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The EPC 2000 - **What's new**

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EPC 2000 *General*

- Revision conference November 2000
- Preparation, proceedings, results
<http://www.epo.org/patents/law/legislative-initiatives/epc2000.html>
- **EPC 2000**
 - **enters into force on 13 December 2007 (cut-off date)**
 - ratified by **27** contracting states to date
AT, BE, BG, CH, CZ, DK, EE, ES, FI, GB, GR, HU, IE,
IS, LI, LT, LU, LV, MC, MT, NL, PL, RO, SE, SI, SK
+ **NO** (1.1.2008)
 - **still missing 6** CY, DE, FR, IT, PT, TR (*as at 1.11.07*)
- Latecomers leave the EPC!
 - ▶ *Art. 172(4)*

EPC 2000 **New Instruments**

▶ EPO website, *OJ special edition 1/2007, Blue book*

- **EPC 2000**
- **Implementing Regulations** (2006) - **renumbered!**
- **Rules relating to Fees** (2006)
- **Guidelines for Examination** (December 2007)
- **Other texts, e.g.**
 - ▶ decisions of President, EPO notices and communications (*OJ special edition 3/2007*)
 - ▶ forms, Guide for applicants
- ***All new instruments apply only as from cut-off date***
 - ▶ *EPO notice on transitional phase EPC 1973/2000 in OJ 10/2007*

EPC 2000 *Aims of revision*

- Judicious **modernisation** of the European patent system
- **Enhancing flexibility, deregulation**
 - many provisions transferred to the Implementing Regulations
- **Alignment** with TRIPS and PLT 2000
- Meeting **users' needs and expectations**
- Streamlining procedures, mastering the **EPO's growing workload**

EPC 2000 *Main features at a glance*

- **Institutional provisions**
 - Administrative Council authorised to amend the EPC
 - Anchoring BEST
- **New procedures**
 - Central limitation/revocation procedure
 - Review of BoA decisions by EBA
- **Patentability**
 - Alignment with TRIPS
 - EP application with prior art effect for all EPC states
 - Better protection for medical uses of known substances

EPC 2000 *Main features at a glance*

- **Grant procedure**
 - New rules for date of filing (PLT 2000)
 - Streamlining of grant and opposition procedures
 - Improved legal remedies (further processing, re-establishment of rights)
- **EP after grant**
 - Strengthening of extent of protection
 - Harmonisation of national revocation proceedings
- Overall **re-drafting of the EPC**
 - ▶ *Synoptical presentation of EPC 1973/2000 in OJ special editions 4 and 5/2007*

EPC 2000 Institutional provisions

- Anchoring **BEST** in the EPC

Art. 16 - 18

- Receiving Section and Search Divisions no longer tied to The Hague

- Responsibility of Receiving Section and Examining Divisions

R 10

- Basis for extended European search report

R 62 (ex R 44a)

- **BEST today > 90%**

- Largely similar procedures under **EPC** (**EESR**) and **PCT** (**WO-ISA**)

EPC 2000 Patentability

- Patents granted for **inventions in all fields of technology**
 - List of exceptions in **Art. 52(2)** unchanged
 - Computer programs!
- **Medical methods** now in **Art. 53(c)**
- EP application **novelty-destroying** for **any** later EP application ► **Art. 54(4) deleted**
 - *only applies to filings as from cut-off date*
- **Purpose-bound product protection** also for second or further medical use of known substance
 - *applies to filings before cut-off date where decision to grant has not been taken yet*

Art. 52(1)

Art. 54(5)

EPC 2000 **Other changes in procedure**

- Definition of "**written form**", "**signature**" R 1, 2(2)
- **Divisional application** to be made in language of proceedings for earlier application R 36(2)
- **Opposition** - principles from G10/91 implemented
 - Grounds invoked by opponent **must** be examined R 81(1)
 - other grounds **may** be examined
- EPO may invite applicant to provide **information** on **prior art** taken into consideration in proceedings before other patent offices Art. 124,
R 141
- **Attorney-client privilege** now enshrined in EPC Art 134a(1)(d),
R 153

EPC 2000 *The EP after grant*

- **Extent of protection**

Art. 69(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."

- **Protocol on interpretation of Art. 69**

Art. 2

" 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."

- *applies also to patents already granted at the cut-off date*
- **no** definition of equivalents
- **no** "prosecution history estoppel,"

- 13th Symposium of European Patent Judges (*OJ special edition 2/2007*)

EPC 2000 *The EP after grant*

Art. 138(2),(3)

- **National revocation proceedings**
 - **Partial revocation** of EP only by limiting claims
 - Patent proprietor has **right to defend EP in limited form** and EP so **limited** is the basis for proceedings
- *Applies also to patents already granted at the cut-off date*