



EPC 2000

Swiss Patent Attorneys Association

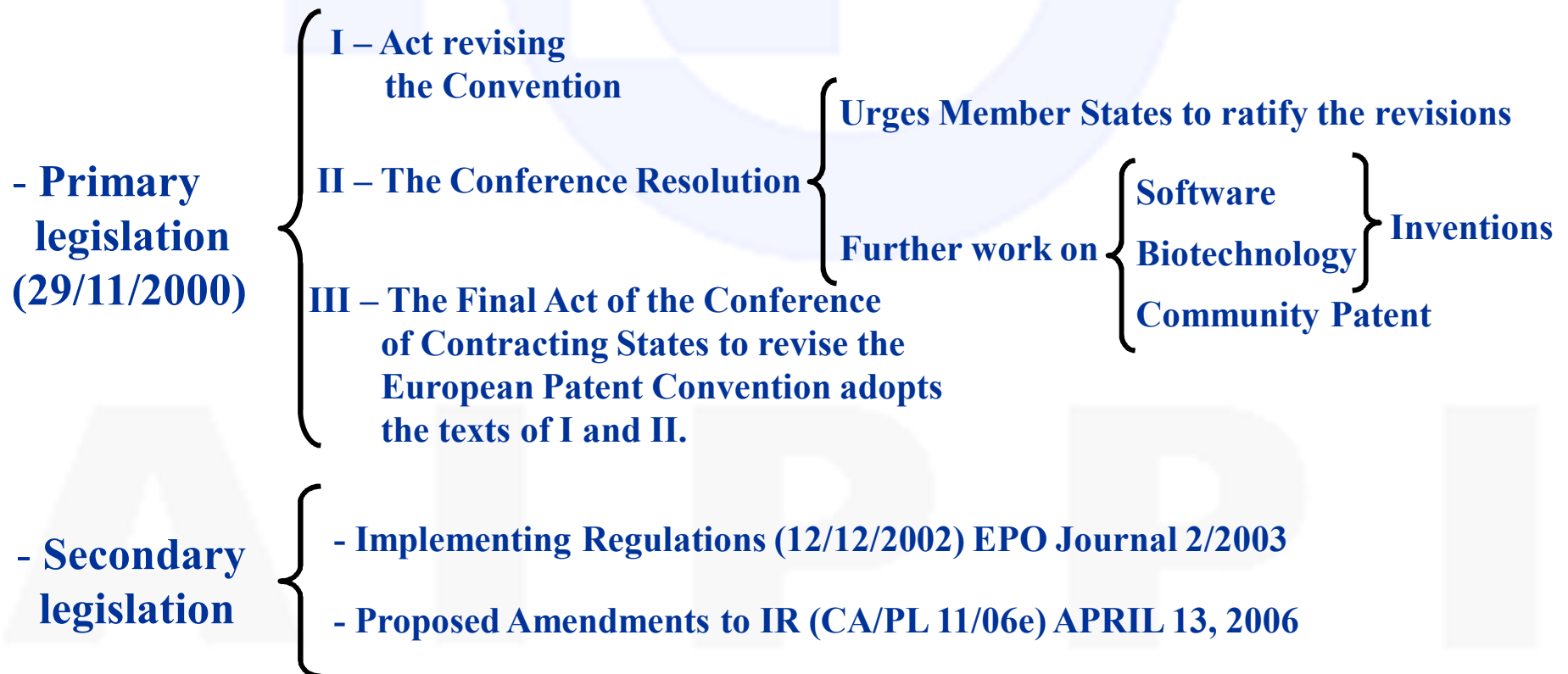
**ZURICH
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Reporter General AIPPI**

INTRODUCTION



- Diplomatic Conference in Munich 20-29 November 2000
- Revise the 1973 European Patent Convention
- 100 provisions and protocols revised



SUMMARY OF CHANGES IN EPC 2000 (I)



**Clarifies and strengthens extent of protection
conferred by EP including “EQUIVALENTS”
(Protocol of interpretation of Art. 69 EPC)**

Substantive law

Institutional level

Regular conference of ministers
(Art. 4a EPC)

More political
responsibility of
Member States

Administrative Council
authorised to adapt EPC
(Art. 33(1)(b) EPC)

