

The EPO. **3** Letters...

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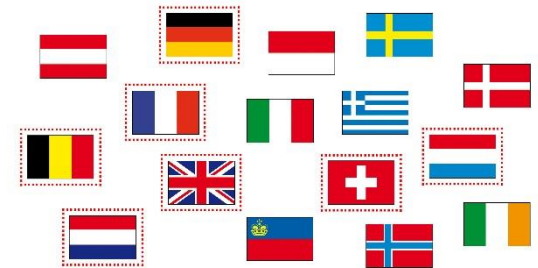
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Our law; **E**uropean **P**atent **C**onvention – not EU

- 1973 – Diplomatic Conference in Munich ► EPC signed by 16 countries

- 1977 – EPC enters into force in seven countries



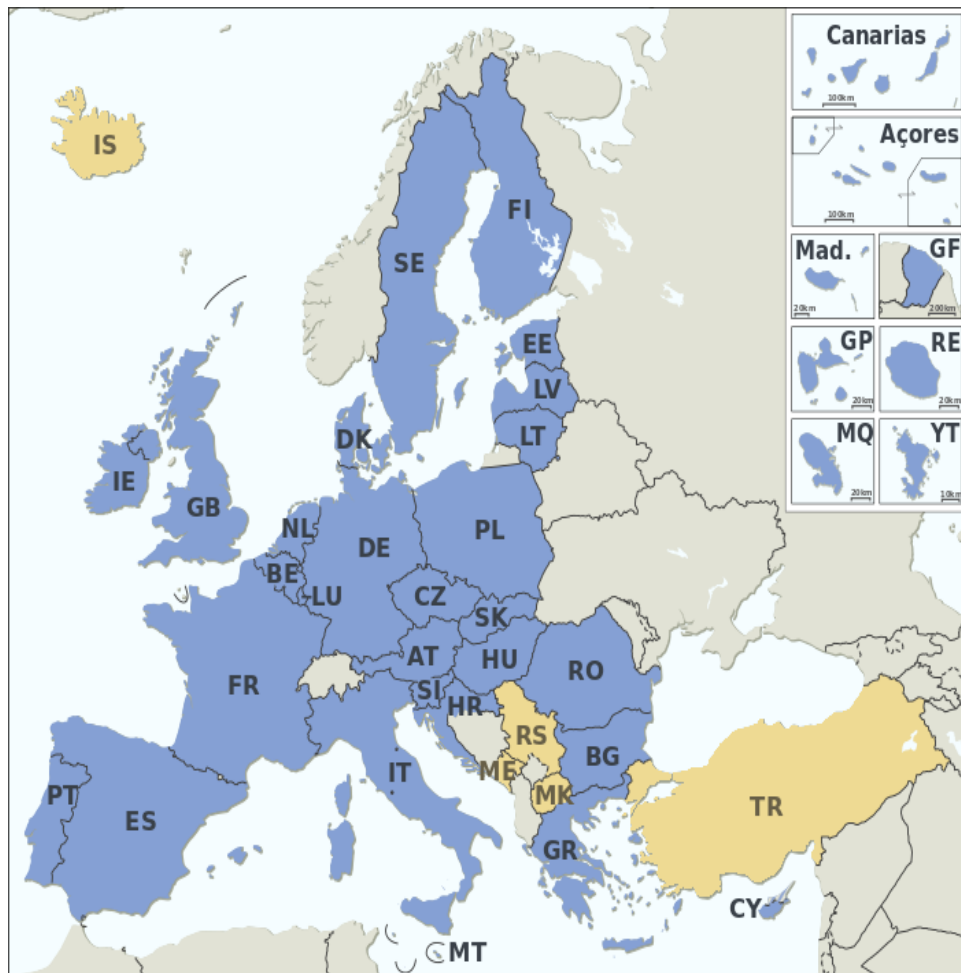
- 2011+ – **38 member states**

Albania • Austria • Belgium • Bulgaria • Croatia • Cyprus • Czech Republic • Denmark • Estonia • Finland • France • Germany • Greece • Hungary • Iceland • Ireland • Italy • Latvia • Liechtenstein • Lithuania • Luxembourg • Former Yugoslav Republic of Macedonia • Malta • Monaco • Netherlands • Norway • Poland • Portugal • Romania • San Marino • Serbia • Slovakia • Slovenia • Spain • Sweden • Switzerland • Turkey • United Kingdom



European Union

28 members



European Patent Organisation

38 members



Our Offices and Staff



The EPO

- **3** large offices
- Main 'seat' in Munich, Germany, 3500 employees with branch offices
 - The Hague, Netherlands (3000)
 - Berlin, Germany (500)
- 4430 Examiners of 38 countries = a very large number of languages
- **3** Official languages for work are English, French and German
 - most staff at least 4 languages
- Examiners are technically qualified to minimum equivalent Masters, many PhD.
- Legal training is in house
- **3** decades. Staff turnover is negligible, most examiners stay until retirement
- A considerable number (growing) also have passed the European patent attorney Qualifying Exam

The EPO; a new structure. **3** large DGs

- DG0 = President's Office
- **DG1** = Patent Grant Process in **3** technical areas
 - COO for PD **MM** - Mobility & Mechatronics
 - COO for PD **HBC** - Healthcare, Biotech, Chemistry
 - COO for PD **ICT** - Information & Communication Tech
- **DG2** = Corporate Services
- **DG3** = Legal and International Affairs
- Boards of Appeal, now under a separate President

- We also have two small sub-offices
 - Vienna, Austria; deals with publication matters
 - Brussels, Belgium; liaison office with the EU
- The EPO is self funding from its fees.
- The EPO has various programs to help develop national IP systems
- EPO Member states of the EPO have individual seats on our controlling Administrative Council.

