositary institution recognised for the purposes of Rule 28. (3) Where the institution with which the original deposit was made ceases to be recognised for the purposes of Rule 28, either entirely or for the kind of biological material to which the deposited sample belongs, or where that institution discontinues, temporarily or definitively, the performance of its functions as regards deposited biological material, and the notification referred to in paragraph 1 from the depositary institution is not received within six months from the date of such event, the three-month period referred to in paragraph 1 shall begin on the date on which this event is announced in the Official Journal of the European Patent Office. (4) Any new deposit shall be accompanied by a statement signed by the depositor certifying that the newly deposited biological material is the same as that originally deposited. (5) If the new deposit has been made under the provisions of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977, the provisions of that Treaty shall prevail.

PART III - IMPLEMENTING REGULATIONS TO PART III OF THE CONVENTION

Chapter I - Filing of the European patent application

Rule 35 - General provisions (1) European patent applications may be filed in writing with the European Patent Office in Munich, The Hague or Berlin, or the authorities referred to in Article 75, paragraph 1(b). [63] (2) The authority with which the European patent application is filed shall mark the documents making up the application with the date of their receipt, and issue without delay a receipt to the applicant including at least the application number and the nature, number and date of receipt of the documents. (3) If the European patent application is filed with an authority referred to in Article 75, paragraph 1(b), such authority shall without delay inform the European Patent Office of the receipt of the application, and, in particular, of the nature and date of receipt of the documents, the application number and any priority date claimed. (4) Upon receipt of a European patent application forwarded by the central industrial property office of a Contracting State, the European Patent Office shall inform the applicant accordingly, indicating the date of its receipt.[64]	**Rule 24 - General provisions** (1) European patent applications may be filed in writing with the authorities referred to in Article 75 either directly or by post. The President of the European Patent Office may permit European patent applications to be filed by other means of communication and lay down conditions governing their use. He may, in particular, require that within such period as the European Patent Office shall specify written confirmation be supplied reproducing the contents of applications so filed and complying with the requirements of these Implementing Regulations. (2) The authority with which the European patent application is filed shall mark the documents making up the application with the date of their receipt. It shall issue without delay a receipt to the applicant which shall include at least the application number, the nature and number of the documents and the date of their receipt. (3) If the European patent application is filed with an authority mentioned in Article 75, paragraph 1(b), it shall without delay inform the European Patent Office of receipt of the documents making up the application. It shall inform the European Patent Office of the nature and date of receipt of the documents, the application number and any priority date claimed. (4) When the European Patent Office has received a European patent application which has been forwarded by a central industrial property office of a Contracting State, it shall inform the applicant accordingly, indicating the date of its receipt at the European Patent Office.
Rule 36 - European divisional applications (1) The applicant may file a divisional application relating to any pending earlier European patent application.[65] (2) A divisional application shall be in the language of the proceedings for the earlier application and shall be filed with the European Patent Office in Munich, The Hague or Berlin. (3) The filing fee and search fee shall be paid within one month of filing the divisional application. If the filing fee or search fee is not paid in due time, the application shall be deemed to be withdrawn. (4) The designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in	**Rule 25 - Provisions for European divisional applications** (1) The applicant may file a divisional application relating to any pending earlier European patent application. (2) The filing fee and search fee shall be payable in respect of a European divisional application within one month after the filing thereof. The designation fees shall be payable within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the European divisional application.

[63] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the designation of the EPO filing offices (Special edition No. 3 OJ EPO 2007, A.1., pp 3-4)

[64] Any further documents to be filed only at the EPO: see Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile, Article 5(4) (Special edition No. 3 OJ EPO 2007, A.3., pp7-11)

[65] **G 10/92**: Under [Rule 36 EPC] an applicant may only file a divisional application on the pending earlier European patent application up to the approval in accordance with [Rule 71(3) EPC].

respect of the divisional application. Rule 39, paragraphs 2 and 3, shall apply.

Rule 37 - Forwarding of European patent applications

(1) The central industrial property office of a Contracting State shall forward European patent applications to the European Patent Office in the shortest time compatible with its national law relating to the secrecy of inventions in the interests of the State, and shall take all appropriate steps to ensure such forwarding within:

(a) six weeks of filing, where the subject of the application is evidently not liable to secrecy under the national law; or

(b) four months of filing or, if priority has been claimed, fourteen months of the date of priority, where the application requires further examination as to its liability to secrecy.

(2) A European patent application not received by the European Patent Office within fourteen months of filing or, if priority has been claimed, of the date of priority, shall be deemed to be withdrawn. Any fees paid in respect of this application shall be refunded.

Rule 38 - Filing fee and search fee

The filing fee and search fee shall be paid within one month of filing the European patent application.

Rule 39 - Designation fees

(1) Designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.

(2) Where the designation fee is not paid in due time in respect of any Contracting State, the designation of that State shall be deemed to be withdrawn.

(3) Where no designation fee is paid in due time or the designations of all the Contracting States are withdrawn, the European patent application shall be deemed to be withdrawn.

(4) Without prejudice to Rule 37, paragraph 2, second sentence, designation fees shall not be refunded.

Rule 40 - Date of filing

(1) The date of filing of a European patent application shall be the date on which the documents filed by the applicant contain:

(a) an indication that a European patent is sought;

(b) information identifying the applicant or allowing the applicant to be contacted; and

(c) a description or reference to a previously filed application.

(2) A reference to a previously filed application under paragraph 1(c) shall state the filing date and number of that application and the Office with which it was filed. Such reference shall indicate that it replaces the description and any drawings.

(3) Where the application contains a reference under paragraph 2, a certified copy of the previously filed application shall be filed within two months of filing the application. Where the previously filed application is not in an official language of the European Patent Office, a translation thereof in one of these languages shall be filed within the same period. Rule 53, paragraph 2, shall apply mutatis mutandis.[66]
[further processing not available: Rule 135(2)]

Chapter II - Provisions governing the application

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Rule 41 - Request for grant

(1) The request for grant of a European patent shall be filed on a form drawn up by the European Patent Office.

(2) The request shall contain:

(a) a petition for the grant of a European patent;

(b) the title of the invention, which shall clearly and concisely state the technical designation of the invention and shall exclude all fancy names;

(c) the name, address and nationality of the applicant and the State in which his residence or principal place of business is located. Names of natural persons shall be indicated by the person's family name, followed by his given names. Names of legal persons, as well as of bodies equivalent to legal persons under the law governing them, shall be indicated by their official designations. Addresses shall be indicated in accordance with applicable customary requirements for prompt postal delivery and shall comprise all the relevant administrative units, including the house number, if any. It is recommended that the fax and telephone numbers be indicated;

(d) if the applicant has appointed a representative, his name and the address of his place of business as prescribed in sub-paragraph (c);

(e) where appropriate, an indication that the application constitutes a divisional application and the number of the earlier European patent application;

(f) in cases covered by Article 61, paragraph 1(b), the number of the original European patent application;

(g) where applicable, a declaration claiming the priority of an earlier application and indicating the date on which and the country in or for which the earlier application was filed;

Rule 26 - Request for grant

(1) The request for the grant of a European patent shall be filed on a form drawn up by the European Patent Office. Printed forms shall be made available to applicants free of charge by the authorities referred to in Article 75, paragraph 1.

(2) The request shall contain:

(a) a petition for the grant of a European patent;

(b) the title of the invention, which shall clearly and concisely state the technical designation of the invention and shall exclude all fancy names;

(c) the name, address and nationality of the applicant and the State in which his residence or principal place of business is located. Names of natural persons shall be indicated by the person's family name and given name(s), the family name being indicated before the given name(s). Names of legal entities, as well as companies considered to be legal entities by reason of the legislation to which they are subject, shall be indicated by their official designations. Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address. They shall in any case comprise all the relevant administrative units, including the house number, if any. It is recommended that the telegraphic and telex address and telephone number be indicated;

(d) if the applicant has appointed a representative, his name and the address of his place of business under the conditions contained in sub-paragraph (c);

(e) where appropriate, indication that the application constitutes a European divisional application and the number of the earlier European patent application;

(f) in cases covered by Article 61, paragraph 1(b), the number of the original European patent application;

[66] See Article 5 of the Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile, (Special edition No. 3 OJ EPO 2007, A.3., pp7-11)

(h) the signature of the applicant or his representative; (i) a list of the documents accompanying the request. This list shall also indicate the number of sheets of the description, claims, drawings and abstract filed with the request; (j) the designation of the inventor, where the applicant is the inventor. (3) If there is more than one applicant, the request shall preferably contain the appointment of one applicant or representative as common representative. [Rule 57: examination as to formal requirements]	(g) where applicable, a declaration claiming the priority of an earlier application and indicating the date on which and the country in or for which the earlier application was filed; (h) designation of the Contracting State or States in which protection of the invention is desired; (i) the signature of the applicant or his representative; (j) a list of the documents accompanying the request. This list shall also indicate the number of sheets of the description, claims, drawings and abstract filed with the request; (k) the designation of the inventor where the applicant is the inventor. (3) If there is more than one applicant, the request shall preferably contain the appointment of one applicant or representative as common representative.
Rule 42 - Content of the description (1) The description shall: (a) specify the technical field to which the invention relates; (b) indicate the background art which, as far as is known to the applicant, can be regarded as useful to understand the invention, draw up the European search report and examine the European patent application, and, preferably, cite the documents reflecting such art; (c) disclose the invention, as claimed, in such terms that the technical problem, even if not expressly stated as such, and its solution can be understood, and state any advantageous effects of the invention with reference to the background art; (d) briefly describe the figures in the drawings, if any; (e) describe in detail at least one way of carrying out the invention claimed, using examples where appropriate and referring to the drawings, if any; (f) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is industrially applicable. (2) The description shall be presented in the manner and order specified in paragraph 1, unless, owing to the nature of the invention, a different presentation would afford a better understanding or be more concise.	**Rule 27 - Content of the description** (1) The description shall: (a) specify the technical field to which the invention relates; (b) indicate the background art which, as far as known to the applicant, can be regarded as useful for understanding the invention, for drawing up the European search report and for the examination, and, preferably, cite the documents reflecting such art; (c) disclose the invention, as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood, and state any advantageous effects of the invention with reference to the background art; (d) briefly describe the figures in the drawings, if any; (e) describe in detail at least one way of carrying out the invention claimed using examples where appropriate and referring to the drawings, if any; (f) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is capable of exploitation in industry. (2) The description shall be presented in the manner and order specified in paragraph 1, unless because of the nature of the invention, a different manner or a different order would afford a better understanding and a more economic presentation.

Rule 43 - Form and content of claims

(1) The claims shall define the matter for which protection is sought in terms of the technical features of the invention. Wherever appropriate, claims shall contain:

(a) a statement indicating the designation of the subject-matter of the invention and those technical features which are necessary for the definition of the claimed subject-matter but which, in combination, form part of the prior art;

(b) a characterising portion, beginning with the expression "characterised in that" or "characterised by" and specifying the technical features for which, in combination with the features stated under sub-paragraph (a), protection is sought.

(2) Without prejudice to Article 82, a European patent application may contain more than one independent claim in the same category (product, process, apparatus or use) only if the subject matter of the application involves one of the following:

(a) a plurality of interrelated products[67],

(b) different uses of a product or apparatus,

(c) alternative solutions to a particular problem, where it is inappropriate to cover these alternatives by a single claim.

(3) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

(4) Any claim which includes all the features of any other claim (dependent claim) shall contain, if possible at the beginning, a reference to the other claim and then state the additional features. A dependent claim directly referring to another dependent claim shall also be admissible. All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most appropriate way possible.

(5) The number of claims shall be reasonable with regard to the nature of the invention claimed. The claims shall be numbered consecutively in Arabic numerals.

(6) Except where absolutely necessary, claims shall not rely on references to the description or drawings in specifying the technical features of the invention. In particular, they shall not contain such expressions as "as described in part ... of the description", or "as illustrated in figure ... of the drawings".

(7) Where the European patent application contains drawings including reference signs, the technical features specified in the claims shall preferably be followed by such reference signs relating to these features, placed in parentheses, if the intelligibility of the claim can thereby be increased. These reference signs shall not be construed as

Rule 29 - Form and content of claims

(1) The claims shall define the matter for which protection is sought in terms of the technical features of the invention. Wherever appropriate claims shall contain:

(a) a statement indicating the designation of the subject-matter of the invention and those technical features which are necessary for the definition of the claimed subject-matter but which, in combination, are part of the prior art;

(b) a characterising portion - preceded by the expression "characterised in that" or "characterised by" - stating the technical features which, in combination with the features stated in sub-paragraph (a), it is desired to protect.

(2) Without prejudice to Article 82, a European patent application may contain more than one independent claim in the same category (product, process, apparatus or use) only if the subject-matter of the application involves one of the following:

(a) a plurality of inter-related products;

(b) different uses of a product or apparatus;

(c) alternative solutions to a particular problem, where it is not appropriate to cover these alternatives by a single claim.

(3) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

(4) Any claim which includes all the features of any other claim (dependent claim) shall contain, if possible at the beginning, a reference to the other claim and then state the additional features which it is desired to protect. A dependent claim shall also be admissible where the claim it directly refers to is itself a dependent claim. All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most appropriate way possible.

(5) The number of the claims shall be reasonable in consideration of the nature of the invention claimed. If there are several claims, they shall be numbered consecutively in Arabic numerals.

(6) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: "as described in part ... of the description", or "as illustrated in figure ... of the drawings".

(7) If the European patent application contains drawings, the technical features mentioned in the claims shall preferably, if the intelligibility of the claim can thereby be increased, be followed by reference signs relating to these features and

[67] **T 671/06**: The term “inter-related products” does not extend to a system which is self-contained in performing the invention and a product which is a constitutive substituent part for the system.

limiting the claim.	placed between parentheses. These reference signs shall not be construed as limiting the claim.
Rule 44 - Unity of invention (1) Where a group of inventions is claimed in a European patent application, the requirement of unity of invention under Article 82 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features which define a contribution which each of the claimed inventions considered as a whole makes over the prior art. (2) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.	**Rule 30 - Unity of invention** (1) Where a group of inventions is claimed in one and the same European patent application, the requirement of unity of invention referred to in Article 82 shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those features which define a contribution which each of the claimed inventions considered as a whole makes over the prior art. (2) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim.
Rule 45 - Claims incurring fees (1) Any European patent application comprising more than ten claims shall, in respect of the eleventh and each subsequent claim, incur payment of a claims fee. (2) The claims fees shall be paid within one month of filing the first set of claims. If the claims fees have not been paid in due time, they may still be paid within one month of a communication concerning the failure to observe the time limit. (3) If a claims fee is not paid in due time, the claim concerned shall be deemed to be abandoned.	**Rule 31 - Claims incurring fees** (1) Any European patent application comprising more than ten claims at the time of filing shall, in respect of each claim over and above that number, incur payment of a claims fee. The claims fee shall be payable within one month after the filing of the application. If the claims fees have not been paid in due time they may still be validly paid within a period of grace of one month of notification of a communication pointing out the failure to observe the time limit. (2) If a claims fee is not paid within the period referred to in paragraph 1, the claim concerned shall be deemed to be abandoned. Any claims fee duly paid shall be refunded only in the case referred to in Article 77, paragraph 5.
Rule 46 - Form of the drawings (1) On sheets containing drawings, the usable surface area shall not exceed 26.2 cm x 17 cm. The usable or used surface shall not be surrounded by frames. The minimum margins shall be as follows: top 2.5 cm left side 2.5 cm right side 1.5 cm bottom 1 cm (2) Drawings shall be executed as follows: (a) Drawings shall be executed without colourings in durable, black, sufficiently dense and dark, uniformly thick and well-defined lines and strokes. (b) Cross-sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines. (c) The scale of the drawings and their graphical execution shall be such that electronic or photographic reproduction with a linear reduction in size to two-thirds will allow all details to be distinguished without difficulty. If, exceptionally, the scale is given on a drawing, it shall be represented graphically.	**Rule 32 - Form of the drawings** (1) On sheets containing drawings, the usable surface area shall not exceed 26.2 cm x 17 cm. These sheets shall not contain frames round the usable or used surface. The minimum margins shall be as follows: top 2.5 cm left side 2.5 cm right side 1.5 cm bottom 1 cm (2) Drawings shall be executed as follows: (a) Drawings shall be executed in durable, black, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without colourings. (b) Cross-sections shall be indicated by hatching which should not impede the clear reading of the reference signs and leading lines. (c) The scale of the drawings and the distinctness of their graphical execution shall be such that reproduction, obtained electronically or photographically, with a linear reduction in size to two-thirds would enable all details to be distinguished without difficulty. If, as an exception, the scale is given on a drawing, it shall be represented graphically.

(d) All numbers, letters, and reference signs appearing on the drawings shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.	(d) All numbers, letters, and reference signs, appearing on the drawings, shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.
(e) Generally, all lines in the drawings shall be drawn with the aid of drafting instruments.	(e) All lines in the drawings shall, ordinarily, be drawn with the aid of drafting instruments.
(f) Elements of the same figure shall be proportional to one another, unless a difference in proportion is indispensable for the clarity of the figure.	(f) Elements of the same figure shall be in proportion to each other, unless a difference in proportion is indispensable for the clarity of the figure.
(g) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.	(g) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.
(h) The same sheet of drawings may contain several figures. Where figures drawn on two or more sheets are intended to form a single figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures. The different figures shall be arranged without wasting space, preferably in an upright position, clearly separated from one another. Where the figures are not arranged in an upright position, they shall be presented sideways with the top of the figures at the left side of the sheet. The different figures shall be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.	(h) The same sheet of drawings may contain several figures. Where figures drawn on two or more sheets are intended to form one whole figure, the figures on the several sheets shall be so arranged that the whole figure can be assembled without concealing any part of the partial figures. The different figures shall be arranged without wasting space, preferably in an upright position, clearly separated from one another. Where the figures are not arranged in an upright position, they shall be presented sideways with the top of the figures at the left side of the sheet. The different figures shall be numbered consecutively in Arabic numerals, independently of the numbering of the sheets.
(i) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. Reference signs to features shall be consistent throughout the application.	(i) Reference signs not mentioned in the description and claims shall not appear in the drawings, and vice versa. The same features, when denoted by reference signs, shall, throughout the application, be denoted by the same signs.
(j) The drawings shall not contain text matter. Where indispensable to understand the drawings, a few short keywords, such as "water", "steam", "open", "closed" or "section on AB", may be included. Any such keywords shall be placed in such a way that, if required, they can be replaced by their translations without interfering with any lines of the drawings.	(j) The drawings shall not contain text matter, except, when absolutely indispensable, a single word or words such as "water", "steam", "open", "closed", "section on AB", and, in the case of electric circuits and block schematic or flow sheet diagrams, a few short catchwords indispensable for understanding. Any such words shall be placed in such a way that, if required, they can be replaced by their translations without interfering with any lines of the drawings.
(3) Flow sheets and diagrams shall be deemed to be drawings.	(3) Flow sheets and diagrams are considered drawings.
Rule 47 - Form and content of the abstract	**Rule 33 - Form and content of the abstract**
(1) The abstract shall indicate the title of the invention.	(1) The abstract shall indicate the title of the invention.
(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings. The summary shall indicate the technical field to which the invention pertains, and shall be drafted in a manner allowing the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on speculative applications thereof.	(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on its speculative application.
(3) The abstract shall preferably not contain more than one	(3) The abstract shall preferably not contain more than one

hundred and fifty words. (4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which should be published with the abstract. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each essential feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign placed in parentheses. (5) The abstract shall be drafted in such a manner as to constitute an efficient instrument for the purpose of searching in the particular technical field. In particular, it shall make it possible to assess whether consultation of the European patent application itself is necessary.	hundred and fifty words. (4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which he suggests should accompany the abstract when the abstract is published. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each main feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign, placed between parentheses. (5) The abstract shall be so drafted that it constitutes an efficient instrument for purposes of searching in the particular technical field particularly by making it possible to assess whether there is a need for consulting the European patent application itself.
Rule 48 - Prohibited matter (1) The European patent application shall not contain: (a) statements or other matter contrary to "ordre public" or morality; (b) statements disparaging the products or processes of any third party or the merits or validity of the applications or patents of any such party. Mere comparisons with the prior art shall not be considered disparaging per se; (c) any statement or other matter obviously irrelevant or unnecessary under the circumstances. (2) If the application contains matter prohibited under paragraph 1(a), the European Patent Office may omit such matter from the application as published, indicating the place and number of words or drawings omitted. (3) If the application contains statements referred to in paragraph 1(b), the European Patent Office may omit them from the application as published, indicating the place and number of words omitted. Upon request, the European Patent Office shall furnish a copy of the passages omitted.	**Rule 34 - Prohibited matter** (1) The European patent application shall not contain: (a) statements or other matter contrary to "ordre public" or morality; (b) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person. Mere comparisons with the prior art shall not be considered disparaging per se; (c) any statement or other matter obviously irrelevant or unnecessary under the circumstances. (2) If a European patent application contains prohibited matter within the meaning of paragraph 1(a), the European Patent Office shall omit it when publishing the application, indicating the place and number of words or drawings omitted. (3) If a European patent application contains statements within the meaning of paragraph 1(b), the European Patent Office may omit them when publishing the application. It shall indicate the place and number of words omitted, and shall furnish, upon request, a copy of the passages omitted.
Rule 49 - General provisions governing the presentation of the application documents (1) Any translation filed under Article 14, paragraph 2, or Rule 40, paragraph 3, shall be deemed to be a document making up the European patent application. (2) The documents making up the application shall be presented 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. All sheets shall be free from cracks, creases and folds. Only one side of the sheet shall be used. (3) The documents making up the application shall be on A4 paper (29.7 cm x 21 cm) which shall be pliable, strong, white, smooth, matt and durable. Subject to paragraph 10 and Rule 46, paragraph 2(h), each sheet shall be used with its short sides at the top and bottom (upright position).	**Rule 35 - General provisions governing the presentation of the application documents** (1) Translations mentioned in Article 14, paragraph 2, shall be considered to be included in the term "documents making up the European patent application". (2) The documents making up the European patent application shall be filed in three copies. The President of the European Patent Office may, however, determine that the documents shall be filed in fewer than three copies. (3) The documents making up the European patent application shall be so presented as to admit of electronic as well as of direct reproduction, in particular by scanning, photography, electrostatic processes, photo offset and micro filming, in an unlimited number of copies. All sheets shall be free from cracks, creases and folds. Only one side of the sheet shall be used.

(4) Each of the documents making up the application (request, description, claims, drawings and abstract) shall commence on a new sheet. The sheets shall be connected in such a way that they can easily be turned over, separated and joined together again.

(5) Subject to Rule 46, paragraph 1, the minimum margins shall be as follows:

top: 2 cm
left side: 2.5 cm
right side: 2 cm
bottom: 2 cm

The recommended maximum for the margins quoted above is as follows:

top: 4 cm
left side: 4 cm
right side: 3 cm
bottom: 3 cm

(6) All the sheets contained in the application shall be numbered in consecutive Arabic numerals. These shall be centred at the top of the sheet, but not placed in the top margin.

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

(8) The request for grant of a European patent, the description, the claims and the abstract shall be typed or printed. Only graphic symbols and characters and chemical or mathematical formulae may, if necessary, be drawn or written by hand. The typing shall be 1½ spaced. All text matter shall be in characters, the capital letters of which are not less than 0.21 cm high, and shall be in a dark, indelible colour.

(9) The request for grant of a European patent, the description, the claims and the abstract shall not contain drawings. The description, claims and abstract may contain chemical or mathematical formulae. The description and abstract may contain tables. The claims may contain tables only if their subject-matter makes the use of tables desirable. Tables and chemical or mathematical formulae may be placed sideways on the sheet if they cannot be presented satisfactorily in an upright position. Tables or chemical or mathematical formulae presented sideways shall be placed so that the tops of the tables or formulae are at the lefthand side of the sheet.

(10) Values shall be expressed in units conforming to international standards, wherever appropriate in terms of the metric system using SI units. Any data not meeting this requirement shall also be expressed in units conforming to international standards. Only the technical terms, conventions, formulae, signs and symbols generally accepted in the field in question shall be used.

(11) The terminology and the signs shall be consistent throughout the European patent application.

(4) The documents making up the European patent application shall be on A 4 paper (29.7 cm x 21 cm) which shall be pliable, strong, white, smooth, matt and durable. Subject to the provisions of Rule 32, paragraph 2(h), and paragraph 11 of this Rule, each sheet shall be used with its short sides at the top and bottom (upright position).

(5) Each of the documents making up the European patent application (request, description, claims, drawings and abstract) shall commence on a new sheet. The sheets shall be connected in such a way that they can easily be turned over, separated and joined together again.

(6) Subject to Rule 32, paragraph 1, the minimum margins shall be as follows:

top: 2 cm
left side: 2.5 cm
right side: 2 cm
bottom: 2 cm

The recommended maximum for the margins quoted above is as follows:

top: 4 cm
left side: 4 cm
right side: 3 cm
bottom: 3 cm

(7) The margins of the documents making up the European patent application, when submitted, must be completely blank.

(8) All the sheets contained in the European patent application shall be numbered in consecutive Arabic numerals. These shall be placed at the top of the sheet, in the middle, but not in the top margin.

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

(10) The request for the grant of a European patent, the description, the claims and the abstract shall be typed or printed. Only graphic symbols and characters and chemical or mathematical formulae may, if necessary, be written by hand or drawn. The typing shall be 1 ½ spaced. All text matter shall be in characters, the capital letters of which are not less than 0.21 cm high, and shall be in a dark, indelible colour.

(11) The request for the grant of a European patent, the description, the claims and the abstract shall not contain drawings. The description, the claims and the abstract may contain chemical or mathematical formulae. The description and the abstract may contain tables. The claims may contain tables only if their subject-matter makes the use of tables desirable. Tables and chemical or mathematical formulae may be placed sideways on the sheet if they cannot be presented satisfactorily in an upright position thereon; sheets on which tables or chemical or mathematical formulae are presented sideways shall be so presented that the tops of the tables or formulae are at the left side of the sheet.

(12) Each sheet shall be reasonably free from erasures and shall be free from alterations. Non-compliance with this rule may be authorised if the authenticity of the content is not impugned and the requirements for good reproduction are not thereby jeopardised.	(12) Physical values shall be expressed in the units recognised in international practice, wherever appropriate in terms of the metric system using SI units. Any data not meeting this requirement must also be expressed in the units recognised in international practice. For mathematical formulae the symbols in general use shall be employed. For chemical formulae the symbols, atomic weights and molecular formulae in general use shall be employed. In general, use should be made of the technical terms, signs and symbols generally accepted in the field in question. (13) The terminology and the signs shall be consistent throughout the European patent application. (14) Each sheet shall be reasonably free from erasures and shall be free from alterations, overwritings and interlineations. Non-compliance with this rule may be authorised if the authenticity of the content is not in question and the requirements for good reproduction are not in jeopardy.
Rule 50 - Documents filed subsequently (1) Rules 42, 43 and 46 to 49 shall apply to documents replacing documents making up the European patent application. Rule 49, paragraphs 2 to 12, shall also apply to the translation of the claims referred to in Rule 71. (2) All documents other than those making up the application shall generally be typewritten or printed. There shall be a margin of about 2.5 cm on the left-hand side of each page. (3) Documents filed after filing the application shall be signed, with the exception of annexed documents. If a document has not been signed, the European Patent Office shall invite the party concerned to do so within a time limit to be specified. If signed in due time, the document shall retain its original date of receipt; otherwise it shall be deemed not to have been filed.[68]	**Rule 36 - Documents filed subsequently** (1) Rules 27, 29 and 32 to 35 shall apply to documents replacing documents making up the European patent application. Rule 35, paragraphs 2 to 14, shall also apply to the translation of the claims referred to in Rule 51. (2) All documents other than those referred to in the first sentence of paragraph 1 shall normally be typewritten or printed. There must be a margin of about 2.5 cm on the left-hand side of each page. (3) All documents, with the exception of annexed documents, filed after filing of the European patent application must be signed. If a document has not been signed, the European Patent Office shall invite the party concerned to do so within a time limit to be laid down by that Office. If signed in due time, the document shall retain its original date of receipt; otherwise it shall be deemed not to have been received. (4) Such documents as must be communicated to other persons or as relate to two or more European patent applications or European patents, must be filed in a sufficient number of copies. If the party concerned does not comply with this obligation in spite of a request by the European Patent Office, the missing copies shall be provided at the expense of the party concerned. [→deleted] (5) Notwithstanding paragraphs 2 to 4 the President of the European Patent Office may permit documents filed after filing of the European patent application to be transmitted to the European Patent Office by other means of communication and lay down conditions governing their use. He may, in particular, require that within a period laid down by him written confirmation be supplied reproducing the contents of documents so filed and complying with the requirements of these Implementing Regulations; if such confirmation is not supplied in due time, the documents shall be deemed not to have been received.

[68] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile, (Special edition No. 3 OJ EPO 2007, A.3., pp7-11); and Decision of the President of the European Patent Office dated 12 July 2007 concerning the electronic filing of patent applications and other documents, (Special edition No. 3 OJ EPO 2007, A.4., pp12-16)

Chapter III - Renewal fees

Rule 51 - Payment of renewal fees

(1) A renewal fee for the European patent application in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application. Renewal fees may not be validly paid more than one year before they fall due.

(2) If a renewal fee is not paid in due time, the fee may still be paid within six months of the due date, provided that an additional fee is also paid within that period.

(3) Renewal fees already due in respect of an earlier application at the date on which a divisional application is filed shall also be paid for the divisional application and shall be due on its filing. These fees and any renewal fee due within four months of filing the divisional application may be paid within that period without an additional fee. Paragraph 2 shall apply.

(4) If a European patent application has been refused or deemed to be withdrawn as a result of non-observance of a time limit, and if the applicant's rights are reestablished under Article 122, a renewal fee

(a) which would have fallen due under paragraph 1 in the period starting on the date on which the loss of rights occurred, up to and including the date of the notification of the decision re-establishing the rights shall be due on that latter date. This fee and any renewal fee due within four months from that latter date may still be paid within four months of that latter date without an additional fee. Paragraph 2 shall apply.

(b) which, on the date on which the loss of rights has occurred, was already due but the period provided for in paragraph 2 has not yet expired, may still be paid within six months from the date of the notification of the decision re-establishing the rights, provided that the additional fee pursuant to paragraph 2 is also paid within that period.

(5) If the Enlarged Board of Appeal reopens proceedings before the Board of Appeal under Article 112a, paragraph 5, second sentence, a renewal fee

(a) which would have fallen due under paragraph 1 in the period starting on the date when the decision of the Board of Appeal subject to the petition for review was taken, up to and including the date of the notification of the decision of the Enlarged Board of Appeal re-opening proceedings before the Board of Appeal, shall be due on that latter date. This fee and any renewal fee due within four months from that latter date may still be paid within four months of that latter date without an additional fee. Paragraph 2 shall apply.

(b) which, on the day on which the decision of the Board of Appeal was taken, was already due but the period provided for in paragraph 2 has not yet expired, may still be paid within six months from the date of the notification of the decision of the Enlarged Board of Appeal re-opening proceedings before the Board of Appeal, provided that the

Rule 37 - Payment of renewal fees

(1) Renewal fees for the European patent application in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application. Renewal fees may not be validly paid more than one year before they fall due.

(2) An additional fee shall be deemed to have been paid at the same time as the renewal fee within the meaning of Article 86, paragraph 2, if it is paid within the period laid down in that provision.

(3) Renewal fees already due in respect of an earlier application up to the date on which a European divisional application is filed must also be paid for the divisional application and fall due when the latter is filed. These fees and any renewal fee falling due within a period of four months from the filing of the divisional application may be paid without an additional fee within that period. If payment is not made in due time, the renewal fees may still be validly paid within six months of the due date, provided that the additional fee under Article 86, paragraph 2, is paid at the same time.

(4) Renewal fees shall not be payable for a new European patent application filed pursuant to Article 61, paragraph 1(b), in respect of the year in which it was actually filed and any preceding year.

additional fee pursuant to paragraph 2 is also paid within that period.

(6) A renewal fee shall not be payable for a new European patent application filed under Article 61, paragraph 1(b), in respect of the year in which it was filed and any preceding year.
[further processing not available for renewal fee deadlines: Rule 135(2)]

Chapter IV - Priority

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Rule 52 - Declaration of priority

(1) The declaration of priority referred to in Article 88, paragraph 1, shall indicate the date of the previous filing, the State party to the Paris Convention or Member of the World Trade Organization in or for which it was made and the file number. In the case referred to in Article 87, paragraph 5, the first sentence shall apply mutatis mutandis.

(2) The declaration of priority shall preferably be made on filing the European patent application. It may still be made within sixteen months from the earliest priority date claimed.

(3) The applicant may correct the declaration of priority within sixteen months from the earliest priority date claimed, or, where the correction would cause a change in the earliest priority date claimed, within sixteen months from the corrected earliest priority date, whichever sixteen-month period expires first, provided that such a correction may be submitted until the expiry of four months from the date of filing accorded to the European patent application.
[further processing not available: Rule 135(2)]

(4) However, a declaration of priority may not be made or corrected after a request under Article 93, paragraph 1(b) [early publication] has been filed.

(5) The particulars of the declaration of priority shall appear in the published European patent application and the European patent specification.

Rule 38 - Declaration of priority and priority documents

(1) The declaration of priority referred to in Article 88, paragraph 1, shall state the date of the previous filing and the State in or for which it was made and shall indicate the file number.

(2) The date and State of the previous filing must be stated on filing the European patent application; the file number shall be indicated before the end of the sixteenth month after the date of priority.

(3) The copy of the previous application must be filed before the end of the sixteenth month after the date of priority. The copy must be certified as an exact copy of the previous application by the authority which received the previous application and must be accompanied by a certificate issued by that authority stating the date of filing of the previous application. [→Rule 53]

(4) The copy of the previous application shall be deemed duly filed if a copy of that application available to the European Patent Office is to be included in the file of the European patent application under the conditions laid down by the President of the European Patent Office. [→Rule 53]

(5) The translation of the previous application required under Article 88, paragraph 1, must be filed within a time limit to be set by the European Patent Office, but at the latest within the time limit under Rule 51, paragraph 4. Alternatively, a declaration may be submitted that the European patent application is a complete translation of the previous application. Paragraph 4 shall apply mutatis mutandis. [→Rule 53]

(6) The particulars stated in the declaration of priority shall appear in the published European patent application and also on the European patent specification.

Rule 53 - Priority documents

(1) An applicant claiming priority shall file a copy of the previous application within sixteen months of the earliest priority date claimed. This copy and the date of filing of the previous application shall be certified as correct by the authority with which that application was filed.

(2) The copy of the previous application shall be deemed to be duly filed if a copy of that application available to the European Patent Office is to be included in the file of the

European patent application under the conditions determined by the President of the European Patent Office.[69] (3) Where the previous application is not in an official language of the European Patent Office and the validity of the priority claim is relevant to the determination of the patentability of the invention concerned, the European Patent Office shall invite the applicant for or proprietor of the European patent to file a translation of that application into one of the official languages within a period to be specified [Rule 132]. Alternatively, a declaration may be submitted that the European patent application is a complete translation of the previous application. Paragraph 2 shall apply mutatis mutandis.[70]	
Rule 54 - Issuing priority documents On request, the European Patent Office shall issue to the applicant a certified copy of the European patent application (priority document), under the conditions determined by the President of the European Patent Office, including the form of the priority document and the circumstances under which an administrative fee shall be paid.[71]	**Rule 38a - Issuing priority documents** On request, the European Patent Office shall issue a certified copy of the European patent application (priority document) to the applicant. The President of the European Patent Office shall determine all necessary arrangements, including the form of the priority document and the circumstances in which an administrative fee is payable.

[69] See Decisions of the President of the European Patent Office dated 12 July 2007:
i) on the filing of priority documents (Special edition No. 3 OJ EPO 2007, B.1., pp22-23);
ii) concerning the filing of priority documents for European divisional applications and for new European patent applications under Article 61(1)(b) EPC (Special edition No. 3 OJ EPO 2007, B.2., pp24-25).

[70] See Notice from the European Patent Office dated 20 September 2007 on implementation of the transitional provisions of the EPC 2000 applicable during the transition from the EPC 1973 to the EPC 2000

[71] See Decision of the President of the European Patent Office dated 14 July 2007 revising the Office's fees and expenses (Special edition No. 3 OJ EPO 2007, M.1., pp130-133).

PART IV - IMPLEMENTING REGULATIONS TO PART IV OF THE CONVENTION

Chapter I - Examination by the Receiving Section

Rule 55 - Examination on filing

If the examination under Article 90, paragraph 1, reveals that the application fails to meet the requirements laid down in Rule 40, paragraph 1(a) or (c), paragraph 2 or paragraph 3, first sentence, the European Patent Office shall inform the applicant of any deficiencies and advise him that the application will not be dealt with as a European patent application unless such deficiencies are remedied within two months. If the applicant does this, he shall be informed of the date of filing accorded by the Office.
[further processing not available: Rule 135(2)]

Rule 39 - Communication following the examination on filing

If the European patent application fails to meet the requirements laid down in Article 80, the Receiving Section shall communicate the disclosed deficiencies to the applicant and inform him that the application will not be dealt with as a European patent application unless he remedies the disclosed deficiencies within one month. If he does so, he shall be informed of the date of filing.

