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I. Introduction

These Guidelines have been prepared by the European Patent Office (EPO) to assist the competent authorities of contracting states to the European Patent Convention (EPC) in the handling of European patent applications filed with those authorities under Article 75(1)(b) EPC.

The Guidelines are mainly concerned with the filing, processing on receipt and forwarding to the EPO of European patent applications filed in **paper** form or by facsimile. They give only general guidance about EPC procedures, and are not intended as detailed working instructions for the staff operating those procedures. Nor do they cover European patent applications filed **online** with the competent national authorities of contracting states that permit online filing (see the decision of the President of the EPO dated 29.10.2002 on the electronic filing of patent applications and other documents - OJ EPO 2002, 543, and the Notice dated 29.10.2002 concerning the electronic filing of patent applications and other documents - OJ EPO 2002, 545). They apply, however, to patent applications stored on electronic data carriers that are filed by post with the competent national authorities of the contracting states.

The Guidelines do not cover the handling of international patent applications under the Patent Cooperation Treaty for which the EPO is to act as a receiving Office but which have been filed in a contracting state under Article 152(1), second sentence, EPC (see however Section VII).

The annexed documents listed below should make these Guidelines more readily understood:

- 1) Request for grant of a European patent (EPO Form 1001)
- 2) Designation of inventor (EPO Form 1002)
- 3) Payment of fees and costs (EPO Form 1010)
- 4) Receipt for documents/Communication under Rule 24(4) EPC (EPO Form 1001.6)
- 5) Numbering system for patent applications
- 6) Advice of despatch (EPO Form 1029)
- 7) Communication pursuant to Art. 77(5) EPC (EPO Form 1040)

II. Filing of European patent applications

1. *Place of filing*

1.1 Under Article 75(1)(b) EPC, European patent applications may be filed, if the law of a contracting state so permits, at

- (a) the central industrial property office of that state, or
- (b) another competent authority of that state.

This has the same effect as if the patent application had been filed on the same date with the EPO.

1.2 Where matters arise which affect authorities under 1.1(b) above (eg administrative difficulties), the EPO will communicate only with the central industrial property office (hereinafter referred to as the "central office") of the contracting state in question.

2. *Method of filing*

Rule 24(1) EPC allows European patent applications to be filed direct, ie by hand or by post. They may also be filed by fax, where the competent authorities of the contracting states so permit (see the decision of the President of the EPO dated 6.12.2004 on the use of facsimile for filing patent applications and other documents, OJ EPO 2005, 41 and the Notice from the EPO dated 6.12.2004 concerning the filing of patent applications and other documents, OJ EPO 2005, 44).

Under these provisions, each contracting state is free to decide when and how patent applications may be filed in that state. For example, the days and hours during which a central office is open to receive patent applications, the frequency of postal deliveries and whether an automatic letter-box is provided, are all matters for which each contracting state is responsible.

III. **Documents which may be filed with the competent national authorities**

1. *Introduction*

The object of this section is to describe the kind, form and language of documents which a national authority can expect to receive, and also which documents enjoy the effect referred to in Section II, 1.1, and up to what point in time.

2. *Complete patent applications*

2.1 In the majority of cases, documents received by national authorities will be complete, ie patent applications will contain the following items:

- (a) a request for grant of a European patent, filed on EPO Form 1001 (Annex 1);
- (b) a description of the invention;
- (c) one or more claims;
- (d) any drawings referred to in the description;
- (e) an abstract.

Only single copies of items (b) to (e) need be filed (decision of the President of the EPO dated 15.11.2001, OJ EPO 2001, 563). As for the request for grant of a European patent, see explanations under IV. 2.4 and 3.2 as well as the Notes to EPO Form 1001, Section I.

