Speed of processing at the EPO

Timely delivery of quality products
Agenda

- Early certainty: 6 / 12 / 15
- Accelerating & shortening the procedure: Your choices!
- Quality
Early Certainty across all processes

- Searches issued within 6 months ... including written opinion
- Average examination 12 months ... median time to grant (IGRA)
- Standard opposition 15 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

<table>
<thead>
<tr>
<th>Overall Duration</th>
<th>Goal</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ EP direct (1\textsuperscript{st} and 2\textsuperscript{nd} filings)</td>
<td>36 months</td>
</tr>
<tr>
<td>✓ E-PCT (EPO is ISA)</td>
<td>49 months</td>
</tr>
<tr>
<td>✓ E-PCT (EPO is not ISA)</td>
<td>61 months</td>
</tr>
<tr>
<td>✓ Divisional applications</td>
<td>24 months</td>
</tr>
</tbody>
</table>
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
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
Stock in months of work (Search + Exam + Oppo)

-25%


14.7

Dec. 2014

19.5

2013 2014 2015 2016
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></th>
<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><strong>Actual</strong></td>
<td>4.1</td>
<td>8.3</td>
<td>31.0</td>
<td>12.0</td>
</tr>
<tr>
<td><strong>Target</strong></td>
<td>6.0</td>
<td>12.0</td>
<td>36.0</td>
<td>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><strong>EP direct</strong> (1st &amp; 2nd filings)</td>
<td>51.9 months</td>
<td>36 months</td>
<td>26%</td>
</tr>
<tr>
<td><strong>Euro-PCT</strong> (EPO is ISA)</td>
<td>66.0 months</td>
<td>49 months</td>
<td>31%</td>
</tr>
<tr>
<td><strong>Euro-PCTbis</strong> (EPO is not ISA)</td>
<td>73.9 months</td>
<td>61 months</td>
<td>32%</td>
</tr>
<tr>
<td><strong>Divisionals</strong></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

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European Patent Office
Early Certainty from examination: 
12 months average examination

What are we doing to achieve this?

- 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
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)
- Expiry of opposition period
- Invitation to patentee to file comments or amendments (Rule 79(1) EPC)
- Communication to opponent of Patentee’s reply without time limit for filing comments
- Summons to oral proceedings (6 months in advance)
- Oral proceedings and decision
- Opponent’s comments
- Final date (Rule 116 EPC) for submissions/amendments (normally 2 months before oral proceedings)

T₀
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
- 2015:
  - Patent revoked: 31%
  - Patent upheld in amended form: 38%
  - Oppositions rejected: 31%
  - Total: 3713

- 2016:
  - Patent revoked: 28%
  - Patent upheld in amended form: 40%
  - Oppositions rejected: 32%
  - Total: 4102

Increase: 10.5%
Agenda

- 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
Waive the opportunity to indicate whether you wish to proceed with the application after search

**Your choice:** Save 6 months

<table>
<thead>
<tr>
<th>Priority Filing</th>
<th>International Search with written opinion</th>
<th>Preliminary Search (optional)</th>
<th>EPO≠ ISA</th>
<th>Rule 70(2) waiver</th>
<th>exam start</th>
<th>1st Communication</th>
<th>grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>31 months</td>
<td>6 months</td>
<td>6 months</td>
<td>average: 23.3 months</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Rule 161/162 waiver
- Rule 70(2) waiver
Request accelerated examination with PACE

**Your choice:** Communications issued within 3 months!
No fee; no justification; non-public

- Priority Filing
- International Search with written opinion
- Preliminary exam (optional)
- Suppl. Search
- Request PACE for examination

<table>
<thead>
<tr>
<th>Rule 161/162 waiver</th>
<th>✓</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rule 70(2) waiver</td>
<td>✓</td>
</tr>
<tr>
<td>Request PACE for examination</td>
<td>✓</td>
</tr>
</tbody>
</table>

Average: 22.6 months
Choose the EPO as International Search Authority

*Your choice:* No supplementary search required = save 6 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

1st filing (EP, PCT, Nat) searched by EPO

Search report + opinion by EPO

Withdrawn before publication

2nd PCT filing at any RO, ISA/EPO...
...with attached PCT Direct letter

New ISR + WO-ISA by EPO...
...taking contents of letter into account

Negative WO-ISA

Positive WO-ISA

PCT Chapter II

Entry Regional / National Phase (PPH)

Expedited grant at EPO

0 m

6 m

12 m

17 m

18 m

31 m

37 m
Your cost-effective strategy?

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

| 1\textsuperscript{st} EP filing at EPO | Search fee: € 1 300 |
| 2\textsuperscript{nd} PCT filing at any RO, ISA/EPO with **PCT Direct** letter | Search fee: € 0 |

- 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 ✓

PCT Direct

- PCT Direct letter
- Priority Filing
- International Search with written opinion
- Preliminary exam (optional)
- grant
- exam start
- 1st Communication

31 months ➔ avg.: < 20 months
Request early entry into the European phase

**Your choice:** Save up to 13 months after publication

Request early entry

- Prioritization
- Filing
  - PCT Direct letter
  - International Search with written opinion

Grant

- Exam start

31 months

ca. 6 months

- 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

- Rule 161/162 waiver
- Rule 70(2) waiver
- Request PACE for examination
- EPO is ISA
- PCT-Direct
- Request for early processing
- 2nd Rule 71(3) waiver
Export your invention all over the world with Patent Prosecution Highway

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

circa 18 months
ca. 6 months

EPO partner offices

JP
KR
CN
US
AU
CA
CO
IL
MX
MY
PH
RU
SG
Agenda

- Early Certainty: 6 / 12 / 15
- Accelerating & shortening the procedure: Your Choices!
- Quality
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
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
### 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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**European Patent Convention**

**Article 18**

*Examin*ing *Divisions*

(1) The Examining Divisions shall be responsible for the examination of European patent applications.

(2) An Examining 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 Examining Division. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Examining Division shall be decisive.

**Article 19**

*Opposition Divisions*

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

Filing — Search — Examination — Grant — Opposition — Appeal

OQC¹

Publication of the application and search report

CASE² OQC

Quality Audit

CASE

Quality Audit

Opposition Metrics

Opposition

Publication of the patent specification

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
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

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
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**
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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