

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 and 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 46	A-IX	
- 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 'ordre public'	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 of unnecessary matter	Rule 48(1)(c)	F-II 7.4, A-IX 6	
Presentation of documents making up the European patent application	Rule 49	A-VIII 2	
Documents filed after filing the application	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(1), (2), (3) and 45 EPC

Topics	EPC	GL/EPO	Other references
Fees on filing the application	Art. 78(2)	A-III 13	
Paying the filing fee and search fee	Rule 38(1)	A-III 13.1	RFees Art. 2(1) 1, 2
- Amount of the filing fee is dependent on the manner of filing	Rule 38(1)	A-III 13.1	RFees Art. 2(1) 1, 2(4)
- 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
- Refund of the search fee		A-X 10.2.1	RFees Art. 9(1)
- Additional fee if application contains > 35 pages	Rule 38(2)-(3)	A-III 13.2	RFees Art. 2(1) 1a
- Non-payment: application deemed to be withdrawn	Art. 78(2)	A-III 13.1, 16	
- 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 st and each subsequent claim	Rule 45(1)	A-III 9	RFees Art. 2(1) 15
- Period for paying - depends on when the claims are filed	Rule 45(2)	A-III 9	
- 1-month grace period	Rule 45(2)	A-III 9	(no surcharge)
- Non-payment	Rule 45(3)	A-III 9, B-III 3.4	

6.1.3 The abstract

Article 85 EPC and Rules 47 and 66 EPC

Topics	EPC	GL/EPO	Other references
Abstract:	Art. 85	A-III 10, F-II 2	Also see § 6.1.10
- Serves the purpose of technical information only	Art. 85	F-II 2.1	
- 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	F-II 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 of a European patent application; forwarding of European applications

Article 75 and Rule 35 EPC

Topics	EPC	GL/EPO	Other references
Filing of 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	
- Filing at national offices (if allowed)	Rule 35(2)-(4)	A-II 3	Nat. Law Table II
National security	Art. 75(2)		

Article 77 and Rule 37 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	
- Onward transmission within 6 weeks	Rule 37(1)(a)	A-II 1.6	
- More time if liability to secrecy must be examined	Rule 37(1)(b)	A-II 1.6	
Application not forwarded if subject has been made secret	Art. 77(2)		
Failure to forward the application to EPO	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	
- Conversion into a national application	Art. 135(1)(a), (2), Rule 155	A-IV 6	See § 9.5.1

Rules 1 and 2 EPC

Topics	EPC	GL/EPO	Other references
Requirements for written proceedings	Rule 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 mail-boxes	Rule 2(1)	A-II 1.1	
- Hand in to the porter	Rule 2(1)	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	
- EPO case management system (CMS)		A-II 1.2.2	
- EPO Web Form Filing service		A-II 1.2.2	
- Filing by other means (e.g. e-mail) is not allowed		A-II 1.3	
- Subsequent filing of documents	Rule 2(1), 50	A-II 1.4, A-VIII 2.5	