- Int. Treaties
- Community legislation

Simplification & Streamlining Patent procedure

**To file EP application in any language
(Art. 14(2)EPC)**

**A translation into an EPO language must be filed
within 1 month (Rule 6(2)IR)**

**Extension of further processing
(Art. 121 EPC)**

SUMMARY OF CHANGES IN EPC 2000 (II)



**Central optional
procedure to limit
a granted EP**

**Art. 150 a)
Art. 150 b)**

- Search and examination together (BEST) : (Protocol on centralisation)
- **Special agreements between contracting States (Art. 149 a) EPC)**
- Transfer of matters from EPC to IR (easier to change)

PART I: GENERAL & INSTITUTIONAL PROVISIONS

CHAPTER III: THE EUROPEAN PATENT OFFICE

Article 14

Languages of the European Patent Office, European patent applications
and other documents

- (1) The official languages of the European Patent Office shall be English, French and German.
- (2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.
- (3) The official language of the European Patent Office in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before the European Patent Office, unless otherwise provided in the Implementing Regulations.
- (4) Natural or legal persons having their residence or principal place of business within 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 documents which have to be filed within a time limit in an official language of that State. They shall however file a translation in an official language of the European

ARTICLE 14

- **This change adapts the EPC to the PLT concerning minimum requirements to obtain a filing date**
- The time limit to file the translation into an EPO language is fixed in Rule 6(2): 1 month (Now is 3 months but not later than 13 months after priority date)
- **Paragraph (4) has been adapted. Now special rules for applicants from contracting States with a language other than an EPO language are only applicable for subsequently filed documents**

Article 22
Enlarged Board of Appeal

- (1) The Enlarged Board of Appeal shall be responsible for:
 - (a) deciding points of law referred to it by Boards of Appeal;
 - (b) giving opinions on points of law referred to it by the President of the European Patent Office under Article 112;
 - (c) deciding on petitions for review of decisions of the Boards of Appeal under Article 112a.
- (2) In proceedings under paragraph 1(a) and (b), the Enlarged Board of Appeal shall consist of five legally qualified and two technically qualified members. In proceedings under paragraph 1(c), the Enlarged Board of Appeal shall consist of three or five members as laid down in the Implementing Regulations. In all proceedings a legally qualified member shall be the Chairman.

ARTICLE 22



- **Changes in paragraph (1)(c) extends the jurisdiction of the Enlarged Board of Appeals to petitions for review under new Article 112a.**
- **Changes in paragraph (2), provides basis for the IR to set up smaller bodies acting as the Enlarged Board of Appeals in proceedings relating to petitions for review i.e.:**

	<u>Now</u>	<u>EPC 2000</u>
Legally qualified	5	2-3
Technically qualified	2	1-2
Total	<hr/> 7	<hr/> 3-5

Present wording

Article 33

Competence of the Administrative Council in certain cases

(1) The Administrative Council shall be competent to amend the following provisions of this Convention:

(a) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 94 only in the conditions laid down in Article 95;

(b) the Implementing Regulations.

(2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend the following provisions:

(a) the Financial Regulations;

(b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature, and rules for the grant, of any supplementary benefits;

Revised wording

Article 33

Competence of the Administrative Council in certain cases

(1) The Administrative Council shall be competent to amend the following provisions [...]:

(a) the time limits laid down in this Convention; [...]

(b) **Parts II to VIII and Part X of this Convention to bring them into line with an international treaty or European Community legislation relating to patents;**

(b) *Becomes (c) - Wording unchanged*

(2) - (4) *Unchanged*

ARTICLE 33

- The change in paragraph (1)(b) grants the Administrative Council competence to amend EPC to ensure that it is in line with

{	International Treaties	}
	Community Legislation	

 concerning patents.
- This relates to Parts

II:	SUBSTANTIVE PATENT LAW
III:	APPLICATION FOR EP
IV:	PROCEDURE UP TO GRANT
V:	OPPOSITION PROCEDURE
VI:	APPEAL PROCEDURE
VII:	COMMON PROVISIONS
VIII:	INTERNATIONAL APPLICATION PURSUANT TO THE PCT
- New PLT 2000 contains a similar provision to adapt PLT to any changes in the PCT (Article 16(1) PLT)

Present wording

Article 35 Voting rules

- (1) The Administrative Council shall take its decisions other than those referred to in paragraph 2 by a simple majority of the Contracting States represented and voting.
- (2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 87, Article 95, Article 134, Article 151, paragraph 3, Article 154, paragraph 2, Article 155, paragraph 2, Article 156, Article 157, paragraphs 2 to 4, Article 160, paragraph 1, second sentence, Article 162, Article 163, Article 166, Article 167 and Article 172.