Rule 56 - Missing parts of the description or missing drawings

(1) If the examination under Article 90, paragraph 1, reveals that parts of the description, or drawings referred to in the description or in the claims, appear to be missing, the European Patent Office shall invite the applicant to file the missing parts within two months. The applicant may not invoke the omission of such a communication.

(2) If missing parts of the description or missing drawings are filed later than the date of filing, but within two months of the date of filing or, if a communication is issued under paragraph 1, within two months of that communication, the application shall be re-dated to the date on which the missing parts of the description or missing drawings were filed. The European Patent Office shall inform the applicant accordingly.

(3) If the missing parts of the description or missing drawings are filed within the period under paragraph 2, and the application claims priority of an earlier application, the date of filing shall, provided that the missing parts of the description or the missing drawings are completely contained in the earlier application, remain the date on which the requirements laid down in Rule 40, paragraph 1, were fulfilled, where the applicant so requests and files, within the period under paragraph 2:

(a) a copy of the earlier application, unless such copy is available to the European Patent Office under Rule 53, paragraph 2;

(b) where the earlier application is not in an official language of the European Patent Office, a translation thereof in one of these languages, unless such copy is available to the European Patent Office under Rule 53, paragraph 3; and

(c) an indication as to where the missing parts of the description or the missing drawings are completely contained in the earlier application and, where applicable, in the translation thereof.

(4) If the applicant:

Rule 43 - Late-filed or missing drawings

(1) If the examination provided for in Article 91, paragraph 1(g), reveals that the drawings were filed later than the date of filing of the European patent application, the Receiving Section shall inform the applicant that the drawings and the references to the drawings in the European patent application shall be deemed to be deleted unless the applicant requests within a period of one month that the application be re-dated to the date on which the drawings were filed.

(2) If the examination reveals that the drawings were not filed, the Receiving Section shall invite him to file them within one month and inform him that the application will be re-dated to the date on which they are filed, or, if they are not filed in due time, any reference to them in the application shall be deemed to be deleted.

(3) The applicant shall be informed of any new date of filing of the application.

(a) fails to file the missing parts of the description or the missing drawings within the period under paragraph 1 or 2, or

(b) withdraws under paragraph 6 any missing part of the description or missing drawing filed under paragraph 2,

any references referred to in paragraph 1 shall be deemed to be deleted, and any filing of the missing parts of the description or missing drawings shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.

(5) If the applicant fails to comply with the requirements referred to in paragraph 3(a) to (c) within the period under paragraph 2, the application shall be redated to the date on which the missing parts of the description or missing drawings were filed. The European Patent Office shall inform the applicant accordingly.

(6) Within one month of the notification referred to in paragraph 2 or 5, last sentence, the applicant may withdraw the missing parts of the description or the missing drawings filed, in which case the re-dating shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.
[further processing not available: Rule 135(2)]

Rule 57 - Examination as to formal requirements

If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with Article 90, paragraph 3, whether:

(a) a translation of the application required under Article 14, paragraph 2, or under Rule 40, paragraph 3, second sentence, has been filed in due time;

(b) the request for grant of a European patent satisfies the requirements of Rule 41;

(c) the application contains one or more claims in accordance with Article 78, paragraph 1(c), or a reference to a previously filed application in accordance with Rule 40, paragraphs 1(c), 2 and 3, indicating that it replaces also the claims;

(d) the application contains an abstract in accordance with Article 78, paragraph 1(e);

(e) the filing fee and the search fee have been paid in accordance with Rule 17, paragraph 2, Rule 36, paragraph 3, or Rule 38;

(f) the designation of the inventor has been made in accordance with Rule 19, paragraph 1;

(g) where appropriate, the requirements laid down in Rules 52 and 53 concerning the claim to priority have been satisfied;

(h) where appropriate, the requirements of Article 133, paragraph 2, have been satisfied;

Rule 40 - Examination for certain physical requirements

The physical requirements which a European patent application must satisfy pursuant to Article 91, paragraph 1(b), shall be those prescribed in Rule 27a, paragraphs 1 to 3, Rule 32, paragraphs 1 and 2, Rule 35, paragraphs 2 to 11 and 14, and Rule 36, paragraphs 2 and 4.

(i) the application meets the requirements laid down in Rule 46 and Rule 49, paragraphs 1 to 9 and 12. (j) the application meets the requirements laid down in Rule 30 or Rule 163, paragraph 3.	
Rule 58 - Correction of deficiencies in the application documents If the European patent application does not comply with the requirements of Rule 57(a) to (d), (h) and (i), the European Patent Office shall inform the applicant accordingly and invite him to correct the deficiencies noted within two months. The description, claims and drawings may be amended only to an extent sufficient to remedy such deficiencies. [further processing not available: Rule 135(2)]	**Rule 41 - Rectification of deficiencies in the application documents** (1) If the examination provided for in Article 91, paragraph 1(a) to (d), reveals deficiencies in the European patent application, the Receiving Section shall inform the applicant accordingly and invite him to remedy the deficiencies within such period as it shall specify. The description, claims and drawings may be amended only to an extent sufficient to remedy the disclosed deficiencies in accordance with the observations of the Receiving Section. (2) Paragraph 1 shall not apply where the applicant, while claiming priority, has omitted to indicate on filing the European patent application the date or State of first filing. (3) Paragraph 1 shall not apply where the examination reveals that the date of the first filing given on filing the European patent application precedes the date of filing of the European patent application by more than one year. In this event the Receiving Section shall inform the applicant that there will be no right of priority for the application unless, within one month, the applicant indicates a corrected date, lying within the year preceding the date of filing of the European patent application.
Rule 59 - Deficiencies in claiming priority If the file number of the previous application under Rule 52, paragraph 1, or the copy of that application under Rule 53, paragraph 1, have not been filed in due time, the European Patent Office shall inform the applicant accordingly and invite him to file them within a period to be specified [Rule 132]. [further processing not available: Rule 135(2)]	
Rule 60 - Subsequent designation of the inventor (1) If the designation of the inventor has not been made in accordance with Rule 19, the European Patent Office shall inform the applicant that the European patent application will be refused unless the designation is made within sixteen months of the date of filing of the application or, if priority is claimed, of the date of priority, this period being deemed to have been observed if the information is communicated before completion of the technical preparations for the publication of the European patent application. (2) Where, in a divisional application or a new application under Article 61, paragraph 1(b), the designation of the inventor has not been made in accordance with Rule 19, the European Patent Office shall invite the applicant to make the designation within a period to be specified [Rule 132].	**Rule 42 - Subsequent identification of the inventor** (1) If the examination provided for in Article 91, paragraph 1(f), reveals that the inventor has not been identified in accordance with the provisions of Rule 17, the Receiving Section shall inform the applicant that the European patent application shall be deemed to be withdrawn unless this deficiency is corrected within the period prescribed by Article 91, paragraph 5. (2) In the case of a European divisional application or a new European patent application filed pursuant to Article 61, paragraph 1(b), the time limit for identifying the inventor may in no case expire before two months after the communication referred to in paragraph 1, which shall state the time limit.
	[for Rule 43, see Rule 56]

Chapter II - European search report

Rule 61 - Content of the European search report (1) The European search report shall mention those documents, available to the European Patent Office at the time of drawing up the report, which may be taken into consideration in deciding whether the invention to which the European patent application relates is new and involves an inventive step. (2) Each citation shall be referred to the claims to which it relates. Where appropriate, relevant parts of the documents cited shall be identified. (3) The European search report shall distinguish between cited documents published before the date of priority claimed, between such date of priority and the date of filing, and on or after the date of filing. (4) Any document which refers to an oral disclosure, a use or any other means of disclosure which took place before the date of filing of the European patent application shall be mentioned in the European search report, together with an indication of the date of publication, if any, of the document and the date of the nonwritten disclosure. (5) The European search report shall be drawn up in the language of the proceedings. (6) The European search report shall contain the classification of the subject matter of the European patent application in accordance with the international classification.	**Rule 44 - Content of the European search report** (1) The European search report shall mention those documents, available to the European Patent Office at the time of drawing up the report, which may be taken into consideration in deciding whether the invention to which the European patent application relates is new and involves an inventive step. (2) Each citation shall be referred to the claims to which it relates. If necessary, the relevant parts of the documents cited shall be identified (for example, by indicating the page, column and lines or the diagrams). (3) The European search report shall distinguish between cited documents published before the date of priority claimed, between such date of priority and the date of filing, and on or after the date of filing. (4) Any document which refers to an oral disclosure, a use or any other means of disclosure which took place prior to the date of filing of the European patent application shall be mentioned in the European search report, together with an indication of the date of publication, if any, of the document and the date of the non-written disclosure. (5) The European search report shall be drawn up in the language of the proceedings. (6) The European search report shall contain the classification of the subject-matter of the European patent application in accordance with the international classification.
Rule 62 - Extended European search report (1) The European search report shall be accompanied by an opinion on whether the application and the invention to which it relates seem to meet the requirements of this Convention, unless a communication under Rule 71, paragraph 1 or 3, can be issued.[72] (2) The opinion under paragraph 1 shall not be published together with the search report.	**Rule 44a - Extended European search report** (1) The European search report shall be accompanied by an opinion on whether the application and the invention to which it relates seem to meet the requirements of this Convention, unless a communication under Rule 51, paragraph 2 or paragraph 4, can be issued. (2) The opinion under paragraph 1 shall not be published together with the search report.
Rule 63 - Incomplete search If the European Patent Office considers that the European patent application does not comply with this Convention to such an extent that it is impossible to carry out a meaningful search into the state of the art on the basis of all or some of the subject-matter claimed, it shall either issue a reasoned declaration to that effect or, as far as is practicable, draw up a partial search report. The declaration or the partial report shall be considered, for the purposes of subsequent proceedings, as the European search report.	**Rule 45 - Incomplete search** If the Search Division considers that the European patent application does not comply with the provisions of the Convention to such an extent that it is not possible to carry out a meaningful search into the state of the art on the basis of all or some of the claims, it shall either declare that search is not possible or shall, so far as is practicable, draw up a partial European search report. The declaration and the partial report referred to shall be considered, for the purposes of subsequent proceedings, as the European search report.

[72] See Notice from the European Patent Office dated 14 July 2007 concerning the programme for accelerated prosecution of European patent applications – "PACE" (Special edition No. 3 OJ EPO 2007, F.1., pp102-105)

Rule 64 - European search report where the invention lacks unity (1) If the European Patent Office considers that the European patent application does not comply with the requirement of unity of invention, it shall draw up a partial search report on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims. It shall inform the applicant that for the European search report to cover the other inventions, a further search fee must be paid, in respect of each invention involved, within a period to be specified [Rule 132], which shall neither be shorter than two weeks nor exceed six weeks. The European search report shall be drawn up for the parts of the application relating to inventions in respect of which search fees have been paid. [73] (2) Any fee paid under paragraph 1 shall be refunded if, during the examination of the European patent application, the applicant requests a refund and the Examining Division finds that the communication under paragraph 1 was not justified. [further processing not available: Rule 135(2)]	**Rule 46 - European search report where the invention lacks unity** (1) If the Search Division considers that the European patent application does not comply with the requirement of unity of invention, it shall draw up a partial European search report on those parts of the European patent application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims. It shall inform the applicant that if the European search report is to cover the other inventions, a further search fee must be paid, for each invention involved, within a period to be fixed by the Search Division which must not be shorter than two weeks and must not exceed six weeks. The Search Division shall draw up the European search report for those parts of the European patent application which relate to inventions in respect of which search fees have been paid. (2) Any fee which has been paid under paragraph 1 shall be refunded if, during the examination of the European patent application by the Examining Division, the applicant requests a refund and the Examining Division finds that the communication referred to in the said paragraph was not justified.
Rule 65 - Transmittal of the European search report Immediately after it has been drawn up, the European search report shall be transmitted to the applicant together with copies of any cited documents.	
Rule 66 - Definitive content of the abstract Upon drawing up the European search report, the European Patent Office shall determine the definitive content of the abstract and transmit it to the applicant together with the search report.	**Rule 47 - Definitive content of the abstract** (1) At the same time as drawing up the European search report, the Search Division shall determine the definitive content of the abstract. (2) The definitive content of the abstract shall be transmitted to the applicant together with the European search report.

[73] **G 2/92**: An applicant who fails to pay the further search fees for a non-unitary application when requested to do so by the Search Division under [Rule 64(1)] EPC cannot pursue that application for the subject-matter in respect of which no search fees have been paid. Such an applicant must file a divisional application in respect of such subject-matter if he wishes to seek protection for it.

Chapter III - Publication of the European patent application

Rule 67 - Technical preparations for publication	**Rule 48 - Technical preparations for publication**
(1) The President of the European Patent Office shall determine when the technical preparations for publication of the European patent application are deemed to have been completed.[74]	(1) The President of the European Patent Office shall determine when the technical preparations for publication of the European patent application are to be deemed to have been completed.
(2) The application shall not be published if it has been finally refused or withdrawn or is deemed to be withdrawn before the termination of the technical preparations for publication.	(2) The European patent application shall not be published if it has been finally refused or withdrawn or deemed to be withdrawn before the termination of the technical preparations for publication.
Rule 68 - Form of the publication of European patent applications and European search reports	**Rule 49 - Form of the publication of European patent applications and European search reports**
(1) The publication of the European patent application shall contain the description, the claims and any drawings as filed, and the abstract, or, if these documents making up the application were not filed in an official language of the European Patent Office, a translation in the language of the proceedings, and, in an annex, the European search report, where it is available before the termination of the technical preparations for publication. If the search report or the abstract is not published at the same time as the application, it shall be published separately.	(1) The President of the European Patent Office shall prescribe the form of the publication of the European patent application and the data which are to be included. The same shall apply where the European search report and the abstract are published separately. The President of the European Patent Office may lay down special conditions for the publication of the abstract.
(2) The President of the European Patent Office shall determine the form of the publication of the application and the data to be included.[75] The same shall apply where the European search report and the abstract are published separately.[76]	(2) The designated Contracting States shall be specified in the published European patent application.
(3) The designated Contracting States shall be indicated in the published application.	(3) If, before the termination of the technical preparations for publication of the European patent application, the claims have been amended pursuant to Rule 86, paragraph 2, the new or amended claims shall be included in the publication in addition to the original claims.
(4) If the patent claims were not filed on the date of filing of the application, this shall be indicated when the application is published. If, before the termination of the technical preparations for publication of the application, the claims have been amended under Rule 137, paragraph 2, the new or amended claims shall be included in the publication in addition to the claims as filed.	
Rule 69 - Information about publication	**Rule 50 - Information about publication**
(1) The European Patent Office shall inform the applicant of the date on which the European Patent Bulletin mentions the publication of the European search report and shall draw his attention to Rule 70, paragraph 1, and Article 94, paragraph	(1) The European Patent Office shall communicate to the applicant the date on which the European Patent Bulletin mentions the publication of the European search report and shall draw his attention in this communication to the

[74] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the completion of technical preparations for the publication of European patent applications (Special edition No. 3 OJ EPO 2007, D.1., p94)

[75] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of sequence listings (Special edition No. 3 OJ EPO 2007, C.1., pp26-29)

[76] See Decisions of the President of the European Patent Office dated 12 July 2007 concerning:

i) the filing of sequence listings (Special edition No. 3 OJ EPO 2007, C.1., pp26-29);

ii) the form of publication of European patent applications, European search reports and European patent specifications (Special edition No. 3 OJ EPO 2007, D.3., pp97-98);

iii) the summary listing of references cited by the applicant in European patent applications and European patent specifications (Special edition No. 3 OJ EPO 2007, D.4., p99);

2. (2) The applicant may not invoke the omission of the communication under paragraph 1. If a later date of publication is specified in the communication, that later date shall be the decisive date as regards the period for filing the request for examination, unless the error is obvious.	provisions of Article 94, paragraphs 2 and 3. (2) The applicant may not invoke the omission of the communication provided for in paragraph 1. If a later date than the date of the mention of the publication is specified in the communication, the later date shall be the decisive date as regards the time limit for filing the request for examination unless the error is apparent.

Chapter IV - Examination by the Examining Division

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Rule 70 - Request for examination (1) The applicant may request examination of the European patent application up to six months after the date on which the European Patent Bulletin mentions the publication of the European search report. The request may not be withdrawn. (2) If the request for examination has been filed before the European search report has been transmitted to the applicant, the European Patent Office shall invite the applicant to indicate, within a period to be specified [Rule 132], whether he wishes to proceed further with the application, and shall give him the opportunity to comment on the search report and to amend, where appropriate, the description, claims and drawings.[77] (3) If the applicant fails to reply in due time to the invitation under paragraph 2, the application shall be deemed to be withdrawn.	
Rule 71 - Examination procedure (1) In any communication under Article 94, paragraph 3, the Examining Division shall, where appropriate, invite the applicant to correct any deficiencies noted and to amend the description, claims and drawings within a period to be specified [Rule 132]. (2) Any communication under Article 94, paragraph 3, shall contain a reasoned statement covering, where appropriate, all the grounds against the grant of the European patent. (3) Before the Examining Division decides to grant the European patent, it shall inform the applicant of the text in which it intends to grant it, and shall invite him to pay the fees for grant and printing and to file a translation of the claims in the two official languages of the European Patent Office other than the language of the proceedings within a period of four months. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the text intended for grant. [78] [further processing applies, with fee: Rule 135(1)] (4) If the applicant, within the period laid down in paragraph 3, requests amendments under Rule 137, paragraph 3, or the correction of errors under Rule 139, he shall, where the claims are amended or corrected, file a translation of the	**Rule 51 - Examination procedure** (1) In the communication under Article 96, paragraph 1, the European Patent Office shall give the applicant an opportunity to comment on the European search report and to amend, where appropriate, the description, claims and drawings. (2) In any communication under Article 96, paragraph 2, the Examining Division shall, where appropriate, invite the applicant to correct the deficiencies noted and to amend the description, claims and drawings. (3) Any communication under Article 96, paragraph 2, shall contain a reasoned statement covering, where appropriate, all the grounds against the grant of the European patent. (4) Before the Examining Division decides to grant the European patent, it shall inform the applicant of the text in which it intends to grant it, and shall invite him to pay the fees for grant and printing and to file a translation of the claims in the two official languages of the European Patent Office other than the language of the proceedings within a non-extendable period to be specified, which may not be less than two months or more than four months. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the text

[77] Invitation can be waived, e.g. if requesting accelerated prosecution; see Notice from the European Patent Office dated 14 July 2007 concerning the programme for accelerated prosecution of European patent applications – "PACE" (Special edition No. 3 OJ EPO 2007, F.1., pp102-105)

[78] See Notice from the European Patent Office dated 14 July 2007 concerning the programme for accelerated prosecution of European patent applications – "PACE" (Special edition No. 3 OJ EPO 2007, F.1., pp102-105)

claims as amended or corrected. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the grant of the patent as amended or corrected.

(5) If the Examining Division does not consent to an amendment or correction requested under paragraph 4, it shall, before taking a decision, give the applicant an opportunity to submit, within a period to be specified [Rule 132], his observations and any amendments considered necessary by the Examining Division, and, where the claims are amended, a translation of the claims as amended. If the applicant submits such amendments, he shall be deemed to have approved the grant of the patent as amended[79]. If the European patent application is refused, withdrawn or deemed to be withdrawn, the fees for grant and printing, and any claims fees paid under paragraph 6, shall be refunded.

(6) If the European patent application in the text intended for grant comprises more than ten claims, the Examining Division shall invite the applicant to pay claims fees in respect of each additional claim within the period under paragraph 3, and, where applicable, paragraph 5, unless the said fees have already been paid under Rule 45 or Rule 162.

(7) If the fees for grant and printing or the claims fees are not paid in due time, or if the translation is not filed in due time, the European patent application shall be deemed to be withdrawn.

(8) If the designation fees become due after the communication under paragraph 3, the mention of the grant of the European patent shall not be published until the designation fees have been paid. The applicant shall be informed accordingly.

(9) If a renewal fee becomes due after the communication under paragraph 3 and before the next possible date for publication of the mention of the grant of the European patent, the mention shall not be published until the renewal fee has been paid. The applicant shall be informed accordingly.

(10) The communication under paragraph 3 shall indicate the designated Contracting States which require a translation under Article 65, paragraph 1.

(11) The decision to grant the European patent shall state which text of the European patent application forms the basis for the decision.

intended for grant.

(5) If the applicant, within the period laid down in paragraph 4, requests amendments under Rule 86, paragraph 3, or the correction of errors under Rule 88, he shall, where the claims are amended or corrected, file a translation of the claims as amended or corrected. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the grant of the patent as amended or corrected.

(6) If the Examining Division does not consent to an amendment or correction requested under paragraph 5, it shall, before taking a decision, give the applicant an opportunity to submit, within a period to be specified, his observations and any amendments considered necessary by the Examining Division, and, where the claims are amended, a translation of the claims as amended. If the applicant submits such amendments, he shall be deemed to have approved the grant of the patent as amended. If the European patent application is refused, withdrawn or deemed to be withdrawn, the fees for grant and printing, and any claims fees paid under paragraph 7, shall be refunded.

(7) If the European patent application in the text intended for grant comprises more than ten claims, the Examining Division shall invite the applicant to pay claims fees in respect of each additional claim within the period laid down in paragraph 4 unless these fees have already been paid under Rule 31, paragraph 1.

(8) If the fees for grant and printing or the claims fees are not paid in due time or if the translation is not filed in due time, the European patent application shall be deemed to be withdrawn.

(8a) If the designation fees become due after the communication under paragraph 4 has been notified, the mention of the grant of the European patent shall not be published until the designation fees have been paid. The applicant shall be informed accordingly.

(9) If a renewal fee becomes due after the communication under paragraph 4 has been notified and before the next possible date for publication of the mention of the grant of the European patent, the mention shall not be published until the renewal fee has been paid. The applicant shall be informed accordingly.

(10) The communication under paragraph 4 shall indicate the designated Contracting States which require a translation pursuant to Article 65, paragraph 1.

(11) The decision to grant the European patent shall state which text of the European patent application forms the basis for the grant of the European patent.

[79] **G 7/93**:
1. An approval of a notified text submitted by an applicant pursuant to [Rule 71(3) EPC] does not become binding once a communication in accordance with [Rule 71(5) EPC] has been issued. Following issue of such a communication under [Rule 71(5) EPC] and until issue of a decision to grant the patent, the Examining Division has a discretion under [Rule 137(3)], second sentence, EPC, whether or not to allow amendment of the application.
2. When exercising such discretion following issue of a communication under [Rule 71(5) EPC], an Examining Division must consider all relevant factors. In particular it must consider and balance the applicant's interest in obtaining a patent which is legally valid in all of the designated States, and the EPO's interest in bringing the examination procedure to a close by the issue of a decision to grant the patent. Having regard to the object underlying the issue of a communication under [Rule 71(5) EPC], which is to conclude the granting procedure on the basis of the previously approved text, the allowance of a request for amendment at that late stage in the granting procedure will be an exception rather than the rule.

Rule 72 - Grant of the European patent to different applicants Where different persons are recorded in the European Patent Register as applicants in respect of different Contracting States, the European Patent Office shall grant the European patent for each Contracting State accordingly.	**Rule 52 - Grant of the European patent to different applicants** Where different persons are entered in the Register of European Patents as applicants in respect of different Contracting States, the Examining Division shall grant the European patent for each Contracting State to the applicant or applicants registered in respect of that State.

Chapter V - The European patent specification

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Rule 73 - Content and form of the specification (1) The specification of the European patent shall include the description, the claims and any drawings. It shall also indicate the period for opposing the European patent. (2) The President of the European Patent Office shall determine the form of the publication of the specification and the data to be included.[80] (3) The designated Contracting States shall be indicated in the specification.	**Rule 53 - Technical preparations for publication and form of the specification of the European patent** Rules 48 and 49, paragraphs 1 and 2, shall apply mutatis mutandis to the specification of the European patent. The specification shall also contain an indication of the time limit for opposing the European patent.
Rule 74 - Certificate for a European patent As soon as the specification of the European patent has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for a European patent. The President of the European Patent Office shall prescribe the content, form and means of communication of the certificate and determine the circumstances in which an administrative fee is payable.[81]	**Rule 54 - Certificate for a European patent** As soon as the specification of the European patent has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for a European patent. The President of the European Patent Office shall prescribe the content, form and means of communication of the certificate and determine the circumstances in which an administrative fee is payable.

[80] See Decisions of the President of the European Patent Office dated 12 July 2007 concerning:
i) the filing of sequence listings (Special edition No. 3 OJ EPO 2007, C.1., pp26-29);
ii) the form of publication of European patent applications, European search reports and European patent specifications (Special edition No. 3 OJ EPO 2007, D.3., pp97-98);
iii) the summary listing of references cited by the applicant in European patent applications and European patent specifications (Special edition No. 3 OJ EPO 2007, D.4., p99).

[81] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the content, form and means of communication of the certificate for a European patent (Special edition No. 3 OJ EPO 2007, pp95-96)

PART V - IMPLEMENTING REGULATIONS TO PART V OF THE CONVENTION

Chapter I - Opposition procedure

Rule 75 - Surrender or lapse of the patent An opposition may be filed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.	
Rule 76 - Form and content of the opposition (1) Notice of opposition shall be filed in a written reasoned statement. (2) The notice of opposition shall contain: (a) particulars of the opponent as provided in Rule 41, paragraph 2(c); (b) the number of the European patent against which opposition is filed, the name of the proprietor of the patent and the title of the invention; (c) a statement of the extent to which the European patent is opposed and of the grounds on which the opposition is based, as well as an indication of the facts and evidence presented in support of these grounds; (d) if the opponent has appointed a representative, particulars as provided in Rule 41, paragraph 2(d). (3) Part III of the Implementing Regulations shall apply mutatis mutandis to the notice of opposition.	**Rule 55 - Content of the notice of opposition** The notice of opposition shall contain: (a) the name and address of the opponent and the State in which his residence or principal place of business is located, in accordance with the provisions of Rule 26, paragraph 2(c); (b) the number of the European patent against which opposition is filed, and the name of the proprietor and title of the invention; (c) a statement of the extent to which the European patent is opposed and of the grounds on which the opposition is based as well as an indication of the facts, evidence and arguments presented in support of these grounds; (d) if the opponent has appointed a representative, his name and the address of his place of business, in accordance with the provisions of Rule 26, paragraph 2(c).
Rule 77 - Rejection of the opposition as inadmissible (1) If the Opposition Division notes that the notice of opposition does not comply with the provisions of Article 99, paragraph 1, or Rule 76, paragraph 2(c), or does not sufficiently identify the patent against which opposition has been filed, it shall reject the opposition as inadmissible, unless these deficiencies have been remedied before expiry of the opposition period. (2) If the Opposition Division notes that the notice of opposition does not comply with provisions other than those referred to in paragraph 1, it shall communicate this to the opponent and shall invite him to remedy the deficiencies noted within a period to be specified [Rule 132]. If the deficiencies are not remedied in due time, the Opposition Division shall reject the opposition as inadmissible. (3) The decision to reject an opposition as inadmissible shall be communicated to the proprietor of the patent, together with a copy of the notice of opposition.	**Rule 56 - Rejection of the notice of opposition as inadmissible** (1) If the Opposition Division notes that the notice of opposition does not comply with the provisions of Article 99, paragraph 1, Rule 1, paragraph 1, and Rule 55, sub-paragraph (c), or does not provide sufficient identification of the patent against which opposition has been filed, it shall reject the notice of opposition as inadmissible unless these deficiencies have been remedied before expiry of the opposition period. (2) If the Opposition Division notes that the notice of opposition does not comply with provisions other than those mentioned in paragraph 1, it shall communicate this to the opponent and shall invite him to remedy the deficiencies noted within such period as it may specify. If the notice of opposition is not corrected in good time the Opposition Division shall reject it as inadmissible. (3) Any decision to reject a notice of opposition as inadmissible shall be communicated to the proprietor of the patent, together with a copy of the notice.
Rule 78 - Procedure where the proprietor of the patent is	**Rule 57 - Preparation of the examination of the**

not entitled (1) If a third party provides evidence, during opposition proceedings or during the opposition period, that he has instituted proceedings against the proprietor of the European patent, seeking a decision within the meaning of Article 61, paragraph 1, opposition proceedings shall be stayed unless the third party communicates to the European Patent Office in writing his consent to the continuation of such proceedings. Such consent shall be irrevocable. However, proceedings shall not be stayed until the Opposition Division has deemed the opposition admissible. Rule 14, paragraphs 2 to 4, shall apply mutatis mutandis. (2) Where a third party has, in accordance with Article 99, paragraph 4, replaced the previous proprietor for one or some of the designated Contracting States, the patent as maintained in opposition proceedings may, for these States, contain claims, a description and drawings different from those for the other designated States.	**opposition** (1) The Opposition Division shall communicate the opposition to the proprietor of the patent and shall invite him to file his observations and to file amendments, where appropriate, to the description, claims and drawings within a period to be fixed by the Opposition Division. (2) If several notices of opposition have been filed, the Opposition Division shall communicate them to the other opponents at the same time as the communication provided for under paragraph 1. (3) The observations and any amendments filed by the proprietor of the patent shall be communicated to the other parties concerned who shall be invited by the Opposition Division, if it considers it expedient, to reply within a period to be fixed by the Opposition Division. (4) In the case of a notice of intervention in opposition proceedings the Opposition Division may dispense with the application of paragraphs 1 to 3.
Rule 79 - Preparation of the examination of the opposition (1) The Opposition Division shall communicate the notice of opposition to the proprietor of the patent and shall give him the opportunity to file his observations and to amend, where appropriate, the description, claims and drawings within a period to be specified [Rule 132]. (2) If several notices of opposition have been filed, the Opposition Division shall communicate them to the other opponents at the same time as the communication under paragraph 1. (3) The Opposition Division shall communicate any observations and amendments filed by the proprietor of the patent to the other parties, and shall invite them, if it considers this expedient, to reply within a period to be specified [Rule 132]. (4) In the case of an intervention under Article 105, the Opposition Division may dispense with the application of paragraphs 1 to 3.	
Rule 80 - Amendment of the European patent Without prejudice to Rule 138, the description, claims and drawings may be amended, provided that the amendments are occasioned by a ground for opposition under Article 100, even if that ground has not been invoked by the opponent.	**Rule 57a - Amendment of the European patent** Without prejudice to Rule 87, the description, claims and drawings may be amended, provided that the amendments are occasioned by grounds for opposition specified in Article 100, even if the respective ground has not been invoked by the opponent.
Rule 81 - Examination of opposition (1) The Opposition Division shall examine those grounds for opposition which are invoked in the opponent's statement under Rule 76, paragraph 2(c). Grounds for opposition not invoked by the opponent may be examined by the Opposition Division of its own motion if they would prejudice the maintenance of the European patent. (2) Communications under Article 101, paragraph 1, second	**Rule 58 - Examination of opposition** (1) All communications issued pursuant to Article 101, paragraph 2, and all replies thereto shall be communicated to all parties. (2) In any communication to the proprietor of the European patent pursuant to Article 101, paragraph 2, he shall, where appropriate, be invited to file, where necessary, the description, claims and drawings in amended form.

sentence, and all replies thereto shall be sent to all parties. If the opposition division considers this expedient, it shall invite the parties to reply within a period to be specified [Rule 132]. (3) In any communication under Article 101, paragraph 1, second sentence, the proprietor of the European patent shall, where necessary, be given the opportunity to amend, where appropriate, the description, claims and drawings. Where necessary, the communication shall contain a reasoned statement covering the grounds against the maintenance of the European patent.	(3) Where necessary, any communication to the proprietor of the European patent pursuant to Article 101, paragraph 2, shall contain a reasoned statement. Where appropriate, this statement shall cover all the grounds against the maintenance of the European patent. (4) Before the Opposition Division decides on the maintenance of the European patent in the amended form, it shall inform the parties that it intends to maintain the patent as amended and shall invite them to state their observations within a period of two months if they disapprove of the text in which it is intended to maintain the patent. [→Rule 82] (5) If disapproval of the text communicated by the Opposition Division is expressed, examination of the opposition may be continued; otherwise, the Opposition Division shall, on expiry of the period referred to in paragraph 4, request the proprietor of the patent to pay, within three months, the fee for the printing of a new specification of the European patent and to file a translation of any amended claims in the two official languages of the European Patent Office other than the language of the proceedings. [→Rule 82] (6) If the acts requested under paragraph 5 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 within this two-month period a surcharge equal to twice the fee for printing a new specification of the European patent is paid. [→Rule 82] (7) The communication of the Opposition Division under paragraph 5 shall indicate the designated Contracting States which require a translation pursuant to Article 65, paragraph 1. [→Rule 82] (8) The decision to maintain the European patent as amended shall state which text of the European patent forms the basis for the maintenance thereof. [→Rule 82]
Rule 82 - Maintenance of the European patent in amended form (1) Before the Opposition Division decides to maintain the European patent as amended, it shall inform the parties of the text in which it intends to maintain the patent, and shall invite them to file their observations within two months if they disapprove of that text. [82] (2) If a party disapproves of the text communicated by the Opposition Division, examination of the opposition may be continued. Otherwise, the Opposition Division shall, on expiry of the period under paragraph 1, invite the proprietor of the patent to pay the prescribed fee and to file a translation of any amended claims in the official languages of the European Patent Office other than the language of the proceedings, within a period of three months. This invitation shall indicate the designated Contracting States which require a translation under Article 65, paragraph 1.	

[82] **G 1/88**: The fact that an opponent has failed, within the time allowed, to make any observations on the text in which it is intended to maintain the European patent after being invited to do so under [Rule 82(1) EPC] does not render his appeal inadmissible.

(3) If the acts required under paragraph 2 are not performed in due time, they may still be performed within two months of a communication concerning the failure to observe the time limit, provided that a surcharge is paid within this period. Otherwise, the patent shall be revoked.[83] (4) The decision to maintain the European patent as amended shall state which text of the patent forms the basis for the decision.	
Rule 83 - Request for documents Documents referred to by a party to opposition proceedings shall be filed together with the notice of opposition or the written submissions. If such documents are neither enclosed nor filed in due time upon invitation by the European Patent Office, it may decide not to take into account any arguments based on them.	**Rule 59 - Requests for documents** Documents referred to by a party to opposition proceedings shall be filed together with the notice of opposition or the written submissions in two copies. If such documents are neither enclosed nor filed in due time upon invitation by the European Patent Office, it may decide not to take into account any arguments based on them.
Rule 84 - Continuation of the opposition proceedings by the European Patent Office of its own motion (1) If the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States, the opposition proceedings may be continued at the request of the opponent filed within two months of a communication from the European Patent Office informing him of the surrender or lapse. (2) In the event of the death or legal incapacity of an opponent, the opposition proceedings may be continued by the European Patent Office of its own motion, even without the participation of the heirs or legal representatives. The same shall apply where the opposition is withdrawn.[84]	**Rule 60 - Continuation of the opposition proceedings by the European Patent Office of its own motion** (1) If the European patent has been surrendered or has lapsed for all the designated States, the opposition proceedings may be continued at the request of the opponent filed within two months as from a notification by the European Patent Office of the surrender or lapse. (2) In the event of the death or legal incapacity of an opponent, the opposition proceedings may be continued by the European Patent Office of its own motion, even without the participation of the heirs or legal representatives. The same shall apply when the opposition is withdrawn.
Rule 85 - Transfer of the European patent Rule 22 shall apply to any transfer of the European patent made during the opposition period or during opposition proceedings.	**Rule 61 - Transfer of the European patent** Rule 20 shall apply mutatis mutandis to any transfer of the European patent made during the opposition period or during opposition proceedings.
Rule 86 - Documents in opposition proceedings Part III of the Implementing Regulations shall apply mutatis mutandis to documents filed in opposition proceedings.	**Rule 61a - Documents in opposition proceedings** Part III, Chapter II, of the Implementing Regulations shall apply mutatis mutandis to documents filed in opposition proceedings.
Rule 87 - Content and form of the new specification of the European patent The new specification of the European patent shall include the description, claims and drawings as amended. Rule 73, paragraphs 2 and 3, and Rule 74 shall apply.[85]	**Rule 62 - Form of the new specification of the European patent in opposition proceedings** Rule 49, paragraphs 1 and 2, shall apply mutatis mutandis to the new specification of the European patent. **Rule 62a - New certificate for a European patent** Rule 54 shall apply mutatis mutandis to the new specification of the European patent.
Rule 88 - Costs	**Rule 63 - Costs**

[83] **G 1/90**: The revocation of a patent under [Rule 82(3) EPC] requires a decision.
[84] **G 7/91 & 8/91**: In so far as the substantive issues settled by the contested decision at first instance are concerned, appeal proceedings are terminated, in ex parte and inter partes proceedings alike, when the sole appellant withdraws the appeal.
[85] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the content, form and means of communication of the certificate for a European patent (Special edition No. 3 OJ EPO 2007, D.3., pp95-96)

(1) The apportionment of costs shall be dealt with in the decision on the opposition. Such apportionment shall only take into consideration the expenses necessary to assure proper protection of the rights involved. The costs shall include the remuneration of the representatives of the parties. (2) The Opposition Division shall, on request, fix the amount of costs to be paid under a final decision apportioning them. A bill of costs, with supporting evidence, shall be attached to the request. Costs may be fixed once their credibility is established. (3) A request for a decision by the Opposition Division may be filed within one month of the communication on the fixing of costs under paragraph 2. The request shall be filed in writing and state the grounds on which it is based. It shall not be deemed to be filed until the prescribed fee has been paid.	(1) Apportionment of costs shall be dealt with in the decision on the opposition. Such apportionment shall only take into consideration the expenses necessary to assure proper protection of the rights involved. The costs shall include the remuneration of the representatives of the parties. (2) A bill of costs, with supporting evidence, shall be attached to the request for the fixing of costs. The request shall only be admissible if the decision in respect of which the fixing of costs is required has become final. Costs may be fixed once their credibility is established. (3) The request for a decision by the Opposition Division on the awarding of costs by the registry, stating the reasons on which it is based, must be filed in writing to the European Patent Office within one month after the date of notification of the awarding of costs. It shall not be deemed to be filed until the fee for the awarding of costs has been paid. (4) The Opposition Division shall take a decision on the request referred to in paragraph 3 without oral proceedings.
	[for Rules 64-79, see Rules 99-128]
Rule 89 - Intervention of the assumed infringer (1) Notice of intervention shall be filed within three months of the date on which proceedings referred to in Article 105 are instituted. (2) Notice of intervention shall be filed in a written reasoned statement; Rules 76 and 77 shall apply mutatis mutandis. The notice of intervention shall not be deemed to have been filed until the opposition fee has been paid.	

