

## CHAPTER 6 EPC PROCEDURAL LAW: FILING THE APPLICATION, DATE OF FILING AND FORMALITIES EXAMINATION; EUROPEAN SEARCH

### 6.1 The European patent application, examination on filing and formalities examination

#### 6.1.1 The European patent application

Article 78(1) and Rules 41-43, 46-50 EPC

Topics	EPC	GL/EPO	Other references
Content of a European patent application:	Art. 78(1)	F-II	Also see § 2.7
- Request for grant	Art. 78(1)(a), Rule 41	A-III 4, F-II 3	
- Content of the description	Art. 78(1)(b), Rule 42	F-II 4	
- Content of the claims	Art. 78(1)(c), Rule 43	F-IV	
- Form of the drawings	Art. 78(1)(d); Rule 49(2)	A-IX	OJ 2022 A113
- Photographs		A-IX 1.2	
- Colour drawings		A-IX 7.1	
- Form and content of the abstract	Art. 78(1)(e), Rule 47	A-III 10, F-II 2	
Prohibited matter	Rule 48	A-III 8, F-II 4.4, 7	
- Morality or ' <i>ordre public</i> '	Art. 53(a), Rule 48(1)(a)	A-III 8.1	Also see § 2.2
- Disparaging statements	Rule 48(1)(b)	A-III 8.2	
- Irrelevant or unnecessary matter	Rule 48(1)(c)	F-II 7.4, A-IX 6	
Presentation of the documents making up the European patent application	Rule 49	A-VIII 2	OJ 2022 A101
- President EPO determines the requirements	Rule 49(2)		OJ 2022 A101, A113, A114
Documents filed after filing the application	Rule 49(1), Rule 50	A-VIII 2.2, 2.5, 3.1	Also see § 6.1.4
- Machine translations		G-IV 4.1	

## 6.1.2 Fees on filing the European patent application

Article 78(2) and Rules 38, 45 EPC

Topics	EPC	GL/EPO	Other references
Filing fee	Art. 78(2), Rule 38(1)	A-III 13.1	RFees Art. 2(1).1
- Amount of filing fee is dependent on manner of filing	Rule 38(1)	A-III 13.1	RFees Art. 2(1).1
- Period: within 1 month of filing the application	Rule 38(1)	A-III 13.1	
- Reduction of the filing fee under the language arrangements	Rule 6(3), Art. 14(4)	A-X 9.2.2	RFees Art. 14(1); see § 1.4.2
- Additional 'page' fee if application contains > 35 pages	Rule 38(2)- (3)	A-III 13.2	RFees Art. 2(1).1a
Additional fee for filing divisional application of second or subsequent generation	Rule 38(4)	A-IV 1.4.1.1	RFees Art. 2(1).1b; see § 6.1.5
Search fee	Art. 78(2), Rule 38(1)	A-III 13.1	RFees Art. 2(1).2
- Refund of the search fee		A-X 10.2.1	RFees Art. 9(1)
Non-payment of filing or search fee: application deemed to be withdrawn	Art. 78(2)	A-III 13.1	
- Remedy: further processing	Art. 121, Rule 135	A-III 13.1, 16.2	RFees Art. 2(1).12
Claims fees	Rule 45	A-III 9	Also see § 7.5.6
- For 16-50 claims and for the 51 <sup>st</sup> and each subsequent claim	Rule 45(1)	A-III 9	RFees Art. 2(1).15
- Period for paying: depends on when first set of claims is filed	Rule 45(2)	A-III 9	
- 1-month grace period	Rule 45(2)	A-III 9	(no surcharge)
- Non-payment: claim concerned deemed to be abandoned	Rule 45(3)	A-III 9, B-III 3.4	See § 6.1.5

## 6.1.3 The abstract

Article 85 EPC and Rules 47, 66 EPC

Topics	EPC	GL/EPO	Other references
Abstract serves the purpose of technical information only	Art. 85	A-III 10, F-II 2	Also see § 6.1.11
- May not be taken into account for any other purpose, in particular for applying Art. 54(3)	Art. 85 → Art. 54(3)	G-IV 5.1	
- Not part of the 'content of the application as filed' for the purpose of Art. 123	Art. 85 ↔ Art. 123(2)	F-II 2.7	Also see § 2.7
Form and content of the abstract	Rule 47	F-II 2, B-X 7	
Definitive content of the abstract	Rule 66	A-III 10.2	See § 6.2.6

