

## **AGREEMENT**

between the European Patent Organisation  
and the International Bureau of the World Intellectual Property Organization

in relation to the functioning of the European Patent Office  
as an International Searching Authority  
and International Preliminary Examining Authority  
under the Patent Cooperation Treaty

(as in force from April 1, 2018)\*

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\* Done at Geneva on October 30, 2017, last amended with effect from April 1, 2018, (see *Official Notices (PCT Gazette)* dated January 18, 2018, page 61 *et seq.*, February 15, 2018, page 190, and March 8, 2018, page 202).

This consolidated text has been prepared by the International Bureau of WIPO on the basis of the original Agreement, which exists in English, French and German.

## **Preamble**

The European Patent Organisation and the International Bureau of the World Intellectual Property Organization,

*Considering* that the PCT Assembly, having heard the advice of the PCT Committee for Technical Cooperation, has appointed the European Patent Office as an International Searching and Preliminary Examining Authority under the Patent Cooperation Treaty and approved this Agreement in accordance with Articles 16(3) and 32(3),

*Hereby agree as follows:*

## **Article 1 Terms and Expressions**

- (1) For the purposes of this Agreement:
  - (a) “Treaty” means the Patent Cooperation Treaty;
  - (b) “Regulations” means the Regulations under the Treaty;
  - (c) “Administrative Instructions” means the Administrative Instructions under the Treaty;
  - (d) “Article” (except where a specific reference is made to an Article of this Agreement) means an Article of the Treaty;
  - (e) “Rule” means a Rule of the Regulations;
  - (f) “Contracting State” means a State party to the Treaty;
  - (g) “the Authority” means the European Patent Office;
  - (h) “the International Bureau” means the International Bureau of the World Intellectual Property Organization.

(2) All other terms and expressions used in this Agreement which are also used in the Treaty, the Regulations or the Administrative Instructions have, for the purposes of this Agreement, the same meaning as in the Treaty, the Regulations and the Administrative Instructions.

## **Article 2 Basic Obligations**

(1) The Authority shall carry out international search and international preliminary examination in accordance with, and perform such other functions of an International Searching Authority and International Preliminary Examining Authority as are provided under, the Treaty, the Regulations, the Administrative Instructions and this Agreement.

(2) In carrying out international search and international preliminary examination, the Authority shall apply and observe all the common rules of international search and of international preliminary examination and, in particular, shall be guided by the PCT International Search and Preliminary Examination Guidelines.

(3) The Authority shall maintain a quality management system in compliance with the requirements set out in the PCT International Search and Preliminary Examination Guidelines.

(4) The Authority and the International Bureau shall, having regard to their respective functions under the Treaty, the Regulations, the Administrative Instructions and this Agreement, render, to the extent considered to be appropriate by both the Authority and the International Bureau, mutual assistance in the performance of their functions thereunder.

### **Article 3 Competence of Authority**

(1) The Authority shall act as International Searching Authority for any international application filed with the receiving Office of, or acting for, any Contracting State specified in Annex A to this Agreement, provided that the receiving Office specifies the Authority for that purpose, that such application, or a translation thereof furnished for the purposes of international search, is in the language or one of the languages specified in Annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant and that any other requirements regarding such application as specified in Annex A to this Agreement have been met.

(2) The Authority shall act as International Preliminary Examining Authority for any international application filed with the receiving Office of, or acting for, any Contracting State specified in Annex A to this Agreement, provided that the receiving Office specifies the Authority for that purpose, that such application, or a translation thereof furnished for the purposes of international preliminary examination, is in the language or one of the languages specified in Annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant and that any other requirements regarding such application as specified in Annex A to this Agreement have been met.

(3) Where an international application is filed with the International Bureau as receiving Office under Rule 19.1(a)(iii), paragraphs (1) and (2) apply as if that application had been filed with a receiving Office which would have been competent under Rule 19.1(a)(i) or (ii), (b) or (c) or Rule 19.2(i).

(4) The Authority shall conduct supplementary international searches in accordance with Rule 45*bis* to the extent decided by it, as set out in Annex B to this Agreement.

### **Article 4 Subject Matter Not Required to Be Searched or Examined**

The Authority shall not be obliged to search, by virtue of Article 17(2)(a)(i), or examine, by virtue of Article 34(4)(a)(i), any international application to the extent that it considers that such application relates to subject matter set forth in Rule 39.1 or 67.1, as the case may be, with the exception of the subject matter specified in Annex C to this Agreement.

### **Article 5 Fees and Charges**

(1) A schedule of all fees of the Authority, and all other charges which the Authority is entitled to make, in relation to its functions as an International Searching Authority and International Preliminary Examining Authority, is set out in Annex D to this Agreement.