2.2 In addition, any one of the following documents may accompany the patent application:

- (f) authorisation - EPO Form 1003;
- (g) general authorisation - EPO Form 1004;
- (h) priority document(s);
- (i) translation(s) of (h);
- (j) designation of inventor (Annex 2);
- (k) earlier search report;
- (l) fee payment form (EPO Form 1010) (Annex 3) (see Sections VI, 2.1 and VIII, 2);

- (m) translation of (b) and (c) under Article 14(2) EPC;
- (n) electronic data carrier containing sequence listing;
- (o) PACE request to the European Patent Office - EPO Form 1005
- (p) other documents.

3. *Incomplete patent applications*

3.1 Instead of the items (a) to (e) listed in 2.1, a patent application may simply comprise:

- (a) an informal indication that a European patent is sought;
- (b) designation of a contracting state;
- (c) information identifying the applicant;
- (d) a description and one or more claims in one of the languages provided for in Article 14(1) and (2) EPC.

3.2 The above items are, according to Article 80 EPC, the minimum requirements for according a date of filing. Documents which - though not meeting these minimum requirements - nevertheless appear at first sight to be a European patent application should be accepted as such and processed as described in Section IV.

4. *European patent applications under Article 61(1)(b) EPC*

4.1 New European patent applications under Article 61(1)(b) EPC may also be filed with the central office or national authorities of contracting states whose law so permits. Such patent applications will be identifiable by the fact that in box 36 of the request for grant of a European patent reference is made to Article 61(1)(b) EPC.

4.2 The procedure on receipt of these applications is the same as for normal European patent applications (see Section IV). With regard to forwarding them to the EPO's Receiving Section, see Section VI, 2.5.

5. *European divisional applications under Article 76 EPC*

5.1 European divisional applications must be filed direct with one of the EPO's filing offices (The Hague, Munich or Berlin) (Article 76(1) EPC).

5.2 If a divisional application is mistakenly filed with a national authority, as a courtesy service to the applicant the authority should forward it to the EPO without delay, rather than sending it back to him.

6. *Languages*

6.1 European patent applications must be filed in one of the EPO's official languages (English, French or German). 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 that state who are resident abroad, may file European patent applications in an official language of that state (Article 14(2) EPC).

6.2 Thus, in a contracting state where the filing of European patent applications at the competent authority is permitted, such applications may be filed in any official language of any contracting state, subject to the national law of the contracting state in question.

6.3 Where an application is filed in a language other than one of the EPO's official languages, a translation in an

EPO language must be filed within 3 months of the filing of the application or, if priority is claimed, at the latest 13 months after the date of priority (Rule 6(1) EPC). If the applicant has not received the communication under Rule 24(4) EPC (Annex 4), he will in all probability file the translation with the national authority with which the application was filed.

IV. Procedure on receipt of European patent applications

1. Identification of a European patent application

- 1.1 The documents making up a European patent application and which may be filed with a national authority are detailed in Section III.
- 1.2 Where the application is filed using the trilingual EPO Form 1001 (Annex 1) it will be clearly recognisable as a European patent application and not a national application.
- 1.3 Doubt may arise as to whether an application is a European patent application when it is filed in the more informal manner referred to in Section III, 3.1(a). But reference to “Europe, European Patent Office, European patent application” or alternatively a request for a patent to be granted in one or more contracting states, in addition to the state in which the application has been filed, is sufficient indication that the application is for a European patent.
- 1.4 Having established that a European application has been received, the national authority should check whether it is a divisional application (Art. 76 EPC) and, where appropriate, proceed in accordance with Section III, 5.2.

2. Date of receipt

- 2.1 The national authority is required under Rule 24(2) EPC to mark the documents making up a European patent application with their date of receipt.
- 2.2 “Date of receipt” means the date on which the application was **actually** filed, whether by hand, post or a delivery service, insofar as this can be ascertained because for example the national authority is open for accepting applications filed by hand or by post, or has an automatic letter-box which sorts applications by date of receipt. If the national authority’s letter-box is not automatic, the date of receipt accorded to applications deposited in it will be the date on which the box is emptied by the authority. The box should be emptied at least once per working day.