- (3) Abstentions shall not be considered as votes.

Revised wording

Article 35 Voting rules

- (1) The Administrative Council shall take its decisions other than those referred to in paragraphs 2 **and 3** by a simple majority of the Contracting States represented and voting.
- (2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, **paragraphs 1(a) and (c), and 2 to 4**, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, [...] **Article 134a, Article 149a, paragraph 2, Article 152, second sentence, Article 153, paragraph 7**, Article 166 [...] and Article 172.
- (3) **Unanimity of the Contracting States voting shall be required for the decisions which the Administrative Council is empowered to take under Article 33, paragraph 1(b). The Administrative Council shall take such decision only if all the Contracting States are represented. A decision taken on the basis of Article 33, paragraph 1(b), shall not take effect if a Contracting State declares, within 12 months of the date of the decision, that it does not wish to be bound by the decision.**

- (3) *Becomes (4) - Wording unchanged*



ARTICLE 35

- SPECIAL VOTING FOR CHANGES UNDER ART. 33.1(b)

- ALL CONTRACTING STATES
REPRESENTED WHEN VOTES CAST**
- UNANIMITY**
- 12 MONTHS FOR MEMBER STATES
TO RECONSIDER**

PART II: SUBSTANTIVE LAW

CHAPTER I: PATENTABILITY

Article 52
Patentable inventions

(1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.

ARTICLE 52



**- TO BRING EPC IN LINE WITH
ART. 27(1) OF TRIPS:**

**PATENT PROTECTION IS AVAILABLE TO
TECHNICAL INVENTIONS OF ALL KINDS**

Present wording

Article 53

Exceptions to patentability

European patents shall not be granted in respect of:

(a) inventions the publication or exploitation of which would be contrary to "ordre public" or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;

(b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof.

*(See current Article 52(4):
Methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body shall not be regarded as inventions which are susceptible of industrial application within the meaning of paragraph 1. This provision shall not apply to products, in particular substances or compositions, for use in any of these methods.)*

Revised wording

Article 53

Exceptions to patentability

European patents shall not be granted in respect of:

(a) inventions the [...] **commercial** exploitation of which would be contrary to "ordre public" or morality, provided that **such** exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;

(b) *Unchanged*

(c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body [...]; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

ARTICLE 53

- Paragraph (a) is brought in line with Article 27.2 of TRIPS and Art. 6.1 of the Directive on biotechnological inventions.

The word “publication” is eliminated and the word “commercial” is added to exploitation.

- Paragraph (c) is current Article 52(4)

Change

- Excluded by the fiction that they lack industrial applicability (since they are inventions) (Art. 52(4))



- Exceptions to patentability (Art. 53(c))

Present wording**Article 54**
Novelty

- (1) An invention shall be considered to be new if does not form part of the state of the art.
- (2) The state of the art shall be held to comprise everything made available to the public by means of an oral or written description, by use, or in any other way, before the date of filing of the European patent application.
- (3) Additionally, the content of European patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published under Article 93 on or after that date, shall be considered as comprised in the state of the art.
- (4) Paragraph 3 shall be applied only in so far as a Contracting State designated in respect of the later application, was also designated in respect of the earlier application as published.

Revised wording**Article 54**
Novelty

- (1) *Unchanged*
- (2) *Unchanged*
- (3) *Unchanged*
- (4) **Deleted**

ARTICLE 54 / I



- Paragraph (4) was included to avoid double patenting at the time when countries were designated at the time of filing
- Now they are designated at the time of paying the examination fee (after publication)
- Any European application with an earlier priority date not yet published will constitute prior art for all EPC States.

Article 54

- (1) An invention shall be considered to be new if it does not form part of the state of the art.
- (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
- (3) Additionally, the content of European patent applications as filed, of which the dates of filing are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.
- (4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art.
- (5) Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any specific use in any method referred to in Article 53(c), provided that such use is not comprised in the state of the art.

