

„EPC 2000“

Protect your IP in Europe

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Las Vegas

Introduction of EPC 2000

- Revision conference November 2000
- Preparation, progress and outcomes on <http://patlaw-reform.european-patent-office.org/epc2000>
- EPC 2000 came into effect on Dec 13, 2007 (cut-off date)
- EPC 2000 has been ratified by 38 states so far:
AL, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HU, HR, IE, IS, IT, LI, LT, LU, LV, MC, MK, MT, NL, NO, PL, PT, RO, RS, SE, SI, SK, SM, TR (Oct 10, 2010)
- Whoever is late was supposed to be eliminated from the EPC!
Art 172(4) EPC – did not happen! DE was very late

New Instruments of EPC 2000

see EPO's website and special edition 1 of the official gazette 2007

- Implementing regulations of the EPC 2000 – the Rules got new numbers!
- New regulations about fees (April 01, 2010)
- New guidelines for examination
- Other instruments, e. g. decisions of the president, notifications of the EPO, applicant's guidelines, forms

Objects of EPC Revision

- Gentle modernization of the European patent system
- Transition to more flexibility and deregulation
- Taking up particular details into implementing regulations
- Adaptation to TRIPS and PLT 2000
- Satisfying of requirements and expectations of users
- Shortening of procedures and managing increasing workload at the EPO

Important details of EPC 2000

Institutional regulations

- Authority of the administrative council to amend the EPC
- Integrating of BEST into EPC 2000

New procedures

- Restriction and revocation procedure

Patentability

- Adaptation to TRIPS
- EP application as prior right for all contracting states
- Improved protection for medical indications

Important details of EPC 2000

Granting procedure of a patent

- New rules for obtaining a filing date (PLT 2000) – claims are no longer needed
- Shortening of grant and appeal procedures
- Improved legal remedies: further processing and reinstatement

EP after grant

- Strong EP patents – large scope of protection “raising the bar”
- Harmonization of national nullity/revocation procedures

Institutional regulations in EPC 2000

Integration of BEST

- Formality examination and search divisions are no longer exclusively located in The Hague, NL (Art. 16-18 EPC)
- Responsibility of formal and search divisions R 10
- Basis for extended search report R 6
- **BEST today > 90 %**
- Procedures of PCT and EPC are harmonized (EESR)

Patentability in EPC 2000

Patentability of inventions in all technical fields

- Exceptions in Art. 52(2) EPC remain unchanged
- Computer programs are still excluded – G-decision
- Medical treatment exclusion now in Art. 53c EPC, but

Protection of compounds for medical use – purpose related substance claims

Claim	Patentable?	EPC 2000
Use of product X for the treatment of cancer	NO	Art 53(c)
Product X for use as a medicament	YES , first medical use	Art 54(4)
Product X for the treatment of cancer	YES , second medical use	Art 54(5)
Product X for the treatment of hypertension	YES , further medical use	Art 54(5)

Patentability in EPC 2000

Prior art – pre filed, post-published

European patent application, filed before another EP application but published later is prior art (novelty), for all contracting states independent of payment of designation fees - Art. 54(4) EPC 1973 (deleted)

New procedures of EPC 2000

Restriction procedure and revocation

Art. 105a-105c, R 90-96 EPC

- Basis is the EP patent as granted or as amended during opposition or restriction procedure.
Also applies to patents granted/amended before Dec. 13, 2007
- Upon request of the applicant
- Official fees
Restriction EUR 1000, Revocation EUR 450
- Priority of the opposition procedure
- Restriction only by amendment of the claims

New procedures of EPC 2000

Restriction procedure and revocation

Art. 105a-105c, R 90-96 EPC

- Examination division examines
 - restriction: no aliud, no "clarification"
 - Art. 84, 123(2) und (3) EPC
- No examination of the restricted patent on patentability
- Decision:
 - ex tunc (from the beginning) and
 - for all designated states in Europe
- Consequences for national procedures

New procedures of EPC 2000

Revision of decisions of the Board of Appeal by The Enlarged Board of Appeal (EBA)

Art. 112a, R 104-110

- Only applies to decision after Dec. 13, 2007
- Upon request of an adversely affected party by a decision of the board of appeal

Reasons (rare in practice)

- False allocation of the board of appeal
- Severe procedural defect, e. g. infringement of the right of being heard
- Discovery of a criminal offence, which might have influenced the decision

New procedures of EPC 2000

Admissibility

- Deadline: 2 months after receipt of the decision of the board of appeal
- Fee: EUR 2500
- Grounds to substantiate the request
- Notification of defect in the appeal proceedings and rejection by the board of appeal

New procedures of EPC 2000

Preliminary examination

- EBA (3 members) refuses unanimously inadmissible or obviously unsubstantiated requests

Decision on the merits

- EBA (5 members) decides about grounds
- If the request is substantiated the procedure will be reopened before the board of appeal.