### 6.1.4 Filing a European patent application; forwarding of European patent applications

Article 75 and Rule 35 EPC

Topics	EPC	GL/EPO	Other references
Filing the application	Art. 75(1)	A-II 1	EPO Form 1001: Request for grant form; Notes on the request for grant form
- Filing at EPO filing offices	Rule 35(1)	A-II 1	
- Includes Online filing		A-II 1.2.2	OJ 2023 A48, A50
- Filing at national offices (if allowed or mandatory)	Rule 35(2)-(4)	A-II 3	National Law II
National security	Art. 75(2)		National Law II

Article 77 and Rules 37, 155 EPC

Topics	EPC	GL/EPO	Other references
Forwarding of the application by national office to the EPO	Art. 77(1), Rule 37(1)	A-II 1.6	
- Period: 6 weeks of filing if not liable to secrecy	Rule 37(1)(a)	A-II 1.6	
- Period: 4 months of filing or 14 months of priority date where examination as to the liability to secrecy is required	Rule 37(1)(b)	A-II 1.6	
Application not forwarded if the subject-matter is liable to secrecy	Art. 77(2)		
If the application is not forwarded to the EPO in due time	Art. 77(3), Rule 37(2)	A-II 1.6, 3.2	
- Application deemed to be withdrawn	Art. 77(3), Rule 37(2)	A-II 1.6	
- All fees refunded	Rule 37(2)	A-X 10.2.4	
- No re-establishment of rights		A-II 1.6	
- Conversion into a national application	Art. 135(1)(a), (2), Rule 155	A-IV 6	See § 9.5.1

## Rules 1, 2 and 50 EPC

Topics	EPC	GL/EPO	Other references
Requirements for written proceedings	Rule 1	A-II 1	
- Documents must be sufficiently legible to enable the information to be discerned	Rule 1	A-II 4.1	
Filing of and formal requirements for documents	Rule 2	A-II 1	
- Delivery by hand or by postal services	Rule 2(1)	A-II 1.1	
- Automated mailboxes		A-II 1.1	
- Hand in to the porter		A-II 1.1	
- By means of electronic communication	Rule 2(1)	A-II 1.2	
- By fax		A-II 1.2.1	
- EPO Online Filing (OLF)		A-II 1.2.2	OJ 2023 A48, A50
- Online Filing 2.0		A-II 1.2.2	OJ 2023 A48, A50
- EPO web-form filing service		A-II 1.2.2	OJ 2023 A48, A50
- EPO Contingency Upload Service			OJ 2023 A48, A50 V
- MyEPO portfolio		xxx	Note: only for some acts; <i>not</i> for filing an application OJ 2023 A48, A50 IV
- Safeguards in event of outages of means of electronic filing and other online services		E-VIII 1.6.2.1	
- Filing by other means (e.g., e-mail) is <i>not</i> allowed		A-II 1.3	
- Filing of subsequent documents	Rule 2(1), 50	A-II 1.4, A-VIII 2.5	E.g., MyEPO Portfolio OJ 2023 A48, A50

