



## Notes

### Entry into the regional phase before the EPO as designated or elected Office (EPA/EPO/OEB Form 1200)

These notes explain how to complete EPA/EPO/OEB Form 1200. Please use a typewriter. Use of the form, although recommended, is not obligatory. It must be filed **with the EPO direct**, preferably with the branch at The Hague. If there is not enough space for an item of information, a separate sheet should be used and then signed. Each section continued on the separate sheet must be indicated by means of its number and heading (e.g. "2 Additional representative(s)", "6 Documents for the European grant procedure"). Further details on entry into the regional phase before the EPO as designated or elected Office may be found in "Information for PCT applicants" (Supplement 1 to OJ EPO 12/1992 as amended by OJ EPO 1994, 131).

#### I. General information

For entry into the regional phase before the EPO as **designated Office**, the applicant must take the procedural steps referred to in Article 22 PCT within **21 months** of the filing date or, where applicable, the (earliest) priority date. If at least one EPC contracting state bound by PCT Chapter II has been elected within 19 months of the filing date or, where applicable, the (earliest) priority date, the procedural steps before the EPO as **elected Office** must be taken within **31 months** of the filing date or, where applicable, the (earliest) priority date; this applies even if other designated contracting states are not bound by PCT Chapter II, as is currently still the case for Spain.

**For applicants wanting rapid examination of Euro-PCT applications, the programme for accelerated prosecution of European patent applications – "PACE" – (OJ EPO 1996, 520) offers effective options for shortening the processing time.**

#### II. Instructions for completing the form

The numbering below corresponds to the sections of the form.

##### 1. Address for correspondence

An address for correspondence may be given only by applicants **with no representative** and having several different business addresses. The address must be the applicant's own and will not appear in either the Register of European Patents or EPO publications (cf. OJ EPO 1980, 397).

##### 2. Appointment of representative (Articles 133, 134 EPC)

Applicants having neither their residence nor principal place of business within the territory of one of the contracting states to the EPC must be represented by a professional representative and act through him in all proceedings established by the EPC (Article 133(2) EPC).

##### 3. Authorisations (Rule 101 EPC)

Professional representatives who identify themselves as such are required under Rule 101(1) EPC, in conjunction with the Decision of the President of the EPO of 19 July 1991, to file a signed authorisation only

in particular cases (see OJ EPO 1991, 421 and 489). However, a legal practitioner entitled to act as professional representative in accordance with Article 134(7) EPC, or an employee acting for an applicant in accordance with Article 133(3), first sentence, EPC but who is not a professional representative, must file a signed authorisation unless an authorisation which expressly empowers him to act in proceedings established by the EPC has previously been filed with the EPO as receiving Office.

If the filing of an authorisation is necessary, the use of EPA/EPO/OEB Form 1003 (OJ EPO 1989, 228) is recommended for individual authorisations and of EPA/EPO/OEB Form 1004 (OJ EPO 1989, 230 ; 1985, 42) for general authorisations. Both forms are available free of charge from the EPO (preferably in Vienna, but also in Munich, The Hague and Berlin) or the central industrial property offices of the Contracting States.

##### 4. Request for examination (Articles 150(2), 94 EPC)

4.1 The request for examination consists of a written request (cross already placed in Section 4 of Form 1200) which is not deemed to be filed until the examination fee has been paid (Article 94(1) and (2) EPC). See III, 6.2 with regard to the filing of the written request for examination under Article 14(4) EPC and the corresponding fee reduction.

4.2 The request for examination may be filed up to six months from the date on which the international search report or the declaration pursuant to Article 17(2) (a) PCT was published (Article 157(1) EPC). However, the time limit within which the written request for examination must be filed and the examination fee paid will under no circumstances expire before the time limit prescribed by Article 22 or 39 PCT (Article 150(2) EPC). In practice this means that in the case of PCT Chapter II the written request for examination has to be filed and the examination fee paid no later than 31 months from the filing date or, where applicable, the (earliest) priority date.

4.3 An applicant who has submitted the request for examination before receiving the supplementary European search report will be invited by the EPO, after the search report has been sent, to indicate within a set period whether he desires to proceed further with the application (Article 96(1) EPC).

##### 5. Additional copy(ies) of documents cited in the supplementary European search report

One or more sets of additional copies of the documents cited in the supplementary European search report can be ordered (cf. Article 92(2) EPC) on payment of the flat-rate fee (cf. III, 7).

