

K oznámeniu č. 355/2009 Z. z.

IMPLEMENTING
REGULATIONS TO THE EUROPEAN PATENT CONVENTION
of 5 October 1973
as amended by decision of the Administrative Council
of the European Patent Organisation
of 25 March 2009

Article 1

The Implementing Regulations to the EPC shall be amended as follows:

1. The following new Rule 62a shall be inserted in Part IV, Chapter II:

"Rule 62a

Applications containing
a plurality of independent claims

(1) If the European Patent Office considers that the claims as filed do not comply with Rule 43, paragraph 2, it shall invite the applicant to indicate, within a period of two months, the claims complying with Rule 43, paragraph 2, on the basis of which the search is to be carried out. If the applicant fails to provide such an indication in due time, the search shall be carried out on the basis of the first claim in each category.

(2) The Examining Division shall invite the applicant to restrict the claims to the subject-matter searched unless it finds that the objection under paragraph 1 was not justified."

2. Rule 63 shall be amended to read as follows:

"Rule 63

Incomplete search

(1) If the European Patent Office considers that the European patent application fails to such an extent to comply with this Convention that it is impossible to carry out a meaningful search regarding the state of the art on the basis of all or some of the subject-matter claimed, it shall invite the applicant to file, within a period of two months, a statement indicating the subject-matter to be searched.

(2) If the statement under paragraph 1 is not filed in due time, or if it is not sufficient to overcome the deficiency noted under paragraph 1, the European Patent Office shall either issue a reasoned declaration stating that the European patent application fails to such an extent to comply with this Convention that it is impossible to carry out a meaningful search regarding

the state of the art on the basis of all or some of the subject-matter claimed or, as far as is practicable, draw up a partial search report. The reasoned declaration or the partial search report shall be considered, for the purposes of subsequent proceedings, as the European search report.

(3) When a partial search report has been drawn up, the Examining Division shall invite the applicant to restrict the claims to the subject-matter searched unless it finds that the objection under paragraph 1 was not justified."

3. Rule 64, paragraph 1, shall be amended to read as follows:

"(1) If the European Patent Office considers that the European patent application does not comply with the requirement of unity of invention, it shall draw up a partial search report on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims. It shall inform the applicant that, for the European search report to cover the other inventions, a further search fee must be paid, in respect of each invention involved, within a period of two months. The European search report shall be drawn up for the parts of the application relating to inventions in respect of which search fees have been paid."

4. Rule 69 shall be amended to read as follows:

"Rule 69

Information about publication

(1) The European Patent Office shall inform the applicant of the date on which the European Patent Bulletin mentions the publication of the European search report and shall draw his attention to Rule 70, paragraph 1, Article 94, paragraph 2, and Rule 70a, paragraph 1.

(2) If a date of publication is specified in the communication under paragraph 1 which is later than the actual date of publication, that later date shall be the decisive date as regards the periods referred to in Rule 70, paragraph 1, and Rule 70a, paragraph 1, unless the error is obvious."

5. The following new Rule 70a shall be inserted in Part IV, Chapter IV:

"Rule 70a

Response to the extended
European search report

(1) In the opinion accompanying the European search report the European Patent Office shall give the applicant the opportunity to comment on the extended European search report and, where appropriate, invite him to correct any deficiencies noted in the opinion accompanying the European search report and to amend the description, claims and drawings within the period referred to in Rule 70, paragraph 1.

(2) In the case referred to in Rule 70, paragraph 2, or if a supplementary European search report is drawn up on a Euro-PCT-application, the European Patent Office shall give the applicant the opportunity to comment on the extended European search report and, where appropriate, invite him to correct any deficiencies noted in the opinion accompanying the European search report and to amend the description, claims and drawings within the period specified for indicating whether he wishes to proceed further with the application.

(3) If the applicant neither complies with nor comments on an invitation in accordance with paragraph 1 or 2, the application shall be deemed to be withdrawn."

6. Rule 135, paragraph 2, shall be amended to read as follows:

"(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 16, paragraph 1(a), Rule 31, paragraph 2, Rule 36, paragraphs 1(a), 1(b) and 2, Rule 40, paragraph 3, Rule 51, paragraphs 2 to 5, Rule 52, paragraphs 2 and 3, Rules 55, 56, 58, 59, 62a, 63, 64 and Rule 112, paragraph 2."

7. Rule 137 shall be amended to read as follows:

"Rule 137

Amendment of the European
patent application

(1) Before receiving the European search report, the applicant may not amend the description, claims or drawings of a European patent application unless otherwise provided.

(2) Together with any comments, corrections or amendments made in response to communications by the European Patent Office under Rule 70a, paragraph 1 or 2, or Rule 161, paragraph 1, the applicant may amend the description, claims and drawings of his own volition.

(3) No further amendment may be made without the consent of the Examining Division.

(4) When filing any amendments referred to in paragraphs 1 to 3, the applicant shall identify them and indicate the basis for them in the application as filed. If the Examining Division notes a failure to meet either requirement, it may request the correction of this deficiency within a period of one month.

(5) Amended claims may not relate to unsearched subject-matter which does not combine with the originally claimed invention or group of inventions to form a single general inventive concept. Nor may they relate to subject-matter not searched in accordance with Rule 62a or Rule 63."

8. Rule 161 shall be amended to read as follows:

"Rule 161

Amendment of the application

(1) If the European Patent Office has acted as the International Searching Authority and, where a demand under Article 31 PCT was filed, also as the International Preliminary Examining Authority for a Euro-PCT application, it shall give the applicant the opportunity to comment on the written opinion of the International Searching Authority or the International Preliminary Examination Report and, where appropriate, invite him to correct any deficiencies noted in the written opinion or in the International Preliminary Examination Report and to amend the description, claims and drawings within a period of one month from the respective communication. If the applicant does not comply with or comment on an invitation in accordance with the first sentence, the application shall be deemed to be withdrawn.

(2) Where the European Patent Office draws up a supplementary European search report on a Euro-PCT application, the application may be amended once within a period of one month from a communication informing the applicant accordingly. The application as amended shall serve as the basis for the supplementary European search."

Article 2

(1) The provisions mentioned in Article 1 of this decision shall enter into force on 1 April 2010.

(2) New Rule 62a, Rule 63 as amended by Article 1, paragraph 2, of this decision, new Rule 70a and Rule 137 as amended by Article 1, paragraph 7, of this decision shall apply to European patent applications for which the European search report or the supplementary European search report is drawn up on or after 1 April 2010.

(3) Rule 161 as amended by Article 1, paragraph 8, of this decision shall apply to European patent applications where a communication under current Rule 161 has not been issued before 1 April 2010.

Done at Munich, 25 March 2009