### 6.1.5 Filing a divisional application

Art. 76 and Rule 36 EPC [1]: Filing conditions

Topics	EPC	GL/EPO	Other references
Filing a divisional application	Art. 76(1)	A-IV 1, C-IX 1	
Pendency of the parent application	Rule 36(1)	A-IV 1, C-IX 1	
- After deemed withdrawal of the parent application		A-IV 1.1.1	
- After refusal of the parent application		A-IV 1.1.1	G 1/09; see § 8.4.1
Sequence of divisional applications: - Filing a divisional application from a divisional application is allowed		A-IV 1.1.2	G 1/05, G 1/06
Persons entitled to file a divisional		A-IV 1.1.3	
- In the case of multiple applicants, a divisional application may only be filed jointly by all applicants		A-IV 1.1.3	
- Effect of filing in the wrong name		A-IV 1.1.3	
Date of filing of a divisional = date of filing of parent application (as far as same subject-matter)	[Art. 80, Rule 40]	A-IV 1.2.1	
- Priority claim of a divisional		A-IV 1.2.2	
Where and how to file a divisional application	Rule 36(2), Rule 41(2)(e)	A-IV 1.3.1, 1.3.2	EPO Form 1001: Box 27
- With the EPO in Munich, The Hague or Berlin or online	Rule 36(2)	A-IV 1.3.1,	OJ 2023 A48, A49
- Divisional application can be filed 'by reference' to the parent application	[Rule 40(1)(c), 40(2), 40(3)]	A-IV 1.3.1, A-II 4.1.3.1	EPO Form 1001: Box 26
- Language requirements	Rule 36(2)	A-IV 1.3.3	Also see § 1.4.1
If not all filing conditions fulfilled:	Rule 36(2)	A-IV 1.1	Pendency, entitled, office, language, and general conditions - see § 6.1.6
- Divisional application is deemed not to have been validly filed (=no date of filing)		A-IV 1.1	
- Applicant informed that the application will not be processed as a European divisional application (nor as a normal European application)	Rule 112(1)	A-IV 1.1	
- Applicant can apply for a decision	Rule 112(2)	A-IV 1.1	
- Any fees paid will be refunded if the loss of rights becomes final	Rule 36(2)	A-IV 1.1	

## Art. 76 and Rule 36 EPC [2]: Subject-matter

Topics	EPC	GL/EPO	Other references
Filing a divisional application	Art. 76(1)	A-IV 1, C-IX 1	
- No extension of subject-matter	Art. 76(1)	C-IX 1.4	G 1/05
- Same date of filing/priority as parent application	Art. 76(1)	C-IX 1.1	
- A divisional application may be filed to pursue any (features of a) claim that is deemed abandoned due to non-payment of claims fee for the parent application	[Rule 45(3)]	A-III 9	
For a divisional application of a sequence of divisional applications: - anything disclosed in that divisional application must be directly and unambiguously derivable from what is disclosed in each of the preceding applications as filed		A-IV 1.1.2	G 1/05, G 1/06
Subject-matter that, on filing of the divisional application, extends beyond the parent application: - Must be removed, else refused - Cannot be topic of a further divisional application - Divisional cannot be converted into an independent application with its own date of filing	Art. 76(1)	C-IX 1.4	G 1/05, G 1/06  The subject-matter does not get a date of filing
Filing of a divisional application following lack of unity objection during substantive examination	Art. 76, Rule 36	F-V 7	See § 4.1
Proceedings for grant of divisional are separate and independent from proceedings concerning parent		C-IX 1.1	G 4/98
Parent and divisional applications may not be granted with claims to the same subject-matter		C-IX 1.6, G-IV 5.4	G 4/19; also see "double patenting" in § 9.5.3

## Art. 76 and Rules 36, 38(4), 51(3) EPC

Topics	EPC	GL/EPO	Other references
Payment of the filing and search fee for a divisional application	Rule 36(3)	A-IV 1.4.1	R Fees Art. 2(1).1, 2
- 1 month of filing the divisional application	Rule 36(3)	A-IV 1.4.1	
- Consequence if fees are not paid in due time	Rule 36(3)	A-IV 1.4.1	
- Full/partial refund of search fee depending on extent that EPO benefits from search report of parent application		A-IV 1.8	R Fees Art. 9(2); OJ 2023 A4
Additional fee as part of the filing fee for filing divisional application of second or subsequent generation	Rule 38(4)	A-IV 1.4.1.1	R Fees Art. 2(1).1b
Renewal fees for divisional applications	Rule 51(3)	A-IV 1.4.3	See § 9.4.5
Payment of the designation fee	Rule 36(4)	A-IV 1.4.1	R Fees Art. 2(1).3
- Period: within 6 months of date mention of the search report in the European Patent Bulletin	Rule 36(4)	A-IV 1.4.1	
Divisional application is bound by States designated in the parent	Art. 76(2)	A-IV 1.3.4	G 4/98
Extension and validation States		A-IV 1.3.5	See § 7.2.2
Request for examination and payment of the examination fee	Rule 70	A-IV 1.8	Same period as for designation fee
Response to the search opinion	Rule 70a		See § 6.2.7

