

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 July 1, 2010)*

* Done at Geneva on October 3, 2007, and last amended with effect from July 1, 2010 (see *Official Notices (PCT Gazette)* dated December 13, 2007, pages 213 to 219, March 13, 2008, page 21, June 26, 2008, page 86, December 11, 2008, page 158, February 26, 2009, pages 44 and 45, March 11, 2010, page 58, and May 6, 2010, pages 89 to 97).

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, 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, that such application is not an application of a kind specified in Annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant.

(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, 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, that such application is not an application of a kind specified in Annex A to this Agreement and, where applicable, that the Authority has been chosen by the applicant.

(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*, covering at least the documentation referred to in Annex E to this Agreement, subject to any limitations and conditions set out in that Annex.

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 B 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 C to this Agreement.

(2) The Authority shall, under the conditions and to the extent set out in Annex C 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 C 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 solely the International Patent Classification.

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 D.

Article 8 International-Type Search

The Authority shall carry out international-type searches to the extent decided by it.

Article 9 Entry into Force

This Agreement shall enter into force on December 13, 2007.

Article 10
Duration and Renewability

This Agreement shall remain in force until December 31, 2017. The parties to this Agreement shall, no later than July 2016, 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 languages contained in Annex A to this Agreement;
- (ii) amend the schedule of fees and charges contained in Annex C to this Agreement;
- (iii) amend the indications of languages of correspondence contained in Annex D to this Agreement;
- (iv) amend the indications and information concerning supplementary international searches contained in Annex E to this Agreement.

(4) Any amendment notified under paragraph (3) shall take effect on the date specified in the notification, provided that, for any change in the currency or amount of fees or charges contained in Annex C, 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 C, 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, 2017:
- (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 Languages and Kinds of Application

Under Article 3 of the Agreement, the Authority specifies:

- (i) the following languages which it will accept:
English, French, German, and, where the receiving Office is the industrial property Office of Belgium or the Netherlands, Dutch;
- (ii) the following kinds of application for which it will not act:
 - (a) as an International Searching Authority and an International Preliminary Examining Authority, international applications filed by a national or resident of the United States of America with the United States Patent and Trademark Office or the International Bureau as receiving Office, where such applications contain one or more claims relating to the field of business methods, as defined by the following International Patent Classification units:
 - G06Q:
Data processing systems or methods, specially adapted for administrative, commercial, financial, managerial, supervisory or forecasting purposes; Systems or methods specially adapted for administrative, commercial, financial, managerial, supervisory or forecasting purposes, not otherwise provided for
 - G06Q 10/00:
Administration, e.g. office automation or reservations; Management, e.g. resource or project management
 - G06Q 30/00:
Commerce, e.g. marketing, shopping, billing, auctions or e-commerce
 - G06Q 40/00:
Finance, e.g. banking, investment or tax processing; Insurance, e.g. risk analysis or pensions
 - G06Q 50/00:
Systems or methods specially adapted for a specific business sector, e.g. health care, utilities, tourism or legal services
 - G06Q 90/00:
Systems or methods specially adapted for administrative, commercial, financial, managerial, supervisory or forecasting purposes, not involving significant data processing
 - G06Q 99/00:
Subject matter not provided for in other groups of this subclass
 - (b) as an International Preliminary Examining Authority, international applications where the international search is to be, or has been, performed by an International Searching Authority other than the European Patent Office or the industrial property Office of a State party to the European Patent Convention.

Annex B
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, is the following:

all subject matter searched or examined under the European patent grant procedure in application of the equivalent provisions of the European Patent Convention.

Annex C
Fees and Charges

Part I. Schedule of Fees and Charges

Kind of fee or charge	Amount (Euro)
Search fee (Rule 16.1(a))	1,785 ¹
Additional fee (Rule 40.2(a))	1,785 ¹
Supplementary search fee (Rule 45 <i>bis</i> .3(a))	1,785
Preliminary examination fee (Rule 58.1(b))	1,760 ¹
Additional fee (Rule 68.3(a))	1,760 ¹
Protest fee (Rules 40.2(e) and 68.3(e)):	
– for international applications still pending on December 13, 2007	1,180
– for international applications filed on or after December 13, 2007	790
Review fee (Rule 45 <i>bis</i> .6(c))	790
Late furnishing fee (Rule 13 <i>ter</i> .1(c))	210

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, upon request, be fully refunded.

(3) Where the Authority benefits from an earlier search (including a privately commissioned “standard” search) already made by the Authority on an application whose priority is claimed for the international application and depending upon the extent to which the Authority benefits from the earlier search in carrying out the international search and any other task entrusted to it, 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.²

¹ 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)).

² *Editor’s Note:* See *Official Notices (PCT Gazette)* of March 26, 2009, page 62.

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

(5) Where the international application or the demand is withdrawn before the start of the international preliminary examination, 75% of the preliminary examination fee paid shall be refunded.

(6) The Authority may provide further refunds of the international preliminary examination fee under the conditions and to the extent laid down by it.

(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 D **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 E **Supplementary International Search: Documentation Covered; Limitations and Conditions**

(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) The Authority will not act for the kinds of application mentioned in Annex A, item (ii)(a) to this Agreement.

(4) 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).

(5) The Authority will conduct a maximum of 700 supplementary international searches per year.