ARTICLE 54 / II

- **New paragraph (4) is equivalent to former paragraph (5)**
- **New paragraph (5) provides protection for each further new medical use of a substance or composition already known as a medicine. This protection is equivalent to that offered by “Swiss form claims” (a claim directed to the use of a substance or composition for the manufacture of a medicament for a specified new and inventive therapeutic application)**
- **Putting the 1st medical use on an equal footing with each further medical use does not affect the scope of claims for medical use. It will continue to be a matter of case law**

CHAPTER III: EFFECTS OF THE EP AND THE EP APPLICATION

Present wording

Article 65

Translation of the specification of the European patent

(1) Any Contracting State may prescribe that if the text, in which the European Patent Office intends to grant a European patent or maintain a European patent as amended for that State, is not drawn up in one of its official languages, the applicant for or proprietor of the patent shall supply to its central industrial property office a translation of this text in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant of the European patent or of the maintenance of the European patent as amended is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant for or proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

Revised wording

Article 65

Translation of the [...] European patent

(1) Any Contracting State may, **if the European patent as granted, amended or limited by the European Patent Office** is not drawn up in one of its official languages, **prescribe that** the [...] proprietor of the patent shall supply to its central industrial property office a translation of the **patent as granted, amended or limited** in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the **grant, maintenance in amended form, or limitation** of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the [...] proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

(3) *Unchanged*



ARTICLE 65

- Establishes the possibility for Member States to require a translation of the amended EP specification when it is amended or limited under the new central limitation procedure.
- The sanction for non-observance is that the EP shall be deemed to be void *ab initio* in that State.

Present wording

Article 68

Effect of revocation of the European patent

The European patent application and the resulting patent shall be deemed not to have had, as from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked in opposition proceedings.

Revised wording

Article 68

Effect of revocation **or limitation** of the European patent

The European patent application and the resulting patent shall be deemed not to have had, as from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked **or limited** in opposition, **limitation or revocation** proceedings.

ARTICLE 68

- Establishes the retroactive effect of limiting or revoking a European patent in opposition, limitation and (national) revocation proceedings.

Present wording

Article 69

Extent of protection

(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

(2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the latest filed claims contained in the publication under Article 93. However, the European patent as granted or as amended in opposition proceedings shall determine retroactively the protection conferred by the European patent application, in so far as such protection is not thereby extended.

Revised wording

Article 69

Extent of protection

(1) The extent of the protection conferred by a European patent or a European patent application shall be determined by [...] the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

(2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the [...] claims contained in the **application as published**. However, the European patent as granted or as **limited** in opposition, **limitation or revocation** proceedings shall determine retroactively the protection conferred by the European patent application, in so far as such protection is not thereby extended.

ARTICLE 69

- (1) The word “term” is eliminated since it does not have the same meaning in all 3 languages “Inhalt”, “teneur”**
- (2) Reflects the new possibility of central limitation and (national) revocation.**

PROTOCOL OF INTERPRETATION

ART. 69

Article 2

Equivalents

For the purpose of determining the extent of protection conferred by a European patent, due account shall be taken of any element which is equivalent to an element specified in the claims.

PART III: APPLICATION FOR EP

CHAPTER I: Filing and requirements of the European patent application

Present wording

Article 79

Designation of Contracting States

- (1) The request for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.
- (2) The designation of a Contracting State shall be subject to the payment of the designation fee. The designation fees shall be paid within six months of the date on which the European Patent Bulletin mentions the publication of the European search report.
- (3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the European patent application. Designation fees shall not be refunded.

Revised wording

Article 79

Designation of Contracting States

- (1) **All the Contracting States party to this Convention at the time of filing of the European patent application shall be deemed to be designated in the request for grant of a European patent.**
- (2) The designation of a Contracting State **may** be subject to the payment of a designation fee. [...]
- (3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. [...]

ARTICLE 79

- **Reflects the new practice that, unless a particular Member State is withdrawn, all of them are designated in a new application.**

CHAPTER II: PRIORITY

Article 87
Priority right

- (1) Any person who has duly filed, in or for
- (a) any State party to the Paris Convention for the Protection of Industrial Property or
- (b) any Member of the World Trade Organization,

an application for a patent, a utility model or a utility certificate, or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

- (5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the European Patent Office, recognises that a first filing made at the European Patent Office gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.