## 6.1.6 Date of filing

Article 80 and Rule 40 EPC

Topics	EPC	GL/EPO	Other references
Requirements for according a date of filing	Art. 80, Rule 40(1)	A-II 4, 4.1.5	
- Indication that a European patent is sought	Rule 40(1)(a)	A-II 4.1(a), 4.1.1	
- Information identifying the applicant or allowing the applicant to be contacted	Rule 40(1)(b)	A-II 4.1(b), 4.1.2	E.g.: name/address representative; PO box number; phone number
- Description or reference to a previously filed application	Rule 40(1)(c)	A-II 4.1(c), 4.1.3, 4.1.4; A-III 3.2.1	
Reference filing: state date of filing, office, number of previous application + indicate it replaces the description and any drawings	Rule 40(2)	A-II 4.1.3.1	
- Option to also refer to the claims	[Rule 57(c)]	A-II 4.1.3.1	
Reference filing: file a certified copy of the previously filed application: two months of filing the application	Rule 40(3)	A-II 4.1.3.1, A-III 3.2.1	
- Previously filed application need not be claimed as priority		A-II 4.1.3.1	
- Conditions where the previously filed application is already available to the EPO	Rule 40(3), 53(2) <i>mutatis mutandis</i>	A-II 4.1.3.1	Only for Euro-direct application or IA filed at EPO as rO
Language is not relevant for accordance of date of filing (if not a divisional application)		A-VII 1.1	Language is not mentioned in Rule 40
- When filing by reference: providing a translation of the previously filed application is not required for the accordance of a date of filing	[Rule 40(3), 57(a), 58]	A-II 4.1.4	
Claims are not required for the accordance of date of filing		A-II 4.1	Claims are not mentioned in Rule 40
- However, claims are essential for the application	Art. 78(1)(c), Art. 92	A-III 15, B-XI 2.2, C-III 1.1.2	
- Set of claims can be filed of own volition		A-III 15	
- If not, EPO informs applicant and invites him to correct the deficiencies (2 months)	Rule 57(c), 58	A-III 15	See § 6.1.11
- Late filed claims are regarded as an amendment	Art. 123(2)	A-III 15, B-XI 2.2, C-III 1.1.2	See § 7.7.1
- Indicated in application as published	Rule 68(4) 1 <sup>st</sup> sentence	A-VI 1.3	See § 7.1

## Article 80 and Rule 40 EPC

Topics	EPC	GL/EPO	Other references
Legal effect of accordance of date of filing:	Art. 80 and Rule 40		
- Determination of state of the art	Art. 54		
- First-to-file principle	Art. 60(2)		
- European patent application is equivalent to a regular national filing	Art. 66		Cf. Art. 4A(2),(3) PC; Cf. PCT Art. 11(4)
- European patent application can be claimed as priority	Art. 87(1)		

**6.1.7 The Receiving Section**

## Article 16 and Rule 10 EPC

Topics	EPC	GL/EPO	Other references
Receiving Section is responsible for the examination on filing and the examination as to formal requirements of European patent applications	Art. 16, 90	A-II 4, A-III 1	Also see § 1.3.2
- Receiving Section is responsible until examining division becomes responsible	Rule 10(1)	A-I 2	
- Receiving Section is composed entirely of formalities officers		A-I 2	G 1/02
- At the search stage, the responsibility for the application lies with the Receiving Section	Art. 16	B-XI 3.9	
Transfer of the responsibility of the Receiving Section to an examining division	Art. 16, 18(1), Rule 10(2)	A-III 3.2, A-VI 2.4	Also see § 7.5.1
- If the request for examination is filed before the European search report has been transmitted to the applicant, the examining division is responsible from the time when the EPO receives the indication under Rule 70(2)	Rule 10(3), 70(2)	A-VI 2.3	Also see § 7.5.1
- Categorical request for examination (waiver of the Rule 70(2) communication)	Rule 10(4)	A-VI 2.3	

