Speed of processing at the EPO
Timely delivery of quality products

Agenda

- Introduction
- Early certainty: 6 / 12 / 15
- Accelerating & shortening the procedure: Your choices!
- Quality
The EPO at a glance

2nd largest intergovernmental institution in Europe

Global player and voice of Europe in patents

Will be in charge of delivering and administering the Unitary Patent

ISO 9001 certification: High-quality European patents are drivers of innovation, securing the competitiveness of the European economy

7,000 employees, of which around 4,300 highly qualified examiners

Self-financing: budget of EUR 2.2bn without any public funding

European patent system extends beyond Europe

- European Patent Organisation
  Founded in 1973
  Some 700 million inhabitants

- European member states (38)

- European extension states (2)

- Validation states (2)
  Republic of Moldova
  Morocco

- Future validation states (3)
  Tunisia
  Cambodia
  Laos

European Patent Office
European patent applications*: stability at a high level

<table>
<thead>
<tr>
<th>Year</th>
<th>Applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012</td>
<td>148,562</td>
</tr>
<tr>
<td>2013</td>
<td>148,027</td>
</tr>
<tr>
<td>2014</td>
<td>152,703</td>
</tr>
<tr>
<td>2015</td>
<td>160,004</td>
</tr>
<tr>
<td>2016</td>
<td>159,353</td>
</tr>
</tbody>
</table>

1st half 2017

Total: +5.7%
US: +9.2%

*Applications are the files for which applicants have decided to request a European patent from the EPO. They are a direct measure of the explicit interest of innovating firms to assert their patent rights on the European technology market. Applications refer to direct European patent applications filed at the EPO under the European Patent Convention, plus international Patent Cooperation Treaty (PCT) filings which entered the European regional phase (becoming a European application) in the year under review.

Structure of the European Patent Office

- **President**: Benoît Battistelli
- **Boards of Appeal Unit**
  - President of the Boards of Appeal
    - Carl Josefsson

**Directorate-General**

**Directorate-General Patent Granting Process**
- Vice-President: Alberto Casado Cervillo
  - Operation
    - Mobility and Mechatronics
    - Healthcare, Biotechnology and Chemistry
    - Information and Communications Technology
  - Support
    - Business Services
    - User Support and Quality Management
    - Automation Support

**Directorate-General Corporate Services**
- Vice-President: Željko Topić
  - Human Resources
  - General Administration
  - Central Procurement
  - Finance
  - Information Management

**Directorate-General Legal and International Affairs**
- Vice-President: Raimund Lutz
  - European and International Cooperation
  - Unitary Patent, European and Int. Legal Affairs
  - Legal Services
  - Patent Information & European Patent Academy
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Early Certainty across all processes

- 6: Searches issued within months... including written opinion
- 12: Average examination months... median time to grant (IGRA)
- 15: Standard opposition months... median time to decision
Maximising **legal certainty** for the benefit of all

- **Key to our mission:**
  “as EPO, we support innovation, competitiveness and economic growth across Europe ...”

- **Better for applicants:**
  - knowing what your invention is worth, and so do investors
  - allows timely and well reasoned decision making

- **Better for the public:**
  - overview on prior art and patentability very early
  - no blind spots in European IP

Why Early Certainty **now**?

- EPO’s historical number 1 user complaint:
  **Timeliness!**

- We can do it now
  - quality framework in place
  - improved efficiency
  - stocks and manpower allow it

- A response to **shortening of product life cycles**
Early Certainty from examination

- **Step-by-step** towards optimisation by 2020
- “Paris Criteria” of 1999: **Average** time to grant of 3 years
- Translates to: Examination **on average** in 12 months
  
  12 months = time from valid examination request to proposal of grant published in file inspection

**Overall Duration** | **Goal**
--- | ---
✔ EP direct (1st and 2nd filings) | 36 months
✔ E-PCT (EPO is ISA) | 49 months
✔ E-PCT (EPO is not ISA) | 61 months
✔ Divisional applications | 24 months

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Early Certainty: Some feedback from users

“In principle, nobody can be negative about Early Certainty.”

“Early Certainty for applicants and for third parties as to whether a patent application will be granted is, generally speaking, a positive thing.”

“A year of delay in grant can be fatal for a start-up seeking funding.”

“49 months from filing to grant gives sufficient time to effectively protect the invention.”

“There are situations where we are interested in our patent being granted later to protect our invention as effectively as possible.”