ARTICLE 87

- **(I) To align it with Article 2 of TRIPS.**
- **Inventors certificates are eliminated since they are obsolete.**

PART V: OPPOSITION PROCEDURE

Present wording

Article 101

Examination of the opposition

(1) If the opposition is admissible, the Opposition Division shall examine whether the grounds for opposition laid down in Article 100 prejudice the maintenance of the European patent.

(2) In the examination of the opposition, which shall be conducted in accordance with the provisions of the Implementing Regulations, the Opposition Division shall invite the parties, as often as necessary, to file observations, within a period to be fixed by the Opposition Division, on communications from another party or issued by itself.

(See current Article 102(1):

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 prejudice the maintenance of the European patent, it shall revoke the patent.

and current Article 102(2):

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 100 do not prejudice the maintenance of the patent unamended, it shall reject the opposition.)

Revised wording

Article 101

Examination of the opposition Revocation or maintenance of the European patent

(1) If the opposition is admissible, the Opposition Division shall examine **in accordance with the Implementing Regulations** whether [...] **at least one ground** for opposition **under** Article 100 prejudices the maintenance of the European patent. **During this examination**, the Opposition Division shall invite the parties, as often as necessary, to file observations [...] on communications from another party or issued by itself.

(2) **Deleted** - incorporated into paragraph 1.

(2) If the Opposition Division is of the opinion that **at least one ground** for opposition prejudices the maintenance of the European patent, it shall revoke the patent. **Otherwise it shall reject the opposition.**

ARTICLE 101

- (1)– Clarifies current practice that the opposition division is not obliged to consider all grounds for opposition.**
- (2) – Clarifies that for a European Patent to be revoked, it is sufficient for one of the grounds for opposition to prejudice its maintenance.**

Article 105a
Request for limitation or revocation

- (1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to have been filed until after the limitation or revocation fee has been paid.
- (2) The request may not be filed while opposition proceedings in respect of the European patent are pending.

Article 105b
Limitation or revocation of the European patent

- (1) The European Patent Office shall examine whether the requirements laid down in the Implementing Regulations for limiting or revoking the European patent have been met.
- (2) If the European Patent Office considers that the request for limitation or revocation of the European patent meets these requirements, it shall decide to limit or revoke the European patent in accordance with the Implementing Regulations. Otherwise, it shall reject the request.
- (3) The decision to limit or revoke the European patent shall apply to the European patent in all the Contracting States in respect of which it has been granted. It shall take effect on the date on which the European Patent Bulletin mentions the decision.

Article 105c
Publication of the amended specification of the European patent

If the European patent is limited under Article 105b, paragraph 2, the European Patent Office shall publish the amended specification of the European patent as soon as possible after the mention of the limitation has been published in the European Patent Bulletin.

ARTICLE 105a-105c



- A single request filed at the EPO
- Special fee
- The request may not be filed while opposition is pending
- EPO will examine limitation or revocation
- Limitation or revocation will have effects in all designated Member States
- Publication of amended specification
- Translation in designated Member States in 3 months (Art. 65(1)EPC)

PART VI: APPEALS PROCEDURE

Article 112a

Petition for review by the Enlarged Board of Appeal

- (1) Any party to appeal proceedings adversely affected by the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.
- (2) The petition may only be filed on the grounds that:
 - (a) a member of the Board of Appeal took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;
 - (b) the Board of Appeal included a person not appointed as a member of the Boards of Appeal;
 - (c) a fundamental violation of Article 113 occurred;
 - (d) any other fundamental procedural defect defined in the Implementing Regulations occurred in the appeal proceedings; or
 - (e) a criminal act established under the conditions laid down in the Implementing Regulations may have had an impact on the decision.
- (3) The petition for review shall not have suspensive effect.