Chapter II - Procedure for limitation or revocation

Rule 90 - Subject of proceedings The subject of limitation or revocation proceedings under Article 105a shall be the European patent as granted or as amended in opposition or limitation proceedings before the European Patent Office.	
Rule 91 - Responsibility for proceedings Decisions on requests for limitation or revocation of the European patent under Article 105a shall be taken by the Examining Division. Article 18, paragraph 2, shall apply mutatis mutandis.	
Rule 92 - Requirements of the request (1) The request for limitation or revocation of a European patent shall be filed in writing. Part III of the Implementing Regulations shall apply mutatis mutandis to documents filed in limitation or revocation proceedings. (2) The request shall contain: (a) particulars of the proprietor of the European patent making the request (the requester) as provided in Rule 41, paragraph 2(c), and an indication of the Contracting States for which the requester is the proprietor of the patent;	

(b) the number of the patent whose limitation or revocation is requested, and a list of the Contracting States in which the patent has taken effect;

(c) where appropriate, the names and addresses of the proprietors of the patent for those Contracting States in which the requester is not the proprietor of the patent, and evidence that the requester is entitled to act on their behalf in the proceedings;

(d) where limitation of the patent is requested, the complete version of the amended claims and, as the case may be, of the amended description and drawings;

(e) where the requester has appointed a representative, particulars as provided in Rule 41, paragraph 2(d).

Rule 93 - Precedence of opposition proceedings

(1) The request for limitation or revocation shall be deemed not to have been filed if opposition proceedings in respect of the patent are pending at the time of filing the request.

(2) If, at the time of filing an opposition to a European patent, limitation proceedings in respect of that patent are pending, the Examining Division shall terminate the limitation proceedings and order the reimbursement of the limitation fee. The reimbursement shall also be ordered in respect of the fee referred to in Rule 95, paragraph 3, first sentence, if the requester has already paid this fee.

Rule 94 - Rejection of the request as inadmissible

If the Examining Division finds that the request for limitation or revocation fails to comply with the requirements of Rule 92, it shall invite the requester to correct the deficiencies noted, within a period to be specified [Rule 132]. If the deficiencies are not corrected in due time, the Examining Division shall reject the request as inadmissible.

Rule 95 - Decision on the request

(1) If a request for revocation is admissible, the Examining Division shall revoke the patent and communicate this to the requester.

(2) If a request for limitation is admissible, the Examining Division shall examine whether the amended claims constitute a limitation vis-à-vis the claims as granted or amended in opposition or limitation proceedings and comply with Article 84 and Article 123, paragraphs 2 and 3. If the request does not comply with these requirements, the Examining Division shall give the requester one opportunity to correct any deficiencies noted, and to amend the claims and, where appropriate, the description and drawings, within a period to be specified [Rule 132].

(3) If a request for limitation is allowable under paragraph 2, the Examining Division shall communicate this to the requester and invite him to pay the prescribed fee and to file a translation of the amended claims in the official languages of the European Patent Office other than the language of the

proceedings, within a period of three months; Rule 82, paragraph 3, first sentence, shall apply mutatis mutandis. If the requester performs these acts in due time, the Examining Division shall limit the patent. [surcharge applies] (4) If the requester does not respond in due time to the communication issued under paragraph 2, or if the request for limitation is not allowable, or if the requester fails to perform the acts required under paragraph 3 in due time, the Examining Division shall reject the request.	
Rule 96 - Content and form of the amended European patent specification The amended European patent specification shall include the description, claims and drawings as amended. Rule 73, paragraphs 2 and 3, and Rule 74 shall apply.[86]	

[86] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the content, form and means of communication of the certificate for a European patent(Special edition No. 3 OJ EPO 2007, D.2., pp95-96)

PART VI - IMPLEMENTING REGULATIONS TO PART VI OF THE CONVENTION

Chapter I - Appeals procedure

Rule 97 - Appeal against apportionment and fixing of costs (1) The apportionment of costs of opposition proceedings cannot be the sole subject of an appeal. (2) A decision fixing the amount of costs of opposition proceedings cannot be appealed unless the amount exceeds that of the fee for appeal.	
Rule 98 - Surrender or lapse of the patent The decision of an Opposition Division may be appealed even if the European patent has been surrendered in all the designated Contracting States or has lapsed in all those States.	
Rule 99 - Content of the notice of appeal and the statement of grounds (1) The notice of appeal shall contain: (a) the name and the address of the appellant as provided in Rule 41, paragraph 2(c); (b) an indication of the decision impugned; and (c) a request defining the subject of the appeal. (2) In the statement of grounds of appeal the appellant shall indicate the reasons for setting aside the decision impugned, or the extent to which it is to be amended, and the facts and evidence on which the appeal is based.[87] (3) Part III of the Implementing Regulations shall apply mutatis mutandis to the notice of appeal, the statement of grounds and the documents filed in appeal proceedings.	**Rule 64 - Content of the notice of appeal** The notice of appeal shall contain: (a) the name and address of the appellant in accordance with the provisions of Rule 26, paragraph 2(c); (b) a statement identifying the decision which is impugned and the extent to which amendment or cancellation of the decision is requested.
Rule 100 - Examination of appeals (1) Unless otherwise provided, the provisions relating to proceedings before the department which has taken the decision impugned shall apply to appeal proceedings. (2) In the examination of the appeal, the Board of Appeal shall invite the parties, as often as necessary, to file observations, within a period to be specified [Rule 132], on communications issued by itself or observations submitted by another party. (3) If the applicant fails to reply in due time to an invitation under paragraph 2, the European patent application shall be	

[87] **G 1/86**: Article 122 EPC is not to be interpreted as being applicable only to the applicant and patent proprietor. An appellant as opponent may have his rights re-established under Article 122 EPC if he has failed to observe the time limit for filing the statement of grounds of appeal.

deemed to be withdrawn, unless the decision impugned was taken by the Legal Division.	
Rule 101 - Rejection of the appeal as inadmissible (1) If the appeal does not comply with Articles 106 to 108, Rule 97 or Rule 99, paragraph 1(b) or (c) or paragraph 2, the Board of Appeal shall reject it as inadmissible, unless any deficiency has been remedied before the relevant period under Article 108 has expired. (2) If the Board of Appeal notes that the appeal does not comply with Rule 99, paragraph 1(a), it shall communicate this to the appellant and shall invite him to remedy the deficiencies noted within a period to be specified [Rule 132]. If the deficiencies are not remedied in due time, the Board of Appeal shall reject the appeal as inadmissible.	**Rule 65 - Rejection of the appeal as inadmissible** (1) If the appeal does not comply with Articles 106 to 108 and with Rule 1, paragraph 1, and Rule 64, sub-paragraph (b), the Board of Appeal shall reject it as inadmissible, unless each deficiency has been remedied before the relevant time limit laid down in Article 108 has expired. (2) If the Board of Appeal notes that the appeal does not comply with the provisions of Rule 64, sub-paragraph (a), it shall communicate this to the appellant and shall invite him to remedy the deficiencies noted within such period as it may specify. If the appeal is not corrected in good time, the Board of Appeal shall reject it as inadmissible.
Rule 102 - Form of decision of the Board of Appeal The decision shall be authenticated by the Chairman of the Board of Appeal and by the competent employee of the registry of the Board of Appeal, either by their signature or by any other appropriate means. The decision shall contain: (a) a statement that it was delivered by the Board of Appeal; (b) the date when the decision was taken; (c) the names of the Chairman and of the other members of the Board of Appeal taking part; (d) the names of the parties and their representatives; (e) the requests of the parties; (f) a summary of the facts; (g) the reasons; (h) the order of the Board of Appeal, including, where appropriate, a decision on costs.	**Rule 66 - Examination of appeals** (1) Unless otherwise provided, the provisions relating to proceedings before the department which has made the decision from which the appeal is brought shall be applicable to appeal proceedings mutatis mutandis. [→Rule 100(1)] (2) The decision shall be authenticated by the Chairman of the Board of Appeal and by the competent employee of the registry of the Board of Appeal, either by their signature or by any other appropriate means. The decision shall contain: (a) a statement that it is delivered by the Board of Appeal; (b) the date when the decision was taken; (c) the names of the Chairman and of the other members of the Board of Appeal taking part; (d) the names of the parties and their representatives; (e) a statement of the issues to be decided; (f) a summary of the facts; (g) the reasons; (h) the order of the Board of Appeal, including, where appropriate, a decision on costs.
Rule 103 - Reimbursement of appeal fees (1) The appeal fee shall be reimbursed (a) in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, or (b) if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired. (2) The department whose decision is impugned shall order the reimbursement if it revises its decision and considers	**Rule 67 - Reimbursement of appeal fees** The reimbursement of appeal fees shall be ordered in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation. In the event of interlocutory revision, reimbursement shall be ordered by the department whose decision has been impugned and, in other cases, by the Board of Appeal.

reimbursement equitable by reason of a substantial procedural violation. In all other cases, matters of reimbursement shall be decided by the Board of Appeal.

Chapter II - Petitions for review by the Enlarged Board of Appeal

Rule 104 - Further fundamental procedural defects

A fundamental procedural defect under Article 112a, paragraph 2(d), may have occurred where the Board of Appeal,

(a) contrary to Article 116, failed to arrange for the holding of oral proceedings requested by the petitioner, or

(b) decided on the appeal without deciding on a request relevant to that decision.

Rule 105 - Criminal acts

A petition for review may be based on Article 112a, paragraph 2(e), if a competent court or authority has finally established that the criminal act occurred; a conviction is not necessary.

Rule 106 - Obligation to raise objections

A petition under Article 112a, paragraph 2(a) to (d), is only admissible where an objection in respect of the procedural defect was raised during the appeal proceedings and dismissed by the Board of Appeal, except where such objection could not be raised during the appeal proceedings.

Rule 107 - Contents of the petition for review

(1) The petition shall contain:

(a) the name and the address of the petitioner as provided in Rule 41, paragraph 2(c);

(b) an indication of the decision to be reviewed.

(2) The petition shall indicate the reasons for setting aside the decision of the Board of Appeal, and the facts and evidence on which the petition is based.

(3) Part III of the Implementing Regulations shall apply mutatis mutandis to the petition for review and the documents filed in the proceedings.

Rule 108 - Examination of the petition

(1) If the petition does not comply with Article 112a, paragraphs 1, 2 or 4, Rule 106 or Rule 107, paragraph 1(b) or 2, the Enlarged Board of Appeal shall reject it as inadmissible, unless any defect has been remedied before the relevant period under Article 112a, paragraph 4, expires.

(2) If the Enlarged Board of Appeal notes that the petition does not comply with Rule 107, paragraph 1(a), it shall communicate this to the petitioner and shall invite him to remedy the deficiencies noted within a period to be specified

[Rule 132]. If the deficiencies are not remedied in due time, the Enlarged Board of Appeal shall reject the petition as inadmissible.

(3) If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision of the Board of Appeal and order the re-opening of the proceedings before the Board of Appeal responsible under Rule 12, paragraph 4. The Enlarged Board of Appeal may order that members of the Board of Appeal who participated in taking the decision set aside shall be replaced.

Rule 109 - Procedure in dealing with petitions for review

(1) In proceedings under Article 112a, the provisions relating to proceedings before the Boards of Appeal shall apply, unless otherwise provided. Rule 115, paragraph 1, second sentence, Rule 118, paragraph 2, first sentence, and Rule 132, paragraph 2, shall not apply. The Enlarged Board of Appeal may specify a period deviating from Rule 4, paragraph 1, first sentence.

(2) The Enlarged Board of Appeal

(a) consisting of two legally qualified members and one technically qualified member shall examine all petitions for review and shall reject those which are clearly inadmissible or unallowable; such decision shall require unanimity;

(b) consisting of four legally qualified members and one technically qualified member shall decide on any petition not rejected under sub-paragraph (a).

(3) The Enlarged Board of Appeal composed according to paragraph 2(a) shall decide without the involvement of other parties and on the basis of the petition.

Rule 110 - Reimbursement of the fee for petitions for review

The Enlarged Board of Appeal shall order the reimbursement of the fee for a petition for review if the proceedings before the Boards of Appeal are reopened.

PART VII - IMPLEMENTING REGULATIONS TO PART VII OF THE CONVENTION

Chapter I - Decisions and communications of the European Patent Office

Rule 111 - Form of decisions (1) Where oral proceedings are held before the European Patent Office, the decision may be given orally. The decision shall subsequently be put in writing and notified to the parties.[88] (2) Decisions of the European Patent Office which are open to appeal shall be reasoned and shall be accompanied by a communication pointing out the possibility of appeal and drawing the attention of the parties to Articles 106 to 108, the text of which shall be attached. The parties may not invoke the omission of the communication.	**Rule 68 - Form of decisions** (1) Where oral proceedings are held before the European Patent Office, the decision may be given orally. Subsequently the decision in writing shall be notified to the parties. (2) Decisions of the European Patent Office which are open to appeal shall be reasoned and shall be accompanied by a written communication of the possibility of appeal. The communication shall also draw the attention of the parties to the provisions laid down in Articles 106 to 108, the text of which shall be attached. The parties may not invoke the omission of the communication.
Rule 112 - Noting of loss of rights (1) If the European Patent Office notes that a loss of rights has occurred, without any decision concerning the refusal of the European patent application or the grant, revocation or maintenance of the European patent, or the taking of evidence, it shall communicate this to the party concerned. (2) If the party concerned considers that the finding of the European Patent Office is inaccurate, it may, within two months of the communication under paragraph 1, apply for a decision on the matter. The European Patent Office shall take such decision only if it does not share the opinion of the party requesting it; otherwise, it shall inform that party. [further processing for r112(2) not available: Rule 135(2)]	**Rule 69 - Noting of loss of rights** (1) If the European Patent Office notes that the loss of any right results from the Convention, without any decision concerning the refusal of the European patent application or the grant, revocation or maintenance of the European patent, or the taking of evidence, it shall communicate this to the person concerned in accordance with the provisions of Article 119. (2) If the person concerned considers that the finding of the European Patent Office is inaccurate, he may, within two months after notification of the communication referred to in paragraph 1, apply for a decision on the matter by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it; otherwise the European Patent Office shall inform the person requesting the decision.
Rule 113 - Signature, name, seal (1) Any decisions, summonses, notices and communications from the European Patent Office shall be signed by, and state the name of, the employee responsible. (2) Where a document referred to in paragraph 1 is produced by the employee responsible using a computer, a seal may replace the signature. Where the document is produced automatically by a computer, the employee's name may also be dispensed with. The same shall apply to pre-printed notices and communications.	**Rule 70 - Signature, name, seal** (1) Any decision, communication and notice from the European Patent Office is to be signed by and to state the name of the employee responsible. (2) Where the documents mentioned in paragraph 1 are produced by the employee responsible using a computer, a seal may replace the signature. Where the documents are produced automatically by a computer the employee's name may also be dispensed with. The same applies to pre-printed notices and communications.

[88] **G 12/91**: The decision-making process following written proceedings is completed on the date the decision to be notified is handed over to the EPO postal service by the decision-taking department's formalities section.

Chapter II - Observations by third parties

Rule 114 - Observations by third parties (1) Any observations by a third party [Article 115] shall be filed in writing in an official language of the European Patent Office and state the grounds on which they are based. Rule 3, paragraph 3, shall apply. (2) Any such observations shall be communicated to the applicant for or proprietor of the patent, who may comment on them.	

Chapter III - Oral proceedings and taking of evidence

Rule 115 - Summons to oral proceedings (1) The parties shall be summoned to oral proceedings under Article 116, drawing their attention to paragraph 2 of this Rule. At least two months' notice of the summons shall be given, unless the parties agree to a shorter period. (2) If a party duly summoned to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without that party.	**Rule 71 - Summons to oral proceedings** (1) The parties shall be summoned to oral proceedings provided for in Article 116 and their attention shall be drawn to paragraph 2 of this Rule. At least two months' notice of the summons shall be given unless the parties agree to a shorter period. (2) If a party who has been duly summoned to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without him.
Rule 116 - Preparation of oral proceedings (1) When issuing the summons, the European Patent Office shall draw attention to the points which in its opinion need to be discussed for the purposes of the decision to be taken. At the same time a final date for making written submissions in preparation for the oral proceedings shall be fixed. Rule 132 shall not apply. New facts and evidence presented after that date need not be considered, unless admitted on the grounds that the subject of the proceedings has changed.[89] (2) If the applicant or patent proprietor has been notified of the grounds prejudicing the grant or maintenance of the patent, he may be invited to submit, by the date specified in paragraph 1, second sentence, documents which meet the requirements of the Convention. Paragraph 1, third and fourth sentences, shall apply mutatis mutandis.	**Rule 71a - Preparation of oral proceedings** (1) When issuing the summons, the European Patent Office shall draw attention to the points which in its opinion need to be discussed for the purposes of the decision to be taken. At the same time a final date for making written submissions in preparation for the oral proceedings shall be fixed. Rule 84 shall not apply. New facts and evidence presented after that date need not be considered, unless admitted on the grounds that the subject of the proceedings has changed. (2) If the applicant or patent proprietor has been notified of the grounds prejudicing the grant or maintenance of the patent, he may be invited to submit, by the date specified in paragraph 1, second sentence, documents which meet the requirements of the Convention. Paragraph 1, third and fourth sentences, shall apply mutatis mutandis.
Rule 117 - Decision on taking of evidence Where the European Patent Office considers it necessary to hear a party, witness or expert, or to carry out an inspection, it shall take a decision to this end, setting out the investigation which it intends to carry out, relevant facts to be proved and the date, time and place of the investigation. If the hearing of a witness or expert is requested by a party, the decision shall specify the period within which the requester must make known the name and address of any witness or expert concerned.	**Rule 72 - Taking of evidence by the European Patent Office** (1) Where the European Patent Office considers it necessary to hear the oral evidence of parties, witnesses or experts or to carry out an inspection, it shall make a decision to this end, setting out the investigation which it intends to carry out, relevant facts to be proved and the date, time and place of the investigation. If oral evidence of witnesses and experts is requested by a party, the decision of the European Patent Office shall determine the period of time within

[89] **G 6/95**: [Rule 116(1)] EPC does not apply to the boards of appeal.

	which the party filing the request must make known to the European Patent Office the names and addresses of the witnesses and experts whom it wishes to be heard. (2) At least two months' notice of a summons issued to a party, witness or expert to give evidence shall be given unless they agree to a shorter period. The summons shall contain: (a) an extract from the decision mentioned in paragraph 1, indicating in particular the date, time and place of the investigation ordered and stating the facts regarding which parties, witnesses and experts are to be heard; (b) the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Rule 74, paragraphs 2 to 4; (c) an indication that the party, witness or expert may request to be heard by the competent court of his country of residence and a requirement that he inform the European Patent Office within a time limit to be fixed by the Office whether he is prepared to appear before it. [→Rule 118] (3) Before a party, witness or expert may be heard, he shall be informed that the European Patent Office may request the competent court in the country of residence of the person concerned to re-examine his evidence on oath or in an equally binding form. [→Rule 119] (4) The parties may attend an investigation and may put relevant questions to the testifying parties, witnesses and experts. [→Rule 119]
Rule 118 - Summons to give evidence before the European Patent Office (1) A summons to give evidence before the European Patent Office shall be issued to the parties, witnesses or experts concerned. (2) At least two months' notice of a summons issued to a party, witness or expert to testify shall be given, unless they agree to a shorter period. The summons shall contain: (a) an extract from the decision under Rule 117, indicating the date, time and place of the investigation ordered and stating the facts in respect of which parties, witnesses or experts are to be heard; (b) the names of the parties and particulars of the rights which the witnesses or experts may invoke under Rule 122, paragraphs 2 to 4; (c) an indication that the party, witness or expert may request to be heard by a competent court of his country of residence under Rule 120, and an invitation to inform the European Patent Office, within a period to be specified [Rule 132], whether he is prepared to appear before it.	
Rule 119 - Examination of evidence before the European Patent Office (1) The Examining Division, Opposition Division or Board of Appeal may commission one of its members to examine	

the evidence adduced. (2) Before a party, witness or expert may be heard, he shall be informed that the European Patent Office may request the competent court in the country of residence of the person concerned to re-examine his testimony under oath or in an equally binding form. (3) The parties may attend an investigation and may put relevant questions to the testifying party, witness or expert.	
Rule 120 - Hearing by a competent national court (1) A party, witness or expert who is summoned before the European Patent Office may request the latter to allow him to be heard by a competent court in his country of residence. If this is requested, or if no reply is received within the period specified in the summons, the European Patent Office may, in accordance with Article 131, paragraph 2, request the competent court to hear the person concerned. (2) If a party, witness or expert has been heard by the European Patent Office, the latter may, if it considers it advisable for the testimony to be given under oath or in an equally binding form, issue a request under Article 131, paragraph 2, to the competent court in the country of residence of the person concerned to re-examine his testimony under such conditions. (3) When the European Patent Office requests a competent court to take evidence, it may request the court to take the evidence under oath or in an equally binding form and to permit a member of the department concerned to attend the hearing and question the party, witness or expert, either through the intermediary of the court or directly.	
Rule 121 - Commissioning of experts (1) The European Patent Office shall decide in what form the opinion of an expert whom it appoints shall be submitted. (2) The terms of reference of the expert shall include: (a) a precise description of his task; (b) the period specified for the submission of his opinion; (c) the names of the parties to the proceedings; (d) particulars of the rights which he may invoke under Rule 122, paragraphs 2 to 4. (3) A copy of any written opinion shall be submitted to the parties. (4) The parties may object to an expert. The department of the European Patent Office concerned shall decide on the objection.	**Rule 73 - Commissioning of experts** (1) The European Patent Office shall decide in what form the report made by an expert whom it appoints shall be submitted. (2) The terms of reference of the expert shall include: (a) a precise description of his task; (b) the time limit laid down for the submission of the expert report; (c) the names of the parties to the proceedings; (d) particulars of the rights which he may invoke under the provisions of Rule 74, paragraphs 2 to 4. (3) A copy of any written report shall be submitted to the parties. (4) The parties may object to an expert. The department of the European Patent Office concerned shall decide on the objection.
Rule 122 - Costs of taking of evidence (1) The taking of evidence by the European Patent Office	**Rule 74 - Costs of taking of evidence** (1) The taking of evidence by the European Patent Office

may be made conditional upon deposit with it, by the party requesting the evidence to be taken, of an amount to be fixed by reference to an estimate of the costs. (2) Witnesses or experts who are summoned by and appear before the European Patent Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance for these expenses may be granted to them. This shall also apply to persons who appear before the European Patent Office without being summoned by it and are heard as witnesses or experts. (3) Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks. (4) The Administrative Council shall lay down the details implementing paragraphs 2 and 3. Any amounts due under these provisions shall be paid by the European Patent Office.	may be made conditional upon deposit with it, by the party who requested the evidence to be taken, of a sum the amount of which shall be fixed by reference to an estimate of the costs. (2) Witnesses and experts who are summoned by and appear before the European Patent Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance for these expenses may be granted to them. The first sentence shall apply to witnesses and experts who appear before the European Patent Office without being summoned by it and are heard as witnesses or experts. (3) Witnesses entitled to reimbursement under paragraph 2 shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks. (4) The Administrative Council shall lay down the details governing the implementation of the provisions of paragraphs 2 and 3. Payment of amounts due pursuant to these paragraphs shall be made by the European Patent Office.
Rule 123 - Conservation of evidence (1) On request, the European Patent Office may, without delay, take measures to conserve evidence of facts liable to affect a decision which it may be called upon to take with regard to a European patent application or a European patent, where there is reason to fear that it might subsequently become more difficult or even impossible to take evidence. The date on which the measures are to be taken shall be communicated to the applicant for or proprietor of the patent in sufficient time to allow him to attend. He may ask relevant questions. (2) The request shall contain: (a) particulars of the requester as provided in Rule 41, paragraph 2(c); (b) sufficient identification of the European patent application or European patent in question; (c) an indication of the facts in respect of which evidence is to be taken; (d) particulars of the means of giving or obtaining evidence; (e) a statement establishing a prima facie case for fearing that it might subsequently become more difficult or impossible to take evidence. (3) The request shall not be deemed to have been filed until the prescribed fee has been paid. (4) The decision on the request and any resulting taking of evidence shall be incumbent upon the department of the European Patent Office which would have to take the decision liable to be affected by the facts to be established. The provisions with regard to the taking of evidence in proceedings before the European Patent Office shall apply.	**Rule 75 - Conservation of evidence** (1) On request, the European Patent Office may, without delay, hear oral evidence or conduct inspections, with a view to conserving evidence of facts liable to affect a decision which it may be called upon to take with regard to an existing European patent application or a European patent, where there is reason to fear that it might subsequently become more difficult or even impossible to take evidence. The date on which the measures are to be taken shall be communicated to the applicant for or proprietor of the patent in sufficient time to allow him to attend. He may ask relevant questions. (2) The request shall contain: (a) the name and address of the person filing the request and the State in which his residence or principal place of business is located, in accordance with the provisions of Rule 26, paragraph 2(c); (b) sufficient identification of the European patent application or European patent in question; (c) the designation of the facts in respect of which evidence is to be taken; (d) particulars of the way in which evidence is to be taken; (e) a statement establishing a prima facie case for fearing that it might subsequently become more difficult or impossible to take evidence. (3) The request shall not be deemed to have been filed until the fee for conservation of evidence has been paid. (4) The decision on the request and any resulting taking of evidence shall be incumbent upon the department of the European Patent Office required to take the decision liable

	to be affected by the facts to be established. The provisions of the Convention with regard to the taking of evidence in proceedings before the European Patent Office shall be applicable.
Rule 124 - Minutes of oral proceedings and of taking of evidence (1) Minutes of oral proceedings and of the taking of evidence shall be drawn up, containing the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties, the testimony of the parties, witnesses or experts and the result of any inspection. (2) The minutes of the testimony of a witness, expert or party shall be read out, submitted to him, so that he may examine them or, where they are recorded by technical means, played back to him, unless he waives this right. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. If his approval is not given, his objections shall be noted. It is not necessary to play back the minutes or to obtain approval of them if the testimony has been recorded verbatim and directly using technical means. (3) The minutes shall be signed by the employee responsible for drawing them up and by the employee who conducted the oral proceedings or taking of evidence. (4) The parties shall be provided with a copy of the minutes.	**Rule 76 - Minutes of oral proceedings and of taking of evidence** (1) Minutes of oral proceedings and of the taking of evidence shall be drawn up containing the essentials of the oral proceedings or of the taking of evidence, the relevant statements made by the parties, the testimony of the parties, witnesses or experts and the result of any inspection. (2) The minutes of the testimony of a witness, expert or party shall be read out or submitted to him so that he may examine them. It shall be noted in the minutes that this formality has been carried out and that the person who gave the testimony approved the minutes. If his approval is not given, his objections shall be noted. (3) The minutes shall be authenticated by the employee who drew them up and by the employee who conducted the oral proceedings or taking of evidence, either by their signature or by any other appropriate means. (4) The parties shall be provided with a copy of the minutes.

Chapter IV - Notifications

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Rule 125 - General provisions (1) In proceedings before the European Patent Office, any notification to be made shall take the form of the original document, a copy thereof certified by or bearing the seal of the European Patent Office, or a computer print-out bearing such seal. Copies of documents emanating from the parties themselves shall not require such certification. (2) Notification shall be made: (b) by technical means of communication in accordance with Rule 127; (c) by delivery on the premises of the European Patent Office in accordance with Rule 128; or (d) by public notice in accordance with Rule 129. (3) Notification through the central industrial property office of a Contracting State shall be made in accordance with the law applicable to that office in national proceedings. (4) Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt.	**Rule 77 - General provisions on notifications** (1) In proceedings before the European Patent Office, any notification to be made shall take the form either of the original document, a copy thereof certified by, or bearing the seal of, the European Patent Office or a computer print-out bearing such seal. Copies of documents emanating from the parties themselves shall not require such certification. (2) Notification shall be made: (a) by post in accordance with Rule 78; (b) by delivery on the premises of the European Patent Office in accordance with Rule 79; (c) by public notice in accordance with Rule 80, or (d) by such technical means of communication as determined by the President of the European Patent Office and under the conditions laid down by him governing their use. (3) Notification through the central industrial property office of a Contracting State shall be made in accordance with the provisions applicable to the said office in national proceedings.

Rule 126 - Notification by post (1) Decisions incurring a period for appeal or a petition for review, summonses and other such documents as determined by the President of the European Patent Office shall be notified by registered letter with advice of delivery. All other notifications by post shall be by registered letter. (2) Where notification is effected by registered letter, whether or not with advice of delivery, such letter shall be deemed to be delivered to the addressee on the tenth day following its posting, unless it has failed to reach the addressee or has reached him at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office 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. (3) Notification by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if acceptance of the letter has been refused. (4) To the extent that notification by post is not covered by paragraphs 1 to 3, the law of the State in which the notification is made shall apply.	**Rule 78 - Notification by post** (1) Decisions incurring a time limit for appeal, summonses and other documents as decided on by the President of the European Patent Office shall be notified by registered letter with advice of delivery. All other notifications by post shall be by registered letter. (2) Where notification is effected by registered letter, whether or not with advice of delivery, this shall be deemed to be delivered to the addressee on the tenth day following its posting, unless the letter has failed to reach the addressee or has reached him at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office 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. (3) Notification by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if acceptance of the letter has been refused. (4) To the extent that notification by post is not covered by paragraphs 1 to 3, the law of the State on the territory of which the notification is made shall apply.
Rule 127 - Notification by technical means of communication Notification may be effected by such technical means of communication as are determined by the President of the European Patent Office and under the conditions laid down by him.	
Rule 128 - Notification by delivery by hand Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have been effected even if the addressee refuses to accept the document or to acknowledge receipt thereof.	**Rule 79 - Notification by delivery by hand** Notification may be effected on the premises of the European Patent Office by delivery by hand of the document to the addressee, who shall on delivery acknowledge its receipt. Notification shall be deemed to have taken place even if the addressee refuses to accept the document or to acknowledge receipt thereof.
Rule 129 - Public notification (1) If the address of the addressee cannot be established, or if notification in accordance with Rule 126, paragraph 1, has proved to be impossible even after a second attempt, notification shall be effected by public notice. (2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on expiry of which the document shall be deemed to have been notified.[90]	**Rule 80 - Public notification** (1) If the address of the addressee cannot be established, or if notification in accordance with Rule 78, paragraph 1, has proved to be impossible even after a second attempt by the European Patent Office, notification shall be effected by public notice. (2) The President of the European Patent Office shall determine how the public notice is to be given and the beginning of the period of one month on the expiry of which the document shall be deemed to have been notified.
Rule 130 - Notification to representatives (1) If a representative has been appointed, notifications shall be addressed to him.	**Rule 81 - Notification to representatives** (1) If a representative has been appointed, notifications shall be addressed to him.

[90] See Decision of the President of the European Patent Office dated 14 July 2007 concerning public notification under Rule 129 EPC (Special edition No. 3 OJ EPO 2007, K.1, p127)

(2) If several representatives have been appointed for a single party, notification to any one of them shall be sufficient. (3) If several parties have a common representative, notification to the common representative shall be sufficient.	(2) If several such representatives have been appointed for a single interested party, notification to any one of them shall be sufficient. (3) If several interested parties have a common representative, notification of a single document to the common representative shall be sufficient.
	Rule 82 - Irregularities in the notification Where a document has reached the addressee, if the European Patent Office is unable to prove that it has been duly notified, or if provisions relating to its notification have not been observed, the document shall be deemed to have been notified on the date established by the European Patent Office as the date of receipt. [→Rule 125(4)]

Chapter V - Time limits

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Rule 131 - Calculation of periods (1) Periods shall be laid down in terms of full years, months, weeks or days. (2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the relevant event shall be the receipt of the document notified, unless otherwise provided. (3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred; if the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month. (4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred; if the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month. (5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.	**Rule 83 - Calculation of time limits** (1) Periods shall be laid down in terms of full years, months, weeks or days. (2) Computation shall start on the day following the day on which the relevant event occurred, the event being either a procedural step or the expiry of another period. Where the procedural step is a notification, the event considered shall be the receipt of the document notified, unless otherwise provided. (3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month. (4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month. (5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.
Rule 132 - Periods specified by the European Patent Office (1) Where the Convention or these Implementing Regulations refer to "a period to be specified", this period shall be specified by the European Patent Office. (2) Unless otherwise provided, a period specified by the European Patent Office shall be neither less than two months nor more than four months; in certain circumstances it may be up to six months. In special cases, the period may be extended upon request, presented before the expiry of such period. [deemed delivery on tenth day following posting: Rule	**Rule 84 - Duration of time limits** Where the Convention or these Implementing Regulations specify a period to be determined by the European Patent Office, such period shall be not less than two months nor more than four months; in certain special circumstances it may be up to six months. In certain special cases, the period may be extended upon request, presented before the expiry of such period.

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Rule 133 - Late receipt of documents (1) A document received late at the European Patent Office shall be deemed to have been received in due time if it was posted, or delivered to a recognised delivery service, in due time before expiry of the period in accordance with the conditions laid down by the President of the European Patent Office[91], unless the document was received later than three months after expiry of the period. (2) Paragraph 1 shall apply mutatis mutandis to any period where transactions are carried out with the competent authority in accordance with Article 75, paragraphs 1(b) or 2(b).	**Rule 84a - Late receipt of documents** (1) A document received late at the European Patent Office shall be deemed to have been received in due time if it was posted, or delivered to a recognised delivery service, in due time before the expiry of the time limit in accordance with the conditions laid down by the President of the European Patent Office, unless the document was received later than three months after expiry of the time limit. (2) Paragraph 1 shall apply mutatis mutandis to the time limits provided for in the Convention where transactions are carried out with the competent authority in accordance with Article 75, paragraph 1(b) or paragraph 2(b).
Rule 134 - Extension of periods (1) If a period expires on a day on which one of the filing offices of the European Patent Office under Rule 35, paragraph 1, is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, mail is not delivered there, the period shall extend to the first day thereafter on which all the filing offices are open for receipt of documents and on which mail is delivered. The first sentence shall apply mutatis mutandis if documents filed by one of the technical means of communication permitted by the President of the European Patent Office under Rule 2, paragraph 1, cannot be received. (2) If a period expires on a day on which there is a general dislocation in the delivery or transmission of mail in a Contracting State, the period shall extend to the first day following the end of the interval of dislocation for parties which are resident in the State concerned or have appointed representatives with a place of business in that State. Where the State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties and their representatives. This paragraph shall apply mutatis mutandis to the period referred to in Rule 37, paragraph 2. (3) Paragraphs 1 and 2 shall apply mutatis mutandis where acts are performed with the competent authority in accordance with Article 75, paragraphs 1(b) or 2(b). (4) The date of commencement and the end of any dislocation under paragraph 2 shall be published by the European Patent Office. (5) Without prejudice to paragraphs 1 to 4, a party concerned may produce evidence that on any of the ten days preceding the day of expiry of a period the delivery or transmission of mail was dislocated due to an exceptional occurrence such as a natural disaster, war, civil disorder, a general breakdown in any of the technical means of communication permitted by the President of the European Patent Office under Rule 2, paragraph 1, or other like reasons affecting the locality where the party or his representative resides or has his place of business. If the evidence produced satisfies the European Patent Office, a	**Rule 85 - Extension of time limits** (1) If a time limit expires on a day on which one of the filing offices of the European Patent Office in the sense of Article 75, paragraph 1(a) is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered there, the time limit shall extend until the first day thereafter on which all the filing offices are open for receipt of documents and on which ordinary mail is delivered. (2) If a time limit expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Contracting State or between a Contracting State and the European Patent Office, the time limit shall extend to the first day following the end of the period of interruption or dislocation for parties resident in the State concerned or who have appointed representatives with a place of business in that State. The first sentence shall apply mutatis mutandis to the period referred to in Article 77, paragraph 5. In the case where the State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties. The duration of the above-mentioned period shall be as stated by the President of the European Patent Office. (3) Paragraphs 1 and 2 shall apply mutatis mutandis to the time limits provided for in the Convention in the case of transactions carried out with the competent authority in accordance with Article 75, paragraph 1(b) or paragraph 2(b). (4) If an exceptional occurrence such as a natural disaster or strike interrupts or dislocates the proper functioning of the European Patent Office so that any communication from the Office to parties concerning the expiry of a time limit is delayed, acts to be completed within such a time limit may still be validly completed within one month after the notification of the delayed communication. The date of commencement and the end of any such interruption or dislocation shall be as stated by the President of the European Patent Office. (5) Without prejudice to paragraphs 1 to 4, evidence may be offered that on any of the ten days preceding the day of

[91] See Decision of the President of the European Patent Office dated 14 July 2007 concerning the application of Rule 133 EPC on the late receipt of documents (Special edition No. 3 OJ EPO 2007, I.1, pp119-120).

document received late shall be deemed to have been received in due time, provided that the mailing or the transmission was effected at the latest on the fifth day after the end of the dislocation.	expiration of a time limit the mail service was interrupted or subsequently dislocated on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, in the locality where the party or his representative resides or has his place of business or is staying. If such circumstances are proven to the satisfaction of the European Patent Office, a document received late shall be deemed to have been received in due time provided that the mailing has been effected within five days after the mail service was resumed.
	Rule 85a - Period of grace for payment of fees (1) If the filing fee, the search fee or a designation fee has not been paid within the time limits provided for in Article 78, paragraph 2, Article 79, paragraph 2, Rule 15, paragraph 2, or Rule 25, paragraph 2, it may still be validly paid within a period of grace of one month from notification of a communication pointing out the failure to observe the time limit, provided that within this period a surcharge is paid. (2) Designation fees in respect of which the applicant has dispensed with notification under paragraph 1 may still be validly paid within a period of grace of two months of expiry of the normal time limits referred to in paragraph 1, provided that within this period a surcharge is paid. [→deleted]
	Rule 85b - Period of grace for the filing of the request for examination If the request for examination has not been filed within the time limit provided for in Article 94, paragraph 2, it may still be validly filed within a period of grace of one month from notification of a communication pointing out the failure to observe the time limit, provided that within this period a surcharge is paid. [→deleted]
Rule 135 - Further processing (1) Further processing under Article 121, paragraph 1, shall be requested by payment of the prescribed fee within two months of the communication concerning either the failure to observe a time limit or a loss of rights. The omitted act shall be completed within the period for making the request. (2) Further processing shall be ruled out in respect of the periods referred to in Article 121, paragraph 4, and of the periods under Rule 6, paragraph 1, Rule 16, paragraph 1(a), Rule 31, paragraph 2, Rule 40, paragraph 3, Rule 51, paragraphs 2 to 5, Rule 52, paragraphs 2 and 3, Rules 55, 56, 58, 59, 64 and Rule 112, paragraph 2. (3) The department competent to decide on the omitted act shall decide on the request for further processing.	
Rule 136 - Reestablishment of rights (1) Any request for reestablishment of rights under Article 122, paragraph 1, shall be filed in writing within two months of the removal of the cause of noncompliance with the period, but at the latest within one year of expiry of the unobserved time limit. However, a request for reestablishment of rights in respect of any of the periods specified in Article 87, paragraph 1, and in Article 112a, paragraph 4, shall be filed within two months of expiry of	

that period. The request for reestablishment of rights shall not be deemed to have been filed until the prescribed fee has been paid. (2) The request shall state the grounds on which it is based and shall set out the facts on which it relies. The omitted act shall be completed within the relevant period for filing the request according to paragraph 1. (3) Reestablishment of rights shall be ruled out in respect of any period for which further processing under Article 121 is available and in respect of the period for requesting reestablishment of rights. (4) The department competent to decide on the omitted act shall decide on the request for reestablishment of rights.	