(2) The Authority shall, under the conditions and to the extent set out in Annex D to this Agreement:

- (i) refund the whole or part of the search fee paid, or waive or reduce the search fee, where the international search report can be wholly or partly based on the results of an earlier search (Rules 16.3 and 41.1);
- (ii) refund the search fee where the international application is withdrawn or considered withdrawn before the start of the international search.

(3) The Authority shall, under the conditions and to the extent set out in Annex D to this Agreement, refund the whole or part of the preliminary examination fee paid where the demand is considered as if it had not been submitted (Rule 58.3) or where the demand or the international application is withdrawn by the applicant before the start of the international preliminary examination.

### **Article 6 Classification**

For the purposes of Rules 43.3(a) and 70.5(b), the Authority shall indicate the classification of the subject matter according to the International Patent Classification. The Authority may, in addition, in accordance with Rules 43.3 and 70.5, indicate the classification of the subject matter according to any other patent classification specified in Annex E to this Agreement to the extent decided by it as set out in that Annex.

### **Article 7 Languages of Correspondence Used by the Authority**

For the purposes of correspondence, including forms, other than with the International Bureau, the Authority shall use the language or one of the languages indicated, having regard to the language or languages indicated in Annex A and to the language or languages whose use is authorized by the Authority under Rule 92.2(b), in Annex F.

### **Article 8 International-Type Search**

The Authority shall carry out international-type searches to the extent decided by it as set out in Annex G to this Agreement.

### **Article 9 Entry into Force**

This Agreement shall enter into force on January 1, 2018.

### **Article 10 Duration and Renewability**

This Agreement shall remain in force until December 31, 2027. The parties to this Agreement shall, no later than July 2026, start negotiations for its renewal.

## **Article 11 Amendment**

(1) Without prejudice to paragraphs (2) and (3), amendments may, subject to approval by the Assembly of the International Patent Cooperation Union, be made to this Agreement by agreement between the parties hereto; they shall take effect on the date agreed upon by them.

(2) Without prejudice to paragraph (3), amendments may be made to the Annexes to this Agreement by agreement between the Director General of the World Intellectual Property Organization and the Authority; and, notwithstanding paragraph (4), they shall take effect on the date agreed upon by them.

(3) The Authority may, by a notification to the Director General of the World Intellectual Property Organization:

- (i) add to the indications of States and languages contained in Annex A to this Agreement;
- (ii) amend the indications on supplementary international searches contained in Annex B to this Agreement;
- (iii) amend the schedule of fees and charges contained in Annex D to this Agreement;
- (iv) amend the indications on patent classification systems contained in Annex E to this Agreement;
- (v) amend the indications on languages of correspondence contained in Annex F to this Agreement;
- (vi) amend the indications on international-type searches contained in Annex G to this Agreement.

(4) Any amendment notified under paragraph (3) shall take effect on the date specified in the notification, provided that:

- (i) for an amendment to Annex B to the effect that the Authority shall no longer conduct supplementary international searches, that date is at least six months later than the date on which the notification is received by the International Bureau, and
- (ii) for any change in the currency or amount of fees or charges contained in Annex D, for any addition of new fees or charges, and for any change in the conditions for and the extent of refunds or reductions of fees contained in Annex D, that date is at least two months later than the date on which the notification is received by the International Bureau.

## **Article 12 Termination**

(1) This Agreement shall terminate before December 31, 2027:

- (i) if the European Patent Organisation gives the Director General of the World Intellectual Property Organization written notice to terminate this Agreement; or
- (ii) if the Director General of the World Intellectual Property Organization gives the European Patent Organisation written notice to terminate this Agreement.

(2) The termination of this Agreement under paragraph (1) shall take effect one year after receipt of the notice by the other party, unless a longer period is specified in such notice or unless both parties agree on a shorter period.

## **Annex A States and Languages**

Under Article 3 of the Agreement, the Authority specifies:

(i) the following States for which it will act:

so far as Article 3(1) is concerned:

any Contracting State;

so far as Article 3(2) is concerned:

any Contracting State, under the condition that the Authority or another International Searching Authority located in and operating for any State party to the European Patent Convention has prepared the international search report.

Where a receiving Office specifies the International Authority under Articles 3(1) and (2), the International Authority shall become competent for international applications filed at that receiving Office from a date to be agreed by the receiving Office and International Authority and to be notified to the International Bureau.

(ii) the following languages which it will accept:

English, French, German, and, where the receiving Office is the industrial property Office of the Netherlands, Dutch.

## **Annex B Supplementary International Search: Documentation Covered; Limitations and Conditions**

The Authority conducts supplementary international searches as follows:

(1) The Authority will accept requests for supplementary international search based on international applications filed in, or translations furnished into, English, French or German.

(2) The supplementary international search shall cover the documents held in the search collection of the Authority, including, but not limited to, the PCT minimum documentation under Rule 34.