ARTICLE 112a



- The petition for review can only be filed on grounds of:

- Art. 24(1) member of BoA
 - personal interest
 - been invoked as representative
 - participated in decision
- **In breach of rules of procedure of BoA**
- BoA included a non-member of BoA
- **fundamental violation of Art. 113 (grounds or evidence parties could not comment)**
- any other fundamental procedural defect in appeal proceedings
- **criminal act impact in the decision**

- The petition will not have a suspensive effect

- **Filed within 2 months**
 - **Notification of decision**
 - 2 months criminal act established but before 5 years

PART VIII: COMMON PROCEDURE

CHAPTER I: COMMON PROVISIONS GOVERNING PROCEDURE

Article 121
Further processing of the European
patent application

- (1) If an applicant fails to observe a time limit vis-à-vis the European Patent Office, he may request further processing of the European patent application.
- (2) The European Patent Office shall grant the request, provided that the requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.
- (3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
- (4) Further processing shall be ruled out in respect of the time limits in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 4, as well as the time limits for requesting further processing or re-establishment of rights. The Implementing Regulations may rule out further processing for other time limits.

ARTICLE 121



- Broadens the scope of further processing of the EP application for cases that until now required “re-establishment of rights”

Exclusions (Art. 121.4)

- Art. 87.1 - Priority
- Art. 108 - Appeal
- Art. 112a.4 - Petition to review
- Time limits for { Further processing
Re-establishment of rights

Exclusions (Rule 85a(2))

- Rule 6(1) Translations of EP applications
- Rule 14a1(a) person not entitled
- Rule 25d(3) copy of a previously filed application
- Rule 37(2) Renewal fees
- Rule 38(2) Declaration of priority
- Rule 39 Deficiencies of examination on filing
- Rule 39a Missing parts of description or drawings
- Rule 41 Correction of deficiencies
- Rule 41a Deficiencies in claim of priority
- Rule 69(a) Communication of loss of rights

Rule 85a

Further processing

- (1) Further processing under Article 121, paragraph 1, shall be requested by payment of the prescribed fee within two months of the communication concerning either the failure to observe a time limit or a loss of rights. The omitted act shall be completed within the period for making the request.
- (2) Further processing shall be ruled out in respect of the periods referred to in Article 121, paragraph 4, and of the periods under Rule 6, paragraph (1), Rule 14a, paragraph 1(a), Rule 25d, paragraph 3, Rule 37, paragraph 2, Rule 38, paragraph 2, Rules 39 and 39a, Rules 41 and 41a, and Rule 69, paragraph 2.
- (3) The department competent to decide on the omitted act shall decide on the request for further processing.

Article 122
Re-establishment of rights



(1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall, upon request, have his rights re-established if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.

(2) The European Patent Office shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.

(3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.

(4) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other time limits.

(5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the loss of rights referred to in paragraph 1 and publication of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

(6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

Rule 85b

Re-establishment of rights

- (1) Any request for re-establishment of rights under Article 122, paragraph 1, shall be filed in writing within two months of the removal of the cause of non-compliance with the period, but at the latest within one year of expiry of the unobserved time limit. Any request for re-establishment of rights in respect of the period specified in Article 87, paragraph 1, shall be filed within two months of expiry of that period. The request for re-establishment of rights shall not be deemed to have been paid.
- (2) The request shall state the grounds on which it is based and shall set out the facts on which it relies. The omitted act shall be completed within the relevant period for filing the request according to paragraph 1.
- (3) Re-establishment of rights shall be ruled out in respect of any period for which further processing under Article 121 is available and in respect of the period for requesting re-establishment of rights.
- (4) The department competent to decide on the omitted act shall decide on the request for re-establishment of rights.

ARTICLE 122



- **Period for re-establishment of priority (2 months)
(PCT Rule 14(4))**
- **Re-establishment is ruled out for cases open to further processing**
- **Open for**

{	<ul style="list-style-type: none">- Priority claim- Notice of appeal- Opposition proceedings- Appeal proceedings	}	Only for patent proprietors
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Article 123
Amendments

- (1) A European patent application or European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any case, the applicant shall be given at least one opportunity of amending the application of his own volition.
- (2) A European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.
- (3) A European patent may not be amended in such a way as to extend the protection it confers.

ARTICLE 123(3)



The European patent “as a whole” (claims, description and drawings) may not be amended in such a way to extend the protection it confers. It brings it in line with Article 138(1)(d) EPC

Present wording

Article 124

Information concerning national patent applications

(1) The Examining Division or the Board of Appeal may invite the applicant to indicate, within a period to be determined by it, the States in which he has made applications for national patents for the whole or part of the invention to which the European patent application relates, and to give the reference numbers of the said applications.