Chapter VI - Amendments and corrections

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Rule 137 - Amendment of the European patent application (1) Before receiving the European search report, the applicant may not amend the description, claims or drawings of a European patent application unless otherwise provided. (2) After receipt of the European search report, the applicant may, of his own volition, amend the description, claims and drawings. (3) After receipt of the first communication from the Examining Division, the applicant may, of his own volition, amend once the description, claims and drawings, provided that the amendment is filed at the same time as the reply to the communication. No further amendment may be made without the consent of the Examining Division. (4) Amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept.	**Rule 86 - Amendment of the European patent application** (1) Before receiving the European search report the applicant may not amend the description, claims or drawings of a European patent application except where otherwise provided. (2) After receiving the European search report and before receipt of the first communication from the Examining Division, the applicant may, of his own volition, amend the description, claims and drawings. (3) After receipt of the first communication from the Examining Division the applicant may, of his own volition, amend once the description, claims and drawings provided that the amendment is filed at the same time as the reply to the communication. No further amendment may be made without the consent of the Examining Division. (4) Amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept.
Rule 138 - Different claims, description and drawings for different States If the European Patent Office is informed of the existence of a prior right under Article 139, paragraph 2, the European patent application or European patent may, for such State or States, contain claims and, where appropriate, a description and drawings which are different from those for the other designated States.	**Rule 87 - Different claims, description and drawings for different States** If the European Patent Office notes that, in respect of one or some of the designated Contracting States, the content of an earlier European patent application forms part of the state of the art pursuant to Article 54, paragraphs 3 and 4, or if it is informed of the existence of a prior right under Article 139, paragraph 2, the European patent application or European patent may contain for such State or States claims and, if the European Patent Office considers it necessary, a description and drawings which are different from those for the other designated Contracting States.
Rule 139 - Correction of errors in documents filed with the European Patent Office Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns the description, claims or drawings, the	**Rule 88 - Correction of errors in documents filed with the European Patent Office** Linguistic errors, errors of transcription and mistakes in any document filed with the European Patent Office may be corrected on request. However, if the request for such correction concerns a description, claims or drawings, the

correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.[92]	correction must be obvious in the sense that it is immediately evident that nothing else would have been intended than what is offered as the correction.
Rule 140 - Correction of errors in decisions In decisions of the European Patent Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected.[93]	**Rule 89 - Correction of errors in decisions** In decisions of the European Patent Office, only linguistic errors, errors of transcription and obvious mistakes may be corrected.

[92] **G 3/89 & 11/91**:
1. The parts of a European patent application or of a European patent relating to the disclosure (the description, claims and drawings) may be corrected under [Rule 139], second sentence, EPC only within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of these documents as filed. Such a correction is of a strictly declaratory nature and thus does not infringe the prohibition of extension under Article 123(2) EPC.
2. Evidence of what was common general knowledge on the date of filing may be furnished in connection with an admissible request for correction in any suitable form.
G 2/95: The complete documents forming a European patent application, that is the description, claims and drawings, cannot be replaced by way of a correction under [Rule 139] EPC by other documents which the applicants had intended to file with their request for grant.
[93] **G 8/95**: An appeal from a decision of an Examining Division refusing a request under [Rule 140] EPC for correction of the decision to grant is to be decided by a technical board of Appeal.

Chapter VII - Information on prior art

Rule 141 - Information on prior art

The European Patent Office may invite the applicant to provide, within a period to be specified [Rule 132], 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.

Chapter VIII - Interruption of proceedings

Rule 142 - Interruption of proceedings

(1) Proceedings before the European Patent Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of the person authorised by national law to act on his behalf. To the extent that the above events do not affect the authorisation of a representative appointed under Article 134, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for or proprietor of a patent, as a result of some action taken against his property, being prevented by legal reasons from continuing the proceedings;

(c) in the event of the death or legal incapacity of the representative of an applicant for or proprietor of a patent, or of his being prevented for legal reasons resulting from action taken against his property from continuing the proceedings.

(2) When, in the cases referred to in paragraph 1(a) or (b), the European Patent Office has been informed of the identity of the person authorised to continue the proceedings, it shall notify such person and, where applicable, any third party, that the proceedings will be resumed as from a specified date.

(3) In the case referred to in paragraph 1(c), the proceedings shall be resumed when the European Patent Office has been informed of the appointment of a new representative of the applicant or when the Office has informed the other parties of the appointment of a new representative of the proprietor of the patent. If, three months after the beginning of the interruption of the proceedings, the European Patent Office has not been informed of the appointment of a new representative, it shall communicate to the applicant for or proprietor of the patent:

(a) where Article 133, paragraph 2, is applicable, that the European patent application will be deemed to be withdrawn or the European patent will be revoked if the information is not submitted within two months of this communication; or

(b) otherwise, that the proceedings will be resumed with the applicant for or proprietor of the patent as from the

Rule 90 - Interruption of proceedings

(1) Proceedings before the European Patent Office shall be interrupted:

(a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of the person authorised by national law to act on his behalf. To the extent that the above events do not affect the authorisation of a representative appointed under Article 134, proceedings shall be interrupted only on application by such representative;

(b) in the event of the applicant for or proprietor of a European patent, as a result of some action taken against his property, being prevented by legal reasons from continuing the proceedings before the European Patent Office;

(c) in the event of the death or legal incapacity of the representative of an applicant for or proprietor of a European patent or of his being prevented for legal reasons resulting from action taken against his property from continuing the proceedings before the European Patent Office.

(2) When, in the cases referred to in paragraph 1(a) and (b), the European Patent Office has been informed of the identity of the person authorised to continue the proceedings before the European Patent Office, the European Patent Office shall communicate to such person and to any interested third party that the proceedings shall be resumed as from a date to be fixed by the European Patent Office.

(3) In the case referred to in paragraph 1(c), the proceedings shall be resumed when the European Patent Office has been informed of the appointment of a new representative of the applicant or when the European Patent Office has notified to the other parties the communication of the appointment of a new representative of the proprietor of the patent. If, three months after the beginning of the interruption of the proceedings, the European Patent Office has not been informed of the appointment of a new representative, it shall communicate to the applicant for or proprietor of the patent:

(a) where Article 133, paragraph 2, is applicable, that the European patent application will be deemed to be withdrawn or the European patent will be revoked if the information is not submitted within two months after this communication is

notification of this communication. (4) Any periods, other than those for requesting examination and paying renewal fees, in force at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings are resumed. If such date is less than two months before the end of the period within which the request for examination must be filed, such a request may be filed within two months of such date.	notified, or (b) where Article 133, paragraph 2, is not applicable, that the proceedings will be resumed with the applicant for or proprietor of the patent as from the date on which this communication is notified. (4) The time limits, other than the time limit for making a request for examination and the time limit for paying the renewal fees, in force as regards the applicant for or proprietor of the patent at the date of interruption of the proceedings, shall begin again as from the day on which the proceedings are resumed. If such date is less than two months before the end of the period within which the request for examination must be filed, such a request may be filed up to the end of two months after such date.
	Rule 91 - Waiving of enforced recovery procedures The President of the European Patent Office may waive action for the enforced recovery of any sum due if the sum to be recovered is minimal or if such recovery is too uncertain. [→deleted]

Chapter IX - Information to the public

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Rule 143 - Entries in the European Patent Register (1) The European Patent Register shall contain the following entries: (a) number of the European patent application; (b) date of filing of the application; (c) title of the invention; (d) classification symbols assigned to the application; (e) the Contracting States designated; (f) particulars of the applicant for or proprietor of the patent as provided in Rule 41, paragraph 2(c); (g) family name, given names and address of the inventor designated by the applicant for or proprietor of the patent, unless he has waived his right to be mentioned under Rule 20, paragraph 1; (h) particulars of the representative of the applicant for or proprietor of the patent as provided in Rule 41, paragraph 2(d); in the case of several representatives only the particulars of the representative first named, followed by the words "and others" and, in the case of an association referred to in Rule 152, paragraph 11, only the name and address of the association; (i) priority data (date, State and file number of the previous application); (j) in the event of a division of the application, the numbers of all the divisional applications; (k) in the case of a divisional application or a new application under Article 61, paragraph 1(b), the information referred to in subparagraphs (a), (b) and (i) with regard to the earlier application; (l) date of publication of the application and, where appropriate, date of the separate publication of the European search report; (m) date of filing of the request for examination; (n) date on which the application is refused, withdrawn or deemed to be withdrawn;	**Rule 92 - Entries in the Register of European Patents** (1) The Register of European Patents shall contain the following entries: (a) number of the European patent application; (b) date of filing of the European patent application; (c) title of the invention; (d) classification code given to the European patent application; (e) the Contracting States designated; (f) family name, given names, address and the State in which the residence or principal place of business of the applicant for or proprietor of the European patent is located; (g) family name, given names and address of the inventor designated by the applicant for or proprietor of the patent, unless he has waived his right to be mentioned under Rule 18, paragraph 1; (h) family name, given names and address of the place of business of the representative of the applicant for or proprietor of the patent referred to in Article 134; in the case of several representatives only the family name, given names and address of the place of business of the representative first named, followed by the words "and others", shall be entered; however, in the case of an association referred to in Rule 101, paragraph 9, only the name and address of the association shall be entered; (i) priority data (date, State and file number of the previous application); (j) in the event of a division of the European patent application, the numbers of the European divisional applications; (k) in the case of European divisional applications and a new European patent application under Article 61, paragraph 1(b), the information referred to under sub-paragraphs (a), (b) and (i) with regard to the earlier European patent application;

(o) date of publication of the mention of the grant of the European patent; (p) date of lapse of the European patent in a Contracting State during the opposition period and, where appropriate, pending a final decision on opposition; (q) date of filing opposition; (r) date and purport of the decision on opposition; (s) dates of stay and resumption of proceedings in the cases referred to in Rules 14 and 78; (t) dates of interruption and resumption of proceedings in the case referred to in Rule 142; (u) date of reestablishment of rights where an entry has been made under sub-paragraphs (n) or (r); (v) the filing of a request for conversion under Article 135, paragraph 3; (w) rights and transfer of such rights relating to an application or a European patent where these Implementing Regulations provide that they shall be recorded; (x) date and purport of the decision on the request for limitation or revocation of the European patent; (y) date and purport of the decision of the Enlarged Board of Appeal on the petition for review. (2) The President of the European Patent Office may decide that entries other than those referred to in paragraph 1 shall be made in the European Patent Register.[94]	(l) date of publication of the European patent application and where appropriate date of the separate publication of the European search report; (m) date of filing of the request for examination; (n) date on which the European patent application is refused, withdrawn or deemed to be withdrawn; (o) date of publication of the mention of the grant of the European patent; (p) date of lapse of the European patent in a Contracting State during the opposition period and, where appropriate, pending a final decision on opposition; (q) date of filing opposition; (r) date and purport of the decision on opposition; (s) dates of suspension and resumption of proceedings in the cases referred to in Rule 13; (t) dates of interruption and resumption of proceedings in the case referred to in Rule 90; (u) date of re-establishment of rights provided that an entry has been made in accordance with sub-paragraph (n) or sub-paragraph (r); (v) the filing of a request to the European Patent Office pursuant to Article 135; (w) rights and transfer of such rights over a European patent application or European patent where these are recorded pursuant to these Implementing Regulations. (2) The President of the European Patent Office may decide that entries other than those referred to in paragraph 1 shall be made in the Register of European Patents. (3) Extracts from the Register of European Patents shall be delivered on request on payment of an administrative fee.
Rule 144 - Parts of the file excluded from inspection The parts of the file excluded from inspection under Article 128, paragraph 4, shall be: (a) the documents relating to the exclusion of or objections to members of the Boards of Appeal or of the Enlarged Board of Appeal; (b) draft decisions and notices, and all other documents, used for the preparation of decisions and notices, which are not communicated to the parties; (c) the designation of the inventor, if he has waived his right to be mentioned under Rule 20, paragraph 1; (d) any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the European patent.[95]	**Rule 93 - Parts of the file not for inspection** The parts of the file which shall be excluded from inspection pursuant to Article 128, paragraph 4, shall be: (a) the documents relating to the exclusion of or objections to members of the Boards of Appeal or of the Enlarged Board of Appeal; (b) draft decisions and opinions, and all other documents, used for the preparation of decisions and opinions, which are not communicated to the parties; (c) the designation of the inventor, if he has waived his right to be mentioned under Rule 18, paragraph 1; (d) any other document excluded from inspection by the President of the European Patent Office on the ground that such inspection would not serve the purpose of informing the public about the European patent application or the resulting patent.
Rule 145 - Procedures for the inspection of files (1) Inspection of the files of European patent applications and patents shall either be of the original document, or of copies thereof, or of technical means of storage if the files are stored in this way.	**Rule 94 - Procedures for the inspection of files** (1) Inspection of the files of European patent applications and patents shall either be of the original document, or of copies thereof, or of technical means of storage if the files are stored in this way.

[94] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the information given in the European Patent Register (Special edition No. 3 OJ EPO 2007, E.1., pp100-101)
[95] See Decision of the President of the European Patent Office dated 12 July 2007 concerning documents excluded from file inspection (Special edition No. 3 OJ EPO 2007, J.3., pp125-126)

(2) The President of the European Patent Office shall determine all file inspection arrangements, including the circumstances in which an administrative fee is payable.[96]	(2) The President of the European Patent Office shall determine all file-inspection arrangements, including the circumstances in which an administrative fee is payable.
Rule 146 - Communication of information contained in the files Subject to the restrictions laid down in Article 128, paragraphs 1 to 4, and in Rule 144, the European Patent Office may, upon request, communicate information concerning any file relating to a European patent application or European patent, subject to the payment of an administrative fee. However, the European Patent Office may refer to the option of file inspection where it deems this to be appropriate in view of the quantity of information to be supplied.	**Rule 95 - Communication of information contained in the files** Subject to the restrictions provided for in Article 128, paragraphs 1 to 4, and in Rule 93, the European Patent Office may, upon request, communicate information concerning any file of a European patent application or European patent subject to the payment of an administrative fee. However, the European Patent Office may require the exercise of the option to obtain inspection of the file itself should it deem this to be appropriate in view of the quantity of information to be supplied.
Rule 147 - Constitution, maintenance and preservation of files (1) The European Patent Office shall constitute, maintain and preserve files relating to all European patent applications and patents. (2) The President of the European Patent Office shall determine the form in which these files shall be constituted, maintained and preserved.[97] (3) Documents incorporated in an electronic file shall be considered to be originals. (4) Any files shall be preserved for at least five years from the end of the year in which: (a) the application is refused or withdrawn or is deemed to be withdrawn; (b) the patent is revoked by the European Patent Office; or (c) the patent or the corresponding protection under Article 63, paragraph 2, lapses in the last of the designated States. (5) Without prejudice to paragraph 4, files relating to applications which have given rise to divisional applications under Article 76 or new applications under Article 61, paragraph 1(b), shall be preserved for at least the same period as the files relating to any one of these last applications. The same shall apply to files relating to any resulting European patents.	**Rule 95a - Constitution, maintenance and preservation of files** (1) The European Patent Office shall constitute, maintain and preserve files relating to all European patent applications and patents. (2) The President of the European Patent Office shall determine the form in which the files relating to European patent applications and patents shall be constituted, maintained and preserved. (3) Documents incorporated in an electronic file shall be considered to be originals. (4) Files relating to European patent applications and patents shall be preserved for at least five years from the end of the year in which: (a) the application is refused or withdrawn or is deemed to be withdrawn; (b) the patent is revoked pursuant to opposition proceedings; or (c) the patent or the extended term or corresponding protection under Article 63, paragraph 2, lapses in the last of the designated States. (5) Without prejudice to paragraph 4, files relating to European patent applications which have given rise to divisional applications under Article 76 or new applications under Article 61, paragraph 1(b), shall be preserved for at least the same period as the files relating to any one of these last applications. The same shall apply to files relating to any resulting European patents.
	Rule 96 - Additional publications by the European Patent Office (1) The President of the European Patent Office may provide that, and in what form, the data referred to in Article 128,

[96] See Decision of the President of the European Patent Office dated 12 July 2007 on the inspection of files (Special edition No. 3 OJ EPO 2007, J.2. pp123-124)

[97] See Decision of the President of the European Patent Office dated 12 July 2007 concerning use of the PHOENIX electronic file system for the creation, maintenance and preservation of files (Special edition No. 3 OJ EPO 2007, J.1., pp121-122), and Decision of the President of the European Patent Office dated 12 July 2007 concerning the payment of fees and costs at the Information Office in Munich (Special edition No. 3 OJ EPO 2007, M.4., p139)

	paragraph 5, shall be communicated to third parties or published. (2) The President of the European Patent Office may provide for the publication of new or amended claims received after the time mentioned in Rule 49, paragraph 3, the form of such publication and the entry in the European Patent Bulletin of particulars concerning such claims. [→deleted]

Chapter X - Legal and administrative cooperation

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Rule 148 - Communications between the European Patent Office and the authorities of the Contracting States (1) Communications between the European Patent Office and the central industrial property offices of the Contracting States which arise out of the application of this Convention shall be effected directly between these authorities. Communications between the European Patent Office and the courts or other authorities of the Contracting States may be effected through the intermediary of the said central industrial property offices. (2) Expenditure in respect of communications under paragraph 1 shall be borne by the authority making the communications, which shall be exempt from fees.	**Rule 97 - Communications between the European Patent Office and the authorities of the Contracting States** (1) Communications between the European Patent Office and the central industrial property offices of the Contracting States which arise out of the application of the Convention shall be effected directly between these authorities. Communications between the European Patent Office and the courts or other authorities of the Contracting States may be effected through the intermediary of the above central industrial property offices. (2) Expenditure in respect of communications under paragraph 1 shall be chargeable to the authority making the communications, which shall be exempt from fees.
Rule 149 - Inspection of files by or via courts or authorities of the Contracting States (1) Inspection of the files of European patent applications or of European patents by courts or authorities of the Contracting States shall be of the original documents or of copies thereof; Rule 145 shall not apply. (2) Courts or Public Prosecutors' offices of the Contracting States may, in the course of their proceedings, communicate to third parties files or copies thereof transmitted to them by the European Patent Office. Such communications shall be effected in accordance with Article 128 and shall not be subject to any fee. (3) The European Patent Office shall, when transmitting the files, draw attention to the restrictions which may, under Article 128, paragraphs 1 and 4, apply to file inspection by third parties.	**Rule 98 - Inspection of files by or via courts or authorities of the Contracting States** (1) Inspection of the files of European patent applications or of European patents by courts or authorities of the Contracting States shall be of the original documents or of copies thereof; Rule 94 shall not apply. (2) Courts or Public Prosecutors' Offices of the Contracting States may, in the course of their proceedings, communicate to third parties files or copies thereof transmitted to them by the European Patent Office. Such communications shall be effected in accordance with the conditions laid down in Article 128; they shall not incur the payment of the administrative fee. (3) The European Patent Office shall, at the time of transmission of the files or copies thereof to the courts or Public Prosecutors' Offices of the Contracting States, indicate such restrictions as may, under Article 128, paragraphs 1 and 4, be applicable to the communication to third parties of files concerning a European patent application or a European patent.
Rule 150 - Procedure for letters rogatory (1) Each Contracting State shall designate a central authority to receive letters rogatory issued by the European Patent Office and to transmit them to the court or authority competent to execute them. (2) The European Patent Office shall draw up letters rogatory in the language of the competent court or authority or shall attach to such letters rogatory a translation into that language.	**Rule 99 - Procedure for letters rogatory** (1) Each Contracting State shall designate a central authority which will undertake to receive letters rogatory issued by the European Patent Office and to transmit them to the authority competent to execute them. (2) The European Patent Office shall draw up letters rogatory in the language of the competent authority or shall attach to such letters rogatory a translation into the language of that authority.

(3) Subject to paragraphs 5 and 6, the competent court or authority shall apply national law as to the procedures to be followed in executing such requests and, in particular, as to the appropriate measures of compulsion.	(3) Subject to the provisions of paragraphs 5 and 6, the competent authority shall apply its own law as to the procedures to be followed in executing such requests. In particular, it shall apply appropriate measures of compulsion in accordance with its own law.
(4) If the court or authority to which the letters rogatory are transmitted is not competent to execute them, the letters rogatory shall be sent forthwith to the central authority referred to in paragraph 1. That authority shall transmit the letters rogatory either to the competent court or authority in that State, or to the European Patent Office where no court or authority is competent in that State.	(4) If the authority to which the letters rogatory are transmitted is not competent to execute them, the letters rogatory shall be sent forthwith to the central authority referred to in paragraph 1. That authority shall transmit the letters rogatory either to the competent authority in that State, or to the European Patent Office where no authority is competent in that State.
(5) The European Patent Office shall be informed of the time when, and the place where, the enquiry or other legal measure is to take place and shall inform the parties, witnesses and experts concerned.	(5) The European Patent Office shall be informed of the time when, and the place where, the enquiry or other legal measure is to take place and shall inform the parties, witnesses and experts concerned.
(6) If so requested by the European Patent Office, the competent court or authority shall permit the attendance of members of the department concerned and allow them to question any person giving evidence either directly or through the competent court or authority.	(6) If so requested by the European Patent Office, the competent authority shall permit the attendance of members of the department concerned and allow them to question any person giving evidence either directly or through the competent authority.
(7) The execution of letters rogatory shall not give rise to any reimbursement of fees or costs of any nature. Nevertheless, the State in which letters rogatory are executed has the right to require the Organisation to reimburse any fees paid to experts or interpreters and the costs arising from the procedure under paragraph 6.	(7) The execution of letters rogatory shall not give rise to any reimbursement of fees or costs of any nature. Nevertheless, the State in which letters rogatory are executed has the right to require the Organisation to reimburse any fees paid to experts and interpreters and the costs incurred by the procedure of paragraph 6.
(8) If the law applied by the competent court or authority obliges the parties to secure evidence and the competent court or authority is not able itself to execute the letters rogatory, that court or authority may, with the consent of the European Patent Office, appoint a suitable person to do so. When seeking such consent, the competent court or authority shall indicate the approximate costs which would result from this procedure. If the European Patent Office gives its consent, the Organisation shall reimburse any costs incurred; otherwise, the Organisation shall not be liable for such costs.	(8) If the law applied by the competent authority obliges the parties to secure evidence and the authority is not able itself to execute the letters rogatory, that authority may, with the consent of the European Patent Office, appoint a suitable person to do so. When seeking the consent of the European Patent Office, the competent authority shall indicate the approximate costs which would result from this procedure. If the European Patent Office gives its consent, the Organisation shall reimburse any costs incurred; without such consent, the Organisation shall not be liable for such costs.

Chapter XI - Representation

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Rule 151 - Appointment of a common representative	**Rule 100 - Appointment of a common representative**
(1) If there is more than one applicant and the request for grant of a European patent does not name a common representative, the applicant first named in the request shall be deemed to be the common representative. However, if one of the applicants is obliged to appoint a professional representative, this representative shall be deemed to be the common representative, unless the applicant first named has appointed a professional representative. The same shall apply to third parties acting in common in filing a notice of opposition or intervention and to joint proprietors of a European patent.	(1) If there is more than one applicant and the request for the grant of a European patent does not name a common representative, the applicant first named in the request shall be considered to be the common representative. However, if one of the applicants is obliged to appoint a professional representative this representative shall be considered to be the common representative unless the first named applicant has appointed a professional representative. The same shall apply mutatis mutandis to third parties acting in common in filing notice of opposition or intervention and to joint proprietors of a European patent.
(2) If the European patent application is transferred to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply mutatis mutandis. If such application is not possible, the European	(2) If, during the course of proceedings, transfer is made to more than one person, and such persons have not appointed a common representative, paragraph 1 shall apply. If such application is not possible, the European Patent Office shall

Patent Office shall invite such persons to appoint a common representative within a period to be specified [Rule 132]. If this invitation is not complied with, the European Patent Office shall appoint the common representative.	require such persons to appoint a common representative within two months. If this request is not complied with, the European Patent Office shall appoint the common representative.
Rule 152 - Authorisations	**Rule 101 - Authorisations**
(1) The President of the European Patent Office shall determine the cases in which a signed authorisation shall be filed by representatives acting before the European Patent Office.[98]	(1) Representatives acting before the European Patent Office shall upon request file a signed authorisation within a period to be specified by the European Patent Office. The President of the European Patent Office shall determine the cases where an authorisation is to be filed.141 The authorisation may cover one or more European patent applications or European patents and shall be filed in the corresponding number of copies. Where the requirements of Article 133, paragraph 2, have not been satisfied, the same period shall be specified for the notification of the appointment of a representative and for the filing of the authorisation.
(2) Where a representative fails to file such an authorisation, the European Patent Office shall invite him to do so within a period to be specified [Rule 132]. The authorisation may cover one or more European patent applications or European patents and shall be filed in the corresponding number of copies.	(2) A general authorisation enabling a representative to act in respect of all the patent transactions of the party making the authorisation may be filed. A single copy shall be sufficient.
(3) Where the requirements of Article 133, paragraph 2, have not been satisfied, the same period shall be specified for the appointment of a representative and the filing of the authorisation.	(3) The President of the European Patent Office may determine and publish in the Official Journal of the European Patent Office the form and content of:
(4) A general authorisation may be filed enabling a representative to act in respect of all the patent transactions of a party. A single copy shall suffice.	(a) an authorisation in so far as it relates to the representation of persons as defined in Article 133, paragraph 2;
(5) The President of the European Patent Office may determine the form and content of:	(b) a general authorisation.
(a) an authorisation relating to the representation of persons under Article 133, paragraph 2;	(4) If the authorisation is not filed in due time, any procedural steps taken by the representative other than the filing of a European patent application shall, without prejudice to any other legal consequences provided for in the Convention, be deemed not to have been taken.
(b) a general authorisation.	(5) The provisions of paragraphs 1 and 2 shall apply mutatis mutandis to a document withdrawing an authorisation.
(6) If a required authorisation is not filed in due time, any procedural steps taken by the representative, other than the filing of a European patent application, shall be deemed not to have been taken, without prejudice to any other legal consequences provided for by this Convention.	(6) Any representative who has ceased to be authorised shall continue to be regarded as the representative until the termination of his authorisation has been communicated to the European Patent Office.
(7) Paragraphs 2 and 4 shall apply to the withdrawal of an authorisation.	(7) Subject to any provisions to the contrary contained therein, an authorisation shall not terminate vis-à-vis the European Patent Office upon the death of the person who gave it.
(8) A representative shall be deemed to be authorised until the termination of his authorisation has been communicated to the European Patent Office.	(8) If several representatives are appointed by a party, they may, notwithstanding any provisions to the contrary in the notification of their appointment or in the authorisation, act either jointly or singly.
(9) Unless it expressly provides otherwise, an authorisation shall not terminate vis-à-vis the European Patent Office upon the death of the person who gave it.	(9) The authorisation of an association of representatives shall be deemed to be authorisation of any representative who can establish that he practises within that association.
(10) If a party appoints several representatives, they may act either jointly or singly, notwithstanding any provisions to the contrary in the communication of their appointment or in the authorisation.	
(11) The authorisation of an association of representatives shall be deemed to be an authorisation of any representative who can provide evidence that he practises within that association.	

[98] See Decision of the President of the European Patent Office dated 12 July 2007 on the filing of authorisations (Special edition No. 3 OJ EPO 2007, L.1., pp128-129).

Rule 153 - Attorney evidentiary privilege (1) Where advice is sought from a professional representative in his capacity as such, all communications between the professional representative and his client or any other person, relating to that purpose and falling under Article 2 of the Regulation on discipline for professional representatives, are permanently privileged from disclosure in proceedings before the European Patent Office, unless such privilege is expressly waived by the client. (2) Such privilege from disclosure shall apply, in particular, to any communication or document relating to: (a) the assessment of the patentability of an invention; (b) the preparation or prosecution of a European patent application; (c) any opinion relating to the validity, scope of protection or infringement of a European patent or a European patent application.	
Rule 154 - Amendment of the list of professional representatives (1) The entry of a professional representative shall be deleted from the list of professional representatives if he so requests or if, despite repeated reminders, he fails to pay the annual subscription to the Institute before the end of September of the year for which the subscription is due. (2) Without prejudice to any disciplinary measures taken under Article 134a, paragraph 1(c), the entry of a professional representative may be deleted ex officio only: (a) in the event of his death or legal incapacity; (b) where he is no longer a national of one of the Contracting States, unless he was granted an exemption under Article 134, paragraph 7(a); (c) where he no longer has his place of business or employment within one of the Contracting States. (3) Any person entered on the list of professional representatives under Article 134, paragraphs (2) or (3), whose entry has been deleted shall, upon request, be reentered on that list if the conditions for deletion no longer exist.	**Rule 102 - Amendment of the list of professional representatives** (1) The entry of a professional representative shall be deleted from the list of professional representatives if he so requests or if, despite repeated reminders, he fails to pay the annual subscription to the Institute of Professional Representatives before the European Patent Office before the end of the year for which the subscription is due. (2) After the expiry of the transitional period provided for in Article 163, paragraph 1, and without prejudice to any disciplinary measures taken under Article 134, paragraph 8(c), the entry of any professional representative may be deleted automatically in the following cases only: (a) in the event of the death or legal incapacity of the professional representative; (b) in the event of the professional representative no longer being a national of one of the Contracting States, unless he was entered on the list during the transitional period or was granted exemption by the President of the European Patent Office in accordance with Article 134, paragraph 6; (c) in the event of the professional representative no longer having his place of business or employment within the territory of one of the Contracting States. (3) A person whose entry has been deleted shall, upon request, be re-entered in the list of professional representatives if the conditions for deletion no longer exist.

PART VIII - IMPLEMENTING REGULATIONS TO PART VIII OF THE CONVENTION

Rule 155 - Filing and transmission of the request for conversion (1) The request for conversion referred to in Article 135, paragraph 1(a) or (b), shall be filed within three months of the withdrawal of the European patent application, or of the communication that the application is deemed to be withdrawn, or of the decision refusing the application or revoking the European patent. The effect of the European patent application under Article 66 shall lapse if the request is not filed in due time. (2) When transmitting the request for conversion to the central industrial property offices of the Contracting States specified in the request, the central industrial property office concerned or the European Patent Office shall attach to the request a copy of the file relating to the European patent application or European patent. (3) Article 135, paragraph 4, shall apply if the request for conversion referred to in Article 135, paragraphs 1(a) or (2), is not transmitted before the expiry of a period of twenty months from the date of filing or, if priority has been claimed, the date of priority.	
Rule 156 - Information to the public in the event of conversion (1) The documents accompanying the request for conversion under Rule 155, paragraph 2, shall be made available to the public by the central industrial property office under the same conditions and to the same extent as documents relating to national proceedings. (2) The printed specification of the national patent resulting from the conversion of a European patent application shall mention that application.	**Rule 103 - Information to the public in the event of conversion** (1) The documents which, in accordance with Article 136, accompany the request for conversion shall be communicated to the public by the central industrial property office under the same conditions and to the same extent as documents relating to national proceedings. (2) The printed specifications of the national patent resulting from the conversion of a European patent application must mention that application.