Where an application is filed by fax, the transmission may continue beyond midnight into the following day, so that parts of the application are received on two consecutive days. In such a case the national authority must enter both dates as the date of receipt in box 2 of the request for grant of a European patent and in the corresponding box (DREC) of the receipt for documents (page 6 of EPO Form 1001, Annex 4). The receipt should tell the applicant which parts of the application were received on which day. If a fax transmission is incomplete, the applicant should be informed accordingly, if possible on the same day.

- 2.3 The date of receipt, once established, is to be indicated on the documents making up the European patent application (for exceptions see Section IV, 2.4 and 2.5). This is best done by rubber-stamping the back of the documents.
- 2.4 No extra copies of the request for grant of a European patent need be filed (except page 6, the receipt for documents), but the date of receipt should be stamped in box 2 on the front page. As the EPO will be scanning the request for grant of a European patent into its PHOENIX electronic file system, the date should be stamped in black ink and be clearly legible. **Stamps bearing the name of the national authority should not be used.**

The date and application number should be stamped **on the back** of the **first and last** page of each

document, except the Request for Grant form. National authorities are free to date-stamp every sheet. Sheets of drawings, which are usually filed loose, should each be stamped on the back.

- 2.5 Any accompanying documents should also be stamped with the date of receipt (see also Section VI, 2.1). Electronic data carriers, however, are not to be stamped.

3. *Preparation of the receipt*

- 3.1 The national authority is required under Rule 24(2) EPC to issue to the applicant without delay a receipt containing at least the application number, the nature of the documents and the date of their receipt.
- 3.2 The receipt for documents (Annex 4) is issued as page 6 of the request for grant of a European patent (EPO Form 1001). It will generally have been completed by the applicant already and should be filed in quadruplicate (original plus three copies).

Where the application is filed without using the EPO Form 1001, the national authority issues its own receipt for documents and informs the EPO under Rule 24(3) EPC of the receipt of the European patent application.

- 3.3 The four copies of the receipt (page 6 of the Request for Grant form) are used as follows:

the **original** should be sent to the applicant;

the **first copy** serves as a communication under Rule 24(3) EPC to the EPO; according to this provision, the national authority competent for receiving European patent applications shall inform the EPO without delay of the receipt of the documents making up the application; the communication under Rule 24(3) is always sent with the documents making up the application unless the application requires a secrecy examination (see below, Section IV, 3.3, fifth paragraph, re use of the **third copy**). In all other cases, the national office must send the **first copy** of the receipt for documents to the EPO together with the **third copy** and the documents making up the application (original file);

the **second copy** stays with the national authority as a file copy;

the **third copy** is used by the EPO as a communication under Rule 24(4) EPC. This copy must therefore be sent to the EPO together with the original file (and the communication under Rule 24(3) EPC (ie first copy) unless the latter has already been sent to the EPO). (As soon as the EPO receives the third copy, it enters the date of receipt in the "RENA" box and sends the copy to the applicant.)

- 3.4 On receiving a European patent application the national authority should enter on **all** copies of the receipt, in the box for official use only, the application number and the date of receipt (DREC). The details entered by the applicant in parts A to C of the receipt should be checked for completeness and attention drawn to any discrepancies. On the original plus the first and second copy of the receipt for documents, the box marked "For official use only" must be completed in full by the national authority (name of the authority, date, signature or official stamp). On the third copy this box should be left blank, as it is used by the EPO for the communication under Rule 24(4) EPC.
- 3.5 If no particulars concerning the recipient (the applicant or his representative) are given, the national authority must complete them wherever possible.
- 3.6 Self-adhesive stickers carrying the next available application number (see Section IV, 4) are then attached to the original and the copies of the receipt for documents and to the front page of the Request for Grant form (box 1 of EPO Form 1001). Electronic data carriers (see Section III, 2.2(n)) should have a sticker attached both to the label of the electronic data carrier and to the protective sleeve provided by the EPO. A further sticker bearing the application number should be affixed to the protective folder for the application documents (see Section IV, 6).