“After the patent is granted significant validation costs are due.”
**Early Certainty: An average of 12 months examination**

- Quality is **always** in first place
- One size does **not** fit all
- All applications are treated **individually**
  - number of exchanges is case dependent
  - predictable and consistent outcome at EPO quality standard
- An **average** of 12 months
  - Circa 48% of grants issued with first examination action
  - with Early Certainty: Issued on average in under 6 months
  - Flexibility to take longer as necessary, e.g.
    - to take account of post filing data
    - complicated cases

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**Performance management: results & actions**

**Increased production:**
- 2015: **+14%**
- 2016: **+8.5%**

**Increased capacity:**
- circa **90%** of examiner time spent on search, examination and opposition

**Management actions:**
- focusing examiner efforts on search, examination and opposition
- expansion of part-time home working
- continuous training
- streamlining of the patent grant procedures
**Early Certainty is happening already ...**

<table>
<thead>
<tr>
<th>Goal</th>
<th>Actual*</th>
<th>Progress</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Searches issued within months</td>
<td>4.9 months</td>
<td>Goal accomplished!</td>
</tr>
<tr>
<td>12 Average examination months</td>
<td>22.6 months</td>
<td>Gradual improvement – volumes are a challenge</td>
</tr>
<tr>
<td>15 Standard opposition months</td>
<td>23.7 months</td>
<td>Rapid improvement due to streamlined procedure</td>
</tr>
</tbody>
</table>

* September 2017
Early Certainty – early masters

Some Directorates master the timeliness already **now**:

<table>
<thead>
<tr>
<th>Search Timeliness</th>
<th>Examination Timeliness</th>
<th>EP Examination Euro Direct</th>
<th>EP Examination Euro Divisionals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actual 4.1</td>
<td>Target 6.0</td>
<td>Actual 8.3</td>
<td>Target 12.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Actual 31.0</td>
<td>Target 36.0</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Actual 12.0</td>
<td>Target 24.0</td>
</tr>
</tbody>
</table>

Early Certainty – total pendency today

<table>
<thead>
<tr>
<th></th>
<th>Actual*</th>
<th>Goal</th>
<th>Workload share</th>
</tr>
</thead>
<tbody>
<tr>
<td>EP direct (1st &amp; 2nd filings)</td>
<td>51.9 months</td>
<td>36 months</td>
<td>26%</td>
</tr>
<tr>
<td>Euro-PCT (EPO is ISA)</td>
<td>66.0 months</td>
<td>49 months</td>
<td>31%</td>
</tr>
<tr>
<td>Euro-PCTbis (EPO is not ISA)</td>
<td>73.9 months</td>
<td>61 months</td>
<td>32%</td>
</tr>
<tr>
<td>Divisionals</td>
<td>31.2 months</td>
<td>24 months</td>
<td>11%</td>
</tr>
</tbody>
</table>

Total pendency: from priority date (divisionals: date of receipt) until the first public announcement of the grant, median duration in months

* September 2017
Early Certainty from examination:
12 months **average** examination

- Refund of the examination fee in case of withdrawal
- PCT Direct enhancements
- Telephone call as first action in examination
- Harmonised practice for treatment of auxiliary requests
- Making positive statements and suggestions

**What are we doing to achieve this?**

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**Early Certainty from opposition**

- **15-month timeline:**
  - applies to **standard** cases: One opponent, no witness hearings, no legal complications
  - extension of time limits only **exceptionally**

- **Parallel processing:**
  - observations and/or amendments filed by the patentee are communicated to the **opponent** for information
  - file forwarded to the **opposition division** for preparing the next action

- **Swift decision process:**
  - **more** summoning to **oral proceedings** at the instance of the EPO
  - summons are dispatched at least six months in advance
  - final date for submissions: two months before oral proceedings
Early Certainty from opposition: The workflow

Notice of opposition

Patentee’s reply (4 months)

Summons to oral proceedings (6 months in advance)

Oral proceedings and decision

T₀

Expiry of opposition period

Communication to opponent of Patentee’s reply without time limit for filing comments

Invitation to patentee to file comments or amendments (Rule 79(1) EPC)

Opponent’s comments

Final date (Rule 116 EPC) for submissions/amendments (normally 2 months before oral proceedings)

Early Certainty from opposition: Indicators

Opposed patents

Patents not opposed: 96%

Patents opposed: 4%

Opposition rate

2012: 4.7%
2013: 4.5%
2014: 4.7%
2015: 4.4%
2016: 4.0%

Outcome of decisions

2016

2015

2016: +10.5%

Patent revoked
Patent upheld in amended form
Oppositions rejected

4102
3713

European Patent Office
Agenda

- Introduction
- Early Certainty: 6 / 12 / 15
- Accelerating & shortening the procedure: Your choices!
- Quality

Accelerating & shortening the procedure

Flexibility

- You decide when to accelerate and shorten the procedure
- Your choices!
  - Waivers (shortening the procedure)
  - PACE (accelerated processing)
  - EPO as ISA (shortening the procedure)
  - PCT Direct (increasing chances of a positive outcome)
  - Early Entry into the European phase (shortening the procedure)
  - Patent Prosecution Highway (sharing positive examination results)
Accelerating & shortening the procedure: Your choice!