PART IX - IMPLEMENTING REGULATIONS TO PART X OF THE CONVENTION

Rule 157 - The European Patent Office as a receiving Office	**Rule 104 - The European Patent Office as a receiving Office**
(1) The European Patent Office shall be competent to act as a receiving Office within the meaning of the PCT if the applicant is a resident or national of a Contracting State to this Convention and to the PCT. Without prejudice to paragraph 3, if the applicant chooses the European Patent Office as a receiving Office, the international application shall be filed directly with the European Patent Office. Article 75, paragraph 2, shall apply mutatis mutandis.	(1) When the European Patent Office acts as a receiving Office under the Cooperation Treaty, the international application shall be filed in English, French or German. It shall be filed in three copies; the same applies to any of the documents referred to in the check list provided for in Rule 3.3(a)(ii) of the Regulations under the Cooperation Treaty except the receipt for the fees paid or the cheque for the payment of fees. The President of the European Patent Office may, however, decide that the international application and any related item shall be filed in fewer than three copies.
(2) Where the European Patent Office acts as a receiving Office under the PCT, the international application shall be filed in English, French or German. The President of the European Patent Office may determine that the international application and any related item shall be filed in more than one copy.	(2) If the provisions of paragraph 1, second sentence, are not complied with, the missing copies shall be prepared by the European Patent Office at the expense of the applicant.
(3) If an international application is filed with an authority of a Contracting State for transmittal to the European Patent Office as the receiving Office, the Contracting State shall ensure that the application reaches the European Patent Office not later than two weeks before the end of the thirteenth month from filing or, if priority is claimed, from the date of priority.	(3) If an international application is filed with an authority of a Contracting State for transmittal to the European Patent Office as the receiving Office, the Contracting State must ensure that the application reaches the European Patent Office not later than two weeks before the end of the thirteenth month after filing or, if priority is claimed, after the date of priority.
(4) The transmittal fee for the international application shall be paid within one month of filing the application.	
Rule 158 - The European Patent Office as an International Searching Authority or International Preliminary Examining Authority	**Rule 105 - The European Patent Office as an International Searching Authority or International Preliminary Examining Authority**
(1) In the case of Article 17, paragraph 3(a) PCT, an additional international search fee shall be paid for each further invention for which an international search is to be carried out.	(1) In the case of Article 17, paragraph 3(a), of the Cooperation Treaty, an additional fee equal to the amount of the search fee shall be payable for each further invention for which an international search is to be carried out.
(2) In the case of Article 34, paragraph 3(a) PCT, an additional fee for international preliminary examination shall be paid for each further invention for which the international preliminary examination is to be carried out.	(2) In the case of Article 34, paragraph 3(a), of the Cooperation Treaty, an additional fee equal to the amount of the preliminary examination fee shall be payable for each further invention for which the international preliminary examination is to be carried out.
(3) Where an additional fee has been paid under protest, the European Patent Office shall examine the protest in accordance with Rule 40.2(c) to (e) or Rule 68.3(c) to (e) PCT, subject to payment of the prescribed protest fee. Further details concerning the procedure shall be determined by the President of the European Patent Office.[99]	(3) Without prejudice to Rules 40.2(e) and 68.3(e) of the Regulations under the Cooperation Treaty, where an additional fee has been paid under protest, the European Patent Office shall review whether the invitation to pay the additional fee was justified and, if it does not so find, shall refund the additional fee. If the European Patent Office after such a review considers the invitation to be justified, it shall inform the applicant accordingly and shall invite him to pay a fee for the examination of the protest ("protest fee"). If the protest fee is paid in due time, the protest shall be referred to

[99] See Decision of the President of the European Patent Office dated 24 June 2007 providing for review panels for the implementation of the protest procedure under the PCT (Special edition No. 3 OJ EPO 2007, N.1., p139); and Notice from the European Patent Office dated 24 June 2007 concerning the protest procedure under the PCT (Special edition No. 3 OJ EPO 2007, N.2., pp142-145)

	the Board of Appeal for a decision.
	Rule 106 - The national fee The national fee provided for in Article 158, paragraph 2, shall comprise the following fees: (a) a national basic fee equal to the filing fee provided for in Article 78, paragraph 2, and (b) the designation fees provided for in Article 79, paragraph 2. [→deleted]
Rule 159 - The European Patent Office as a designated or elected Office – Requirements for entry into the European phase (1) In respect of an international application under Article 153, the applicant shall perform the following acts within thirtyone months from the date of filing of the application or, if priority has been claimed, from the priority date: (a) supply, where applicable, the translation of the international application required under Article 153, paragraph 4; (b) specify the application documents, as originally filed or as amended, on which the European grant procedure is to be based; (c) pay the filing fee provided for in Article 78, paragraph 2; (d) pay the designation fees if the period under Rule 39 has expired earlier; (e) pay the search fee, where a supplementary European search report has to be drawn up; (f) file the request for examination provided for in Article 94, if the period under Rule 70, paragraph 1, has expired earlier; (g) pay the renewal fee in respect of the third year provided for in Article 86, paragraph 1, if the fee has fallen due earlier under Rule 51, paragraph 1; (h) file, where applicable, the certificate of exhibition referred to in Article 55, paragraph 2, and Rule 25. (2) The Examining Division shall be competent to take decisions of the European Patent Office under Article 25, paragraph 2(a) PCT.	**Rule 107 - The European Patent Office as a designated or elected Office - Requirements for entry into the European phase** (1) In the case of an international application as referred to in Article 150, paragraph 3, the applicant must perform the following acts within a period of thirty-one months from the date of filing of the application or, if priority has been claimed, from the priority date: (a) supply, where applicable, the translation of the international application required under Article 158, paragraph 2; (b) specify the application documents, as originally filed or in amended form, on which the European grant procedure is to be based; (c) pay the national basic fee provided for in Rule 106(a); (d) pay the designation fees if the time limit specified in Article 79, paragraph 2, has expired earlier; (e) pay the search fee provided for in Article 157, paragraph 2(b), where a supplementary European search report has to be drawn up; (f) file the request for examination provided for in Article 94, if the time limit specified in Article 94, paragraph 2, has expired earlier; (g) pay the renewal fee in respect of the third year provided for in Article 86, paragraph 1, if the fee has fallen due earlier under Rule 37, paragraph 1; (h) file, where applicable, the certificate of exhibition referred to in Article 55, paragraph 2, and Rule 23. (2) Where the European Patent Office has drawn up an international preliminary examination report the examination fee shall be reduced as laid down in the Rules relating to Fees. If the report was established on certain parts of the international application in accordance with Article 34, paragraph 3(c), of the Cooperation Treaty, the reduction shall be allowed only if examination is to be performed on the subject-matter covered by the report.
Rule 160 - Consequences of non-fulfilment of certain requirements (1) If either the translation of the international application or the request for examination is not filed in due time, or if the	**Rule 108 - Consequences of non-fulfilment of certain requirements** (1) If either the translation of the international application or the request for examination is not filed in due time, or if the

filing fee or the search fee is not paid in due time, or if no designation fee is paid in due time, the European patent application shall be deemed to be withdrawn. (2) The designation of any Contracting State in respect of which the designation fee has not been paid in due time shall be deemed to be withdrawn. (3) If the European Patent Office notes that the application or the designation of a Contracting State is deemed to be withdrawn under paragraph 1 or 2, it shall communicate this to the applicant. Rule 112, paragraph 2, shall apply mutatis mutandis.	national basic fee or the search fee is not paid in due time, or if no designation fee is paid in due time, the European patent application shall be deemed to be withdrawn. (2) The designation of any Contracting State in respect of which the designation fee has not been paid in due time shall be deemed to be withdrawn. (3) If the European Patent Office notes that the application or the designation of a Contracting State is deemed to be withdrawn under paragraph 1 or 2, it shall communicate this to the applicant. Rule 69, paragraph 2, shall apply mutatis mutandis. The loss of rights shall be deemed not to have occurred if, within two months of notification of the communication under sentence 1, the omitted act is completed and a surcharge is paid. (4) Designation fees in respect of which the applicant has dispensed with notification of the communication under paragraph 3 may still be validly paid within two months of expiry of the applicable time limit, provided that within this period a surcharge is paid.
Rule 161 - Amendment of the application Without prejudice to Rule 137, paragraphs 2 to 4, the application may be amended once, within one month from a communication informing the applicant accordingly. The application as amended shall serve as the basis for any supplementary search which has to be performed under Article 153, paragraph 7.	**Rule 109 - Amendment of the application** Without prejudice to Rule 86, paragraphs 2 to 4, the application may be amended once, within a non-extendable period of one month as from notification of a communication informing the applicant accordingly. The application as amended shall serve as the basis for any supplementary search which has to be performed under Article 157, paragraph 2.
Rule 162 - Claims incurring fees (1) If the application documents on which the European grant procedure is to be based comprise more than ten claims, a claims fee shall be paid for the eleventh and each subsequent claim within the period under Rule 159, paragraph 1. (2) If the claims fees are not paid in due time, they may still be paid within one month from a communication concerning the failure to observe the time limit. If within this period amended claims are filed, the claims fees due shall be computed on the basis of such amended claims. (3) Any claims fees paid within the period under paragraph 1 and in excess of those due under paragraph 2, second sentence, shall be refunded. (4) Where a claims fee is not paid in due time, the claim concerned shall be deemed to be abandoned.	**Rule 110 Claims incurring fees; Consequence of non-payment** (1) If the application documents on which the European grant procedure is to be based comprise more than ten claims, a claims fee shall be payable for the eleventh and each subsequent claim within the period provided for in Rule 107, paragraph 1. (2) Any claims fees not paid in due time may still be validly paid within a non-extendable period of grace of one month as from notification of a communication pointing out the failure to pay. If within this period amended claims are filed, the claims fees due shall be computed on the basis of such amended claims. (3) Any claims fees paid within the period provided for in paragraph 1 and which are in excess of those due under paragraph 2, second sentence, shall be refunded. (4) Where a claims fee is not paid in due time, the claim concerned shall be deemed to be abandoned.
Rule 163 - Examination of certain formal requirements by the European Patent Office (1) Where the designation of the inventor under Rule 19, paragraph 1, has not yet been made within the period under Rule 159, paragraph 1, the European Patent Office shall invite the applicant to make the designation within two months. (2) Where the priority of an earlier application is claimed	**Rule 111 - Examination of certain formal requirements by the European Patent Office** (1) If the data concerning the inventor prescribed in Rule 17, paragraph 1, have not yet been submitted at the expiry of the period provided for in Rule 107, paragraph 1, the European Patent Office shall invite the applicant to furnish the data within such period as it shall specify. (2) Where the priority of an earlier application is claimed

and the file number of the previous application or the copy thereof provided for in Rule 52, paragraph 1, and Rule 53 have not yet been submitted within the period under Rule 159, paragraph 1, the European Patent Office shall invite the applicant to furnish that number or copy within two months. Rule 53, paragraphs 2 and 3, shall apply.[100] (3) Where, at the expiry of the period under Rule 159, paragraph 1, a sequence listing complying with the standard provided for in the Administrative Instructions under the PCT is not available to the European Patent Office, the applicant shall be invited to file a sequence listing complying with the rules laid down by the President of the European Patent Office within two months. Rule 30, paragraphs 2 and 3, shall apply mutatis mutandis.[101] (4) Where, at the expiry of the period under Rule 159, paragraph 1, the address, the nationality or the State in which his residence or principal place of business is located is missing in respect of any applicant, the European Patent Office shall invite the applicant to furnish these indications within two months. (5) Where, at the expiry of the period under Rule 159, paragraph 1, the requirements of Article 133, paragraph 2, have not been satisfied, the European Patent Office shall invite the applicant to appoint a professional representative within two months. (6) If the deficiencies noted under paragraphs 1, 4 or 5 are not corrected in due time, the European patent application shall be refused. If the deficiency noted under paragraph 2 is not corrected in due time, the right of priority shall be lost for the application.	and the file number or copy provided for in Article 88, paragraph 1, and Rule 38, paragraphs 1 to 3, have not yet been submitted at the expiry of the period provided for in Rule 107, paragraph 1, the European Patent Office shall invite the applicant to furnish the number or copy of the earlier application within such period as it shall specify. Rule 38, paragraph 4, shall apply. (3) If at the expiry of the period provided for in Rule 107, paragraph 1, a sequence listing as prescribed in Rule 5.2 of the Regulations under the Cooperation Treaty is not available to the European Patent Office, or does not conform to the prescribed standard, or has not been filed on the prescribed data carrier, the applicant shall be invited to file a sequence listing conforming to the prescribed standard or on the prescribed data carrier within such period as the European Patent Office shall specify.

[100] See Decision of the President of the European Patent Office dated 12 July 2007 on the filing of priority documents (Special edition No. 3 OJ EPO 2007, B.1., pp22-23)
[101] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of sequence listings (Special edition No. 3 OJ EPO 2007, C.1., pp26-29)

Rule 164 - Consideration of unity by the European Patent Office[102] (1) Where the European Patent Office considers that the application documents which are to serve as the basis for the supplementary search do not meet the requirements of unity of invention, a supplementary search report shall be drawn up on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims. (2) Where the examining division finds that the application documents on which the European grant procedure is to be based do not meet the requirements of unity of invention, or protection is sought for an invention not covered by the international search report or, as the case may be, by the supplementary search report, it shall invite the applicant to limit the application to one invention covered by the international search report or the supplementary search report.	**Rule 112 - Consideration of unity by the European Patent Office** If only a part of the international application has been searched by the International Searching Authority because that Authority considered that the application did not comply with the requirement of unity of invention, and the applicant did not pay all additional fees according to Article 17, paragraph 3(a), of the Cooperation Treaty within the prescribed time limit, the European Patent Office shall consider whether the application complies with the requirement of unity of invention. If the European Patent Office considers that this is not the case, it shall inform the applicant that a European search report can be obtained in respect of those parts of the international application which have not been searched if a search fee is paid for each invention involved within a period specified by the European Patent Office which may not be shorter than two weeks and may not exceed six weeks. The Search Division shall draw up a European search report for those parts of the international application which relate to inventions in respect of which search fees have been paid. Rule 46, paragraph 2, shall apply mutatis mutandis.
Rule 165 - The EuroPCT application as conflicting application under Article 54, paragraph 3 A EuroPCT application shall be considered as comprised in the state of the art under Article 54, paragraph 3, if in addition to the conditions laid down in Article 153, paragraph 3 or 4, the filing fee under Rule 159, paragraph 1(c) has been paid.	

[102] From the EPO FAQ on EPC2000:
The possibility under Rule 112 EPC 1973 of having several inventions searched in a single application by paying further search fees was deleted in the new version of the corresponding Rule 164 EPC 2000. The EPC 2000 establishes two possible scenarios for international applications entering the regional phase before the EPO.

(a) The EPO draws up a supplementary search report:
Where the EPO considers that the application documents which are to serve as the basis for the supplementary search do not meet the requirements of unity of invention, a supplementary search report will be drawn up on those parts of the application which relate to the invention, or group of inventions, first mentioned in the claims (see Rule 164(1) EPC 2000). Under the EPC 2000, therefore, the applicant will no longer have the option in the European phase of obtaining search reports on further inventions by paying further search fees. If the examining division concurs with the view of the search examiner, it will then invite the applicant to limit the application to one invention covered by the supplementary search report (see Rule 164(2) EPC 2000). Divisional applications can be filed for parts excised in response to the objection of lack of unity.

(b) The EPO does not draw up a supplementary search report:
Where the examining division finds that the application documents on which the European grant procedure is to be based do not meet the requirements of unity of invention, or protection is sought for an invention not covered by the international search report, it will invite the applicant to limit the application to one invention covered by the international search report. In this case too, under the EPC 2000, the applicant no longer has the possibility in the European phase of having further inventions searched on payment of further search fees. However, divisional applications can be filed for parts excised in response to the objection.

Transitional Provisions[103]

Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the European Patent Convention of 29 November 2000

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,
Having regard to Article 7, paragraph 2, of the Act revising the European Patent Convention of 29 November 2000 ("Revision Act"),
On a proposal from the President of the European Patent Office,
Having regard to the opinion of the Committee on Patent Law,
HAS DECIDED AS FOLLOWS:

Article 1

In accordance with Article 7, paragraph 1, second sentence, of the Revision Act, the following transitional provisions shall apply to the amended and new provisions of the European Patent Convention specified below:

1. Articles 14(3) to (6), 51, 52, 53, 54(3) and (4), 61, 67, 68 and 69, the Protocol on the Interpretation of Article 69, and Articles 70, 86, 88, 90, 92, 93, 94, 97, 98, 106, 108, 110, 115, 117, 119, 120, 123, 124, 127, 128, 129, 133, 135, 137 and 141 shall apply to European patent applications pending at the time of their entry into force and to European patents already granted at that time. However, Article 54(4) of the version of the Convention in force before that time shall continue to apply to these applications and patents.

2. Articles 65, 99, 101, 103, 104, 105, 105a-c and 138 shall apply to European patents already granted at the time of their entry into force and to European patents granted in respect of European patent applications pending at that time.

3. Article 54(5) shall apply to European patent applications pending at the time of its entry into force, in so far as a decision on the grant of the patent has not yet been taken.

4. Article 112a shall apply to decisions of the Boards of Appeal taken as from the date of its entry into force.

5. Articles 121 and 122 shall apply to European patent applications pending at the time of their entry into force and to European patents already granted at that time, in so far as the time limits for requesting further processing or reestablishment of rights have not yet expired at that time.

6. Articles 150 to 153 shall apply to international applications pending at the time of their entry into force. However, Articles 154(3) and 155(3) of the version of the Convention in force before that time shall continue to apply to these applications.

Article 2

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act [13 December 2007].

Done at Munich, 28 June 2001
For the Administrative Council
The Chairman
Roland GROSSENBACHER

[103] See Notice from the European Patent Office dated 20 September 2007 on implementation of the transitional provisions of the EPC 2000 applicable during the transition from the EPC 1973 to the EPC 2000

Rules relating to Fees

as adopted by decision of the Administrative Council of 7 December 2006 THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION, HAVING REGARD to the European Patent Convention and in particular Article 33, paragraph 2(d), thereof, HAS ADOPTED THE FOLLOWING RULES RELATING TO FEES:	of 20 October 1977 as last amended by decision of the Administrative Council of the European Patent Organisation of 15 December 2005
Article 1 - General The following shall be levied in accordance with the provisions contained in these Rules: (a) fees due to be paid to the European Patent Office (hereinafter referred to as the Office) as provided for in the Convention and in the Implementing Regulations and the fees and expenses which the President of the Office lays down pursuant to Article 3, paragraph 1; (b) fees and expenses pursuant to the Patent Cooperation Treaty (hereinafter referred to as the PCT), the amounts of which may be fixed by the Office.	**Article 1 - General** The following shall be levied in accordance with the provisions contained in these Rules: (a) fees due to be paid to the European Patent Office (hereinafter referred to as the Office) as provided for in the Convention and in the Implementing Regulations and the fees and costs which the President of the Office lays down pursuant to Article 3, paragraph 1; (b) fees and costs pursuant to the Patent Cooperation Treaty (hereinafter referred to as the PCT), the amounts of which may be fixed by the Office.
Article 2 - Fees provided for in the Convention and in the Implementing Regulations The fees due to be paid to the Office under Article 1 shall be as follows: 1. Filing fee (Article 78, paragraph 2) where – the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed online **€ 95** – the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is not filed online **€ 170** 2. Search fee in respect of – a European or supplementary European search on an application filed on or after 1 July 2005 (Article 78, paragraph 2, Rule 62, Rule 64, paragraph 1, Article 153, paragraph 7) **€ 1 000** [supplementary search fee reductions: see A153(7)] – a European or supplementary European search on an application filed before 1 July 2005 (Article 78, paragraph 2, Rule 64, paragraph 1, Article 153, paragraph 7) **€ 720** – an international search (Rule 16.1 PCT and Rule 158, paragraph 1) **€ 1 615**	**Article 2 - Fees provided for in the Convention and in the Implementing Regulations** The fees due to be paid to the Office under Article 1 shall be as follows: 1. Filing fee (Article 78, paragraph 2); national basic fee (Rule 106(a)) where - the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed online **€ 95** - the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed on paper **€ 170** 2. Search fee in respect of - a European or supplementary European search on an application filed on or after 1 July 2005 (Article 78, paragraph 2, Rule 44a, Rule 46, paragraph 1, and Rule 112, Article 157, paragraph 2(b)) **€ 1 000** - a supplementary European search on an application filed before 1 July 2005 (Article 157, paragraph 2(b)) **€ 720** - an international search (Rule 16.1 PCT and Rule 105, paragraph 1) **€ 1 615** 3. Designation fee for each contracting state designated (Article 79, paragraph 2), designation fees being deemed paid for all contracting states upon payment of seven times the amount of this fee

3. Designation fee for each contracting state designated (Article 79, paragraph 2), designation fees being deemed paid for all contracting states upon payment of seven times the amount of this fee

€ 80

3a. Joint designation fee for the Swiss Confederation and the Principality of Liechtenstein

€ 80

4. Renewal fees for the European patent applications (Article 86, paragraph 1), calculated in each case from the date of filing of the application

– for the 3rd year	**€ 400**
– for the 4th year	**€ 425**
– for the 5th year	**€ 450**
– for the 6th year	**€ 745**
– for the 7th year	**€ 770**
– for the 8th year	**€ 800**
– for the 9th year	**€ 1 010**
– for the 10th and each subsequent year	**€ 1 065**

5. Additional fee for belated payment of a renewal fee for the European patent application (Rule 51, paragraph 2) 10 % of the belated renewal fee

6. Examination fee (Article 94, paragraph 1)

– an application filed before 1 July 2005

€ 1 490

– an application filed on or after 1 July 2005

€ 1 335

– an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 153, paragraph 7) [reduced if IPER drawn up by EPO: A14(2)]

€ 1 490

7. Fee for grant, including fee for printing the European patent specification (Rule 71, paragraph 3), where the application documents to be printed comprise:

7.1 not more than 35 pages

€ 750

7.2 more than 35 pages

€ 750

plus **€ 11** for the 36th and each subsequent page

8. Fee for printing a new specification of the European patent (Rule 82, paragraph 2, Rule 95, paragraph 3)

– flat-rate fee **€ 55**

9. Surcharge for late performance of the acts required to maintain the European patent in amended form (Rule 82, paragraph 3, Rule 95, paragraph 3)

– flat-rate fee **€ 100**

10. Opposition fee (Article 99, paragraph 1, and Article 105,

€ 80

3a. Joint designation fee for the Swiss Confederation and the Principality of Liechtenstein

€ 80

3b. Surcharge for late payment of the filing fee, the search fee or the designation fee (Rule 85a) 50% of the relevant fee or fees,but not to exceeda total of **€ 680**

3c. Surcharge for late filing of either the translation of the international application or the request for examination, or for late payment of the national basic fee, the search fee or the designation fees (Rule 108(3) and (4)4) 50% of the relevant fees, but at least **€ 520** for late filing of the translation up to a maximum of **€ 1 820**

4. Renewal fees for the European patent applications (Article 86, paragraph 1), calculated in each case from the date of filing of the application

- for the 3rd year	**€ 400**
- for the 4th year	**€ 425**
- for the 5th year	**€ 450**
- for the 6th year	**€ 745**
- for the 7th year	**€ 770**
- for the 8th year	**€ 800**
- for the 9th year	**€ 1 010**
- for the 10th and each subsequent year	**€ 1 065**

5. Additional fee for belated payment of a renewal fee for the European patent application (Article 86, paragraph 2) 10% of the belated renewal fee.

6. Examination fee (Article 94, paragraph 2) in respect of

- an application filed before 1 July 2005

€ 1 490

- an application filed on or after 1 July 2005

€ 1 335

- an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 157, paragraph 3(a))

€ 1 490

7. Surcharge for late filing of the request for examination (Rule 85b) 50% of the examination fee.

8. Fee for grant, including fee for printing the European patent specification (Article 97, paragraph 2(b)), where the application documents to be printed comprise:

8.1 not more than 35 pages

€ 750

8.2 more than 35 pages

€ 750

plus **€ 11** for the 36th and each subsequent page.

9. Fee for printing a new specification of the European patent (Article 102, paragraph 3(b))

- flat-rate fee

paragraph 2)

€ 635

10a. Limitation or revocation fee (Article 105a, paragraph 1)

– request for limitation **€ 1 000**

– request for revocation **€ 450**

11. Fee for appeal (Article 108)

€ 1 065

11a. Fee for petition for review (Article 112a, paragraph 4)

€ 2 500

12. Fee for further processing (Rule 135, paragraph 1)

– in the event of late payment of a fee

50% of the relevant fee

– in the event of late performance of the acts required under Rule 71, paragraph 3

€ 210

– other cases

€ 210

13. Fee for re-establishment of rights / fee for requesting restoration / fee for reinstatement of rights (Rule 136, paragraph 1, Rule 26bis.3(d) PCT, Rule 49ter.2(d) PCT, Rule 49.6(d)(i) PCT)[104]

€ 550

14. Conversion fee (Article 135, paragraph 3, and Article 140)

€ 55

14a. Fee for late furnishing of a sequence listing (Rule 30, paragraph 3)

€ 200

15. Claims fee for the eleventh and each subsequent claim (Rule 45, paragraph 1, Rule 71, paragraph 7, and Rule 162, paragraph 1)

€ 45

16. Fee for the awarding of costs (Rule 88, paragraph 3)

€ 55

17. Fee for the conservation of evidence (Rule 123, paragraph 3)

€ 55

18. Transmittal fee for an international application (Rule 157, paragraph 4)

€ 105

19. Fee for the preliminary examination of an international application (Rule 58 PCT and Rule 158, paragraph 2)

€ 1 595

€ 55

10. Opposition fee (Article 99, paragraph 1, and Article 105, paragraph 2)

€ 635

11. Fee for appeal (Article 108)

€ 1 065

12. Fee for further processing (Article 121, paragraph 2)

€ 210

13. Fee for re-establishment of rights (Article 122, paragraph 3)

€ 365

14. Conversion fee (Article 136, paragraph 1, and Article 140)

€ 55

15. Claims fee for the eleventh and each subsequent claim (Rule 31, paragraph 1, Rule 51, paragraph 7, and Rule 110, paragraph 1)

€ 45

16. Fee for the awarding of costs (Rule 63, paragraph 3)

€ 55

17. Fee for the conservation of evidence (Rule 75, paragraph 3)

€ 55

18. Transmittal fee for an international application (Article 152, paragraph 3)

€ 105

19. Fee for the preliminary examination of an international application (Rule 58 PCT and Rule 105, paragraph 2)

€ 1 595

20. Fee for a technical opinion (Article 25)

€ 3 185

21. Protest fee (Rules 40.2(e) and 68.3(e) PCT, Rule 105, paragraph 3)

€ 1 065

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[104] Amended by Article 1 of the Decision of the Administrative Council of 25 October 2007 amending the Rules relating to Fees (CA/D 17/07), as from 13 December 2007.

20. Fee for a technical opinion (Article 25)

€ 3 185

21. Protest fee (Rules 40.2(e) and 68.3(e) PCT)

– for international applications still pending on [13 December 2007]

€ 1 065

– for international applications filed on or after [13 December 2007] (Rule 158, paragraph 3)

€ 750

Article 3 - Fees, expenses and prices laid down by the President of the Office	**Article 3 - Fees, costs and prices laid down by the President of the Office**
(1) The President of the Office shall lay down the amount of the administrative fees provided for in the Implementing Regulations and, where appropriate, the amount of the fees and expenses for any services rendered by the Office other than those specified in Article 2.[105]	(1) The President of the Office shall lay down the amount of the administrative fees provided for in the Implementing Regulations and, where appropriate, the amount of the fees and costs for any services rendered by the Office other than those specified in Article 2.
(2) He shall also lay down the prices of the publications referred to in Articles 93, 98, 103 and 129 of the Convention.	(2) He shall also lay down the prices of the publications referred to in Articles 93, 98, 103 and 129 of the Convention.
(3) The amounts of the fees provided for in Article 2 and of the fees and expenses laid down in accordance with paragraph 1 shall be published in the Official Journal and on the website of the European Patent Office.	(3) The amounts of the fees provided for in Article 2 and of the fees and costs laid down in accordance with paragraph 1 shall be published in the Official Journal of the European Patent Office.
Article 4 - Due date for fees	**Article 4 - Due date for fees**
(1) Fees in respect of which the due date is not specified in the provisions of the Convention or of the PCT or of the Implementing Regulations thereto shall be due on the date of receipt of the request for the service incurring the fee concerned.	(1) Fees in respect of which the due date is not specified in the provisions of the Convention or of the PCT or of the Implementing Regulations thereto shall be due on the date of receipt of the request for the service incurring the fee concerned.
(2) The President of the Office may decide not to make services within the meaning of paragraph 1 dependent upon the advance payment of the corresponding fee.	(2) The President of the Office may decide not to make services within the meaning of paragraph 1 dependent upon the advance payment of the corresponding fee.
Article 5 - Payment of fees[106]	**Article 5 - Payment of fees**
(1) The fees due to the Office shall be paid in euro:	(1) The fees due to the Office shall be paid in euro:
(a) by payment or transfer to a bank account held by the Office,	(a) by payment or transfer to a bank account held by the Office,
(b) by payment or transfer to a Giro account held by the Office, or	(b) by payment or transfer to a Giro account held by the Office, or
(c) by delivery or remittance of cheques made payable to the Office.	(c) by delivery or remittance of cheques made payable to the Office.
(2) The President of the Office may allow other methods of paying fees than those set out in paragraph 1.[107]	(2) The President of the Office may allow other methods of paying fees than those set out in paragraph 1.

[105] See Decision of the President of the European Patent Office dated 14 July 2007 revising the Office's fees and expenses (Special edition No. 3 OJ EPO 2007, M.1., pp130-133).
[106] To be amended by Article 1, point 2 of the Decision of the Administrative Council of 25 October 2007 amending the Rules relating to Fees (CA/D 17/07), as from 1 April 2008.
[107] Decision of the President of the European Patent Office dated 12 July 2007 concerning the payment of fees and costs at the Information Office in Munich (Special edition No. 3 OJ EPO 2007, M.4., p139]

Article 6 - Particulars concerning payments

(1) Every payment must indicate the name of the person making the payment and must contain the necessary particulars to enable the Office to establish immediately the purpose of the payment.

(2) If the purpose of the payment cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If he does not comply with this request in due time the payment shall be considered not to have been made.[108]

Article 7 - Particulars concerning payments

(1) Every payment must indicate the name of the person making the payment and must contain the necessary particulars to enable the Office to establish immediately the purpose of the payment.

(2) If the purpose of the payment cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If he does not comply with this request in due time the payment shall be considered not to have been made.

Article 7 - Date to be considered as the date on which payment is made[109]

(1) The date on which any payment shall be considered to have been made to the Office shall be as follows:

(a) in the cases referred to in Article 5, paragraph 1(a) and (b): the date on which the amount of the payment or of the transfer is actually entered in a bank account or a Giro account held by the Office;

(b) in the case referred to in Article 5, paragraph 1(c): the date of receipt of the cheque at the Office, provided that the cheque is met.

(2) Where the President of the Office allows, in accordance with the provisions of Article 5, paragraph 2, other methods of paying fees than those set out in Article 5, paragraph 1, he shall also lay down the date on which such payments shall be considered to have been made.

(3) Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment

(a) fulfilled one of the following conditions in a Contracting State within the period within which the payment should have been made:

(i) he effected the payment through a banking establishment or a post office;

(ii) he duly gave an order to a banking establishment or a post office to transfer the amount of the payment;

(iii) he despatched at a post office a letter bearing the address of the Office and containing a cheque within the meaning of Article 5, paragraph 1(c), provided that the cheque is met, and

(b) paid a surcharge of 10% on the relevant fee or fees, but not exceeding EUR 150; no surcharge is payable if a condition according to subparagraph (a) has been fulfilled

Article 8 - Date to be considered as the date on which payment is made

(1) The date on which any payment shall be considered to have been made to the Office shall be as follows:

(a) in the cases referred to in Article 5, paragraph 1(a) and (b): the date on which the amount of the payment or of the transfer is actually entered in a bank account or a Giro account held by the Office;

(b) in the case referred to in Article 5, paragraph 1(c): the date of receipt of the cheque at the Office, provided that the cheque is met.

(2) Where the President of the Office allows, in accordance with the provisions of Article 5, paragraph 2, other methods of paying fees than those set out in Article 5, paragraph 1, he shall also lay down the date on which such payments shall be considered to have been made.

(3) Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment

(a) fulfilled one of the following conditions in a Contracting State within the period within which the payment should have been made:

(i) he effected the payment through a banking establishment or a post office;

(ii) he duly gave an order to a banking establishment or a post office to transfer the amount of the payment;

(iii) he despatched at a post office a letter bearing the address of the Office and containing a cheque within the meaning of Article 5, paragraph 1(c), provided that the cheque is met, and

(b) paid a surcharge of 10% on the relevant fee or fees, but not exceeding EUR 150; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled

[108] See Decision of the President of the European Patent Office dated 12 July 2007 concerning the payment of fees and costs at the Information Office in Munich (Special edition No. 3 OJ EPO 2007, M.4., p139)

[109] To be amended by Article 1, point 3 of the Decision of the Administrative Council of 25 October 2007 amending the Rules relating to Fees (CA/D 17/07), as from 1 April 2008.

not later than ten days before the expiry of the period for payment.

(4) The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3(a) was fulfilled and, where required, pay the surcharge referred to in paragraph 3(b), within a period to be specified [Rule 132] by it. If he fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.

not later than ten days before the expiry of the period for payment.

(4) The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3(a) was fulfilled and, where required, pay the surcharge referred to in paragraph 3(b), within a period to be specified by it. If he fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.

Article 8 - Insufficiency of the amount paid

(1) A time limit for payment shall in principle be deemed to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired. The Office may, however, in so far as this is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking. It may also, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

(2) Where the amount paid in designation fees is insufficient to cover the designation fees payable for all the Contracting States, the amount paid shall be applied according to the specifications to be made by the applicant by the time of payment at the latest. If the applicant makes no such specifications, the fees shall be deemed to be paid only for as many designations as are covered by the amount paid and in the order in which the Contracting States are listed in the request for grant.

Article 9 - Insufficiency of the amount paid

(1) A time limit for payment shall in principle be deemed to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired. The Office may, however, in so far as this is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking. It may also, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

(2) Where the request for grant of a European patent designates more than one Contracting State in accordance with Article 79, paragraph 1, of the Convention, and the amount paid is insufficient to cover all the designation fees, the amount paid shall be applied according to the specifications made by the applicant at the time of payment. If the applicant makes no such specifications at the time of payment, these fees shall be deemed to be paid only for as many designations as are covered by the amount paid and in the order in which the Contracting States are designated in the request.

Article 9 - Refund of search fees

(1) The search fee paid for a European or supplementary European search shall be fully refunded if the European patent application is withdrawn or refused or deemed to be withdrawn at a time when the Office has not yet begun to draw up the search report.

(2) Where the European search report is based on an earlier search report prepared by the Office on an application whose priority is claimed or an earlier application within the meaning of Article 76 of the Convention or of Rule 17 of the Convention, the Office shall refund to the applicant, in accordance with a decision of its President, an amount which shall depend on the type of earlier search and the extent to which the Office benefits from the earlier search report when carrying out the subsequent search.[110]

Article 10 - Refund of search fees

(1) The search fee paid for a European or supplementary European search shall be fully refunded if the European patent application is withdrawn or refused or deemed to be withdrawn at a time when the Office has not yet begun to draw up the search report.

(2) Where the European search report is based on an earlier search report prepared by the Office on an application whose priority is claimed or an earlier application within the meaning of Article 76 of the Convention or an original application within the meaning of Rule 15 of the Convention, the Office shall refund to the applicant, in accordance with a decision of its President, an amount which shall depend on the type of earlier search and the extent to which the Office benefits from the earlier search report when carrying out the subsequent search.

Article 10 - Refund of the fee for a technical opinion

An amount of 75% of the fee for a technical opinion under Article 25 of the Convention shall be refunded if the request for a technical opinion is withdrawn at a time when the

Article 10a - Refund of the fee for a technical opinion

An amount of 75% of the fee for a technical opinion under Article 25 of the Convention shall be refunded if the request for a technical opinion is withdrawn at a time when the

[110] Decision of the President of the European Patent Office dated 14 July 2007 concerning the refund of search fees under Article 9(2) of the Rules relating to Fees (Special edition No. 3 OJ EPO 2007, M.2., pp134-137) and Notice from the President of the European Patent Office dated 1 July 2005 concerning the criteria for refund of search fees (OJ EPO 2005, 433)

Office has not yet begun to draw up the technical opinion.	Office has not yet begun to draw up the technical opinion.
Article 11 - Refund of examination fee The examination fee provided for in Article 94, paragraph 1, of the Convention shall be refunded: (a) in full if the European patent application is withdrawn, refused or deemed to be withdrawn before the Examining Divisions have assumed responsibility; (b) at a rate of 75% if the European patent application is withdrawn, refused or deemed to be withdrawn after the Examining Divisions have assumed responsibility but before substantive examination has begun.	**Article 10b - Refund of examination fee** The examination fee provided for in Article 94, paragraph 2, of the Convention shall be refunded: (a) in full if the European patent application is withdrawn, refused or deemed to be withdrawn before the Examining Divisions have assumed responsibility; (b) at a rate of 75% if the European patent application is withdrawn, refused or deemed to be withdrawn after the Examining Divisions have assumed responsibility but before substantive examination has begun.
Article 12 - Refund of insignificant amounts Where too large a sum is paid to cover a fee, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. The President of the Office shall determine what constitutes an insignificant amount.[111] [set at **€10**]	**Article 10c - Refund of insignificant amounts** Where too large a sum is paid to cover a fee, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. The President of the Office shall determine what constitutes an insignificant amount.
-	**Article 10d - Refund of fee for international preliminary examination** If the applicant, during international preliminary examination, has not asked for a detailed preliminary examination or has not filed any amendments under Article 19 or 34(2) PCT or any other arguments, two thirds of the fee paid for international preliminary examination shall be refunded. The details of the refund shall be determined by the President of the Office.
Article 13 - Termination of financial obligations[112] (1) Rights of the Organisation to the payment of a fee to the European Patent Office shall be extinguished after four years from the end of the calendar year in which the fee was due. (2) Rights against the Organisation for the refunding by the European Patent Office of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose. (3) The period laid down in paragraphs 1 and 2 shall be interrupted in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgment enters into force. (4) The President of the European Patent Office may waive action for the enforced recovery of any sum due if the sum to be recovered is minimal or if such recovery is too uncertain.	**Article 11 - Decisions fixing costs which are subject to appeal** In accordance with Article 106, paragraph 5, of the Convention, decisions fixing the amount of costs of opposition proceedings may be appealed if the amount is in excess of the fee for appeal.

[111] See Decision of the President of the European Patent Office dated 14 July 2007 implementing Article 12 of the Rules relating to Fees (Special edition No. 3 OJ EPO 2007, M.3., p138)
[112] Amended by Article 1, point 4 of the Decision of the Administrative Council of 25 October 2007 amending the Rules relating to Fees (CA/D 17/07), as from 13 December 2007.

Article 14 - Reduction of fees (1) The reduction laid down in Rule 6, paragraph 3, of the Convention shall be 20% of the filing fee, examination fee, opposition fee, appeal fee, fee for the petition for review or the limitation or revocation fee. (2) Where the European Patent Office has drawn up an international preliminary examination report [r70 PCT], the examination fee shall be reduced by 50%. If the report was established on certain parts of the international application in accordance with Article 34, paragraph 3(c), PCT, the fee shall not be reduced if subject matter not covered by the report is to be examined.	**Article 12 - Reduction of fees** (1) The reduction laid down in Rule 6, paragraph 3, of the Convention shall be 20% of the filing fee, examination fee, opposition fee and fee for appeal. (2) The reduction laid down in Rule 107, paragraph 2, of the Convention shall be 50% of the examination fee. The reduction shall not be granted if the Office as an International Preliminary Examining Authority has refunded the fee paid for preliminary examination under Article 10d.
-	**Article 13 - Notification** The President of the European Patent Office shall forward a certified copy of these Rules to all the signatory States to the Convention and to the States which accede thereto.
Article 15 - Entry into force These Rules shall enter into force on 20 October 1977.* DONE at Munich, 20 October 1977 For the Administrative Council The Chairman	**Article 14 - Entry into force** These Rules shall enter into force on 20 October 1977. DONE at Munich, 20 October 1977.

