

Overview of European Patent Prosecution

Under the European patent system, administered by the European Patent Office (EPO), a single patent application is examined and granted but can then be brought into force in a large number of European states including all current members of the EU and some other countries such as Switzerland and Turkey. It represents a convenient way of obtaining Europe-wide patent protection for an invention that is usually less expensive than prosecuting separate applications in individual European countries.

What is a European patent?

A European patent is a patent granted by the European Patent Office (EPO) on an application which it has examined and decided that meets the requirements of the European Patent Convention (EPC: the patent law that applies to the EPO). The European patent can then be brought into force into some or all of the Contracting States of the EPC as well as some further countries which are not members of the EPC but allow applicants for a European patent to extend the patent to that state; the so-called Extension States. In some respects, a European patent can be considered to be a bundle of national patents with each member of that bundle capable of providing protection in a European state that is a member of the EPC.

Presently there are 38 Contracting States, 2 Extension States and 2 Validation States. A full list can be found [here](#).

Filing

A European patent application is filed with the EPO at one of its branches in Munich, the Hague or Berlin. It can either be filed within 12 months of an earlier national application by claiming priority from the earlier application or within 31 months of that priority as a regional phase of a Patent Cooperation Treaty (PCT) application.

[More details on claiming priority](#)

A European patent application must be prosecuted in one of the official languages of the EPO (English, French or German). Applications drafted in a different language will therefore require translation.

Official fees are payable to the EPO when an application is filed. The fees payable depend to some extent on the number of claims that the application has and, to a lesser extent, on the number of pages. Currently the basic fees include an allowance of 15 claims and 35 pages in total. If either of these figures is exceeded, additional costs are incurred. Whilst the fee for each additional page is quite modest, the claims fees are much higher.

Search

After filing, the application is examined for compliance with formal requirements and then the claimed invention is searched by an EPO Examiner. A search report listing documents considered to be relevant is drawn up. This is accompanied by a preliminary opinion from the Examiner as to whether the application complies with the substantive provisions of the EPC (absolute patentability, novelty, inventive step, sufficiency, clarity and support).

Examination

After the search report has been received the Applicant can decide whether to proceed with substantive examination and either by paying the examination fee (for applications filed directly at the EPO) or by confirming that it wishes to proceed (for applications filed via the PCT).

The results of the previous search form the basis of the substantive examination and the first official communication from the Examiner usually simply refers back to the preliminary opinion accompanying the search report. The applicant has an opportunity to present arguments or make amendments to the application to address any objections. Typically, an applicant is given one or two attempts to rectify all outstanding objections. After that the EPO will convene a formal hearing at one of its offices to resolve the issues in person.

[More details on Oral Proceedings before the EPO](#)

Grant

Once the EPO is satisfied that the application is allowable the applicant is invited to pay grant and printing fees and to file translations of the allowed claims into the other two official languages of the EPC. The EPO then grants and publishes the patent.

The European patent must be validated in individual countries to bring about enforceable national patent rights. Formalities vary between different countries. In some a full translation of the patent into the local language is required. In others which have signed up to the London Agreement, either the claims only need to be translated, or no translation at all is necessary.

Further advice

If you would like any further advice please contact us at Dehns using the details below.



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