

Decision of the administrative council of 9 December 2004 amending the Implementing Regulations to the European Patent Convention and the Rules relating to Fees* ("Extended European search report" new Rule 44a, Article 2, items 2 and 6, and Article 10 RFees) CA/D 18/04

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention (EPC), and in particular Article 33(1)(b) and (2)(d) thereof,

On a proposal from the President of the European Patent Office,

Having regard to the opinion of the Committee on Patent Law and of the Budget and Finance Committee,

HAS DECIDED AS FOLLOWS:

Article 1

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

The following new Rule 44a shall be inserted in Part IV, Chapter II:

"Rule 44a

Extended European search report

(1) The European search report shall be accompanied by an opinion on whether the application and the invention to which it relates seem to meet the requirements of this Convention, unless a communication under Rule 51, paragraph 2 or paragraph 4, can be issued.

(2) The opinion under paragraph 1 shall not be published together with the search report."

Article 2

The Rules relating to Fees shall be amended as follows:

1. Article 2, items 2 and 6, shall be amended to read as follows:

"2. Search fee in respect of

- a European or supplementary European search(Article 78, paragraph 2, Rule 46, paragraph 1, Rule 112, Article 157, paragraph 2(b)) EUR 960

- an international search (Rule 16.1 PCT and Rule 105, paragraph 1) EUR 1 550

6a. Examination fee (Article 94, paragraph 2) EUR 1 280

6b. Examination fee (Article 94, paragraph 2) in the case of an international application for which no supplementary European search report is drawn up (Article 157, paragraph 3(a)) EUR 1 430

2. Article 10 shall be amended to read as follows:

"Article 10

Refund of search fees

(1) The search fee paid for a European or supplementary European search shall be fully refunded if the European patent application is withdrawn or refused or deemed to be withdrawn at a time when the Office has not yet begun to draw up the search report.

(2) Where the European search report is based on an earlier search report prepared by the Office on an application whose priority is claimed or an earlier application within the meaning of Article 76 of the Convention or an original application within the meaning of Rule 15 of the Convention, the Office shall refund to the applicant, in accordance with a decision of its President, an amount which shall depend on the type of earlier search and the extent to which the Office benefits from the earlier search report when carrying out the subsequent search."

Article 3

(1) This decision shall enter into force on 1 July 2005.

(2) New Rule 44a of the Implementing Regulations shall apply to European patent applications and international applications entering the European phase, filed on or after 1 July 2005.

(3) The new amounts of the European and supplementary European search fee and of the examination fee shall apply to European patent applications and international applications entering the European phase, filed on or after 1 July 2005.

(4) If within six months of 1 July 2005 the European search fee for an application filed on or after that date is paid in due time but only in the amount due for applications filed before said date, that fee shall be deemed to have been validly paid if the deficit is made good within two months of an invitation to that effect from the European Patent Office.

(5) Article 10 of the Rules relating to Fees as amended by this decision shall apply to European patent applications filed on or after 1 July 2005.

Done at Munich, 9 December 2004

For the Administrative Council
The Chairman

Roland GROSSENBACHER