Fees – EP as PCT

- Int. Search €1875
- Int. Examiner €1825

Fee reductions from 01 April 2018

- PCT search fee, PCT examination fee - €100 each
- EPO was PCT? EP examination fees ~~-50%~~ -75%
- Total reduction -14% vs current situation
- Further reductions when filing electronically (when available)

Fees - EP

- Filing (35 pages with 15 claims)
- Search + opinion
- Designation fee (flat)
- Examination fee
- Grant & publish
- Yearly fees, 3rd-
- Opposition
- 3rd party observation (any point in procedure)
- Appeal fee
- €120 (€210 on paper)
- €1300
- €585
- €1635
- €925
- €470-€1575
- **€785**
- **Free**
- **€1880**

How a COO area is organised – 3 levels

- Each COO is in charge of a number of directorates (20+)
- Each directorate covers a specific technical area (or areas)
- A directorate = 60-100 examiners, headed by a **Director**
 - Directors are promoted examiners who no longer examine
- Each directorate is split into 4-6 teams, each with a **Team Manager**
 - Team managers still work as examiners as well
- **Examiners** work in teams of 8-15, usually on a field basis
- Examiners do not work in fixed small groups, but within larger

The EPC; what the EPO 'does'

- The European Patent Convention is our 'statute'
- Normal examiners cover **3** things; Search, Examination, Opposition
- Search is multilingual and performed entirely by examiners
- Examination is done in 'divisions' of **3** examiners, who have an equal vote on the outcome and vary in role for different applications
 - First examiner; writes the examination communications and is usually the search examiner who wrote the initial search opinion
 - Second examiner; checks formalities/paperwork
 - Chairman; responsible for legality of procedure
- Opposition is done in similar divisions but with at least two examiners changed, and the chairman is always 'fresh'.
 - Opposition to a granted patent is possible for 9 months after grant and gives the opponent full participatory rights in the ensuing consideration of whether the grant was valid or not

Quality in legal structure through feedback

- Search normally by the substantive examiner
- Examining Division involved early, three votes on the outcome
- Affordable Appeal against refusal
- Affordable Opposition procedure against a granted patent
- Affordable Appeal procedure against the outcome of Opposition (for any party negatively affected)
- Outcomes of Appeal are flexible – a decision may be taken or the case may be fed back to the appropriate earlier stage for further work

Quality in Procedure

Divisions, Managers, Sampling

- The EPO attained and maintains ISO9001 compliance
- Each point of the process is checked; search, examination (CASE) and other procedures (training, staffing etc.)
- The first member's work is checked by both second and chair at points of decision
- Finalised work is also checked by the team manager
- At any step, compliance is recorded, whether positive or negative
- Should there be a non-compliance, the file is halted and discussed, with the resolution recorded (which may include a majority vote)
- Quality statistics gathered are then used as feedback for remedial action in terms of training or problem identification and resolution
- Beyond the procedural checks, sampling and regular audits are carried out, as well as user satisfaction surveys to identify points of improvement

Appeal - independent

- The Boards of Appeal of the EPO is made up from examiners and lawyers promoted internally, as well as some directly appointed members (judges, experienced attorneys)
- Yes, they work in **3s**.
- The Boards of Appeal enjoy functional and decision independence even from the rest of the European Patent Office
- A decision by the BoA is binding on the previous instance **on that case (T decisions)**
- Where a major point of law must be decided an 'Enlarged Board' decision may issue which is then **binding on all instances of the EPO (G decisions)**
- The decisions of the BoA are gathered into a book of case law periodically
- Where a 'track' of case law is apparent, this is translated into changes to the Guidelines for Examination (updated annually), which examiners normally follow

Consistency of approach, reliable outcome

- Exclusions and Exceptions to patentability
- Article 52(2)&(3) and Article 53 EPC.
 - List of excluded matter vs concept of ‘statutory’
 - Nuanced handling of medical, biotech, diagnostic systems
- “Business Methods” and CII
 - Methodology constant in processing applications since 2002, track record of case law supporting and refining it
- “Diagnostic Methods”, Medical use claims, biotech
 - Case law (Enlarged Board of Appeal decisions 1995-2008)
 - G1/04, G1/07; diagnostics, therapy
 - G3/95, G1/98, G2/03, G2/07, G1/08; genetic, genome, breeding
 - G2/06; embryo use