You choose to accelerate the procedure using PACE

You choose to waive the period of 6 months for further amending the application on own volition upon entry into the European phase

You choose to waive the opportunity to confirm whether you wish to proceed with the application after search

You choose early entry into the European phase

You choose to waive the opportunity to receive a further communication following filing amendments/corrections after receiving an intention to grant after PCT

receive examination communications within 3 months!

advance processing by 6 months!

advance processing by 6 months!

advance processing by up to 13 months!

Save processing by 4 months!

Waive the period of 6 months for further amending the application on own volition

Your choice: Save 6 months

Priority Filing | International Search with written opinion | Preliminary exam (optional) | Rule 161/162 waiver | EPO/ISA | exam start | 1st Communication | grant

31 months | 6 months | 6 months | 6 months | average: 23.3 months

Rule 161/162 waiver ✓
Waive the opportunity to indicate whether you wish to proceed with the application after search

Your choice: Save 6 months

Request accelerated examination with PACE

Your choice: Communications issued within 3 months!
No fee; no justification; non-public
Choose the EPO as International Search Authority

Your choice: No supplementary search required = save 6 months

- Priority Filing
- International Search with written opinion
- Preliminary exam (optional)
- Suppl. Search
- EPO = ISA
- Exam start
- 1st Communication
- Grant

31 months | 6 months | avg.: < 20 months

Rule 161/162 waiver
Rule 70(2) waiver
Request PACE for examination
EPO is ISA

PCT Direct

- You file a 1st filing application searched by EPO
- You file a PCT application with EPO as International Search Authority claiming priority from the 1st filing application
- You reply and amend your PCT application in response to the 1st search report and opinion established by the EPO
- EPO establishes the search report and written opinion on the basis of your reply and addressing the points raised by you therein
**PCT Direct timeline**

1. **1st filing (EP, PCT, Nat) searched by EPO**
2. **Search report + opinion by EPO**
3. **2nd PCT filing at any RO, ISA/EPO... with attached PCT Direct letter**
4. **New ISR + WO-ISA by EPO... taking contents of letter into account**
5. **Positive WO-ISA**
6. **Negative WO-ISA**
7. **PCT Chapter II**
8. **Entry Regional / National Phase (PPH)**
9. **Expedited grant at EPO**

**Your cost-effective strategy?**

- **YES, low cost for global fast-track**
- **Search fee refund for 2nd searched application!**
  - **100% refund if first filing search fully reused in 2nd search**
  - **25% refund if first filing search partially reused in 2nd search**

<table>
<thead>
<tr>
<th>Step</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st EP filing at EPO</td>
<td>€ 1,300</td>
</tr>
<tr>
<td>2nd PCT filing at any RO, ISA/EPO with <strong>PCT Direct</strong> letter</td>
<td>€ 0</td>
</tr>
</tbody>
</table>

- Faster grant may lead to savings on EPO renewal fees
Priority examination after positive WO-ISA

Your choice: Use PCT Direct to maximise chances

Rule 161/162 waiver ✓
Rule 70(2) waiver ✓
Request PACE for examination ✓
EPO is ISA ✓
PCT-Direct ✓

Request early entry into the European phase

Your choice: Save up to 13 months after publication

Rule 161/162 waiver ✓
Rule 70(2) waiver ✓
Request PACE for examination ✓
EPO is ISA ✓
PCT-Direct ✓
Request for early processing ✓
Streamline final stage of grant

**Your choice:** Waive the right to a 2nd R.71(3) communication after corrections

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Available Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 161/162 waiver</td>
<td>✔</td>
</tr>
<tr>
<td>Rule 70(2) waiver</td>
<td>✔</td>
</tr>
<tr>
<td>Request PACE for examination</td>
<td>✔</td>
</tr>
<tr>
<td>EPO is ISA</td>
<td>✔</td>
</tr>
<tr>
<td>PCT-Direct</td>
<td>✔</td>
</tr>
<tr>
<td>Request for early processing</td>
<td>✔</td>
</tr>
<tr>
<td>2nd Rule 71(3) waiver</td>
<td>✔</td>
</tr>
</tbody>
</table>

- PCT Direct letter
- Priority Filing
- International Search with written opinion
- Exam start
- Grant

Circum: 18 months

C. 6 months

Export your invention all over the world with Patent Prosecution Highway

- PCT Direct letter
- Priority Filing
- International Search with written opinion
- Exam start
- Grant

Circum: 18 months

C. 6 months

EPO partner offices

- JP (Japan)
- KR (South Korea)
- CN (China)
- US (United States)
- AU (Australia)
- CA (Canada)
- CO (Colombia)
- IL (Israel)
- MX (Mexico)
- MY (Malaysia)
- PH (Philippines)
- RU (Russia)
- SG (Singapore)
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The EPO Quality Policy