Decision of the President of the European Patent Office dated 12 July 2007 concerning the designation of the EPO filing offices

A.1. [Special edition No. 3 OJ EPO 2007, pp 3-4]

The President of the European Patent Office, having regard to Article 10(2)(a) EPC and Rule 2(1) EPC, has decided as follows:

Article 1: Filing offices of the European Patent Office

(1) For the purposes of Article 75(1)(a) EPC and Rule 35(1) EPC, the European Patent Office (EPO) has filing offices at its headquarters and "PschorrHöfe" buildings in Munich, its branch at The Hague and its Berlin sub-office.
(2) The EPO's sub-office in Vienna is not a filing office for the purposes of Article 75(1)(a) EPC and Rule 35(1) EPC. Patent applications filed with the Vienna sub-office are forwarded to one of the filing offices and will only be accorded a filing date on receipt by the latter.
(3) The filing offices in Munich and Berlin are equipped with automated mail-boxes which may be used at any time. The automated mail-box facility is not yet available at the filing office in The Hague. Outside office hours, documents may be handed to the porter.
(4) Patent grant procedure documents other than authorisations and priority documents may be filed by fax.

Article 2: Opening hours of the filing offices

(1) The EPO's filing offices are open for the receipt of documents during the working hours of the site in question.
(2) The filing offices are closed on Saturdays, Sundays and public holidays.

Article 3: Previous decisions superseded

Upon the entry into force of this decision, the decisions of the President dated 10 May 1989 on the setting-up of a filing office in the Berlin sub-office of the European Patent Office (OJ EPO 1989, 218) and dated 18 March 1991 on the setting-up of a filing office in the Munich building "PschorrHöfe" (OJ EPO 1991, 223) shall cease to apply.

Article 4: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act [13 December 2007].

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Notice from the European Patent Office dated 12 July 2007 concerning the availability of the EPO filing offices

A.2. [Special edition No. 3 OJ EPO 2007, p5]

The present notice is issued further to the decision of the President of the European Patent Office (EPO) dated 12 July 2007 concerning the designation of the EPO filing offices. It applies with effect from the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act.

1. Street addresses and opening hours of the filing offices

Munich
European Patent Office
Erhardtstrasse 27
80469 Munich
Germany

European Patent Office
Bayerstrasse 34
(entrance via Zollstrasse 3)
80335 Munich
Germany

Monday to Thursday: 08.00 to 16.45 hrs,
and
Friday: 08.00 to 15.30 hrs (both offices)

The Hague
European Patent Office
Patentlaan 2
2288 EE Rijswijk
Netherlands

Monday to Friday: 08.00 to 18.00 hrs

Berlin
European Patent Office
Gitschiner Strasse 103
10969 Berlin
Germany

Monday to Friday: 10.00 to 12.00 hrs

2. Postal addresses of the filing offices

European Patent Office
80298 Munich
Germany

European Patent Office
Postbus 5818
2280 HV Rijswijk
Netherlands

European Patent Office
10958 Berlin
Germany

3. Fax numbers of the filing offices

Only the following numbers are to be used for filing patent grant procedure documents by fax:

Munich
+49 (0)89 2399-4465

The Hague
+31 (0)70 340-3016

Berlin
+49 (0)30 25901-840

Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of patent applications and other documents by facsimile

A.3. [Special edition No. 3 OJ EPO 2007, pp7-11]

The President of the European Patent Office, having regard to Rule 2(1) EPC and Rule 92.4 PCT, has decided as follows:

Article 1: Filing of European patent applications

(1) European patent applications may be filed by facsimile with the filing offices of the European Patent Office in Munich, The Hague and Berlin.
(2) European patent applications may also be filed by facsimile with the competent national authorities of those contracting states which so permit.
(3) European patent applications and international applications may not be filed by telegram, teletex or similar means. Applications so filed shall be deemed not to have been received.

Article 2: Filing of international patent applications

(1) International (PCT) applications may be filed by facsimile with the filing offices of the European Patent Office in Munich, The Hague and Berlin.
(2) Where an international application is filed by facsimile, the application documents in due form and the Request (Form PCT/RO/101) shall be filed by post at the same time. The facsimile should state that the application documents have been filed separately on paper.

Article 3: Filing of other documents

After a European patent application or an international application has been filed, documents as referred to in Rule 50 EPC or Rule 92.4 PCT with the exception of authorisations and priority documents may be filed by facsimile with the filing offices of the European Patent Office in Munich, The Hague and Berlin.

Article 4: Signature

Where a document is filed by facsimile, reproduction of the filing person's signature on the facsimile shall in keeping with Rule 2(2) EPC be deemed sufficient to confirm the document's authenticity. The signature must clearly indicate the filing person's name and position.

Article 5: Date of filing of patent applications and date of receipt of documents

(1) The date of filing accorded to a European patent application or international patent application filed by facsimile shall be the date on which the application documents filed by facsimile were received in full at a filing office of the European Patent Office in Munich, The Hague or Berlin, provided these documents satisfy the requirements of Article 80 EPC and Rule 40 EPC or of Article 11(1) PCT.
(2) If the filing process extends beyond midnight and the documents received on the earlier day satisfy these requirements, the date of filing accorded to the application shall be the earlier day, provided the applicant so requests and at the same time renounces those parts of the application received after midnight.
(3) The date of receipt accorded to other documents filed by facsimile with the filing offices of the European Patent Office in Munich, The Hague and Berlin shall be the date on which they were received at the said filing offices.
(4) The foregoing paragraphs shall apply mutatis mutandis to documents filed with the competent national authorities of those contracting states which permit filing by facsimile. However, once the applicant has received the communication under Rule 35(4) EPC from the European Patent Office, all further documents relating to the application may be filed only with the European Patent Office.
(5) European or international patent applications and other subsequent documents filed with the Vienna suboffice shall be forwarded to one of the filing offices, and the date of filing accorded to them shall be their date of receipt at the latter office.

Article 6: Illegible or incomplete documents

Where a document filed by facsimile is illegible or incomplete, or where an attempt to file a document by facsimile has failed, the facsimile shall be deemed not to have been received. The sender, if identifiable, shall be notified without delay.

Article 7: Supplying confirmation of European patent applications and other documents

(1) At the invitation of the European Patent Office department charged with the procedure, paper confirmation of a European patent application filed by facsimile shall be supplied within a period of two months in the form of application documents reproducing the contents of the facsimile documents and complying with the requirements of the Implementing Regulations to the EPC. If the applicant fails to comply with this invitation in due time, the European patent application shall be refused (Article 90(5) EPC, Rule 2(1) EPC).
(2) At the invitation of the European Patent Office department charged with the procedure, paper confirmation of documents filed by facsimile which relate to European patent applications or patents or to international applications shall be supplied within a period of two months in the form of documents reproducing the contents of the facsimile documents and complying with the requirements of the Implementing Regulations to the EPC. If the party concerned fails to comply with this invitation in due time, the facsimile shall be deemed not to have been received (Rule 2(1) EPC, Rule 92.4(g)(ii) PCT).

Article 8: Acknowledgment of receipt

(1) The European Patent Office or the competent national authority of the contracting state concerned shall acknowledge receipt of a European patent application on the form provided for that purpose (EPO Form 1001 (Request for Grant), p. 6). For international applications the European Patent Office shall use EPO Form 1030/1031.
(2) The European Patent Office shall acknowledge receipt of other documents on the form provided for that purpose, which is to be completed by the party concerned (EPO Form 1037 or 1038).
(3) Prompt acknowledgment of the receipt of filed documents shall be assured only if the postal address is given to which such acknowledgment is to be sent.
(4) On request, the European Patent Office shall acknowledge receipt of the documents referred to in paragraphs 1 and 2 by facsimile. This shall be subject to payment of an administrative fee. Where immediate acknowledgment of receipt by facsimile has been requested, this shall be assured only if the request and evidence of payment of the administrative fee or a debit order are enclosed with the documents or filed at the same time and the facsimile number is given to which such acknowledgment is to be sent.

Article 9: Previous decisions superseded

Upon entry into force of this decision, the decision dated 6 December 2004 on the use of facsimile for filing patent applications and other documents (OJ EPO 2005, 41) and the notice dated 6 December 2004 concerning the filing of patent applications and other documents (OJ EPO 2005, 44) shall cease to have effect.

Article 10: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the electronic filing of patent applications and other documents

A.4. [Special edition No. 3 OJ EPO 2007, pp12-16]

The President of the European Patent Office, having regard to Rule 2 EPC and Rule 89bis.1 and 2 PCT, has decided as follows:

Article 1: Filing of patent applications

(1) European patent applications and international (PCT) applications may be filed with the European Patent Office in electronic form.
(2) European patent applications may also be filed in electronic form with the competent national authorities of those contracting states which so permit.

Article 2: Filing of other documents

(1) Other documents within the meaning of Rule 50 EPC or Rule 89bis.1 and 2 PCT not forming part of the application may be filed in electronic form.
(2) Paragraph 1 shall not apply to priority documents, save such as have been digitally signed by the issuing authority and are accepted by the European Patent Office.
(3) Paragraph 1 shall not apply to documents in opposition proceedings, in European patent limitation or revocation proceedings, in appeal proceedings, or in proceedings for review by the Enlarged Board of Appeal of decisions of the boards of appeal.

Article 3: Sequence listings

The provisions governing the filing of sequence listings shall apply mutatis mutandis to applications containing a sequence listing.

Article 4 Electronic filings

(1) Electronic filings shall be made online or on admissible electronic data carriers.
(2) Electronic filings shall be made using the software provided free of charge by the European Patent Office. European and international patent applications may also be filed using other software, subject to prior approval by the European Patent Office.
(3) Documents filed on an electronic data carrier shall be accompanied by a paper document identifying the applicant and/or his representative, indicating an address for correspondence and listing the files stored on the data carrier.

Article 5: Packaging of patent applications and other documents

(1) The submissions referred to in Article 1 and Article 2(1) and (2) shall be packaged using the software provided free of charge by the European Patent Office.
(2) Subject to prior approval by the European Patent Office, other software may also be used.
(3) The Administrative Instructions under the PCT, Part 7 and Annex F, shall apply to the filing of international applications and other documents within the meaning of Rule 89bis PCT.

Article 6: Signature

(1) Where filed documents require signature, their authenticity may be confirmed by means of a facsimile signature, a text string signature or an enhanced electronic signature.
(2) A facsimile signature shall be the facsimile reproduction of the filing person's signature.
(3) A text string signature shall be a string of characters, preceded and followed by a forward slash (/), selected by the signatory to provide evidence of his identity and of his intent to authenticate the message in question.
(4) An enhanced electronic signature shall be an electronic signature either issued by the European Patent Office or accepted by it.

Article 7 Wrapping and enveloping of documents

Documents filed in accordance with Article 4(1) and (2) of this decision shall be wrapped and enveloped as a data package

using the certificates of electronic signatures issued by the European Patent Office or accepted by it.

Article 8: Date of filing of electronically filed patent applications and date of receipt of electronically filed documents

(1) The date of filing accorded to a European patent application filed in electronic form shall be the date on which the application documents thus transmitted were received at the European Patent Office or the competent national authority of the contracting state concerned, provided these documents satisfy the requirements of Article 80 EPC and Rule 40 EPC or of Article 11(1) PCT.
(2) The date of receipt accorded to documents electronically filed with the European Patent Office under Rule 2 EPC shall be the date on which they were received at the European Patent Office.

Article 9: Acknowledgment of receipt

(1) Receipt of documents filed in accordance with this decision shall be acknowledged electronically within the submission session by the European Patent Office or the competent national authority of the contracting state concerned.
(2) Where such acknowledgment is not successfully transmitted, the Office shall transmit it by other means without delay, provided it has sufficient information at its disposal.
(3) The acknowledgment shall include the identity of the Office, the date and time of receipt, a reference or application number assigned by the Office, a list of the files transferred, and a hash value (the message digest).
(4) Acknowledgment of receipt shall not imply the accordance of a date of filing.

Article 10: Illegible or incomplete documents and infected files

(1) Where a filed document is illegible or incomplete, that part of it which is illegible or incomplete shall be deemed not to have been received.
(2) If a filed document is infected with a computer virus or contains other malicious software, it shall be deemed to be illegible. The Office shall not be obliged to either open it or process it.
(3) Where a filed document is found to be deficient within the meaning of paragraph 1 or 2, the sender, if identifiable, shall be notified without delay.

Article 11: Confirmation through the filing of paper documents

No paper documents need be filed to confirm documents filed electronically in accordance with this decision.

Article 12: Previous decisions superseded

When this decision enters into force, the decision dated 29 October 2002 on the electronic filing of European patent applications and other documents (OJ EPO 2002, 543), the notice dated 29 October 2002 concerning the electronic filing of patent applications and other documents (OJ EPO 2002, 545) and the notice dated 3 December 2003 concerning the electronic filing of documents within the meaning of Rule 36 EPC (OJ EPO 2003, 609) shall cease to have effect.

Article 13: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the electronic signatures, data carriers and software to be used for the electronic filing of patent applications and other documents

A.5. [Special edition No. 3 OJ EPO 2007, pp17-18]

The President of the European Patent Office, having regard to Rule 2 EPC and Rule 89bis.1 and 2 PCT, has decided as follows:

Article 1: Electronic signatures

(1) The authenticity of documents filed electronically with the European Patent Office shall be confirmed by means of an enhanced electronic signature.
(2) The certificates of the electronic signature shall be required for the wrapping and enveloping of patent applications and other documents under Article 1 and Article 2(1) respectively of the decision dated 12 July 2007 concerning the electronic filing of patent applications and other documents.
(3) The European Patent Office shall accept certificates issued by the following certification authorities:

– European Patent Office (http://www.epoline.org)
– CERES (http://www.cert.fnmt.es/)
– VRK-FINSIGN (http://www.vaestorekisterikeskus.fi/)
– WIPO (http://www.wipo.int/pct-safe/en/certificates.htm)

Article 2: Data carriers

European patent applications and international (PCT) applications and other documents shall be filed electronically on CDR discs conforming to the ISO 9660 standard or on DVDR or DVD+R discs.

Article 3: Original data formats

(1) Technical documents relating to a European or international patent application may be additionally attached to the application in the data format in which they were created, provided the files contain either plain ASCII text or they were created with one of the following word processing programs:

– Microsoft Word 97 and later releases
– Corel WordPerfect 6.1, 8 & 10 and later releases
– Writer of OpenOffice 2.0 and later releases (including the corresponding StarOffice products)

(2) Any objects originating from other programs may be embedded into documents being generated by the word processing programs mentioned in paragraph 1 as long as they can be viewed without loss of the information being contained in these objects.
(3) Technical documents in a format other than those mentioned in paragraph 1 may be attached in that format only if the applicant informs the European Patent Office at the time of filing where it can within reason acquire the relevant software.

Article 4: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Notice from the European Patent Office dated 12 July 2007 concerning the electronic filing of European patent applications with the German Patent and Trade Mark Office (DPMA)

A.6. [Special edition No. 3 OJ EPO 2007, pp19-21]

The present notice is issued under Article 4(2) of the decision of the President of the European Patent Office (EPO) dated 12 July 2007 concerning the electronic filing of patent applications and other documents.

1. Filing European patent applications using PaTrASINT software

1.1 European patent applications, including all drawings, may also be filed in electronic form with the DPMA using the PaTrASINT software provided free of charge by the DPMA.

1.2 Users of PaTrASINT software must comply not only with the technical and legal requirements which apply when European patent applications are filed electronically with the DPMA2, but also with the EPC's provisions and the EPO's rules governing the electronic filing of patent applications and other documents.

2. Electronic filing

2.1 Electronic filing may be effected online or on electronic data carriers.

2.2 European patent applications are transmitted to the DPMA's electronic filing office using the access and transmission software made available by the DPMA on the basis of the OSCI (Online Services Computer Interface) protocol3.

2.3 A list of the admissible data carriers and data formats is published on the DPMA website.

2.4 If European patent applications are filed on electronic data carriers, they must be accompanied by a paper document identifying the applicant and/or his representative, indicating an address for correspondence and listing the files stored on the data carrier.

3. Form of the documents for European patent applications

3.1 Users of PaTrASINT software must comply with the DPMA's published technical conditions when preparing their European patent applications.

3.2 For applications containing a sequence listing, the provisions governing the filing of sequence listings are applied mutatis mutandis.

4. Encryption

4.1 European patent applications prepared using PaTrASINT software are encrypted for transmission.

5. Acknowledgement of receipt

5.1 As soon as a European patent application has been transmitted via the OSCI protocol, the applicant is notified that a message has been received and is given a document reference number to assist with any queries with the DPMA.

5.2 A few minutes later, the acknowledgement of receipt under Rule 35(2) EPC can be collected from the applicant's mailbox in the Virtual Post Room (VPR). It is issued once the files received under point 1 above have been scrutinised. If the VPR cannot be reached, the procedure can be repeated later.

5.3 The receipt includes the identity of the Office, the date and time when the application was received, a reference or application number allocated by the Office and a list of the files transmitted.

5.4 The "message received" notification and the receipt itself do not imply the accordance of a filing date.

6. Previous notices

This notice replaces the notice from the European Patent Office dated 19 March 2004 concerning the electronic filing of European patent applications with the German Patent and Trade Mark Office(DPMA) (OJ EPO 2004, 270).

Decision of the President of the European Patent Office dated 12 July 2007 on the filing of priority documents

B.1. [Special edition No. 3 OJ EPO 2007, pp22-23]

The President of the European Patent Office, having regard to Rules 53(2) and 163(2) of the European Patent Convention (EPC), has decided as follows:

Article 1: Inclusion of a copy of the previous application in the file of a European patent application

The European Patent Office shall include free of charge in the file of a European patent application a copy of the previous application from which priority is claimed if the previous application is:

(a) a European patent application;

(b) an international application filed with the European Patent Office as receiving Office under the Patent Cooperation Treaty (PCT);

(c) a Japanese patent or utility model application;

(d) an international application filed with the Japanese Patent Office as receiving Office under the PCT;

(e) a Korean patent or utility model application;

(f) a United States provisional or nonprovisional patent application.

Article 2: Information to the applicant

(1) As soon as the European Patent Office has included in the file of the European patent application a copy of the previous application from which priority is claimed, it shall inform the applicant accordingly, unless the previous application is a European patent application or an international application filed with the European Patent Office as receiving Office under the PCT.

(2) If a copy of the previous application cannot be included in the file, it shall not be deemed duly filed under Rule 53(2) EPC. The European Patent Office shall inform the applicant accordingly in good time and give him an opportunity to file the copy subsequently in accordance with Rule 53(1) EPC.

Article 3: Euro-PCT applications

Articles 1 and 2 shall also apply to international applications entering the European phase before the European Patent Office as designated or elected Office (Rule 163(2) EPC).

Article 4: Previous decisions superseded

On entry into force of the this decision, the decision dated 25 June 2007 on the filing of priority documents (OJ EPO2007, 470) shall cease to apply.

Article 5: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act [13 December 2007]. It shall be applicable to all European patent applications filed as from that date and to international applications entering the European phase as from that date.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of priority documents for European divisional applications and for new European patent applications under Article 61(1)(b) EPC

B.2. [Special edition No. 3 OJ EPO 2007, pp24-25]

The President of the European Patent Office, having regard to Rule 53(2) EPC, has decided as follows:

Article 1: Placing a copy of the previous application in the file of a European patent application

(1) For European divisional applications under Article 76 EPC or new European patent applications under Article 61(1)(b) EPC, the European Patent Office shall place, free of charge, a copy of the previous application whose priority is claimed in the file of the divisional or new application concerned.
(2) If the file of the European parent application or the earlier application under Article 61(1)(b) EPC contains no certified copy of the previous application whose priority is claimed, and the time limit under Rule 53(1) EPC for filing the priority documents has expired, theEuropean Patent Office shall request the applicant to file such a certified copy within a specified period, to go on the file of the divisional or new application concerned.

Article 2: Translation of the previous application

(1) If, for European divisional applications under Article 76 EPC or new European patent applications under Article 61(1)(b) EPC, a translation of the previous application whose priority is claimed has to be filed for the purpose of assessing the validity of the priority claim, the European Patent Office shall take a copy of the translation from the file of the European parent application or of the earlier application under Article 61(1)(b) EPC.
(2) If the file of the European parent application or the earlier application under Article 61(1)(b) EPC contains no translation of the previous application whose priority is claimed, the European Patent Office shall request the applicant to file such a translation within a specified period, to go on the file of the divisional or new application concerned.

Article 3: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the filing of sequence listings

C.1. [Special edition No. 3 OJ EPO 2007, pp26-29]

The President of the European Patent Office (EPO), having regard to Article 10(2) EPC, Rules 2, 30(1), 68(2), 73(2) and 163(3) EPC and Rule 13ter PCT, has decided as follows:

Article 1: Filing of sequence listings

(1) If nucleotide or amino acid sequences are disclosed in a European patent application, the description shall contain a sequence listing complying with WIPO Standard ST. 25 and presented as a separate part of the description in accordance with that standard. [see Annex to the Decision, pp29-83]
(2) The sequence listing under paragraph (1) shall be filed on paper.
(3) A copy of the sequence listing under paragraph (1) shall be filed on an electronic data carrier.
(4) Each electronic data carrier shall be accompanied by a statement by the applicant that the information recorded on the electronic data carrier is identical to the sequence listing filed on paper.

Article 2: Rectification of deficiencies – Late furnishing fee

(1) If the requirements laid down in Article 1 are not met at the date of filing of the European patent application, the EPO shall inform the applicant accordingly and invite him to correct the deficiencies in question and pay the late furnishing fee [under Rule 30(3)] within a non-extendable period of two months from the invitation.
(2) Sequence listings filed after the date of filing of the European patent application shall be accompanied by a statement that the sequence listing does not include matter which goes beyond the content of the application as filed.

Article 3: Sequence listing filed on electronic data carrier – Illegible or incomplete information; infected files

(1) Where the information recorded on an electronic data carrier is illegible or incomplete, that part of it which is illegible or incomplete shall be regarded as not having been received.
(2) If an electronic data carrier is found on filing to be infected with a computer virus or to contain other malicious software, it shall be deemed to be illegible. The EPO shall not be obliged to either open it or process it.
(3) Where an electronic data carrier is found on filing to be deficient within the meaning of paragraphs 1 or 2, the applicant shall be notified promptly and invited to submit a replacement copy within a non-extendable period of two months from the invitation.

Article 4: Filing of sequence listings with the EPO as International Searching Authority or International Preliminary Examining Authority

With regard to international applications under the PCT, for which a sequence listing is prescribed under Rule 5.2 PCT, the European Patent Office shall act as International Searching Authority or International Preliminary Examining Authority in accordance with Rule 13ter PCT and Sections 208 and 513 together with Annex C and C-bis of the PCT Administrative Instructions.

Article 5: Filing of sequence listings with the EPO as designated Office or elected Office

Where an applicant is invited to file a sequence listing in accordance with Rule 163(3) EPC, Articles 1 to 3 shall apply mutatis mutandis.

Article 6: Publication by the EPO of sequence listings forming part of the application

Where a sequence listing was filed on the date of filing of the European patent application, it shall be published together with the application documents as part of the description.

Article 7: Previous decisions superseded

When this decision enters into force, the decision of the President of the European Patent Office dated 2 October 1998 concerning the presentation of nucleotide and amino acid sequences in patent applications and the filing of sequence listings (Supplement No. 2 to OJ EPO 11/1998, 1) shall cease to have effect.

Article 8: Entry into force

The present decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act [13 December 2007] and shall apply to all European patent applications and international PCT patent applications filed on or after that date or pending on that date.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Notice from the European Patent Office dated 12 July 2007 concerning the filing of sequence listings

C.2. [Special edition No. 3 OJ EPO 2007, pp84-91]

The present Notice supplements the decision of the President dated 12 July 2007 concerning the filing of sequence listings (hereinafter referred to as the "decision of the President") and is intended to describe the EPC and PCT procedures for the filing of sequence listings following the entry into force of EPC 2000.

I. European patent grant procedure

1. Sequence listing

1.1 If nucleotide or amino acid sequences are disclosed in a European patent application, the description must contain a sequence listing complying with WIPO Standard ST. 25 (Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in International Patent Applications under the PCT – hereinafter referred to as the "Standard"). The sequence listing is to be presented as a separate part of the description in accordance with the Standard (see Rule 30(1) EPC in conjunction with Article 1(1) of the decision of the President).

1.2 Rule 30(1) EPC governs disclosures of nucleotide and/or amino acid sequences. A sequence listing has to be filed for all sequence information, whether claimed or not, that conforms to the length thresholds defined in the Standard (see paragraph 2(ii)). Where the description refers to sequences which belong to the prior art and can be found in publicly accessible sequence databases, it will not be necessary to include such sequences in the sequence listing. However, each such sequence must be identified adequately by its database accession number and either the version number or the database release number. Where the claim(s) refer(s) to prior art sequences or where sequences constitute essential features of the invention or are required for the prior art search, those sequences should be incorporated in the sequence listing.

1.3 Where a sequence listing is filed together with the application documents, i.e. as an integral part of the description, it is to be placed at the end of the application (see the Standard, paragraphs 3 and 36, for details).

1.4 The sequence listing may be written either in the language of filing or (preferably) in English. Where the sequence listing and the description are not in the same language, and the sequence listing contains "free text" within the meaning of the Standard (paragraph 33), it is recommended that the free text be repeated at the end of the description in the language of the description in accordance with paragraph 36 of the Standard (see examples in the annex to this notice). This will ensure that, in individual contracting states to the EPC, features given only in the "free text" of the sequence listing will not be deemed not to be part of the subject-matter of the original disclosure because of the language used.

2. Sequence listing to be filed on paper and on an electronic data carrier accompanied by the statement under Article 1(4) of the decision of thePresident

2.1 The sequence listing under Article 1(1) of the decision of the President must be filed on paper (Article 1(2) of the decision of the President). In addition, a copy of that sequence listing must be filed on an electronic data carrier (Article 1(3) of the decision of the President). Further details with regard to authorised electronic data carriers, their identification, the format for the information recorded on them and the necessary hardware are set out in the Standard (paragraphs 39 ff). The copy of the sequence listing on an electronic data carrier is required for European or international searches and, after publication of the application, for continual updating of the international patent sequence database.

2.2 The EPO strongly recommends the use of PatentIn software, which is available to applicants free of charge. By using the latest version of this software, applicants can ensure that the formal requirements under Rule 30(1) EPC are met. The software can be downloaded from the EPO's website.

2.3. The information recorded on the electronic data carrier must be identical to the sequence listing filed on paper. The applicant or his representative must make sure that this is the case, and must file a statement in accordance with Article 1(4) of the decision of the President together with the sequence listing on an electronic data carrier (see also the Standard, paragraph 40). This statement is set out in the Request for Grant (EPO Form 1001), and may also be used as a model when the sequence listing is filed subsequently on an electronic data carrier. If the examining division finds that the information recorded on the electronic data carrier is not identical to the sequence listing filed on paper and the statement under Article 1(4) of the decision of the President is therefore incorrect, this may lead to refusal of the application under Article 97(2) EPC in conjunction with Rule 30(1) and (3) EPC. Furthermore, a different prior art from that on which the examination was based may be relevant. This may lead to a different assessment of the conditions for patentability by the departments or courts concerned, even after a patent has been granted.

2.4 Where the sequence listing filed on an electronic data carrier is found to be deficient within the meaning of Article 3(1) or (2) of the decision of the President, the applicant will be notified promptly and invited to submit a replacement copy within a

non-extendable period of two months from the invitation (Article 3(3) of the decision of the President).

3. Rectification of deficiencies – Late furnishing fee – Loss of rights

3.1 Where the applicant has not filed a sequence listing within the meaning of Rule 30(1) EPC in conjunction with Article 1 of the decision of the President, or where the filed sequence listing does not comply with the requirements laid down in those provisions at the date of filing of the European patent application, the Receiving Section will inform the applicant of any deficiencies in the sequence listing or the required statements and invite him to remedy the deficiencies and pay a late furnishing fee within a non-extendable period of two months (Rule 30(1) and (3) EPC in conjunction with Article 2(1) of the decision of the President). If the requirements of Rule 30 EPC in conjunction with the decision of the President are not complied with in due time, where appropriate following the relevant invitation from the Receiving Section (which also applies to payment of the late furnishing fee), the application will be refused in accordance with Rule 30(3) EPC.

3.2 The applicant may request further processing of the application under Article 121 EPC.

3.3 A subsequently filed sequence listing may contain only the sequence information – in a standardised form – already contained in the original application. The listing should contain no more and no fewer sequences than disclosed in the original description, and their numbering should remain unchanged. The applicant must make sure that this is the case, and must file a statement to that effect in accordance with Article 2(2) of the decision of the President and paragraph 37 of the Standard. It is recommended that the specimen statement in the footnote2 be used for this purpose. Point I.2 applies to the electronic data carrier which must also be filed.

3.4 A sequence listing filed after the date of filing does not form part of the description and cannot therefore be used to determine the originally disclosed content of the application (Rule 30(2) EPC). It can only be used for the purposes of the search.

II. Proceedings before the EPO as International Searching Authority (ISA) or International Preliminary Examining Authority (IPEA)

1. Where the EPO acting as ISA or IPEA finds that an international application discloses one or more nucleotide and/or amino acid sequences and that a sequence listing and/or tables relating thereto and complying with the Standard and the technical requirements set out in Annexes C and/or C-bis of the Administrative Instructions under the PCT have not already been furnished, the EPO may invite the applicant to furnish a sequence listing and/or tables relating thereto and complying with the Standard and the technical requirements on an electronic data carrier and on paper within a time limit fixed in the invitation. The furnishing of a sequence listing and/or tables relating thereto in response to an invitation under Rule 13ter.1(a) or (b) PCT or Rule 13ter.2 PCT is subject to the payment of a late furnishing fee (see Rule 13ter.1(c) PCT, Article 4 of the decision of the President and the decision of the President of the European Patent Office dated 26 January 2005 concerning the late furnishing fee under Rule 13ter PCT, OJ EPO 2005, 225).

2. Any sequence listing and/or tables relating thereto which are furnished by the applicant must be accompanied by a statement to the effect that the sequence listing and/or tables relating thereto do not include matter which goes beyond the disclosure in the international application as filed and/or that the information recorded on the electronic data carrier is identical to the sequence listing filed on paper (Article 2(2), 1(4) and 4 of the decision of the President, paragraphs 37 and 40 of the Standard). Any sequence listing and/or tables relating thereto which are furnished separately to the EPO acting as ISA or IPEA do not form part of the international application.

3. If the applicant does not, within the period specified in the invitation, furnish the required sequence listing and pay any late furnishing fee due, the EPO acting as ISA shall only be required to search the international application to the extent that a meaningful search can be carried out without the sequence listing (Rule 13ter.1(d) PCT). In this case the international search report is replaced in full or in part by the statement under Article 17(2) PCT.

4. If the international search report has not been drawn up in full or in part for the aforementioned reasons, the EPO as IPEA does not perform the international preliminary examination if a meaningful examination cannot be carried out (Rule 66.1(e) PCT). The applicant is informed accordingly and an entry is made in the international preliminary examination report (Rules 66.2(a)(vii) and 70.12(iv) PCT). An invitation to file a sequence listing under Rule 13ter.2 PCT is not issued. Applicants are strongly advised not to file sequence listings at this late stage. In the case of voluminous sequence listings at least, the EPO would not be in a position to establish whether the sequence listing goes beyond the content of the international application as disclosed at the time of filing, although under Article 34(2)(b) and Rule 66.2(a)(iv) PCT it is obliged to carry out such an examination. In contrast to the situation with the international search, a statement from the applicant to the effect that the subsequently filed sequence listing does not go beyond the content of the international application as filed cannot release the EPO from its obligation to carry out the international preliminary examination taking due account of the provisions of Article 34(2)(b) and Rule 66.2(a) PCT whereby any amendments filed must not go beyond the disclosure in the application as filed. However, there is at present no appropriate and acceptably economical means of satisfactorily comparing the documents as originally filed with the subsequently filed sequence listing. The international preliminary examination report will therefore not be established on the basis of the subsequently filed sequence listing but only on the basis of the sequences available in the

description the date of filing. This will be mentioned in the international preliminary examination report.

III. Entry of Euro-PCT applications into the regional phase before the EPO

1. Where a sequence listing complying with the Standard is not available to the EPO on the expiry of the period under Rule 159(1) EPC, the applicant will be invited to file a sequence listing complying with Rule 30(1) EPC in conjunction with Article 1 of the decision of the President within two months from the invitation. Rule 30(2) and (3) shall apply mutatis mutandis (see Rule 163(3) EPC). Thus, the applicant will not only be invited to remedy the deficiencies noted but also to pay the late furnishing fee within a non-extendable period of two months (Rule 163(3) EPC, Rule 30(3) EPC and Article 5 of the decision of the President). Articles 1 to 3 of the decision of the President apply mutatis mutandis (Article 5 of the decision of the President).

2. If any deficiencies are not remedied in due time after such an invitation, which also applies to payment of the late furnishing fee, the application is refused (Rule 30(3) EPC).

3. The applicant may request further processing of the application under Article 121 EPC

4. Translation in accordance with Article 153(4) EPC

There is no requirement to translate any text in a sequence listing which forms part of the description, provided that the sequence listing complies with Rule 12.1(d) PCT and the description with Rule 5.2(b) PCT (Rule 49.5(a-bis) PCT). If the requirement under Rule 5.2(b) PCT is not met, the EPO does not require such a translation as long as the sequence listing is in English and the international application has been published in one of the other official languages of the EPO (French or German).

IV. Publication by the EPO of sequence listings forming part of the application

Where a sequence listing was filed on the date of filing of the European patent application, it will be published together with the application documents (Rule 68(1) EPC) and with the specification (Rule 73 EPC) as part of the description (Rule 30(2) EPC). In contrast to former practice, a sequence listing filed after the date of filing of the European patent application will not be published together with the application or specification documents since it does not form part of the description.

V. Previous Notice from the EPO superseded

The present Notice supersedes the Notice from the European Patent Office dated 2 October 1998 concerning the presentation of nucleotide and amino acid sequences in patent applications and the filing of sequence listings (Supplement No. 2 to OJ EPO 11/1998, 59) with effect from the entry into force of the revised text of the Convention in accordance with Article 8 of the RevisionAct.

Decision of the President of the European Patent Office dated 12 July 2007 concerning the completion of technical preparations for the publication of European patent applications

D.1. [Special edition No. 3 OJ EPO 2007, p94]

The President of the European Patent Office, having regard to Article 10(2)(a) EPC and Rule 67(1) EPC, has decided as follows:

Article 1
The technical preparations for the publication of European patent applications shall be deemed to have been completed at the end of the day that comes five weeks before expiry of the eighteenth month following the date of filing or, if priority is claimed, following the earliest date of priority.
[See also the Notice from the EPO dated 25 April 2006 concerning the withdrawal of the application to prevent publication (OJ EPO 2006, 406]

Article 2
This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act [13 December 2007]. The decision of the President of the EPO dated 25 April 2006 concerning the completion of technical preparations for the publication of European patent applications (OJ EPO 2006, 405) shall cease to have effect when this decision enters into force.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the content, form and means of communication of the certificate for a European patent

D.2. [Special edition No. 3 OJ EPO 2007, pp95-96]

The President of the European Patent Office, having regard to Rules 74, 87 and 96 EPC, has decided as follows:

Article 1: Form and means of communication of the certificate for a European patent

(1) The certificate issued for a European patent as granted or amended shall be communicated to the proprietor in paper form. If there is more than one proprietor, a certificate shall be issued to each of them.
(2) Upon special request within the period under Rule 71(3), Rule 82(2) or (3) or Rule 95(3) EPC, each proprietor shall be sent the certificate together with a copy of the patent specification. This request shall be free of charge.
(3) Certified copies of the certificate with the specification annexed shall be issued to the proprietor upon payment of an administrative fee.

Article 2: Content of the certificate for a Europeanpatent

(1) The certificate shall state the patent number and shall certify that the patent has been granted in respect of the invention described and states designated in the patent specification to the persons named in the certificate. Thereafter it shall state the name and address of the patent proprietor. If there is more than one proprietor, it shall mention each of them by name.
(2) Paragraph 1 shall apply mutatis mutandis to the certificate for a European patent that has been maintained in amended or limited form.

Article 3: Previous decisions superseded

Upon entry into force of this decision, the decision dated 22 December 2004 concerning the content and form of the certificate for a European patent, and the procedure for issuing it (OJ EPO 2005, 122) shall cease to have effect.

Article 4: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the form of publication of European patent applications, European search reports and European patent specifications

D.3. [Special edition No. 3 OJ EPO 2007, pp97-98]

The President of the European Patent Office, having regard to Rules 68(2), 73(2) and 87 EPC, has decided as follows:

Article 1: Form of publication of European patent applications and European search reports

(1) European patent applications and European search reports shall be published in electronic form by means of a publication server on which they are made available for downloading. If a European patent application exceeds 400 pages and has been published with a corresponding indication, the complete application may also be published on other suitable electronic media.
(2) Where European patent applications exceed 400 pages and have been published with a corresponding indication, the European Patent Office may also make them available on other suitable electronic media on separate request.

Article 2: Form of publication of European patent specifications

(1) Specifications of European patents as granted or amended shall be published in electronic form by means of a publication server on which they are made available for downloading. If a European patent specification exceeds 400 pages and has been published with a corresponding indication, the complete specification may also be published on other suitable electronic media.
(2) Where European patent specifications exceed 400 pages and have been published with a corresponding indication, the European Patent Office may also make them available on other suitable electronic media on separate request.