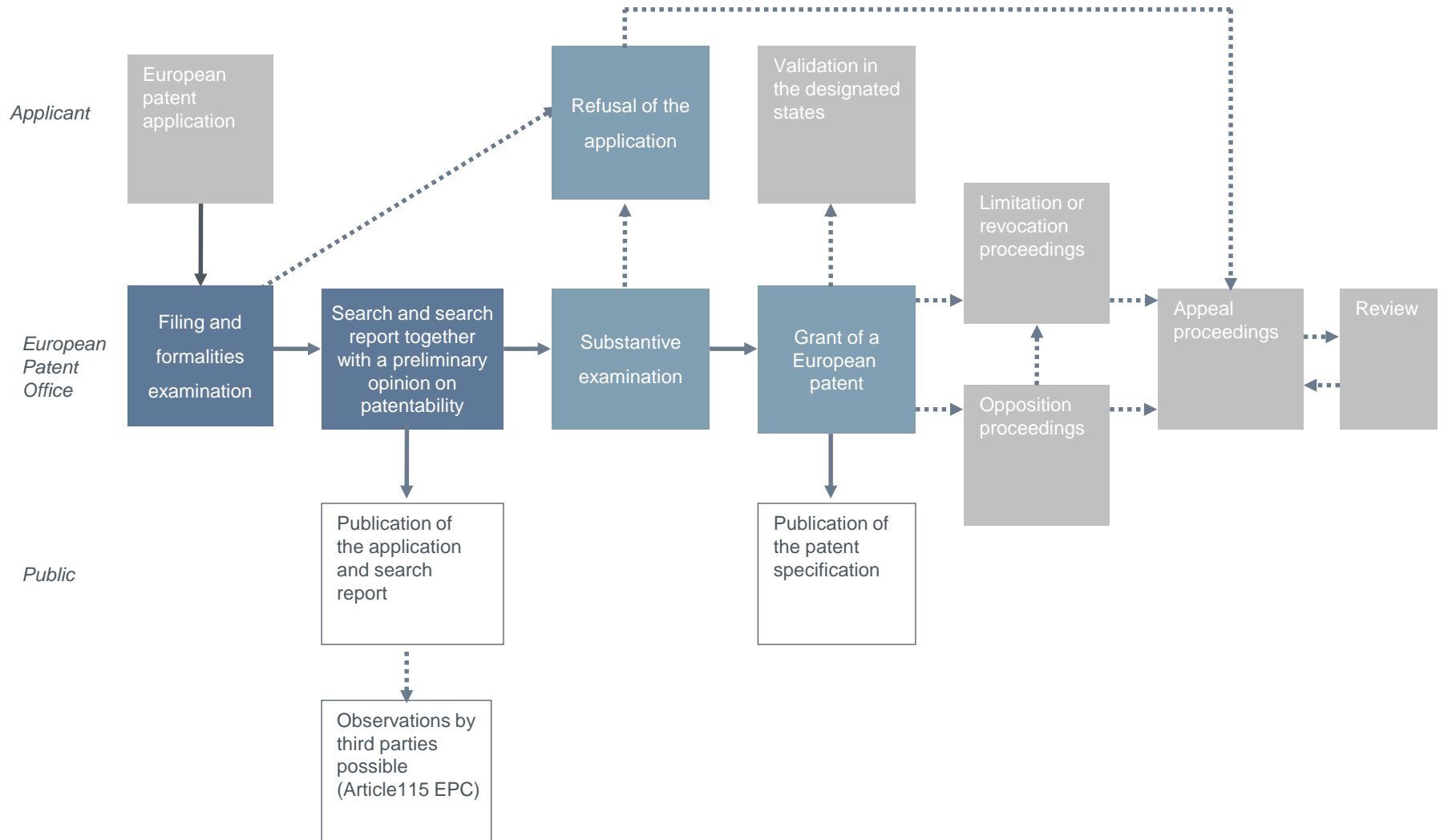
CII = Computer Implemented Inventions

MoB = Methods of doing Business

- The EPO does not grant patents for
 - business innovations
 - administrative innovations
 - financial schemes
 - abstract ideas or mental acts
- The EPO DOES grant patents for
 - innovations in control of machines
 - innovations in compression or security of data
 - improved man/machine interfaces
- The EPO does not consider computer program listings, but wishes to know what the program **achieves**
- Innovations may be based on a computer program or not.
- Features which contribute technical character may be the source of inventive step, those which contribute none cannot.



The grant procedure at a glance



Recent improvements at the EPO

- Timeliness
 - 27% reduction in pendency since 2015
 - 4 months average until search report
 - 22 months pendency for Examination
 - 22 months for Opposition
- Stock levels
 - Search stock levels now completely under control
 - Examination stock levels being addressed
 - Opposition now being to specialised central unit
- Output
 - Again an increase in production of 4.6% in 2017
- Aim
 - 4+6+12 month average for patent applications
 - To remain an agile, productive organisation, ready to respond effectively to any future changes in the IP landscape

Questions?