##### 6. Documents for the European grant procedure

When an application enters the regional phase before the EPO, the applicant must specify which documents are to form the basis for the European grant procedure. In proceedings before the EPO as **designated Office** (PCT Chapter I) the basis is generally formed by the **published documents**, where applicable with the amendments made before the International Bureau under Article 19 PCT, and in proceedings before the

EPO as **elected Office** (PCT Chapter II) by the **documents on which the international preliminary examination report is based**. The applicant may however indicate that amended documents are to form the basis for the grant procedure.

If, **exceptionally**, the applicant does not wish to proceed with the amendments submitted during the international preliminary examination procedure, but would rather revert to the published documents, where applicable with the amendments made before the International Bureau under Article 19 PCT, a request to this effect should be made on a signed **separate sheet**.

In any case Section 6 cannot deal with all possible circumstances. Classification in these exceptional cases will be necessary on a signed separate sheet.

Documents which replace published application documents must be filed **in triplicate** (Rule 36(1) in conjunction with Rule 35(2) EPC). This applies also to amended documents as annexed to the international preliminary examination report, even if the EPO carried out the international preliminary examination. A reference to the annexes of the international preliminary examination report is therefore not sufficient. See "Information for PCT applicants" (D.5 and C.5 respectively, Supplement 1 to OJ EPO 12/1992 as amended by OJ EPO, 1994, 131).

If the applicant has supplied **test reports** in proceedings before the EPO as International Preliminary Examining Authority, it is assumed that the EPO may use these in the European grant proceedings.

## 7. Translation(s)

### 7.1 Translation of the application

If the international application was **not** published in an official language of the EPO, the applicant **must** furnish the EPO with a translation in one of the official languages within 21 or 31 months of the filing date or, where applicable, the (earliest) priority date.

Where an English translation of the international application has been published by the International Bureau, the applicant can still choose the language of proceedings before the EPO, i.e. he can file a French or German translation, or even another English translation, if he wishes to file a translation of his own. However, if he does not file a translation, he will be deemed to have chosen English as the language of the European proceedings, which will be based on the published English version.

The translation must include the description, claims as filed, any text in the drawings, and the abstract. It should also include the claims amended under Article 19 PCT together with any statement, as well as all indications under Rule 13bis.3 and 13bis.4 PCT and all published requests for rectification (Rule 91.1(f) PCT). See "Information for PCT applicants" (B.I.1 in Supplement 1 to OJ EPO 12/1992 as amended by OJ EPO 1994, 131).

The translation must be filed in **triplicate**.

### 7.2 Translation of the priority document

Under the new version of Rule 38(4) EPC (OJ EPO 1995, 9 and 409), a translation of the priority document (or a declaration that the European patent application is

a complete translation of the previous application) must be filed only if requested by the EPO, but then at the latest upon expiry of the period under Rule 51(6) EPC (Article 88(1), Rule 38(4) EPC). The applicant is free, however, to file them earlier.

### 7.3 Translation of annexes

Where **PCT Chapter II** applies, any annexes to the international preliminary examination report must also be translated (Article 36(2)(b), (3)(b), Rule 74.1 PCT) and filed in triplicate.

## 8. Biological material

To enable the EPO to check compliance with Rule 28(1) and (2) EPC, the receipt issued by the depositary authority is to be submitted to the EPO (see the Notice of the EPO in OJ EPO 1986, 269). Applicants are strongly recommended to submit the receipt when filing this form or at the latest within 21 or 31 months of the filing date or, where applicable, the (earliest) priority date.

### Waiver under Rule 28(3)

The applicant may waive his right under Rule 28(3) to an undertaking from the requester to issue a sample of the biological material provided that he is the depositor of the biological material concerned. This waiver must be expressly declared to the EPO in the form of a separate, signed statement. The waiver must specify the biological material concerned (depository institution and accession number or applicant's/representative's reference number as shown in the application documents). The waiver may also be submitted at any time after the application has been filed.

## 9. Nucleotide and amino acid sequences

If nucleotide or amino acid sequences are disclosed in the international application the description must contain a sequence listing in accordance with Rule 5.2 PCT. The EPO as International Searching Authority additionally requires the sequence listing to be furnished in machine-readable form, together with a statement that the information recorded on the prescribed data carrier is identical to the written sequence listing (Rule 13ter.1 PCT and Article 3 of the Decision dated 11 December 1992, Supplement 2 to OJ EPO 12/1992).

If the EPO was International Searching Authority, it will generally already have received all the necessary items. If on expiry of the period of 21 or 31 months from the date of filing or from the (earliest) priority date the sequence listing is not available to the EPO, or does not conform to the prescribed standard, or has not been filed on the prescribed data carrier, or if a sequence listing filed subsequently is not drawn up in one of the official languages of the EPO, the missing item(s) must be filed subsequently **on entry into the regional phase before the EPO** (Rule 104b(3a) EPC and Decision of the President of the EPO dated 11 December 1992, Supplement 2 to OJ EPO 12/1992). If applicable, it (they) must be accompanied by a statement that the written sequence listing filed subsequently does not include matter which goes beyond the content of the application as filed and that the information recorded on the data carrier is identical to the written sequence listing.