(2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.

Revised wording

Article 124

Information **on the prior art**

(1) **The European Patent Office may, in accordance with the Implementing Regulations, invite the applicant to provide information on the prior art taken into consideration in national or regional patent proceedings and concerning an** invention to which the European patent application relates.

(2) *Unchanged*

ARTICLE 124

It extends the scope of this article to the possibility for the EPO to obtain information from the applicant about prior art concerning corresponding national or regional patent applications to which the EP application relates.

CHAPTER III: REPRESENTATION

Article 134a

Institute of Professional Representatives before the European Patent Office

(1) The Administrative Council shall be competent to adopt and amend provisions governing:

- (a) the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;
 - (b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination;
 - (c) any disciplinary power exercised by the Institute or the European Patent Office in respect of professional representatives;
 - (d) the obligation of confidentiality on the professional representative and the privilege from disclosure in proceedings before the European Patent Office in respect of communications between a professional representative and his client or any other person.
- (2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute.

ARTICLE 134(a)



- **1(d) Introduces a representative-client privilege applicable in EPO proceedings, equivalent to that existing in the US.**
- **Confers to the Administrative Council the competence to create an evidentiary exception applying solely to proceedings before the EPO, modelled on the US attorney-client privilege.**

ARTICLE 7 TRANSITIONAL PROVISIONS

(1) The revised version of the Convention shall apply to all European patent applications filed after its entry into force, as well as to all patents granted in respect of such applications. It shall not apply to European patents already granted at the time of its entry into force, or to European patent applications pending at that time, unless otherwise decided by the Administrative Council of the European Patent Organisation.

(2) The Administrative Council of the European Patent Organisation shall take a decision under paragraph 1 no later than 30 June 2001, by a majority of three quarters of the Contracting States represented and voting. Such decision shall become an integral part of this Revision Act.

ARTICLE 7

TRANSITIONAL PROVISIONS

- **EPC 2000 will apply to EP filed after entry in force.**

ARTICLE 8 ENTRY INTO FORCE

- (1) The revised text of the European Patent Convention shall enter into force two years after the fifteenth Contracting State has deposited its instrument of ratification or accession, or on the first day of the third month following the deposit of the instrument of ratification or accession by the Contracting State taking this step as the last of all the Contracting States, if this takes place earlier.

ARTICLE 8

ENTRY INTO FORCE

- **2 YEARS AFTER RATIFICATION**
15 MEMBER STATES → 13.12.2007

OR

- **1ST DAY 3RD MONTH LAST MEMBER STATE**
→ ALL RATIFIED

Status of accession and ratification

Under [Article 8 of the Revision Act](#), the EPC 2000 shall enter into force

- two years after the fifteenth Contracting States has deposited its instrument of ratification or accession, or
- on the first day of the third month following the deposit of the instrument of ratification or accession by the Contracting State taking this step as the last of all

Contracting States, if this takes place earlier.

On 13.12.2005, Greece became the fifteenth state to deposit its instrument of ratification. The EPC 2000 will therefore enter into force on 13.12.2007 at the latest.

According to [Article 172\(4\) EPC](#), a Contracting State that has not ratified or acceded to the EPC 2000 at the time of its entry into force shall cease to be party to the EPC as from that time.

EPC Contracting State Instrument of Deposited on

Austria		
Belgium		
Bulgaria	accession	30.04.2002
Cyprus		
Czech Republic	accession	30.04.2002
Denmark		
Estonia	accession	30.04.2002
Finland	accession	23.12.2005
France		
Germany		
Greece	ratification	13.12.2005
Hungary	accession	28.10.2002
Iceland	accession	31.08.2004
Ireland		
Italy		
Latvia	accession	5.04.2005
Lithuania	accession	3.09.2004
Liechtenstein		
Luxemburg		
Monaco	ratification	12.11.2003
Netherlands		
Poland	accession	30.12.2003
Portugal		
Romania	accession	12.12.2002
Slovak Republic	accession	17.04.2002
Slovenia	accession	18.09.2002
Spain	ratification	12.08.2003
Sweden		
Switzerland		
Turkey		
United Kingdom	ratification	26.05.2005