### 6.1.8 Examination on filing; accordance of date of filing

Article 90(1), (2), (4) and Rule 55 EPC

Topics	EPC	GL/EPO	Other references
Receiving Section checks requirements for accordance of date of filing	Art. 90(1), (2); Rule 55 referring to: Rule 40(1)(a),(c), 40(2), 40(3), 1 <sup>st</sup> sentence	A-II 4	Note that Rule 55 does not refer to Rule 40(3), 2 <sup>nd</sup> sentence: see Rule 57(a)
Invitation to correct deficiencies	Art. 90(4), Rule 55	A-II 4.1.4, 4.1.5	
- No invitation for deficiency under Rule 40(1)(b): applicant can identify himself within two months of the date of receipt of the original documents	Rule 55 does <i>not</i> refer to Rule 40(1)(b)	A-II 4.1.4	
No date of filing accorded	Art. 90(2), Rule 55	A-II 4.1.4	
- Application not dealt with as a European patent application	Art. 90(2), Rule 55	A-II 4.1.4	
- Re-establishment of rights may be requested (all due care)	Rule 112(1), Art. 122, Rule 136	A-II 4.1.4	
Date of filing accorded to the application if requirements are met		A-II 4.1.5	

### 6.1.9 Filing missing parts of the description or missing drawings

Rule 56(1)-(2) EPC

Topics	EPC	GL/EPO	Other references
Late filing of missing parts of the description or missing drawings upon invitation of the EPO or by the applicant of own volition	Art. 90(1); Rule 56(1), 56(2)	A-II 5.1, 5.2, 5.3	Applicant may not invoke the omission of the invitation
- Normally, the application is re-dated	Rule 56(2)	A-II 5.2, 5.3	EPO informs the applicant accordingly
Equivalent Rule in the PCT is Rule 20.5			See § 10.4.2
- Unlike PCT Rule 20.5, Rule 56 EPC does <i>not</i> provide for the filing of missing claims			PCT Rule 20.5

## Rule 56(3) EPC

Topics	EPC	GL/EPO	Other references
Applicant can request to keep date of filing in case of missing parts/drawings based on the priority application: Criteria to be satisfied:	Rule 56(3)	A-II 5.4	
- Missing parts/drawings are filed within the applicable period	Rule 56(3) → Rule 56(2)	A-II 5.4(ii), A-II 5.1, 5.2	
- Application claims priority on the initial date of filing	Rule 56(3)	A-II 5.4(ii), 5.4.1	
- Late-filed parts/drawings are based on the claimed priority	Rule 56(3)	A-II 5.4(iii), 5.4.1	
- ‘Completely contained’ requirement	Rule 56(3)	A-II 5.4(iv), 5.4.2, B-XI 2.1, C-III 1.1.1	
- Applicant files a copy of the priority application	Rule 56(3)(a)	A-II 5.4(v), 5.4.3	Unless available to the EPO
- Where required, the applicant files a translation of the priority application	Rule 56(3)(b)	A-II 5.4(vi), 5.4.4	Unless available to the EPO
- Applicant indicates where the missing parts/drawings are completely contained	Rule 56(3)(c)	A-II 5.4(vii), 5.4.2, 5.4.4	
- Additional fee (‘page fee’) for pages in excess of 35	Rule 38(2), 38(3)	A-II 5.6, A-III 13.2	
If the requirements of Rule 56(3) are fulfilled, the date of filing remains unchanged	Rule 56(3)	A-II 5.4	EPO informs the applicant accordingly

## Rule 56(3) EPC

Topics	EPC	GL/EPO	Other references
Review of ‘completely contained’ requirement	Rule 56(3), (5), (6)	A-II 5.4.2 → C-III 1	
- Search division checks: if requirements not fulfilled, search opinion contains warning		B-XI 2.1	Also see § 6.2.5
- Examining division may raise objection under Rule 56		C-III 1.1.1	Also see § 7.5.2
Sufficiency of disclosure and Rule 56	[Art. 83]	F-III 10, C-III 1.1.1	See § 4.2