If the request for grant of a European patent has not been filed using EPO Form 1001, the sticker with the application number is affixed to the document indicating that a European patent is sought.

4. *Allocation of an application number*

- 4.1 The European application number (Annex 5) consists of an 8-digit number plus a check digit. It begins with the last two digits of the year of filing, followed by a set of six digits for the individual places of filing. The last digit after the point is a computer-generated check digit used to check the accuracy of an application number when fed into the database. Since January 2005, the EPO has been assigning a second number in accordance with WIPO Standard 10/C. Appearing after the application number, from which it is separated with a slash, it starts with the organisation or country code before the eight-digit number but is without a check digit. This number must be used when the application is being claimed as priority (see Notice from the EPO dated 12.11.2004 concerning revision of the request for grant of a European patent (Form 1001), OJ EPO 2004, 592, point 3).
- 4.2 The application number is printed on stickers. In good time before the start of each year the EPO supplies each contracting state with a sufficient quantity of new stickers for the coming year. Annex 5 shows the form and ranges of the application numbers allotted to each contracting state. The EPO has already set aside separate sets of numbers for European applications filed electronically with national authorities. However, these are to be used only if those authorities allow electronic filing.

5. *Applications liable to secrecy*

- 5.1 Where European patent applications require further examination as to their liability to secrecy under Article 77(3) EPC, a comment such as "examination under Article 77(3) EPC required" should be written on the first copy of the receipt for documents and this copy then sent to the EPO without delay. In view of the time limit under Article 77(5) EPC, it is absolutely essential in such cases to inform the EPO of the application number, and the date of receipt and of earliest priority.
- 5.2 Where the application contains an automatic debit order (box 43 of the request for grant of a European patent, EPO Form 1001), the national authority should send a copy of the Request for Grant - containing the debit order - from which the information subject to secrecy (eg the title and priority number, but not the priority date) has been deleted.

6. *Creation of files*

The EPO supplies protective folders, bearing application numbers and bar codes, in which all European patent application documents are to be inserted. A protective folder is intended for the documents of **one** application only. It is advisable to indicate on the folder anything that should be drawn to the immediate attention of the EPO in connection with the processing of the application (eg PACE request, missing documents, etc.).

7. *Further procedure*

- 7.1 Under the EPC, the formalities examination on incoming documents is carried out not by the national authority but by the EPO Receiving Section. Even where there appears to be an obvious deficiency in the application, the documents must be accepted, given a date of receipt and a receipt issued as described in Section IV, 3 above.
- 7.2 The national authority shall merely notify the applicant of any apparent deficiency in a non-binding way. It would be helpful if national authorities also drew the EPO's attention to any deficiencies they notice.

- 7.3 Any examination provided for by the national law of a contracting state concerning the secrecy of inventions in the interests of that state should now be carried out, the procedure for this being laid down by each contracting state (see also Section IV, 5). However, in the interests of forwarding European patent applications to the EPO as soon as possible, those applications which are obviously not liable to secrecy should be speedily identified and forwarded to the EPO before the applications requiring a more extensive secrecy examination (see Section VI, 2.1).

V. Procedure on receiving subsequently filed documents

1. Introduction

- 1.1 Once the applicant has filed an application - be it complete or incomplete - with a national authority, he can also file related documents, eg documents (f) to (k) and (m) to (p) specified in Section III, 2.2. These documents are considered to be an integral part of a European patent application and may be filed as such with the national authority. The subsequently filed documents have the same effect as if they had been filed with the EPO on the same day (see however 2.2).
- 1.2 Although the EPC makes no special provision for the handling of subsequently filed documents relating to a European patent application, the procedure described below should be followed.