(3) Where applicable, the Authority shall start the supplementary international search in accordance with Rule 45*bis*.5(a) only if a copy of a sequence listing in electronic form complying with the standard provided for in the Administrative Instructions is furnished under Rule 45*bis*.1(c)(ii) and thereafter transmitted to it under Rule 45*bis*.4(e)(iii).

## **Annex C Subject Matter Not Excluded from Search or Examination**

The subject matter set forth in Rule 39.1 or 67.1 which, under Article 4 of the Agreement, is not excluded from search or examination.

any subject matter which is searched or examined under the patent grant procedure in accordance with the provisions of the European Patent Convention.

## Annex D Fees and Charges

### Part I. Schedule of Fees and Charges

Kind of fee or charge	Amount (Euro)
Search fee (Rule 16.1(a))	1,775 <sup>1</sup>
Additional fee (Rule 40.2(a))	1,775 <sup>1</sup>
Supplementary search fees (Rule 45 <i>bis</i> .3(a))	1,775
Preliminary examination fee (Rule 58.1(b))	1,830 <sup>1</sup>
Additional fee (Rule 68.3(a))	1,830 <sup>1</sup>
Protest fee (Rules 40.2(e) and 68.3(e))	875
Review fee (Rule 45 <i>bis</i> .6(c))	875
Late furnishing fee for sequence listings (Rules 13 <i>ter</i> .1(c) and 13 <i>ter</i> .2)	230

### Part II. Conditions for and Extent of Refunds or Reductions of Fees

(1) Any amount paid by mistake, without cause, or in excess of the amount due, for fees indicated in Part I shall be refunded.

(2) Where the international application is withdrawn or considered withdrawn, under Article 14(1), (3) or (4), before the start of the international search, the amount of the search fee paid shall be fully refunded.

(3) Where the Authority benefits from the results of an earlier search already made by the Authority on an application whose priority is claimed for the international application and depending on the extent to which an Authority benefits from that earlier search, the search fee paid shall be refunded to the extent provided for in a communication from the Authority to the International Bureau and published in the Gazette<sup>2</sup>.

(4) Where the applicant or, if there are two or more applicants, each applicant is a natural person who is a national and resident of a State not party to the European Patent Convention, which on the date of filing of the application or the demand is classified as a low-income or lower-middle-income economy by the World Bank, the amount of the search fee, the preliminary examination fee and any additional fee to be paid shall be reduced by 75%. Where the Authority is informed of a change under Rule 92*bis* before the start of the international search or, if a demand for international preliminary examination is filed, before the start of international preliminary examination, and the change would modify the applicability of the fee reduction, the Authority may request the applicant to pay the full amount of the search fee or preliminary examination fee before the Authority starts the search or preliminary examination, respectively, and the Authority will request the full amount of any additional fees that the applicant may be invited to pay.

(5) In the cases provided for under Rule 58.3, the amount of the preliminary examination fee paid shall be fully refunded.

<sup>1</sup> This fee is reduced by 75% under certain conditions (see decision of the EPO's Administrative Council of October 21, 2008 (OJ EPO 11/08, 521)). See Part II, paragraph (4), for further details.

<sup>2</sup> See OJ EPO 2017, A95 and *Official Notices (PCT Gazette)* dated 29 March 2018, pages 226 and 227.

(6) Where the international application or the demand is withdrawn before the start of the international preliminary examination, the amount of the preliminary examination fee paid shall be fully refunded.

(7) The Authority shall refund the supplementary search fee if, before it has started the supplementary international search in accordance with Rule 45*bis*.5(a), the supplementary search request is considered not to have been submitted under Rule 45*bis*.5(g).

(8) The Authority shall refund the supplementary search fee if, after receipt of the documents specified in Rule 45*bis*.4(e)(i) to (iv), but before it has started the supplementary international search in accordance with Rule 45*bis*.5(a), it is notified of the withdrawal of the international application or the supplementary search request.

### **Annex E Classification**

Under Article 6 of the Agreement, the Authority specifies the following classification system in addition to the International Patent Classification: the Cooperative Patent Classification (CPC).

### **Annex F Languages of Correspondence**

Under Article 7 of the Agreement, the Authority specifies the following languages:

English, French or German, depending on the language in which the international application is filed or translated.

### **Annex G International-Type Search**

Under Article 8 of the Agreement, the Authority specifies the following extent of international-type searches:

The Authority conducts international-type searches as follows:

An international-type search report (without a written opinion) is drawn up by the Authority on behalf of certain national Offices (e.g. Switzerland, Denmark and Norway) on the basis of the national law of the State for which the Office operates. The amount of the fee to be paid for an international-type search is laid down by the President of the European Patent Office in a decision under Article 3(1) of the Rules relating to Fees published in the Official Journal of the EPO.

An international-type search report accompanied by a written opinion is drawn up by the Authority on behalf of certain national Offices (e.g. Netherlands and Belgium) on the basis of a bilateral working agreement. The amount of the fee to be paid for an international-type search accompanied by a written opinion is set by the national Offices concerned.