## Rule 56(4)-(6) EPC

Topics	EPC	GL/EPO	Other references
Consequences if the applicant fails to file the missing parts/drawings or withdraws any missing parts/drawings	Rule 56(4), (6)	A-II 5.4, 5.5	
Re-dating of the application, if the applicant fails to comply with the requirements in Rule 56(3)	Rule 56(5) → Rule 56(3)(a)-(c)	A-II 5.4, 5.5	EPO informs the applicant accordingly
Withdrawal of late-filed missing parts/drawings: re-dating is deemed not to have been made	Rule 56(6) → Rule 56(2), (5)	A-II 5.5, C-III 1.1.1	EPO informs the applicant accordingly
- This may also happen before the examining division		C-III 1.1.1	

**6.1.10 Correction of erroneously filed application documents or parts**

## Rule 56a(1)-(3) EPC

Topics	EPC	GL/EPO	Other references
Late filing of erroneously filed application documents (or parts) upon invitation of the EPO or by the applicant of own volition	Art. 90(1); Rule 56a(1), (3)	A-II 6.1, 6.2, 6.3	Applicant may not invoke the omission of the invitation
- No re-dating if correct application documents are filed <i>on or before the date of filing</i>	Rule 56a(2), (5)(a)	A-II 6.6	Referred to as “same-day corrections”
- Normally, the application is re-dated if correct application documents are filed <i>later than the date of filing</i>	Rule 56a(3), (5)(a)	A-II 6.2	EPO informs the applicant accordingly
- Additional fee (page fee) for pages in excess of 35	Rule 38(2), 38(3)	A-II 6.8, A-III 13.2	
- Claims fees for the set of claims first filed	Rule 45	A-II 6.9, A-III 9	For claims over 15
Equivalent Rule in the PCT: Rule 20.5bis			See § 10.4.3; PCT Rule 20.5bis

## Rule 56a(4) EPC

Topics	EPC	GL/EPO	Other references
Applicant can request to keep date of filing in case of correct application documents (or parts) based on the priority application: Criteria to be satisfied:	Rule 56a(4)	A-II 6.4	
- Correct application documents are filed within the applicable period	Rule 56a(4) → Rule 56a(3)		
- Application claims priority on the initial date of filing	Rule 56a(4)	A-II 6.4.1	
- Correct application documents are based on the claimed priority	Rule 56a(4)		
- 'Completely contained' requirement	Rule 56a(4)		
- Applicant files a copy of the priority application	Rule 56a(4)(a)	A-II 6.4.2	Unless available to the EPO
- Where required, the applicant files a translation of the priority application	Rule 56a(4)(b)	A-II 6.4.3	Unless available to the EPO
- Applicant indicates where the correct application documents are completely contained	Rule 56a(4)(c)		
- Additional fee ('page fee') for pages in excess of 35	Rule 38(2), 38(3)	A-II 6.8, A-III 13.2	
- Claims fees for the set of claims first filed (i.e., the erroneous claims)	Rule 56a(4)(c), 45	A-II 6.9, A-III 9	For claims over 15
If the requirements of Rule 56a(4) are fulfilled, the date of filing remains unchanged	Rule 56a(4), last sentence	A-II 6.4	EPO informs the applicant accordingly
- The correct application documents are <i>included</i> in the application and the erroneously filed application documents or parts <i>remain</i> in the application	Rule 56a(4), last sentence	A-II 6.4	
- Removing erroneously filed documents only via Art. 123(2)	[Art. 123(2)]	A-II 6.4	

## Rule 56a(4) EPC

Topics	EPC	GL/EPO	Other references
Review of 'completely contained' requirement	Rule 56a(4), (6), (7)	A-II 6.4.1 → C-III 1	
- Search division checks: if requirements not fulfilled, search opinion contains warning		B-XI 2.1	Also see § 6.2.5
- Examining division may raise objection under Rule 56a		C-III 1.1.1	Also see § 7.5.2
Sufficiency of disclosure and Rule 56a	[Art. 83]	F-III 10, C-III 1.1.1	See § 4.2