2. Handling of subsequently filed documents

- 2.1 If the application to which the subsequently filed documents relate is still with the national authority, these documents should be added to the application documents, ie placed in the relevant protective folder (cf. Section IV, 6).
- 2.2 If the application has already been forwarded to the EPO and the acknowledged advice of despatch (Annex 6) has **not** yet been received by the national authority, the documents can generally still be validly filed with the national authority. Once the national authority gets the acknowledged advice of despatch back, documents filed with it subsequently can no longer be accorded the national authority's date of receipt by the EPO. In such cases the date of receipt is the date on which the documents are actually received at the EPO. It has to be assumed that the applicant has already received the communication under Rule 24(4) EPC (Annex 4) because the EPO despatches both the acknowledged advice of despatch and the Rule 24(4) EPC communication on the same day.
- 2.3 Irrespective of whether or not the date of receipt by the national authority can be accorded to subsequently filed documents, the national authority should always forward such documents to the EPO as a courtesy service, marking on them both the date of receipt and the number of the European patent application to which they relate.
- 2.4 The EPO alone is responsible for establishing whether subsequently filed documents have been validly filed with a national authority and what date of receipt is to be accorded to them.

3. Issue of a receipt

- 3.1 The receipt for documents forming part of the request for grant of a European patent (see Section IV, 3.2) may not be used to acknowledge receipt of subsequently filed documents.
- 3.2 If the person filing documents requests a receipt, or the national authority chooses to issue one, the receipt form normally used by that authority should be issued.

VI. Forwarding of European patent applications to the EPO

1. Introduction

- 1.1 Article 77(1) EPC requires the central office of a contracting state to forward to the EPO, **in the shortest time** compatible with the national laws governing secrecy of inventions in the interests of the state, European applications filed with that office or another competent authority of that state.
- 1.2 Any European patent applications filed with an authority other than the central office must first be forwarded to that office and not direct to the EPO.

2. Time limits

- 2.1 Under Article 77(2) EPC, contracting states are obliged to take all appropriate steps to ensure that European patent applications which are obviously not liable to secrecy are forwarded to the EPO within six weeks of filing.

If EPO Form 1010 ("Payment of fees and costs") contains a request that the fees be debited from a deposit account held with the EPO (**individual debit order**), to avoid disadvantages for the applicant the national authority must ensure that the debit order is sent separately to the EPO Munich (Treasury and Accounts Directorate) within two weeks of its date of receipt. On Form 1010 the national authority must indicate whether the debit order was filed together with the application or subsequently, and give the date of receipt. It should also indicate on the first copy of Form 1001.6 (Receipt for documents) that it has sent Form 1010 direct to Treasury and Accounts (see also Section VIII, 2).

If the application contains an **automatic debit order** (box 43 of the request for grant of a European patent, EPO Form 1001), it is important for the proper operation of the automatic debiting procedure that the application be forwarded to the EPO within two weeks of the date of receipt.

- 2.2 Under Article 77(3) EPC, European patent applications examined for liability to secrecy but found not to be so liable must be forwarded to reach the EPO within four months of filing or, where priority is claimed, 14 months of the priority date.
- 2.3 Applications declared to be secret are not forwarded to the EPO (Article 77(4) EPC), but the national authority should tell the EPO so that the Receiving Section can close the file.
- 2.4 Please note that European patent applications which do not reach the EPO before the end of the 14th month after filing or, if priority has been claimed, after the date of priority, are deemed under Article 77(5) EPC to be withdrawn. In such cases the EPO notifies the applicant accordingly using EPO Form 1040 (Annex 7). Where the EPO has not been informed of the name of the applicant or his representative as provided for under Section IV, 3.5, the communication is sent to the central office of the contracting state in which the European patent application was filed. The central office then has to forward this communication (EPO Form 1040) to the applicant (Article 119, second sentence, EPC).

It should be noted in particular that where a European patent application is not forwarded to the EPO, or is forwarded too late, there is no possibility of the applicant's having his rights re-established (see board of appeal decision J 3/80, OJ EPO 1980, 92 et seq.). The applicant might therefore seek compensation under national law if he believes the national authority was at fault.