## 10. Designations

- 10.1 Only those contracting states designated in the international application, for which the applicant intends to pay or has already paid the designation fees, should be indicated in Section 10.1.
- 10.2 Applicants making the declaration in Section 10.2 may nevertheless pay, within the time limit laid down in Rule 104b (1) EPC, the designation fees for those contracting states not indicated in Section 10.1 but designated in the international application. Where appropriate they may also validly pay the designation fees within a period of grace (Rule 85a(2) EPC). See also III, 9.1.

## 11. Extension of the European patent

The European application and patent granted in respect of it are extended, at the applicant's request, to states **designated in the international application** which are not contracting states to the EPC and with which "extension agreements" existed at the time of filing of the international application (Slovenia as from 1 March 1994, Lithuania as from 5 July 1994, Latvia as from 1 May 1995, Albania as from 1 February 1996 and Romania as from 15 October 1996).

Subject to this condition the request for extension is deemed to be made for any application entering the regional phase before the EPO as designated Office or elected Office on or after the commencement date (entry into force of the extension agreement). It is deemed withdrawn if the extension fee is not paid to the EPO within the time limits laid down in the EPC for the payment of designation fees (Rule 104b(1) EPC; Rule 85a(2) EPC). No communication equivalent to Rule 85a(1) or Rule 69 EPC is issued.

Detailed information about the extension system is published in OJ EPO 1994, 75.

## 12. Automatic debit order

See Arrangements for the automatic debiting procedure and Information from the EPO concerning the automatic debiting procedure (Supplement to OJ EPO No. 6/1994).

## 13. Deposit account

If an applicant pays fees in Deutsche Mark and has a deposit account with the EPO (OJ EPO 1982, 15), any refunds due to him may be credited to that account. If he wishes this to be done the applicant must indicate the account number and the account holder's name. Where a **representative's** deposit account is to be indicated, refer to point 5 of Legal Advice No. 6/91 rev., OJ EPO 1991, 573.

## III. Notes on fees

It is recommended that EPA/EPO/OEB Form 1010 (OJ EPO 1992, 671) be used when paying fees.

### 1. PCT Chapter I (Article 22 PCT)

- 1.1 Fees **payable within 21 months of the filing date or, where applicable, the (earliest) priority date:**

- (a) national fee under Article 158(2) EPC comprising
- (i) a basic national fee corresponding to a filing fee
  - (ii) designation fees (see 4 below)
  - (iii) claims fees, if any (see 5 below)

(b) supplementary European search fee, if any (see 3 below)

- 1.2 Examination fee

The examination fee must be paid **within 6 months of publication of the international search report** or of the declaration pursuant to Article 17(2) PCT (see also 6 below).

### 2. PCT Chapter II (Article 39(1) PCT)

Fees payable **within 31 months of the filing date or, where applicable, the (earliest) priority date:**

- (a) national fee under Article 158(2) EPC comprising
- (i) a basic national fee corresponding to a filing fee
  - (ii) designation fees (see 4 below)
  - (iii) claims fees, if any (see 5 below)

(b) supplementary European search fee, if any (see 3 below)

(c) examination fee

(d) renewal fee for the third year unless not due until a later date (cf. Rule 104b(1)(e) EPC)

### 3. Search fee

- 3.1 No search fee payable

If the international search report has been drawn up by the EPO, the Swedish Patent Office, the Austrian Patent Office or the Spanish Patent and Trademark Office, no supplementary European search report will be drawn up and no search fee charged.

- 3.2 Reduction of search fee

The search fee is reduced by 20 % if an international search report has been drawn up in respect of the application by the United States Patent and Trademark Office, the Japanese Patent Office, the Russian Patent Office, the Australian Patent Office, or the Chinese Patent Office.

#### 4.1 Designation fees

A designation fee is payable for each designated state. A single designation fee is charged for the joint designation of Switzerland and Liechtenstein.

#### 4.2 Extension fees

An extension fee is payable for each state requested. **When extension fees are paid, the states for which they are intended must be specified.**

### 5. Claims fees

The applicant is entitled to file amended claims with the EPO at entry into the regional phase (see II, 6). As regards the calculation of claims fees to be paid, if any, (Rule 104b(1)(b)(iii) EPC), see "Information for PCT applicants" (B.II.1 and 4 in Supplement 1 to OJ EPO 12/1992).