- Sets the official statement of the EPO about its intentions regarding quality
- Commits the EPO to continually improve its products and services
- Keystone of the quality management system
Quality is enshrined in the EPC

- **Three-member** examining divisions (Article 18 EPC)
- **Third-party** observations (Article 115 EPC)
- **Applicants’ right to be heard** e.g. oral proceedings (Article 116 EPC)
- **Oppositions** Three-member opposition divisions (Article 19 EPC)
- **The right to appeal** EPO decisions (Article 106 EPC) The Boards of Appeal is an independent body

Recruit the best and invest in them

**Minimum examiner requirements**
- Master's degree in physics, chemistry, engineering or natural sciences
- Excellent knowledge of one official language (English, French and German) and the ability to understand the other two
- Citizenship of one of the 38 EPC member states

**First two years**
- 45.5 days instructor-led, interactive, classroom training
- On the job coaching by experienced examiners who see all actions prepared by new examiners

**Career-long training**
- Technical, legal, new tools
- In 2016, 89.5% of staff received at least one training activity
- An examiner is fully trained in about four years
Supportive and co-operative working

- EPC, Guidelines, Internal Instructions, QMS
- Coaches
- Examining Division
- Helpdesks
- Examiner
- Classification Experts
- Asian Patent Expert Group
- Formalities officers
- Line manager

3-member divisions for all decisions

- **Quality check** in 100% of:
  - positive opinions
  - decisions
- **Consultation before**:
  - decisions are taken
  - oral proceedings are arranged
  - summons are issued
- **Sharing of knowledge**:
  - procedural
  - legal
  - technical

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**Article 18**

**Examination Division**

(1) The Examination Division shall be responsible for the examination of European patent applications.

(2) An Examination Division shall consist of three technically qualified examiners. However, before a decision is taken on a European patent application, its examination shall, as a general rule, be entrusted to one member of the Examination Division. Oral proceedings shall be before the Examination Division itself. If the Examination Division considers that the nature of the decision so requires, it shall be entrusted by the addition of a legally qualified examiner in the event of parity of votes, the vote of the Chairman of the Examination Division shall be decisive.

**Article 19**

**Opposition Division**

(1) The Opposition Division shall be responsible for the examination of oppositions against any European patent.
Quality assurance in the entire patent process

1. OQC (Operational Quality Control)
   - Random selection of files extracted from recent production workload
   - Quality control of Patent Administration processes and products
   - Nonconforming Product Procedure (NPC)

2. CASE (Conformity Assurance for Search and Examination)
   - In-process control
   - ISO 9001 certified
   - Random sample of searches, all grants
   - Capture of quality-relevant data for continual improvement

Diligent monitoring of KPIs
730 million prior art records

- **85 databases**, including:
  - > 90 million full-text patent documents
  - > 30 million non-patent literature (NPL) documents
  - > 3 million standards documents

- **Patent translate collaboration with Google**:
  - patent-specific machine translation
  - covers 29 languages worldwide
  - bulk translation project adds translations of all available patent literature to our search databases

- World-standard search and classification tools

User feedback sources

- User feedback is collected and analysed from many sources
- It is a core element of the EPO’s ISO 9001 certified QMS

User group meetings, Meetings with applicants, Partnership for quality, Applicant filling patterns

Metrics-based feedback (blue) is assessed statistically, non-metrics based feedback (red) includes oral feedback received, e.g. during meetings
ISO 9001 in practice: example → improving timeliness

**Issue raised**
- Backlog Euro-pct bis
- PACE awareness

**Outcomes & follow-up**
- Improved timeliness
- Better workload management
- Enhanced user satisfaction
- Communication
- Continued monitoring

1. Root-cause Analysis
   - Metrics-based approach
   - In depth data analysis and evaluation

2. Identify issue origin
   - Examiners awareness
   - Workload distribution
   - PACE request handling

3. Formulate action Plans
   - ECfS: since July 2014
   - Quality objectives
   - New PACE procedure
   - Increasing awareness
   - Improved workload monitoring

4. Implement action plans
   - ECfS: since July 2014
   - Quality objectives
   - New PACE procedure
   - Increasing awareness
   - Improved workload monitoring

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**The EPO Quality Report 2016**

- Published recently, the EPO's first ever annual Quality Report
- Informs the members states and interested stakeholders about all aspects of quality at the EPO
- Shows how the EPO sets the world standard for patent quality
Recap – timely delivery of quality products

- Highly qualified examiners
- European Patent Convention & guidelines for examination
- 3-member divisions
- Opposition & appeal
- Quality management
- Early Certainty
- Equal treatment for EP and PCT applications
- Massive documentation
- CPC classification
- Options for accelerating and shortening the procedure

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