## Rule 56a(5)-(7) EPC

Topics	EPC	GL/EPO	Other references
Consequences if the applicant fails to file the correct application documents or withdraws any correct application documents	Rule 56a(5), (7)	A-II 6.4	
Re-dating the application if the applicant fails to comply with the requirements in Rule 56a(4)	Rule 56a(6) → Rule 56(4)(a)-(c)	A-II 6.4	EPO informs the applicant accordingly
Withdrawal of the correct application documents: re-dating deemed not to have been made	Rule 56a(7) → Rule 56a(3), (6)	A-II 6.5	EPO informs the applicant accordingly
- This may also happen before the examining division			

## Rule 56a(8) EPC

Topics	EPC	GL/EPO	Other references
If the applicant files correct application documents after the EPO has begun to draw up the search report:	Rule 56a(8) → Rule 56a(3), (4)	A-II 6.7	
- EPO will invite the applicant to pay a further search fee within one month		A-II 6.7	RFees Art. 2(1).2
- If the search fee is not paid in due time: application deemed to be withdrawn		A-II 6.7	
- Remedy: further processing	Art. 121, Rule 135	A-II 6.7	

### 6.1.11 Examination of formal requirements

Article 90(3), (4) and Rules 57-60 EPC

Topics	EPC	GL/EPO	Other references
Examination as to formal requirements	Art. 90(3), Rule 57	A-III	EPO Form 1034: Important deadlines when filing a European patent application
Invitation to correct deficiencies	Art. 90(4), Rules 57-60	A-II 4.1.4, 4.1.5	
- Translation of the application or an application filed by reference	Rule 57(a), 58	A-III 14, 16	
- Request for grant	Rule 57(b), 58	A-III 4, 16	
- Presence of at least one claim	Rule 57(c), 58	A-III 15, 16	See § 6.1.6
- Abstract	Rule 57(d), 58	A-III 14, 16	
- Filing fee and/or search fee paid	Rule 57(e)	A-III 13.1	
- Designation of the inventor	Rule 57(f), 60	A-III 5, 16	See § 5.3
- Priority claim	Rule 57(g), 52(3), 59	A-III 6.5.3, 6.7, 16	See § 4.4.2
- Representation	Rule 57(h), 58	A-III 2, 16	
- Physical requirements (form of drawings and presentation of application documents)	Rule 57(i), 58	A-III 3, 16	
- Sequence listing	Rule 57(j), 30	A-IV 5	See § 6.1.13

### 6.1.12 Consequences if deficiencies are not rectified in due time

Article 90(5) and Rules 57-58 EPC

Topics	EPC	GL/EPO	Other references
Application refused	Art. 90(5)		
- Request for grant not filed or not corrected	Rule 57(b), 58, Art. 90(5)	A-III 16.2(iii)	
- No claims filed	Rule 57(c), 58, Art. 90(5)	A-III 16.2(vi)	
- Abstract not filed	Rule 57(d), 58, Art. 90(5)	A-III 16.2(iv)	
- Non-appointment of compulsory representative	Rule 57(h), 58, Art. 90(5)	A-III 16.2(i)	
- Non-compliance with the physical requirements	Rule 57(i), 58, Art. 90(5)	A-III 16.2(ii)	
No further processing	Art. 121, Rule 135(2)	A-III 14, 16, E-VIII 2	
- Re-establishment of rights possible (all due care)	Art. 122, Rule 136	E-VIII 3.1.1	

## Articles 90(5), 14(2) and Rules 57-58 EPC

Topics	EPC	GL/EPO	Other references
Application deemed to be withdrawn	Art. 90(5) 'different legal consequence'		
- Translation not filed	Rule 57(a), 58, Art. 90(5), Art. 14(2) last sentence	A-III 16.2(v)	Also see § 6.1.11
No further processing	Art. 121, Rule 135(2)	A-III 14, 16, E-VIII 2	
- Re-establishment of rights possible (all due care)	Art. 122, Rule 136	E-VIII 3.1.1	