### 6. Reduction of examination fee

- 6.1 International preliminary examination by the EPO  
The examination fee is reduced by 50 % if the EPO, acting as International Preliminary Examining Authority, has already drawn up the international preliminary examination report in respect of the application in question (Rule 104b(6) EPC and Article 12(2) RFees).

- 6.2 Languages

Persons having their residence or principal place of business within the territory of an EPC contracting

state with an official language other than English, French or German, and nationals of that state who are resident abroad, may file the request for examination in an official language of that state (admissible non-EPO language) (Article 14(4) EPC). The examination fee is reduced by 20 % if the written request for examination is filed in an admissible non-EPO language and, within one month of such filing (i.e. at the earliest simultaneously with the request for examination), a translation in the language of proceedings is also filed.

**If EPO Form 1200 is used the written request for examination in the admissible non-EPO language must be entered in the space provided in**

**Section 4**, as this already contains a request for examination in the language of proceedings (Rule 6(3) EPC, Article 12(1) RFees and Notice from the EPO dated 3 July 1992, OJ EPO 1992, 467). The request for examination may be worded as follows:

(a) in Italian: "Si richiede di esaminare la domanda ai sensi dell'art. 94."

(b) in Swedish: "Härmed begärs prövning av patentansökan enligt art. 94."

(c) in Dutch: "Verzocht wordt om onderzoek van de aanvraag als bedoeld in Art. 94."

(d) in Luxembourgish: "Et gët heimat Préifung vun der Umeldung nom Art. 94 ugefrot."

(e) in Spanish: "Se solicita el examen de la solicitud según el artículo 94."

(f) in Danish: "Hermed anmodes om behandling af ansøgningen i henhold til Art. 94."

(g) in Greek: "Simfona me tis diataxis tou arthrou 94 zitite i exetasis tis etiseos."

(h) in Irish: "Iarrtar leis seo scrúdú an iarratais de bhun Airteagal 94."

(i) in Portuguese: "Solicita-se o exame de pedido segundo o artigo 94º."

6.3 If the requirements for both reductions are satisfied, the examination fee is reduced first by 50 %. The 20 % reduction is applied to the resulting total and not to the full fee.

## 7. Amounts of fees

Current fees and the equivalents in other currencies of the EPC contracting states are set out in "Guidance for the payment of fees, costs and prices" which is published regularly in the Official Journal of the EPO.

## 8. 10-day safety rule

It is recommended that in contracting states to the EPC payment be made no later than 10 days before expiry of the period for payment under Article 8(3) and (4) RFees. If in such cases fees are considered under Article 8(1) and (2) RFees not to have been paid until after the period for payment has expired, that period is nonetheless considered to have been observed if appropriate evidence is produced. If payment is made later than 10 days before expiry of the period for payment, but still within the period for payment, a surcharge must be paid and appropriate evidence of the original payment supplied.

## 9. Legal consequences of non-payment of fees

9.1 Basic national fee, designation fees, search fee, extensions fees

If the basic national fee, a designation fee or the search fee is not paid within the time limit, it may still be validly paid within a period of grace of one month of notification of a communication from the EPO pointing out the failure to observe the time limit, provided that within this period a surcharge is paid (Rule 85a(1) EPC). Designation fees in respect of which the applicant has dispensed in Section 10.2 with notification under Rule 85a(1) EPC and extension fees may still be validly paid within a period of grace of two months of expiry of the normal time limit provided that within this period a surcharge is paid (Rule 85a(2) EPC). Unless both the basic national fee and also at least one designation fee are paid in due time, the application will be deemed to be withdrawn (Rule 104c(1) EPC). If the designation fee has not been paid in due time for any particular designated state, the designation of such state will be deemed to be withdrawn (Rule 104c(2) EPC). If an extension fee is not paid in due time the request for extension is deemed to be withdrawn. If the search fee is not paid in due time, the application will be deemed to be withdrawn (Article 157(2) EPC).

9.2 Examination fee

If the examination fee is not paid within the time limit it may still be validly paid within a period of grace of one month of notification of a communication from the EPO pointing out the failure to observe the time limit, provided that within this period a surcharge is paid (Rule 85b EPC). If the examination fee is not paid in due time the application will be deemed to be withdrawn (Article 94(3) EPC).

9.3 Claims fees

If a claims fee is not paid in due time it may still be validly paid within a period of grace of one month from notification of the failure to observe the time limit (Rule 31(1) EPC). If a claims fee is not paid in due time, the claim concerned will be deemed to be abandoned (Rule 104c(3) EPC).

9.4 Renewal fee

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 (Article 86(2) EPC). If the renewal fee and any additional fee have not been paid in due time the European patent application will be deemed to be withdrawn (Article 86(3) EPC).