- 2.5 New European patent applications under Article 61(1)(b) EPC must have been received at the EPO within four months of their having been filed with the national authority (Rule 15(3) EPC).

3. *Destination*

- 3.1 The central offices should forward European patent applications to the EPO Receiving Section at The Hague.
- 3.2 Exceptionally, however, an application may also be forwarded to the EPO filing offices in Munich or Berlin, eg if this is the only way to ensure that it reaches the EPO before expiry of the time limits referred to under Section VI, 2.4 and 2.5.

4. *Packaging and transport*

- 4.1 How European patent applications are to be packed and transported to the EPO is agreed between the EPO and the individual contracting states on the basis of cost and security aspects.
- 4.2 A package of application documents or subsequently filed documents despatched by a central office must contain an advice of despatch (Annex 6) indicating the contents of the package by application number. This advice of despatch (EPO Form 1029) is the same for the central offices and all national authorities, and is supplied by the EPO. On receiving the package, the EPO sends this advice of despatch back to the central office as a receipt for the documents. A copy of the despatch note stays with the EPO.

5. *Notification of the applicant under Rule 24(4) EPC and of the central office by the EPO*

- 5.1 When the EPO receives a European patent application from the central office, it informs the applicant without delay by sending him a copy of the receipt for documents (Annex 4) and entering in the "RENA" box the date on which it received the application. This copy serves as the "communication under Rule 24(4) EPC", and instructs the applicant to file direct with the EPO any further documents relating to the application.
- 5.2 The date of despatch of the "communication under Rule 24(4) EPC" to the applicant is notified to the national authority on the returned advice of despatch. The EPO ensures by organisational means that this date represents both the **date of receipt of the application at the EPO** and the date of despatch to the applicant of the communication under Rule 24(4) EPC. This is also the date on which the advice of despatch is sent back to the national authority as a receipt (see Section VI, 4.2).

VII. **Forwarding of international applications to the EPO**

International applications filed with a national authority under Article 152(1), second sentence, EPC **must reach the EPO** not later than two weeks before the end of the thirteenth month after filing or the priority date (Rule 104(3) EPC). International applications for which the EPO is the intended receiving Office and which were filed erroneously with the national authority must be forwarded to the EPO without delay.

VIII. **Payment of fees**

1. How fees are to be paid, and the date on which this is considered to have occurred, is laid down in Articles 5 and 8 of the EPO's Rules relating to Fees (RFees) and its Arrangements for deposit accounts (ADA) (Supplement No. 2 to OJ EPO 1/2005). Under these provisions, bank or giro transfers may be made only to accounts held by the EPO, and cheques must be sent direct to the EPO or handed in personally. The date of payment is the date the transfer is credited to an EPO account or the date the cheque is received at the EPO. National authorities should not accept such payments.

2. The sole exceptions here are payments made by individual or automatic debit orders (EPO Form 1010 and Form 1001, box 43, respectively). These orders may be filed with national authorities, together with the application (see point 6.9 ADA, Supplement No. 2 to OJ EPO 1/2005, 6 et seq.). For the processing and forwarding of individual and automatic debit orders, see Section VI, 2.1, second and third paragraphs, and - for applications liable to secrecy - Section IV, 5. If fee payment Form 1010 is mistakenly **filed subsequently** with a national authority, as a courtesy service to the applicant it should be forwarded without delay to the EPO's Treasury and Accounts Directorate in Munich, not sent back to him.
3. If a national authority receives a cheque by post in payment of European fees, the authority should return it to the sender and ask him to make payment into an EPO account instead. Alternatively, as a courtesy service, it can forward the cheque to a bank with which the EPO holds an account, or to the EPO itself. If it offers such a service, the national authority should point out to the applicant that the date of payment to the EPO is determined under Article 8 RFees and is not the date the cheque was received by the national authority.