## Article 90(5) and Rule 59 EPC

Topics	EPC	GL/EPO	Other references
Right of priority lost	Rule 57(g), 59, Art. 90(5) last sentence	A-III 16.2(viii)	Also see § 6.1.11
No further processing	Art. 121, Rule 135(2)	A-III 14, 16, E-VIII 2	
- Re-establishment of rights possible (all due care)	Art. 122, Rule 136	E-VIII 3.1.1	

## Article 90(5) and Rule 60 EPC

Topics	EPC	GL/EPO	Other references
Application refused	Art. 90(5)		Also see § 5.3
- Designation of the inventor not made or not corrected in due time	Rule 57(f), 60, Art. 90(5)	A-III 5.4	
Remedy: further processing	Art. 121, Rule 135	A-III 5.4	

## Article 78(2) and Rule 57 EPC

Topics	EPC	GL/EPO	Other references
Non-payment of the filing fee or search fee	Art. 78(2), Rule 57(e)	A-III 13, 16.2(ix)	Also see § 6.1.2
- Application deemed to be withdrawn	Art. 78(2)	A-III 13.1, 16.2	
- Remedy: further processing	Art. 121, Rule 135	A-III 13.1, 16.2	

## Article 78(2) and Rule 45 EPC

Topics	EPC	GL/EPO	Other references
Non-payment of claims fees	Rule 45(2)	A-III 9, 16.2(vii)	Also see § 6.1.2
- If a claims fee is not paid after invitation, the claim concerned is deemed to be abandoned	Rule 45(3)	A-III 9, 16.2	
- A divisional application may be filed to pursue any (features of a) claim that is deemed abandoned due to non payment of claims fee for the parent application		A-III 9	Also see § 6.1.5
Claims fees at grant of patent	[Rule 71(4)]	C-V 1.4	See § 7.5.6

### 6.1.13 Applications relating to nucleotide and amino acid sequences

Rule 30 EPC

Topics	EPC	GL/EPO	Other references
Sequence listing	Rule 30(1)	A-IV 5, F-II 6	OJ 2023 A96, A97
- Not part of description	Rule 30(2)	A-IV 5	
- WIPO Standard ST.26		A-IV 5	
Invitation to correct deficiencies	Art. 90(3), Rule 57(j), 30(3)	A-IV 5, A-III 3.3	OJ 2023 A96, A97; Also see below
- Period: two months	Rule 30(3)	A-IV 5	
- Statement	Rule 30(3)	A-IV 5, H-IV 2.2.5	
- Pay the late furnishing fee	Rule 30(3)	A-IV 5	R Fees Art. 2(1).14a
- If not complied with: application will be refused	Rule 30(3)	A-IV 5	
- Remedy: further processing	Art. 121, Rule 135	A-IV 5	
Sequence listings filed after the date of filing	Rule 30(2)	A-IV 5, H-IV 2.2.5	OJ 2023 A96, A97
- May only contain the sequence information in the original application (original description): statement required	Rule 30(2)	A-IV 5, H-IV 2.2.5	OJ 2023 A96, A97
- Not examined for Art. 123(2)		H-IV 2.2.5	OJ 2023 A96, A97
- May be corrected or amended	Rule 139, Art. 123(2)	H-IV 2.2.5	OJ 2023 A96, A97
Sequence listings of a divisional application	Rule 30, Art. 76(1)	A-IV 5.4	OJ 2023 A96, A97
Euro-PCT application: late-filed sequence listing	[Rule 163(3)]		See § 12.2.9

### 6.1.14 Applications relating to biological material

Rules 26(3), 31-34 EPC

Topics	EPC	GL/EPO	Other references
Biological material	Rule 26(3)	A-IV 4.1	
Deposit of biological material	Rule 31	A-IV 4.1	
- New deposit	Rule 34	A-IV 4.1.1	
- Budapest Treaty		A-IV 4.1.1	
Missing information; notification	Rule 31(2)	A-IV 4.2, F-III 6.3(ii)	G 2/93
- Further processing and re-establishment are excluded		A-IV 4.1	
Deposited biological material available via expert only	Rule 32	A-IV 4.3	
Requests for samples of biological material	Rule 33	A-IV 4.4	