Article 3: Previous decisions superseded

Upon entry into force of this decision, the decision of the President of the European Patent Office dated 9 June 2000 concerning the form of publication of European patent applications (OJ EPO 2000, 367) and the decision of the President of the European Patent Office dated 22 December 2004 concerning the form of publication of European patent applications, European search reports and European patent specifications (OJ EPO 2005, 124) shall cease to have effect.

Article 4: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 on the summary listing of references cited by the applicant in European patent applications and European patent specifications

D.4. [Special edition No. 3 OJ EPO 2007, p99]

The President of the European Patent Office, having regard to Rules 68(2) and 73(2) EPC 2000, has decided as follows:

Article 1
The patent and nonpatent literature cited by the applicant in the description shall be captured according to WIPO Standard ST. 36 and listed separately at the end of the European patent application or the specification of the European patent.

Article 2
The list referred to in Article 1 shall be included for information only, and shall not form part of the European patent application or the specification of the European patent.

Article 3
This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act [13 December 2007]. It shall apply to all European patent applications published from that date. Patent specifications shall be published in accordance with Article 1 where the patent application has already been published in accordance with this decision or in accordance with the identical decision of the President dated 3 June 2006. The identical decision of the President dated 3 June 2006 (OJ EPO 2006, 428) shall be revoked when this decision enters into force.

Done at Munich on 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the information given in the European Patent Register

E.1. [Special edition No. 3 OJ EPO 2007, pp100-101]

Article 1

The President of the European Patent Office, having regard to Rule 143(2) EPC 2000, has decided that the following further entries will be made in the European Patent Register:

1. If the patent's period for opposition expires without an opposition being filed:
   "No opposition filed"
2. If an error is corrected in the European patent specification:
   "Patent specification corrected on (date)"
3. Date of despatch of supplementary European search report
4. Date of despatch of first examination communication
5. Date of receipt of request for re-establishment of rights
6. Refusal of request for re-establishment of rights
7. Opponent's name, address and country of residence or principal place of business
8. Name and business address of opponent's representative
9. New documents coming to light after the European search report was drawn up
10. For international applications under the Patent Cooperation Treaty (PCT) for which the European Patent Office acts as designated Office:
   – the international filing number
   – the international publication number
   – the international publication date
11. Date of request for limitation or revocation of the European patent
12. Requester's name, address and country of residence or principal place of business
13. Date of petition for review by the Enlarged Board of Appeal
14. Petitioner's name, address and country of residence or principal place of business
15. File number of the petition for review

Article 2

In future, changes to the content of the European Patent Register will be made in parallel to public online file inspection and the information made publicly available via Register Plus (see Notice from the European Patent Office dated 15 August 2006 concerning the inspection of files and online consultation of the European Patent Register, OJ EPO 2006, 535) and will no longer be announced separately.

Article 3

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Notice from the European Patent Office dated 14 July 2007 concerning the programme for accelerated prosecution of European patent applications – "PACE"[113]

F.1. [Special edition No. 3 OJ EPO 2007, pp102-105]

The entry into force of the revised European Patent Convention (EPC 2000) means updating the established PACE programme. Besides the changes to the European patent grant procedure made in the EPC 2000, the revised PACE programme also takes account of the extended European search report (EESR) introduced in 2005.

As in the past, PACE enables applicants who want their applications processed rapidly to obtain the search report, the first examination report and any communication under Rule 71(3) EPC within tight deadlines[114]. This also applies to the opinion on patentability (under Rule 62(1) EPC) which is sent to the applicant together with the search report. More details of the PACE programme, including any peculiarities for EuroPCT applications, are given below.

1. Accelerated prosecution of European patent applications normally occurs on written request. The EPO does not publish requests for accelerated search and/or examination (PACE requests) and, by decision of the President dated 12 July 2007[115], they are excluded from file inspection, provided they are made using EPO Form 1005[116] or on a separate sheet of paper.

Search

2. For European patent applications claiming no priority (first filings)[117], the Office always performs an accelerated search; no separate request is needed. In such cases, the Office ensures that as a rule applicants obtain their search reports within six months of the filing date.

3. For European patent applications which do claim priority (second filings), accelerated search can be requested when the application is filed. In such cases, the Office makes every effort to issue the search report as soon as possible.

4. In either case, however, an accelerated search is possible only if the application documents on filing are complete enough for the search to be performed. That means in particular providing the Office at that time with the claims, the description, the translations required and, where applicable, the drawings and a sequence listing conforming to the rules for the standardised representation of nucleotide or amino acid sequences. In particular, prosecution under PACE is not possible if use is made of the possibility of referring to an earlier application (see Rule 40(1)(c) in conjunction with (2) EPC) or of subsequently filing parts of the description, or drawings under Rule 56 EPC, as well as where the claims are filed subsequently.

Examination

5. Accelerated examination can be requested in writing when filing the European patent application, provided examination is bindingly requested[118] at the same time, in response to the search report, or subsequently. For Euro-PCT applications, it can be requested on or after entry into the European phase before the EPO[119]. If requested on entry, accelerated prosecution covers formalities examination[120], drawing up the supplementary European search report, and substantive examination.

6. When accelerated examination is requested, the Office makes every effort to issue the first examination communication within three months of receipt by the examining division of the application or the request for accelerated examination (whichever is later). The Office aims to produce all subsequent examination communications within three months of receipt of the applicant's reply, provided this is received within the time limit set by the examining division in its previous communication and deals with all the points raised.

Accelerated examination can be carried out efficiently only if the applicant co-operates with the Office.

Other ways of accelerating the European grant procedure

7. Before the applicant receives the search report, he can waive the invitation under Rule 70(2) EPC and request examination

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[113] Revised and expanded version of the notice last published in OJ EPO 2001, 459.
[114] However, this service can be provided only where practically feasible, and in certain technical fields there may be constraints due to the numbers of incoming PACE requests.
[115] See Special edition No. 3, OJ EPO 2007, J.3.
[116] EPA/EPO/OEB Form 1005 11.01 is obtainable free of charge from the EPO (preferably from Vienna, but also from Munich, The Hague and Berlin) and the central industrial property offices of the member states. It is also available from the EPO website at http://www.epo.org
[117] The Office treats European patent applications as "first filings" only if the applicant indicates on filing that he does not intend to claim priority.
[118] I.e. the applicant has paid the requisite fee and unconditionally waived the invitation from the Office under Article 94 in conjunction with Rule 70(2) EPC).
[119] With Euro-PCT applications, the applicant can speed up entry into the European phase by expressly requesting early processing under Articles 23(2) or 40(2) PCT. However, accelerated examination in the European phase will not be performed unless requested separately under the PACE programme.
[120] This is the case if the EPO did not draw up a supplementary European search report, i.e. if it drew up the international search report or if, for international applications filed before 1 July 2005, the Austrian, Spanish or Swedish patent office did (see OJ EPO 2005, 422 and 546).

unconditionally, irrespective of the result of the search. In this case, under Rule 62 EPC the European search report is issued together with a first examining communication instead of the opinion on patentability. A prompt and full response from the applicant then ensures that the proceedings can continue quickly.

8. The applicant may file a substantive response to the search report or – in the case of a EuroPCT application entering the European phase before the EPO as designated Office – to the extended international search report, without waiting for the first examination communication. A "substantive" response means reasoned observations or appropriate amendments to the application.

Decision of the President of the European Patent Office dated 12 July 2007 concerning the entrustment to non-examining staff of certain duties normally the responsibility of the examining or opposition divisions

F.2. [Special edition No. 3 OJ EPO 2007, pp106-112]

The President of the European Patent Office, having regard to Rule 11(3) EPC, has decided as follows:

Article 1: Entrustment to formalities officers of certain duties normally the responsibility of the examining divisions of the EPO

Within the framework of the responsibilities of the examining divisions of the EPO, certain employees (formalities officers) who are not technically or legally qualified examiners shall be entrusted with the following duties normally the responsibility of the examining divisions:

1. Examination as to formal deficiencies under Article 90(3) to (5) EPC.

2. Examination of documents submitted under Rule 46(1) and (2), Rule 49(2) to (9) and (12) as well as Rule 50(2) to (3) EPC in so far as this is not covered in number 1 above.

3. Examination under Rules 159(1) and 163(1) to (6) EPC.

4. Examination of duly made appointments of representatives and authorisations as well as communications under Rule 152(2), (3) and (6) EPC.

5. Communications under Article 94(3) EPC in cases 1 to 4 referred to above.

6. Refusal of the European patent application in so far as this has to take place in cases 1 to 4 referred to above.

7. Communications concerning loss of rights under Rule 112(1) EPC.

8. Decisions, and informing the person requesting the decision, under Rule 112(2) EPC.

9. Examination and communications under Rule 71(3), (6) to (9) EPC; issuing decisions whereby European patents are granted (Rule 71(11) EPC).

10. Decisions on requests under Article 121 and Rule 135 EPC in cases where

(a) the application is deemed withdrawn under Article 94(4) or Rule 71(7) EPC; or

(b) the application has been refused on grounds covered by point 6 or 20.

11. Decisions on requests under Article 122 and Rule 136 EPC in cases where the request can be dealt with without oral proceedings under Article 116 EPC or without further taking of evidence under Rule 117 EPC.

12. Request to the applicant to comment on an application for inspection of files under Article 128(1) EPC.

13. Decisions concerning inspection of files in cases covered by Article 128(2) to (4) EPC and Rule 144 EPC and provision of information from the files under Rule 146 EPC.

14. Summons to oral proceedings under Rule 115(1) EPC following request by the examining division.

15. Summons to give evidence before the European Patent Office under Rule 118(2) EPC following request by the examining division.

16. Notification as required under Article 119 EPC in conjunction with Rules 125 to 130 EPC, examination of proof of notification and decisions concerning notification.

17. Extension of a time limit under Rule 132 EPC.

18. Issue of a certificate for a European patent and issue of duplicate copies of the certificate under Rule 74 EPC.

19. Correction of the designation of contracting states where the designation is withdrawn after a decision to grant a European patent and before the decision takes effect.

20. Notification of refusals of European patent applications under Article 97(2) EPC.

21. Decisions to refund fees, with the exception of the European search fee, the fee for appeal and the fee for petitions for review. The decision to refund the appeal fee shall be taken by the formalities officer where it is part of his duty to rectify the decision.

22. Decisions concerning the correction of errors in documents filed with the European Patent Office, with the exception of the description, claims and drawings (Rule 139 EPC); decisions concerning the correction of the declaration of priority (Rule 52(3) EPC).

23. Decisions of the European Patent Office as designated Office under Article 25(2)(a) of the Cooperation Treaty (Rule 159(2) EPC).

24. Examination of an application for evidence to be taken under Rule 123(2)(a), (b) and (3) EPC and notification that the taking of evidence has been ordered.

25.[121] Registering transfers and changes of name until such time when an adverse decision seems likely (Articles 71, 72 and 74, Rules 22 and 85 EPC; see J 18/84, OJ EPO 1987, 215).

26.[121] Rectification of the designation of an inventor until such time when an adverse decision seems likely (Rule 21 EPC; see J 18/84, OJ EPO 1987, 215, 226, points 6.3 and 6.4).

27. Examination under Article 105a(1) and (2) EPC, Rule 92(1) and (2) EPC, communications under Rule 93(1), Rule 94 and Rule 95(1) and (3) EPC as well as decisions under Rule 93(2) EPC and Rule 95(1) EPC.

28. Decisions to reject the request for limitation under Rule 95(4) EPC where the requester does not respond in due

[121] See the Decision of the President of the EPO dated 12 July 2007 concerning the responsibilities of the Legal Division (Special edition No. 3, OJ EPO 2007, G.1).

time to the communication issued under Rule 95(2) EPC and where the requester fails to perform the acts required under Rule 95(3) EPC in due time.

29. Issue of a new certificate for a European patent as amended under Rule 96 EPC and issue of duplicate copies of the certificate under Rule 74 EPC.

30. Invitations under Article 124(1) and Rule 141 EPC.

Article 2: Entrustment to formalities officers of certain duties normally the responsibility of the opposition divisions of the EPO

Within the framework of the responsibilities of the opposition divisions of the EPO, certain employees (formalities officers) who are not technically or legally qualified examiners shall be entrusted with the following duties normally the responsibility of the opposition divisions:

1. Examination as to formal deficiencies, under Rule 46(1) and (2), Rule 49(2) to (9) and (12) and Rule 50(2) to (3) EPC on the basis of Rule 86 EPC, of the notice of opposition, the amendments of the European patent made by the proprietor and the documents filed.

2. Examination of duly-made appointments of representatives and authorisations as well as communications under Rule 152(2), (3) and (6) EPC.

3. Communication of documents to the parties and invitation to state observations or to file documents in routine cases or on the instructions of the opposition division.

4. Communications concerning loss of rights under Rule 112(1) EPC.

5. Decisions, and informing the person requesting the decision, under Rule 112(2) EPC.

6. Communication to the opponent concerning deficiencies under Rule 77(1) and (2) EPC.

7. Examination and decisions under Rule 76 and 77 EPC in ex parte proceedings on the inadmissibility of the opposition and the intervention of the assumed infringer with the exception of the cases provided for in Rule 76(2)(c) EPC.

8. Communications under Rule 82(1) and (2) EPC on the instructions of the opposition division and communications under Rule 82(3) EPC (see OJ EPO 1989, 1).

9. Issue of a decision on the maintenance of the European patent as amended under Article 101(3)(a) EPC.

10. Issue of a new certificate for a European patent as amended under Rule 87 EPC and issue of duplicate copies of the certificate under Rule 74 EPC.

11. Revocation of the European patent in accordance with Rule 82(3) EPC.

12. Decisions on requests under Article 122 and Rule 136 EPC in cases where the request can be dealt with without oral proceedings under Article 116 EPC or without further taking of evidence under Rule 117 EPC.

13. Invitations under Rule 83 EPC.

14. Decisions concerning inspection of files in cases covered by Article 128(2) to (4) EPC and Rule 144 EPC and provision of information from the files under Rule 146 EPC.

15. Summons to oral proceedings under Rule 115(1) EPC following request by the opposition division.

16. Summons to give evidence before the European Patent Office under Rule 118(2) EPC following request by the opposition division.

17. Notification as required under Article 119 EPC in conjunction with Rules 125 to 130 EPC and examination of proof of notification.

18. Extension of a time limit under Rule 132 EPC.

19. Decisions concerning discontinuance of the opposition proceedings in cases covered by Rule 84 EPC where such proceedings are not continued by the opposition division of its own motion.

20. Decisions concerning the refund of fees, with the exception of the appeal fee and the fee for petitions for review.

21. Decisions concerning the correction of errors in documents filed with the European Patent Office with the exception of the description, claims and drawings (Rule 139 EPC).

22. Examination of an application for evidence to be taken under Rule 123(2)(a) and (b) and (3) EPC and notification that the taking of evidence has been ordered.

23. Revocation of a European patent during opposition proceedings in accordance with Legal Advice No. 11/82 (OJ EPO 1982, 57, 58) where the patent proprietor states that he no longer approves the text in which the patent was granted and does not submit an amended text or where the proprietor requests that the patent be revoked.

24.[121] Registering transfers and changes of name until such time when an adverse decision seems likely (Articles 71, 72 and 74, Rules 22 and 85 EPC; see J 18/84, OJ EPO 1987, 215).

25.[121] Rectification of the designation of an inventor until such time when an adverse decision seems likely (Rule 21 EPC; see J 18/84, OJ EPO 1987, 215, 226, points 6.3 and 6.4).

Article 3: Competence of the examining or opposition division to take decisions itself

Delegation of a duty under Articles 1 and 2 to an employee who is not a technically or legally qualified examiner shall not affect the competence of the examining or opposition division to take decisions itself.

Article 4: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act and shall replace the notice dated 28 April 1998 (OJ EPO 1999, 504).

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the responsibilities of the Legal Division

G.1. [Special edition No. 3 OJ EPO 2007, pp113-114]

The President of the European Patent Office, having regard to Article 20 and Rule 11(2) EPC, has decided as follows:

1. Sole responsibility for the following duties shall be vested in the Legal Division:[122]

1.1 Registers of Representatives

(a) Entry in, and deletion from, the list of professional representatives (Articles 134(1) to (7) and Rule 154 EPC; Articles 4(1)(d), (e) and 28(2) RDR[123]).

(b) Registration and deletion of associations (Rule 152(11) EPC; cf. OJ EPO 1979, 92).

(c) Registration and deletion of legal practitioners (Article 134(8) EPC).

(d) Registration and deletion of general authorisations (Article 133(3), first sentence, Rule 152(4), (5) EPC).

1.2 Register of Patents

(a) Procedure where the applicant or proprietor is not entitled (Articles 61(1)(a) and 99(4), Rules 14, 15, 16 and 78 EPC).

(b) Interruption and resumption of proceedings (Rule 142 EPC).

(c) Registration and cancellation of licences and other rights (Articles 71, 73 and 74, Rules 23 and 24 EPC).

(d) Registration of transfers and changes of name once an adverse decision seems likely (Articles 71, 72 and 74, Rules 22 and 85 EPC; cf. OJ EPO 1987, 215).

(e) Rectification of the designation of an inventor once an adverse decision seems likely or after the opposition phase (Rule 21 EPC; cf. OJ EPO 1987, 215, 226 point 6.3 and 6.4).

2. This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

[122] The duties of the Legal Division are performed by Directorate 5.2.4 (Legal Division, Patent Administration).
[123] RDR = Regulation on discipline for professional representatives.

Notice of the Vice-President of Directorate-General 3 of the European Patent Office dated 16 July 2007 concerning oral proceedings before the boards of appeal of the EPO

H.1. [Special edition No. 3 OJ EPO 2007, pp115-116]

Since 1 November 2000 the procedure set out below has been used for fixing the dates of oral proceedings before the boards of appeal. This procedure has been approved in co-operation with former DG 2 (now DG 1) and after discussion in the Standing Advisory Committee before the EPO (SACEPO).

1. The boards of appeal fix one single date for oral proceedings. A preannouncement of the date is not made.

2. Oral proceedings appointed by the EPO will be cancelled and another date fixed at the request of a party only if the party concerned can advance serious reasons which justify the fixing of a new date. The request to fix another date shall be filed as soon as possible after the grounds preventing the party concerned from attending the oral proceedings have arisen. The request shall be accompanied by a sufficiently substantiated written statement indicating these reasons.

2.1 Serious substantive reasons to request the change of the date for oral proccedings may be, for instance:

– a previously notified summons to oral proceedings of the same party in other proceedings before the EPO or a national court,

– serious illness,

– a case of death within the family,

– the marriage of a person whose attendance in oral proceedings is relevant,

– military service or other obligatory performance of civic duties,

– holidays which have already been firmly booked before the notification of the summons to oral proceedings.

2.2 Grounds which, as a rule, are not acceptable are, for instance:

– a summons to oral proceedings before the EPO or a national court notified after the summons in the relevant proceedings,

– excessive work pressure.

2.3 Every request for fixing another date for oral proceedings should contain a statement why another representative within the meaning of Articles 133(3) or 134 EPC cannot substitute the representative prevented from attending the oral proceedings.

Notice of the Vice-President of Directorate-General 3 of the European Patent Office dated 16 July 2007 concerning sound recording devices in oral proceedings before the boards of appeal of the EPO

H.2. [Special edition No. 3 OJ EPO 2007, p117]

All parties to oral proceedings before the boards of appeal and their representatives are hereby informed of the following rule.

At oral proceedings under Article 116 EPC before a board of appeal no person other than an EPO employee is allowed to use any kind of sound recording device in the hearing room.

Communication from the Vice-President of Directorate-General 3 of the European Patent Office dated 16 July 2007 concerning the obligation to give notice pursuant to Rule 4(1), first sentence, EPC in proceedings before the boards of appeal of the EPO (use of an alternative official language in oral proceedings)

H.3. [Special edition No. 3 OJ EPO 2007, p118]

In oral proceedings before the European Patent Office a party may use one of the Office's other official languages in lieu of the language of the proceedings provided that he gives notice in good time in accordance with Rule 4(1), first sentence, EPC or makes provision for interpreting into the language of the proceedings.

In proceedings before the board of appeal this obligation to give notice also applies if the party has lawfully used an alternative official language in oral proceedings before the department of first instance (see decision T 34/90, OJ EPO 1992, 454).

This communication applies as from the entry into force of the revised text of the European Patent Convention.

Decision of the President of the European Patent Office dated 14 July 2007 concerning the application of Rule 133 EPC on the late receipt of documents

I.1. [Special edition No. 3 OJ EPO 2007, pp119-120]

The President of the European Patent Office,

Having regard to Article 10(2)(a) EPC and Rule 133(1) EPC,

Taking into account the need for periodic updating of the list of generally recognised delivery services,

Has decided as follows:

Article 1: Posting in due time and proof thereof
A document shall be deemed to have been received in due time within the meaning of Rule 133 EPC if it was posted, or delivered to one of the delivery services referred to in Article 2, five days before the expiry of the relevant time limit. At the request of the EPO, confirmation of registration by the post office or of receipt by the delivery service shall be provided as evidence that the document was posted in due time.

Article 2: Delivery services
The delivery services generally recognised by the EPO for the application of Rule 133 EPC shall be:

Chronopost,
DHL,
Federal Express,
flexpress,
TNT,
SkyNet and
UPS.

Article 3: Methods of despatch
Rule 133 EPC shall only apply if the document was sent as a registered letter and, if posted outside Europe, by airmail. This shall apply mutatis mutandis to the transportation of the document by a delivery service.

Article 4: Entry into force
This decision shall enter into force upon entry into force of the revised European Patent Convention in accordance with Article 8 of the Act revising the EPC and shall replace the decision of 31 March 2003 (OJ EPO 2003, 283).

Done at Munich, 14 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning use of the PHOENIX electronic file system for the creation, maintenance and preservation of files

J.1. [Special edition No. 3 OJ EPO 2007, pp121-122]

The President of the European Patent Office, having regard to Rule 147(2) EPC, has decided as follows:

Article 1: PHOENIX electronic file system
Files relating to European patent applications, and to international applications for which the European Patent Office (EPO) acts under the Patent Cooperation Treaty (PCT), shall be created, maintained and processed using the EPO's electronic file system, PHOENIX.

Article 2: Preservation of electronic files and of original documents
(1) The electronic files created pursuant to Article 1 shall be stored on two different electronic media for the entire period under Rule 147(4) and (5) EPC or Rule 93.1 and 93.3 PCT, as applicable.
(2) The original documents, whether making up the application or subsequently filed, shall be preserved until further notice.

Article 3: Previous decision superseded
On the entry into force of this decision, the decision dated 14 May 1998 concerning phased implementation and use of the PHOENIX electronic file system for the creation, maintenance, preservation and inspection of files (OJ EPO 1998, 360) shall cease to apply.

Article 4: Entry into force
This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 on the inspection of files

J.2. [Special edition No. 3 OJ EPO 2007, pp123-124]

The President of the European Patent Office, having regard to Article 128(4) and Rule 145(2) EPC and to Rule 94.3 PCT, has decided as follows:

Article 1: Online file inspection

(1) The files relating to European patent applications and granted patents, and to international applications under the PCT for which the European Patent Office acts as a designated or elected Office, shall be available for inspection free of charge via the Register Plus online service. The European Patent Office shall provide computers for online file inspection on its premises.

(2) After the introduction of free online file inspection, as a rule it will no longer be possible to inspect paper files on the premises of the European Patent Office.

(3) If inspection is requested of a file not yet stored in electronic form, as a rule the file will be made available online within ten working days of entry of the application or publication number, unless it has already been destroyed (Rule 147 EPC). Entering a valid application or publication number is equivalent to requesting a file inspection. There is no need for a separate written request.

(4) Paragraph 3 shall not apply to files for which oral proceedings are imminent or have recently taken place.

(5) Files or parts thereof that are not scannable shall be made available for inspection in their original form or as filed. They shall be made thus available on the premises of the European Patent Office.

Article 2: File inspection on paper copies

(1) File inspection on paper copies shall be available on request. If it is requested, an administrative fee shall be payable in advance. The request shall not be deemed to have been made until the administrative fee has been paid.

(2) If more than 100 pages have to be produced, the EPO will normally provide only an electronic storage medium holding a copy of the file. If paper copies are expressly requested instead, an additional fee for each page in excess of 100 shall be charged. The invoice for the additional administrative fee shall be sent together with the file inspection documents.

(3) On request, the European Patent Office shall certify the paper copies made available under paragraph 1. The certification request shall not be deemed to have been made until the administrative fee for it has been paid.

(4) It will normally take at least four weeks for the requested electronic storage media or paper copies to be made available.

Article 3: Previous decisions superseded

On the entry into force of this decision, the decision of the President of the European Patent Office dated 6 June 2003 on the inspection of files (OJ EPO 2003, 370) shall cease to apply.

Article 4: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning documents excluded from file inspection

J.3. [Special edition No. 3 OJ EPO 2007, pp125-126]

The President of the European Patent Office, having regard to Article 128(4) and Rule 144(d) EPC, has decided as follows:

Article 1: Documents excluded from file inspection

(1) The following shall be excluded from file inspection by the Office of its own motion:

(a) medical certificates;

(b) documents relating to the issue of priority documents, file-inspection proceedings or the communication of information from the files, and requests for exclusion from inspection under paragraph 2(a);

(c) requests for accelerated search and accelerated examination under the "PACE" programme, if they are submitted using EPO Form 1005 or in a separate document.

(2) Documents or parts thereof other than those referred to in paragraph 1

(a) shall be excluded from file inspection at the reasoned request of a party or his representative if their inspection would be prejudicial to the legitimate personal or economic interests of natural or legal persons;

(b) may, exceptionally, be excluded from file inspection by the Office of its own motion if their inspection would be prima facie prejudicial to the legitimate personal or economic interests of natural or legal persons other than a party or his representative.

(3) Documents covered by a request under paragraph 2(a) shall be excluded from file inspection provisionally, pending a final decision on the request. If the request is not granted, they shall be open for inspection as soon as the decision refusing it becomes final.

Article 2: Entry into force

This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act, and supersedes the decision of the President of the European Patent Office dated 7 September 2001 (OJ EPO 2001, 458). Paragraph 1(c) of Article 1 shall apply to PACE requests received by the EPO on or after 3 December 2001.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 14 July 2007 concerning public notification under Rule 129 EPC

K.1. [Special edition No. 3 OJ EPO 2007, p127]

The President of the European Patent Office,

Having regard to Rule 129 EPC,

Has decided as follows:

Article 1
Public notification in the cases referred to in Rule 129, paragraph 1, EPC shall be effected in accordance with Article 2.

Article 2
(1) Public notification shall be effected by publication of the following particulars in the European Patent Bulletin:
(a) the number of the European patent application or European patent;
(b) the name of the addressee;
(c) the last address of the addressee known to the EPO;
(d) the type of document (decision, summons, communication, etc.);
(e) the date of the document;
(f) the place where the document can be inspected.
(2) The document shall be deemed to have been notified one month after the date of publication of the public notification in the European Patent Bulletin.

Article 3
This decision shall enter into force upon entry into force of the revised European Patent Convention in accordance with Article 8 of the Act revising the EPC.[124] [13 December 2007]

Done at Munich, 14 July 2007
Alison BRIMELOW
President

[124] The decision replaces – without any changes to the substance – the announcement by the President of the EPO of 11 January 1980 (OJ EPO1980, 36).

Decision of the President of the European Patent Office dated 12 July 2007 on the filing of authorisations

L.1. [Special edition No. 3 OJ EPO 2007, pp128-129]

The President of the European Patent Office, having regard to Article 10(2)(a) EPC and Rule 152(1), has decided as follows:

Article 1: Professional representatives
(1) A professional representative whose name appears on the list maintained by the European Patent Office and who identifies himself as such shall be required to file a signed authorisation only in the circumstances set out in paragraphs (2) and (3) below. Any individual authorisation submitted shall be placed on file even if it has not been requested. It shall not however be checked for deficiencies. General authorisations shall be checked and registered as hitherto (Rule 152(4) EPC).

(2) If the European Patent Office is informed of a change of representative involving professional representatives who are not members of the same association, without being notified that the previous representative's authorisation has terminated, the new representative must file, together with the notification of his appointment, an individual authorisation (original and one copy) or a reference to a general authorisation already on file. If he does not, he shall be requested to do so within a period to be specified [Rule 132] by the European Patent Office. If the European Patent Office is informed before the end of the specified period that the previous representative's authorisation has terminated, such request may be disregarded. The European Patent Office shall send the previous representative a copy of the individual authorisation or notify him of the number of the general authorisation and the name of the new representative, and inform him that the subsequent proceedings will be conducted with the new representative.

(3) The European Patent Office may require that an authorisation be produced if the circumstances of a particular case necessitate this, particularly in case of doubt as to the professional representative's entitlement to act.

Article 2: Legal practitioners
Legal practitioners entitled to act as representatives under Article 134(8) EPC must file a signed authorisation or a reference to a general authorisation already on file. If the European Patent Office is informed of the appointment of a legal practitioner without an authorisation being filed, the practitioner shall be requested to file the authorisation within a period to be specified [Rule 132] by the European Patent Office.

Article 3: Employees
Employees who are representing a party under Article 133(3), first sentence, EPC and who are not professional representatives must file a signed authorisation or a reference to a general authorisation already on file. If the employee acts without filing an authorisation, the applicant shall be requested to file the authorisation within a period to be specified [Rule 132] by the European Patent Office.

Article 4: Entry info force
This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 14 July 2007 revising the Office's fees and expenses

M.1. [Special edition No. 3 OJ EPO 2007, pp130-133]

Article 1
Pursuant to Article 3, paragraph 1, of the Rules relating to Fees, the amount of the administrative fees provided for in the Implementing Regulations and the fees and expenses for any services rendered by the European Patent Office other than those specified in Article 2 of the Rules relating to Fees shall be revised as shown in the following extract from the schedule of fees. The extract from the fees schedule shall form part of this decision.

Article 2
The fees and expenses as revised in accordance with Article 1 shall be binding on payments made on or after the date of entry into force of the revised text of the European Patent Convention.

Article 3
This decision shall enter into force on the same date as the revised text of the Convention.

Done at Munich,14 July 2007
Alison BRIMELOW
President

Nature of fee	Code	Amount / EUR
2. **Fees and expenses (Article 3(1) of the Rules relating to Fees)**		
2.1 **Administrative fees/ expenses**		
1 Registering of transfer (R 22(2) EPC)	022	80
2 Registering of licences and other rights (R 23(1) EPC)	023	80
3 Cancellation of entry in respect of licences and other rights (R 23(2) EPC)	024	80
4 Certified copies of the European patent certificate with specification attached (R 74 EPC)	025	35
5 Extracts from the Register of European Patents	026	25
6 Online inspection of the files of European patent applications and patents • for each A4 page printed (available only by self-service on European Patent Office premises)		free 0.25
7.1 Charge for furnishing paper copies (up to 100 A4 pages) or an electronic storage medium for file inspection (R 145(2) EPC) • surcharge per A4 page over 100	027	35 0.35
7.2 Additional charge for sending copies by fax, per page • in Europe • outside Europe		 3.00 4.50
8.1 Issue of a certified copy of a European patent application or an international application and a certificate stating the filing date (priority document) (R 54 EPC, R 17.1(b), R 20.9 PCT)	029	35
8.2 Certification of other documents	080	35

Nature of fee	Code	Amount / EUR
9.1 Communication of information contained in the files of a European patent application (R 146 EPC) 9.2 Additional charge per page for transmission by telex or telefax • in Europe • outside Europe	030	25 3.00 4.50
11 Additional copy of the documents cited in the European search report	055	25
12.1 Fee for the European qualifying examination for professional representatives (VEP / REE Art. 19)	054	425
12.2 Fee for appeal (VEP / REE Art. 27)	054	370
13 Issue of receipts by telex or telefax: • in Europe • outside Europe (OJ EPO 1992, 310)	031	 40 65
14 Copies of EPO documents, per page (A4) • copied by EPO staff • self-service	-	 0.65 0.25
2.2 **Fees and charges for various searches**		
1 Fee for an international-type search[125] OJ EPO 1999, 300		
1.1 For first filings	-	985
1.2 For all other cases	-	1540

[125] Payable unless different terms have been agreed between the European Patent Organisation and a Contracting State to the European Patent Convention

Decision of the President of the European Patent Office dated 14 July 2007 concerning the refund of search fees under Article 9(2) of the Rules relating to Fees[126]

M.2. [Special edition No. 3 OJ EPO 2007, pp134-137]

The President of the European Patent Office, having regard to the entry into force of the revised text of the European Patent Convention, having regard to Article 9(2) of the revised Rules relating to Fees, has decided as follows:

I. Where the European search report is based on an earlier search report prepared by the Office on

– an application whose priority is claimed, or
– an earlier application within the meaning of Article 76 EPC, or
– an original application within the meaning of Rule 17 EPC,

the refund shall be as follows:

Earlier search	**Level of benefit for the subsequent search**	**Amount of refund in EUR**
1. European search (Art. 78(2) EPC) on an application		
1.1. filed on or after 1 July 2005, **and**		
1.1.1. search fee paid before 1 April 2006	full partial	960.00 240.00
1.1.2. search fee paid on or after 1 April 2006	full partial	1000.00 250.00
1.2. filed before 1 July 2005, and		
1.2.1. search fee paid before 1 April 2006	full partial	690.00 172.50
1.2.2 search fee paid on or after 1 April 2006	full partial	720.00 180.00
2. International search (Art. 15(1) PCT), and		
2.1. search fee paid before 1 April 2006	full partial	945.00 236.25
2.2. search fee paid on or after 1 April 2006	full partial	985.00 246.25
3. International-type search (Art. 15(5) PCT), and		
3.1. search fee paid before 1 April 2006	full partial	945.00 236.25
3.2. search fee paid on or after 1 April 2006	full partial	985.00 246.25
4. Standard search, and		
4.1. search fee paid before 1 April 2006	full partial	690.00 172.50
4.2. search fee paid on or after 1 April 2006	full partial	720.00 180.00
5. Search without written opinion on a national application made on behalf of a national office (BE, FR, LU, NL, TR), and		
5.1. search fee for the European application paid before 1 April 2006	full partial	690.00 172.50
5.2. search fee for the European application paid on or after 1 April 2006	full partial	720.00 180.00
6. Search with written opinion on a national application made on behalf of a national office (BE[127], FR, LU2, NL, TR), and		
6.1. search fee for the European application paid before 1 April 2006	full partial	810.00 202.50
6.2. search fee for the European application paid on or after 1 April 2006	full partial	845.00 211.25

If the EPO can base its search report **wholly** on the earlier search, the amounts of a full refund indicated above apply.

If the EPO can base its search **partly** on the earlier search, the amounts of a partial refund indicated above apply.

[126] The present decision updates the decision of the President dated 17 February 2006 (OJ EPO 2006, 189) in view of the entry into force of the revised text of the European Patent Convention and the revised Rules relating to Fees (see the Decision of the Administrative Council dated 7 December 2006, Special edition No. 1 OJ EPO 2007, 199).

[127] Only for national applications filed as from 1 January 2007.

II. The criteria determining the applicable refund rate (full or partial) and the refund procedure shall be governed by the Notice from the President of the European Patent Office dated 1 July 2005 concerning the criteria for refund of search fees (OJ EPO 2005, 433).

III. This Decision enters into force on the same date as the revised text of the Convention and applies to all European patent applications and international patent applications entering the European phase, filed on or after 1 July 2005.

Decision of the President of the European Patent Office dated 14 July 2007 implementing Article 12 of the Rules relating to Fees

M.3. [Special edition No. 3 OJ EPO 2007, p138]

The President of the European Patent Office,

Having regard to Article 12 of the Rules relating to Fees,

Has decided as follows:

Article 1
The insignificant amount referred to in Article 12 of the Rules relating to Fees shall be fixed at EUR 10.

Article 2
This decision shall enter into force upon entry into force of the revised European Patent Convention in accordance with Article 8 of the Act revising the EPC, and shall replace the decision of 6 September 2001 (OJ EPO 2001, 521).

Done at Munich, 14 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 12 July 2007 concerning the payment of fees and costs at the Information Office in Munich

M.4. [Special edition No. 3 OJ EPO 2007, p139]

The President of the European Patent Office, having regard to Article 5(2) of the Rules relating to Fees, has decided as follows:

Article 1
Credit cards shall also be accepted in payment of administrative fees for photocopies made by EPO staff or by the requester in the course of file inspection at the Munich Information Office (Rule 145(2) EPC, point 2.1(7.2) of the Schedule of fees and costs).

Article 2
The same shall also apply to purchases of patent information products, other copies of EPO documents and Office publications.

Article 3
The EPO shall accept EUROCARD (MasterCard), VISA and JCB credit cards.

Article 4
This decision shall enter into force upon the entry into force of the revised text of the Convention in accordance with Article 8 of the Revision Act.

Done at Munich, 12 July 2007
Alison BRIMELOW
President

Decision of the President of the European Patent Office dated 24 June 2007 providing for review panels for the implementation of the protest procedure under the PCT[128]

N.1. [Special edition No. 3 OJ EPO 2007, p140-141]

The President of the European Patent Office, having regard to Article 10 and Rule 11(2) EPC, Rules 40.2(c) to (e) and 68.3(c) to (e) PCT, and Rule 158(3) EPC, has decided as follows:

Article 1: Review panel
The examination of a protest under Rule 40.2(c) or 68.3(c) PCT and Rule 158(3) EPC shall be carried out by a review panel consisting of three members: the head of a directorate, normally the head of the directorate by which the invitation to pay additional fees as provided for in Articles 17(3)(a) and 34(3)(a) PCT was issued, an examiner with special expertise in unity of invention and, normally, the examiner who issued the invitation.

Article 2: Entry into force
This decision shall replace the decision dated 25 August 1992 providing for review panels for the implementation of the protest procedure under the PCT (OJ EPO 1992, 547) and shall enter into force upon the entry into force of the Act revising the European Patent Convention of 29 November 2000[129] and apply to all international patent applications filed on or after that date.

Article 3: Transitional provision
The decision dated 25 August 1992 providing for review panels for the implementation of the protest procedure under the PCT (OJ EPO 1992, 547) shall continue to apply to all international patent applications filed before the date of entry into force of the Act revising the European Patent Convention of 29 November 2000[130].

Done at Munich, 24 June 2007
Alain POMPIDOU
President

[128] Also referred to as: "Decision concerning the PCT protest procedure" (see notice concerning the PCT protest procedure, Special Edition No. 3, OJ EPO 2007, N.2).
[129] Special Edition No. 4, OJ EPO 2001, 3.
[130] Special Edition No. 4, OJ EPO 2001, 3.

Notice from the European Patent Office dated 24 June 2007 concerning the protest procedure under the PCT

N.2. [Special edition No. 3 OJ EPO 2007, pp142-145]

1. When the Act revising the European Patent Convention of 29 November 2000 (EPC 2000) enters into force, this notice will replace the notice from the European Patent Office dated 1 March 2005 concerning the protest procedure under the PCT (lack of unity), published in OJ EPO 2005, 226.

2. When EPC 2000 enters into force, two different protest procedures will apply before the European Patent Office acting as International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA). Which of the two procedures applies will depend on the filing date of the international application concerned:

- a one-stage procedure for international applications filed on or after the date of entry into force of EPC 2000, as set out in paragraph I
- a two-stage procedure for international applications pending on the date of entry into force of EPC 2000, as set out in paragraph II.

I. One-stage procedure for applications filed on or after the date of entry into force of EPC 2000

3. Pursuant to Rules 40 and 68 PCT as in force since 1 April 2005, the protest procedure under the PCT is a one-stage procedure requiring the examination of a protest by a "review body" constituted in the framework of the ISA or the IPEA respectively. The requirement to carry out a review of the justification for the invitation to pay additional fees under Article 17(3)(a) or Article 34(3)(a) PCT prior to requiring payment of a protest fee (Rules 40.2(e) and 68.3(e) PCT) has been deleted.

4. Following the deletion of Articles 154(3) and 155(3) EPC in the Act revising the European Patent Convention of 29 November 2000, the President of the European Patent Office has decided[131], in accordance with Rule 158 EPC, that the examination of a protest is to be carried out by a review panel consisting of three members: the head of a directorate, normally the head of the directorate by which the invitation to pay additional fees as provided for in Articles 17(3)(a) and 34(3)(a) PCT was issued, an examiner with special expertise in unity of invention and, normally, the examiner who issued the invitation. This means that, with respect to international patent applications filed on or after the date of entry into force of EPC 2000, the review panel will be the only body examining a protest.

5. Where additional fees for international search or international preliminary examination are paid under protest in accordance with Rule 40.2(c) or Rule 68.3(c) PCT and the protest fee is duly paid, the protest will be referred to the review panel for a decision.

(a) If the review panel finds that the protest was entirely justified, the additional fees and the protest fee will be refunded.

(b) If the review panel finds that the protest was justified only in part, the corresponding additional fees will be refunded, but not the protest fee.

II. Two-stage procedure for applications pending on the date of entry into force of EPC 2000

6. Pursuant to Article 1(6) of the decision of the Administrative Council of 28 June 2001[132], Articles 154(3) and 155(3) EPC 1973 will continue to apply to international applications pending on the date of entry into force of the Act revising the European Patent Convention of 29 November 2000. Where, in respect of such international applications, additional fees for international search or international preliminary examination are paid under protest in accordance with Rule 40.2(c) or Rule 68.3(c) PCT, the EPO will continue to subject any invitation to pay such additional fees to an internal review, prior to submission of the protest to the board of appeal for examination. This review is in the nature of a service and will be carried out by a review panel constituted as laid down in Article 1 of the decision of the President of the European Patent Office dated 25 August 1992.[133] In order to allow the applicant to consider the result of the review, the EPO will not require payment of the protest fee until one month after the date of notification of the review to the applicant.

7. The procedure for internal review by the review panel prior to submission of a protest to the board of appeal is as follows[134]:

8.

(a) If the result of the review is that the invitation was not justified, any additional fees paid for international search or

[131] Decision concerning the PCT protest procedure, Special edition No. 3, OJ EPO 2007, N.1.
[132] Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the European Patent Convention of 29 November 2000, Special edition No. 1, OJ EPO 2007, 197.
[133] OJ EPO 1992, 547. See Art. 3 of the decision concerning the PCT protest procedure, Special edition No. 3, OJ EPO 2007, N.1.
[134] The procedure in points 8 and 9 of the present notice is the same as that laid down in points 4 and 5 of the previous notice published in OJ EPO 2005, 226.

international preliminary examination will be refunded. If the applicant has already paid the protest fee this will also be refunded.

(b) If the result of the review is that the invitation was entirely justified, the applicant will be notified and will also be informed that if he wishes to proceed to examination of the protest by the board of appeal he must pay the protest fee within one month if he has not already done so.

(c) If the result of the review is that the invitation was justified only in part, the corresponding additional fees will be refunded. If the applicant has already paid the protest fee, the protest will be referred to the board of appeal unless the applicant indicates within one month from notification of the result of the review that he does not wish to continue with the protest. If the applicant has not already paid the protest fee, he will be informed that he must do so within one month of the date of the notification of the result of the review if he wishes the protest to be referred to the board of appeal.

9. If the protest fee is duly paid, the protest will be referred to the board of appeal for examination of the protest and a decision.

(a) If the board of appeal finds that the protest was entirely justified, the additional fees and the protest fee will be refunded.

(b) If the board of appeal finds that the protest was justified only in part, the corresponding additional fees will be refunded, but not the protest fee.

Notice from the President of the European Patent Office dated 14 July 2007 concerning the refund of search fees by the EPO acting as International Searching Authority in the light of the entry into force of the revised text of the European Patent Convention

N.3. [Special edition No. 3 OJ EPO 2007, pp146-149]

I. By Notice from the President of the EPO dated 30 November 2003[135] concerning refund of search fees, the public was informed of the amendment to the provisions of Annex C, Part II(3) of the Agreement between the European Patent Organisation and WIPO under the PCT[136]. Section 3 of this Notice was last modified on 17 February 2006 in view of the adjustment of fees and prices as from 1 April 2006.[137]

Section 3 of the Notice from the President dated 30 November 2003 is now further amended in view of the entry into force of the revised Working Agreements with Belgium and Luxembourg respectively, and of the revised text of the European Patent Convention and is applicable as from the same date of entry into force as the revised text of the Convention.

II. Section 3 of the Notice from the President of the European Patent Office dated 30 November 2003 now reads:

The amounts refundable in such circumstances will be as follows:

Earlier search – Cases	**Level of benefit for subsequent search**	**Amount of refund in EUR**
1. 1.1. European search (Art. 78(2) EPC) on an application filed on or after 1 July 2005 and		
– search fee paid before 1 April 2006	full partial	960.00 240.00
– search fee paid on or after 1 April 2006	full partial	1000.00 250.00
1.2. European search (Art. 78 (2) EPC) on an application filed before 1 July 2005 and		
– search fee paid before 1 April 2006	full partial	690.00 172.50
– search fee paid on or after 1 April 2006	full partial	720.00 180.00
2. 2.1. International search (Art. 15(1) PCT) on an international application filed on or after 1 January 2004 and		
– search fee paid before 1 April 2006	full partial	1550.00 387.50
– search fee paid on or after 1 April 2006	full partial	1615.00 403.75
2.2. Search with written opinion on a national application made on behalf of a national office (BE, FR, LU, NL, TR[138]) and		
– search fee for the international application paid before 1 April 2006	full partial	1550.00 387.50
– search fee for the international application paid on or after 1 April 2006	full partial	1615.00 403.75
3. 3.1. International search (Art. 15(1) PCT) on an international application filed before 1 January 2004 or – International-type search (Art. 15(5) PCT) or – Standard search and		
– search fee paid before 1 April 2006	full partial	945.00 236.25
– search fee paid on or after 1 April 2006	full partial	985.00 246.25
3.2. Search without written opinion on a national application made on behalf of a national office (BE, FR, LU, NL, TR) and		
– search fee for the international application paid before 1 April 2006	full partial	945.00 236.25

[135] OJ EPO 2003, 631.
[136] OJ EPO 2001, 601 (609).
[137] OJ EPO 2006, 252.
[138] In the revised Working Agreements concluded by the EPO with Belgium and Luxembourg respectively, which entered into force on 1 January 2007, it is provided that a search report with a written opinion is drawn up on behalf of the national Offices of these States for national applications filed as from 1 January 2007. In accordance therewith BE and LU have been added to the list of States mentioned in point II-2.2.

– search fee for the international application paid on or after 1 April 2006	full partial	985.00 246.25

If the EPO can base its search report wholly on the earlier search, the amounts of a full refund indicated above apply.

If the EPO can base its search partly on the earlier search, the amounts of a partial refund indicated above apply.

III. The Notice from the President of the European Patent Office of 30 November 2003 as revised by the present Notice remains in full force and effect. An exception applies with regard to search reports drawn up on international patent applications filed on or after 1 July 2005, to the extent that for these international applications Section 4 of the Notice from the President of the European Patent Office of 30 November 2003 is replaced by the Notice from the President of the European Patent Office dated 1 July 2005 concerning the criteria for refund of search fees.[139]

[139] OJ EPO 2005, 433.

Notice from the President of the European Patent Office dated 1 July 2005 concerning the criteria for refund of search fees[140]

(OJ EPO 2005, 433)

1. Where the European or international search may be wholly or partly based on an earlier search report already prepared by the EPO, a refund of search fees is provided for in

– Article 10, paragraph 2 [now Article 9(2)], of the Rules relating to Fees in conjunction with the Decision of the President of the European Patent Office dated 1 July 2005 concerning the refund of search fees (OJ EPO 7/2005, 431) and
– Annex C Part II(3) of the Agreement between the EPO and WIPO under the PCT in conjunction with the Notice from the President of the EPO dated 1 July 2005 concerning revised amounts of the refund of search fees in the light of the introduction of the extended European search report as from 1 July 2005 (OJ EPO 7/2005, 463).

2. The criteria for determining the applicable refund rate are as follows:

2.1. The full refund will apply where the European or international search report may be based wholly on the earlier search. This would occur, in particular, where the claims of the earlier and the later application are identical or, where the claims of the later application are limited with respect to those of the earlier application, this limitation is due to

(a) the deletion of alternative features from an independent claim or

(b) the introduction of one or more limiting features into one or more of the independent claims of the later application where the limiting feature(s) was/ were all contained in a dependent claim referring back to said independent claim(s) in the earlier application.

2.2. The partial refund will apply where the European or international search report may be based partly on the earlier search. This would occur, in particular, where

(a) the claims of the later application are broader than those of the earlier application, this broadening representing a further generalisation of the same invention as that searched in the earlier application, or

(b) the claims of the later application are limited with respect to those of the earlier application, due to a limiting feature not disclosed in the earlier application but relating to the same invention as that searched in the earlier application.

The cases referred to under points 2.1 and 2.2 are intended to illustrate the most common situations but are not to be considered exhaustive.

2.3. No refund will be due where the subject-matter claimed in the later application represents an invention different from that searched in the earlier application, or the legal requirements for a refund are not fulfilled, for example, where the priority of the earlier application is not claimed (Article 10(2) RFees [now Article 9(2)]).

3. The procedure for refunding search fees remains unchanged, ie the rate of refund applicable will be communicated to the applicant together with the European or international search report, and the EPO will make the corresponding refund. In the event of disagreement, the applicant may request a decision from the EPO.

4. This Notice applies to search reports drawn up on European and international patent applications filed on or after 1 July 2005.

[140] This Notice replaces – with regard to the search reports referred to in No. 4 of this Notice – the Notice from the President of the European Patent Office dated 13 December 2001 concerning refund of search fees (OJ EPO 1/2002, 56).

Notice from the European Patent Office dated 20 September 2007 on implementation of the transitional provisions of the EPC 2000 applicable during the transition from the EPC 1973 to the EPC 2000

The revised version of the European Patent Convention ("EPC 2000") will enter into force on 13 December 2007. The following gives a brief summary of those transitional provisions that will be particularly important in practice (see OJ EPO 2007, Special Edition No. 1, 196 ff) and describes how they will be implemented by the EPO.

1. **Provided that this is expressly requested on filing**, a European patent application filed no more than one month before the date of entry into force of the EPC 2000 and meeting the requirements of Article 80 in conjunction with Rule 40 EPC 2000 will be accorded the **date of entry into force of the EPC 2000 as the date of filing**.

   The same will apply to divisional applications (provided, of course, that the parent application is still pending on the date of entry into force of the EPC 2000). The date on which a divisional application is filed will be decisive in establishing whether it is subject to the filing and formal requirements under the EPC 2000 or those under the old law; the filing or priority date of the parent application is irrelevant in this connection.

2. **Priority from a previous application filed in a member of the WTO** may also be claimed for a European or Euro-PCT application with a filing date on or after the date of entry into force of the EPC 2000.

3. **Prior rights** for European patent applications filed on or after the date of entry into force of the EPC 2000 are all earlier European patent applications, within the meaning of Article 54(3) EPC 2000, and international patent applications meeting the requirements laid down in Article 153(3) or (4) and Rule 165 EPC 2000. In the case of applications filed on or after the entry into force of the EPC 2000, it is no longer relevant whether the same contracting states are designated in the conflicting earlier application.

   The provisions currently laid down in Article 54(3) and (4) in conjunction with Rule 23a EPC 1973 will continue to apply to European patent applications filed and patents granted before the entry into force of the EPC 2000.

   The decisive factor in establishing whether the old or new provisions apply is the filing date of the application or patent to be examined, not the date of priority.

4. In the case of failure to comply with a time limit and loss of rights, the Office will already begin to apply the remedies provided for in the EPC 2000 during the transitional phase, if they are more favourable to the applicant than the EPC 1973 provisions and if this is possible under the transitional provisions of the Revision Act.

   In accordance with that principle, in those cases in which the EPC 2000 provides for **further processing** of the application under Article 121 and Rule 135 EPC 2000 in the event of failure to comply with a time limit, the EPO will send a modified communication concerning the loss of rights even before the EPC 2000 enters into force, if the two-month period for a request for further processing expires on or after the date of entry into force of the EPC 2000. This means that the remedy of further processing under the EPC 2000 will be available for all applications pending on the date of entry into force of the EPC 2000 (see Article 1(5) of the Decision of the Administrative Council of 28 June 2001 on transitional provisions, OJ EPO 2007, Special Edition No. 1, 197).

5. Under Rule 53(3) EPC 2000, a **translation of the priority document** will be required only if the earlier application is not drafted in one of the EPO's official languages and the validity of the priority claim is relevant to the assessment of the invention's patentability.

   Where the applicant has been asked to file a translation of the priority document before the entry into force of the EPC 2000, a distinction will be made between two cases during the transitional phase:

   (a) A request under Rule 38(5) EPC 1973 will be issued where the translation of the priority document is required for the substantive examination of an application. If the applicant has received such a request, a translation of the priority document must be filed even if the prescribed period expires after entry into force of the EPC 2000. The same will apply where the applicant has failed to comply with such a request under Rule 38(5) EPC 1973 and a communication under Rule 41(1) EPC 1973 has been issued as a result.

   (b) Where, however, the translation of the priority document has been requested in connection with a communication under Rule 51(4) EPC 1973 or a subsequent communication under Rule 41(1) EPC 1973 and the prescribed period expires after the entry into force of the EPC 2000, there will no longer be a need to furnish the translation.

6. The possibility of pursuing non-unitary applications on entry of international applications into the European phase will be limited under **Rule 164 EPC 2000**. Once the EPC 2000 has entered into force, the EPO will cease to send communications under Rule 112 EPC 1973.

7. It is planned to **withdraw all reservations** relating to **PCT** provisions when the EPC 2000 enters into force.

8. From the date of entry into force of the EPC 2000, **applications for limitation or revocation** of a European patent under Articles 105a to 105c and Rules 90 to 96 EPC 2000 may be filed even for patents already granted under the EPC 1973.

9. **Petitions for review of a board of appeal decision** under Article 112a and Rules 104 to 110 EPC 2000 may be filed in respect of decisions taken by the boards of appeal after the entry into force of the EPC 2000.

More detailed information on the transitional phase can be found in " **Implementation of the Decision of the Administrative Council of 28 June 2001 on the transitional provisions under Article 7 of the Act revising the European Patent Convention of 29 November 2000** ", which is available (in English only) at http://www.epo.org/patents/law/legal-texts/InformationEPO/archiveinfo/20070912.html.

RULES OF PROCEDURE OF THE BOARDS OF APPEAL

Decision of the Administrative Council of 25 October 2007 approving amendments to the Rules of Procedure of the Boards of Appeal of the European Patent Office (CA/D 35/07)

(http://www.epo.org/patents/law/legal-texts/decisions/archive/25102007c.html)

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,
Having regard to the European Patent Convention, and in particular Article 23, paragraph 4, thereof,
Having regard to the amendments to the Rules of Procedure of the Boards of Appeal, adopted on 12 September 2007 under Rule 10, paragraph 3 [rule 12(3) EPC2000], of the Implementing Regulations to the European Patent Convention,
Having regard to the opinion of the Committee on Patent Law,
HAS DECIDED AS FOLLOWS:
The amendments to the Rules of Procedure of the Boards of Appeal, as shown in the Annex to this decision, are hereby approved.
Done at Munich, 25 October 2007
For the Administrative Council
The Chairman
Roland GROSSENBACHER

ANNEX
DECISION
Amendments to the Rules of Procedure of the Boards of Appeal, OJ EPO 1983, 7 as amended in OJ EPO 1989, 361, OJ EPO 2000, 316, OJ EPO 2003, 61, OJ EPO 2003, 89 and OJ EPO 2004, 541

In accordance with Rule 10, paragraph 3 [rule 12(3) EPC2000], of the Implementing Regulations to the European Patent Convention, the Presidium amends the Rules of Procedure of the Boards of Appeal. These amended Rules of Procedure read as follows:

Article 1
Business distribution and composition

(1) The Presidium referred to in Rule 12, paragraph 4, EPC, shall before the beginning of each working year draw up a business distribution scheme for the distribution among the Boards of Appeal of all appeals that may be filed during the year, designating the members who may serve on each Board and their respective alternates. The scheme may be amended during the working year.
(2) The Chairman of each Board of Appeal shall determine the composition of the Board for each particular case in accordance with the business distribution scheme.

Article 2
Replacement of members

(1) Members shall be replaced by alternates if they are prevented from participating, particularly as a result of sickness, excessive workload, and commitments which cannot be avoided.
(2) Any member requesting to be replaced by an alternate shall inform the Chairman of the Board concerned of his unavailability without delay.
(3) The Chairman of the Board may designate another member of the Board to replace him or her as Chairman in a particular appeal in accordance with the business distribution scheme.

Article 3
Exclusion and objection

(1) If a Board has knowledge of a possible reason for exclusion or objection which does not originate from a member himself or from any party to the proceedings, then the procedure of Article 24, paragraph 4, EPC shall be applied.
(2) The member concerned shall be invited to present his comments as to whether there is a reason for exclusion.
(3) Before a decision is taken on the exclusion of the member, there shall be no further proceedings in the case.

Article 4
Procedural compliance

(1) The Chairman shall for each appeal designate a member of the Board or himself to consider the admissibility of the appeal.
(2) The Chairman or a member designated by him shall ensure that the parties comply with these Rules and with directions of the Board and shall propose action to be taken as appropriate.

Article 5
Rapporteurs

(1) The Chairman of each Board shall for each appeal designate a member of his Board, or himself, as rapporteur. If appropriate in the light of the subject-matter of the case, the Chairman may designate an additional rapporteur.
(2) If an additional rapporteur is appointed, the steps referred to in paragraphs 3 to 5 shall be taken by the rapporteur and additional rapporteur jointly unless the Chairman directs otherwise.
(3) The rapporteur shall carry out a preliminary study of the appeal and may prepare communications to the parties subject to the direction of the Chairman of the Board. Communications shall be signed by the rapporteur on behalf of the Board.
(4) The rapporteur shall make the preparations for meetings of the Board and for oral proceedings.
(5) The rapporteur shall draft decisions.
(6) If a rapporteur or additional rapporteur considers that his knowledge of the language of the proceedings is insufficient for drafting communications or decisions, he may draft these in one of the other official languages. His drafts shall be translated by the European Patent Office into the language of the proceedings and the translations shall be checked by the rapporteur or by another member of the Board concerned.

Article 6
Registries

(1) Registries shall be established for the Boards of Appeal. Registrars shall be responsible for the discharge of the functions of the Registries. One of the Registrars shall be designated Senior Registrar.
(2) The Presidium referred to in Rule 12, paragraph 1, EPC may entrust to the Registrars the execution of functions which involve no technical or legal difficulties, in particular in relation to arranging for inspection of files, issuing summonses to oral proceedings and notifications and granting requests for further processing of applications.
(3) The Registrar shall report to the Chairman of the Board concerned on the admissibility of each newly filed appeal.
(4) Minutes of oral proceedings and of the taking of evidence shall be drawn up by the Registrar or such other employee of the Office as the Chairman may designate.

Article 7
Attendance of interpreters

If required, the Chairman of any Board shall make arrangements for interpretation during oral proceedings, the taking of evidence or the deliberations of his Board.

Article 8
Change in the composition of the Board

(1) If the composition of a Board is changed after oral proceedings, the parties to the proceedings shall be informed that, at the request of any party, fresh oral proceedings shall be held before the Board in its new composition. Fresh oral proceedings shall also be held if so requested by the new member and if the other members of the Board concerned have given their agreement.
(2) Each new member shall be bound to the same extent as the other members by an interim decision which has already been taken.
(3) If, when a Board has already reached a final decision, a member is unable to act, he shall not be replaced by an alternate. If the Chairman is unable to act, the member of the Board concerned having the longer or longest service on the Boards of Appeal, or in the case where members have the same length of service, the elder or eldest member, shall sign the decision on behalf of the Chairman.

Article 9
Enlargement of a Board of Appeal

If a Board of Appeal consisting of two technically qualified members and one legally qualified member considers that the nature of the appeal requires that the Board should consist of three technically qualified members and two legally qualified members, the decision to enlarge the Board shall be taken at the earliest possible stage in the examination of that appeal.

Article 10
Consolidation of appeal proceedings

(1) If several appeals are filed from a decision, these appeals shall be considered in the same proceedings.
(2) If appeals are filed from separate decisions and all the appeals are designated to be examined by one Board in a common composition, that Board may deal with those appeals in consolidated proceedings with the consent of the parties.

Article 11
Remission to the department of first instance

A Board shall remit a case to the department of first instance if fundamental deficiencies are apparent in the first instance proceedings, unless special reasons present themselves for doing otherwise.

Article 12
Basis of Proceedings

(1) Appeal proceedings shall be based on
(a) the notice of appeal and statement of grounds of appeal filed pursuant to Article 108 EPC;
(b) in cases where there is more than one party, any written reply of the other party or parties to be filed within four months of notification of the grounds of appeal;
(c) any communication sent by the Board and any answer thereto filed pursuant to directions of the Board.
(2) The statement of grounds of appeal and the reply shall contain a party's complete case. They shall set out clearly and concisely the reasons why it is requested that the decision under appeal be reversed, amended or upheld, and should specify expressly all the facts, arguments and evidence relied on. All documents referred to shall be
(a) attached as annexes insofar as they have not already been filed in the course of the grant, opposition or appeal proceedings or produced by the Office in said proceedings;
(b) filed in any event to the extent that the Board so directs in a particular case.
(3) Subject to Articles 113 and 116 EPC the Board may decide the case at any time after filing of the statement of grounds of appeal or, in cases where there is more than one party, after the expiry of the time limit in (1)(b).
(4) Without prejudice to the power of the Board to hold inadmissible facts, evidence or requests which could have been presented or were not admitted in the first instance proceedings, everything presented by the parties under (1) shall be taken into account by the Board if and to the extent it relates to the case under appeal and meets the requirements in (2).
(5) Extension of time limits may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request.

Article 13
Amendment to a party's case

(1) Any amendment to a party's case after it has filed its grounds of appeal or reply may be admitted and considered at the Board's discretion. The discretion shall be exercised in view of inter alia the complexity of the new subject matter submitted, the current state of the proceedings and the need for procedural economy.
(2) Other parties shall be entitled to submit their observations on any amendment not held inadmissible by the Board ex officio.
(3) Amendments sought to be made after oral proceedings have been arranged shall not be admitted if they raise issues which the Board or the other party or parties cannot reasonably be expected to deal with without adjournment of the oral proceedings.

Article 14
Interventions

Articles 12 and 13 shall apply mutatis mutandis to interventions commenced while an appeal is pending.

Article 15
Oral Proceedings

(1) If oral proceedings are to take place, the Board may send a communication drawing attention to matters which seem to be of special significance, or to the fact that questions appear no longer to be contentious, or containing other observations that may help concentration on essentials during the oral proceedings.
(2) A change of date for oral proceedings may exceptionally be allowed in the Board's discretion following receipt of a written and reasoned request made as far in advance of the appointed date as possible.
(3) The Board shall not be obliged to delay any step in the proceedings, including its decision, by reason only of the absence at the oral proceedings of any party duly summoned who may then be treated as relying only on its written case.
(4) The Chairman presides over the oral proceedings and ensures their fair, orderly and efficient conduct.
(5) When a case is ready for decision during oral proceedings, the Chairman shall state the final requests of the parties and declare the debate closed. No submissions may be made by the parties after the closure of the debate unless the Board decides to re-open the debate.
(6) The Board shall ensure that each case is ready for decision at the conclusion of the oral proceedings, unless there are special reasons to the contrary. Before the oral proceedings are closed, the decision may be announced orally by the Chairman.

Article 16
Costs

(1) Subject to Article 104, paragraph 1, EPC, the Board may on request order a party to pay some or all of another party's costs which shall, without limiting the Board's discretion, include those incurred by any
(a) amendment pursuant to Article 13 to a party's case as filed pursuant to Article 12, paragraph 1;
(b) extension of a time limit;

(c) acts or omissions prejudicing the timely and efficient conduct of oral proceedings;
(d) failure to comply with a direction of the Board;
(e) abuse of procedure.
(2) The costs ordered to be paid may be all or part of those incurred by the receiving party and may inter alia be expressed as a percentage or as a specific sum. In the latter event, the Board's decision shall be a final decision for the purposes of Article 104, paragraph 3, EPC. The costs ordered may include costs charged to a party by its professional representative, costs incurred by a party itself whether or not acting through a professional representative, and the costs of witnesses or experts paid by a party but shall be limited to costs necessarily and reasonably incurred.

Article 17
Communications to the parties

(1) In the written phase of proceedings, replies to requests and directions on matters of procedure shall be given by means of communications.
(2) If a Board deems it expedient to communicate with the parties regarding a possible appreciation of substantive or legal matters, such communication shall be made in such a way as not to imply that the Board is in any way bound by it.

Article 18
EPO President's right to comment

The Board may, on its own initiative or at the written, reasoned request of the President of the European Patent Office, invite him to comment in writing or orally on questions of general interest which arise in the course of proceedings pending before it. The parties shall be entitled to submit their observations on the President's comments.

Article 19
Deliberation and voting

(1) If the members of a Board are not all of the same opinion, the Board shall meet to deliberate regarding the decision to be taken. Only members of the Board shall participate in the deliberations; the Chairman may, however, authorise other officers to attend. Deliberations shall be secret.
(2) During the deliberations between members of the Board, the opinion of the rapporteur shall be heard first, followed by that of the additional rapporteur if one has been appointed and, if the rapporteur is not the Chairman, the Chairman's last.
(3) If voting is necessary, votes shall be taken in the same sequence; even if the Chairman is the rapporteur, he shall vote last. Abstentions shall not be permitted.

Article 20
Deviations from an earlier decision of any Board or from the Guidelines

(1) Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention given in an earlier decision of any Board, the grounds for this deviation shall be given, unless such grounds are in accordance with an earlier opinion or decision of the Enlarged Board of Appeal. The President of the European Patent Office shall be informed of the Board's decision.
(2) If, in its decision, a Board gives a different interpretation of the Convention to that provided for in the Guidelines, it shall state the grounds for its action if it considers that this decision will be more readily understood in the light of such grounds.

Article 21
Deviation from an earlier decision or opinion of the Enlarged Board of Appeal

Should a Board consider it necessary to deviate from an interpretation or explanation of the Convention contained in an earlier opinion or decision of the Enlarged Board of Appeal, the question shall be referred to the Enlarged Board of Appeal.

Article 22
Referral of a question to the Enlarged Board of Appeal

(1) If a point is to be referred to the Enlarged Board of Appeal, a decision to this effect shall be taken by the Board concerned.
(2) The decision shall contain the items specified in Rule 102, sub-paragraphs (a), (b), (c), (d) and (f), EPC and the point which the Board refers to the Enlarged Board of Appeal. The context in which the point originated shall also be stated.
(3) The decision shall be communicated to the parties.

Article 23
Binding nature of the Rules of Procedure

These Rules of Procedure shall be binding upon the Boards of Appeal, provided that they do not lead to a situation which would be incompatible with the spirit and purpose of the Convention.

Article 24
Entry into force

These Rules of Procedure shall enter into force upon entry into force of the revised text of the European Patent Convention in accordance with Article 8 of the Revision Act. [13 December 2007]

Done at Munich on 12 September 2007
For the Presidium
The Chairman
Peter MESSERLI

Agreement on the application of Article 65 of the Convention on the Grant of European Patents

The States parties to this Agreement,

IN THEIR CAPACITY as Contracting States to the Convention on the Grant of European Patents (European Patent Convention) of 5 October 1973,

REAFFIRMING their desire to strengthen co-operation between the States of Europe in respect of the protection of inventions,

HAVING REGARD to Article 65 of the European Patent Convention,

RECOGNISING the importance of the objective to reduce the costs relating to the translation of European patents,

STRESSING the need for widespread adherence to that objective,

DETERMINED to contribute effectively to such cost reduction,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

Article 1: Dispensation with translation requirements

(1) Any State party to this Agreement having an official language in common with one of the official languages of the European Patent Office shall dispense with the translation requirements provided for in Article 65, paragraph 1, of the European Patent Convention.

(2) Any State party to this Agreement having no official language in common with one of the official languages of the European Patent Office shall dispense with the translation requirements provided for in Article 65, paragraph 1, of the European Patent Convention, if the European patent has been granted in the official language of the European Patent Office prescribed by that State, or translated into that language and supplied under the conditions provided for in Article 65, paragraph 1, of the European Patent Convention.

(3) The States referred to in paragraph 2 shall continue to have the right to require that a translation of the claims into one of their official languages be supplied under the conditions provided for in Article 65, paragraph 1, of the European Patent Convention.

(4) Nothing in this Agreement shall be construed as restricting the right of the States parties to this Agreement to dispense with any translation requirement or to apply more liberal translation requirements than those referred to in paragraphs 2 and 3.

Article 2: Translations in case of dispute

Nothing in this Agreement shall be construed as restricting the right of the States parties to this Agreement to prescribe that, in the case of a dispute relating to a European patent, the patent proprietor, at his own expense,

(a) shall supply, at the request of an alleged infringer, a full translation into an official language of the State in which the alleged infringement took place,

(b) shall supply, at the request of the competent court or quasi judicial authority in the course of legal proceedings, a full translation into an official language of the State concerned.

Article 3: Signature – Ratification

(1) This Agreement shall be open for signature by any Contracting State to the European Patent Convention until 30 June 2001.

(2) This Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Government of the Federal Republic of Germany. [141]

Article 4: Accession

[141] See current status of ratification (http://www.epo.org/patents/law/legislative-initiatives/london-agreement/status.html).

This Agreement shall, on expiry of the term for signature mentioned in Article 3, paragraph 1, be open to accession by any Contracting State to the European Patent Convention and any State which is entitled to accede to that Convention. Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.

Article 5: Prohibition of reservations

No State party to this Agreement may make reservations thereto.

Article 6: Entry into force

(1) This Agreement shall enter into force on the first day of the fourth month after the deposit of the last instrument of ratification or accession by eight Contracting States to the European Patent Convention, including the three States in which the most European patents took effect in 1999.

(2) Any ratification or accession after the entry into force of this Agreement shall take effect on the first day of the fourth month after the deposit of the instrument of ratification or accession.

Article 7: Duration of the Agreement

This Agreement shall be concluded for an unlimited duration.

Article 8: Denunciation

Any State party to this Agreement may denounce it at any time once it has been in force for three years. Notification of denunciation shall be given to the Government of the Federal Republic of Germany. The denunciation shall take effect one year after the date of receipt of such notification. No rights acquired pursuant to this Agreement before the denunciation took effect shall thereby be impaired.

Article 9: Scope

This Agreement shall apply to European patents in respect of which the mention of grant was published in the European Patent Bulletin after the Agreement entered into force for the State concerned.

Article 10: Languages of the Agreement

This Agreement, drawn up in a single original in the English, French and German languages shall be deposited with the Government of the Federal Republic of Germany, the three texts being equally authentic.

Article 11: Transmissions and notifications

(1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Agreement and shall transmit them to the Governments of all signatory or acceding States.

(2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:

(a) any signature;
(b) the deposit of any instrument of ratification or accession;
(c) the date of entry into force of this Agreement;
(d) any denunciation received pursuant to Article 8 and the date on which it will take effect.

(3) The Government of the Federal Republic of Germany shall register this Agreement with the Secretariat of the United Nations.

In WITNESS WHEREOF, the Plenipotentiaries authorised thereto, having presented their Full Powers, found to be in good and due form, have signed this Agreement.

Done at London on 17 October 2000, in one original, in English, French and Germany, each text being equally authentic.

Decision of the Administrative Council of 25 October 2007 amending the Rules relating to Fees (CA/D 17/07)

(http://www.epo.org/patents/law/legal-texts/decisions/archive/25101007.html)

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 33(2)(d) thereof,

On a proposal from the President of the European Patent Office,

Having regard to the opinion of the Committee on Patent Law and the Budget and Finance Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The Rules relating to Fees shall be amended as follows:

1. **Article 2, item 13, shall be amended to read as follows:**
"13. Fee for re-establishment of rights / fee for requesting restoration / fee for reinstatement of rights (Rule 136, paragraph 1, Rule 26bis.3(d) PCT, Rule 49ter.2(d) PCT, Rule 49.6(d)(i) PCT) 550"

2. **Article 5 shall be amended to read as follows:**
"**Article 5**
Payment of fees

(1) The fees due to the Office shall be paid in euro by payment or transfer to a bank account held by the Office.

(2) The President of the Office may allow other methods of paying fees than those set out in paragraph 1."

3. **Article 7 shall be amended to read as follows:**
"**Article 7**
Date to be considered as the date on which payment is made

(1) The date on which any payment shall be considered to have been made to the Office shall be the date on which the amount of the payment or of the transfer is actually entered in a bank account held by the Office.

(2) Where the President of the Office allows, in accordance with the provisions of Article 5, paragraph 2, other methods of paying fees than those set out in Article 5, paragraph 1, he shall also lay down the date on which such payments shall be considered to have been made.

(3) Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment

(a) fulfilled one of the following conditions in a Contracting State within the period within which the payment should have been made:

(i) he effected the payment through a banking establishment;

(ii) he duly gave an order to a banking establishment to transfer the amount of the payment; and

(b) paid a surcharge of 10% on the relevant fee or fees, but not exceeding EUR 150; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled not later than ten days before the expiry of the period for payment.

(4) The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3(a) was fulfilled and, where required, pay the surcharge referred to in paragraph 3(b), within a period to be specified by it. If he fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed."

4. **Article 13 shall be amended to read as follows:**
"**Article 13**
Termination of financial obligations

(1) Rights of the Organisation to the payment of a fee to the European Patent Office shall be extinguished after four years from the end of the calendar year in which the fee was due.

(2) Rights against the Organisation for the refunding by the European Patent Office of fees or sums of money paid in excess of a fee shall be extinguished after four years from the end of the calendar year in which the right arose.

(3) The period laid down in paragraphs 1 and 2 shall be interrupted in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. On interruption it shall begin again immediately and shall end at the latest six years after the end of the year in which it originally began, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgment enters into force.

(4) The President of the European Patent Office may waive action for the enforced recovery of any sum due if the sum to be recovered is minimal or if such recovery is too uncertain."

Article 2

(1) This decision shall enter into force on 25 October 2007.

(2) Article 1, points 1 and 4, of this decision shall enter into force on the same date as the text of the Rules relating to Fees adopted by the Administrative Council with the decision CA/D 11/06 of 7 December 2006.

(3) Article 1, points 2 and 3, of this decision shall enter into force on 1 April 2008 and shall apply to payments of fees made from that date.

Done at Munich, 25 October 2007

For the Administrative Council
The Chairman

Roland GROSSENBACHER