



DECISION OF THE ADMINISTRATIVE COUNCIL
of 14 December 2021
inserting a new Rule 56a and amending Rules 56
and 135 of the Implementing Regulations to the
European Patent Convention and amending
Article 2 of the Rules relating to Fees

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention (hereinafter referred to as "EPC") and in particular Article 33(1)(c) and (2)(d) thereof,

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

Having regard to the opinion of the Budget and Finance Committee,

Having regard to the opinion of the Committee on Patent Law,

HAS DECIDED AS FOLLOWS:

Article 1

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

1. Rule 56(2) and (3) shall read as follows:

"(2) If missing parts of the description or missing drawings are filed later than the date of filing, but within two months of the date of filing or, if a communication is issued under paragraph 1 or under Rule 56a, paragraph 1, within two months of that communication, the application shall be re-dated to the date on which the missing parts of the description or missing drawings were filed. The European Patent Office shall inform the applicant accordingly.

(3) If the missing parts of the description or missing drawings are filed within the period under paragraph 2, and the application claims priority of an earlier application on the date on which the requirements laid down in Rule 40, paragraph 1, were fulfilled, the date of filing shall, provided that the missing parts of the description or the missing drawings are completely contained in the earlier application, remain the date on which the requirements laid down in Rule 40, paragraph 1, were fulfilled, where the applicant so requests and files, within the period under paragraph 2:

(a) copy of the earlier application, unless such copy is available to the European Patent Office under Rule 53, paragraph 2;

(b) where the earlier application is not in an official language of the European Patent Office, a translation thereof in one of these languages, unless such copy is available to the European Patent Office under Rule 53, paragraph 3; and

(c) an indication as to where the missing parts of the description or the missing drawings are completely contained in the earlier application and, where applicable, in the translation thereof."

2. The following new Rule 56a shall be inserted in Chapter I of Part IV:

"Rule 56a

Erroneously filed application documents or parts

(1) If the examination under Article 90, paragraph 1, reveals that the description, claims or drawings, or parts of those application documents, appear to have been erroneously filed, the European Patent Office shall invite the applicant to file the correct application documents or parts within two months. The applicant may not invoke the omission of such a communication.

(2) If correct application documents or parts referred to in paragraph 1 are filed on or before the date of filing so as to correct the application, those correct application documents or parts shall be included in the application and the erroneously filed application documents or parts shall be deemed not to have been filed. The European Patent Office shall inform the applicant accordingly.

(3) If correct application documents or parts referred to in paragraph 1 are filed later than the date of filing, but within two months of the date of filing or, if a communication is issued under paragraph 1 or under Rule 56, paragraph 1, within two months of that communication, the application shall be re-dated to the date on which the correct application documents or parts were filed. The correct application documents or parts shall be included in the application and the erroneously filed application documents or parts shall be deemed not to have been filed. The European Patent Office shall inform the applicant accordingly.

(4) If the correct application documents or parts are filed within the period under paragraph 3, and the application claims priority of an earlier application on the date on which the requirements laid down in Rule 40, paragraph 1, were fulfilled, the date of filing shall, provided that the correct application documents or parts are completely contained in the earlier application, remain the date on which the requirements laid down in Rule 40, paragraph 1, were fulfilled, where the applicant so requests and files, within the period under paragraph 3:

(a) a copy of the earlier application, unless such copy is available to the European Patent Office under Rule 53, paragraph 2;

(b) where the earlier application is not in an official language of the European Patent Office, a translation thereof in one of these languages, unless such copy is available to the European Patent Office under Rule 53, paragraph 3;

and

(c) an indication as to where the correct application documents or parts are completely contained in the earlier application and, where applicable, in the translation thereof.

If these requirements are fulfilled, the correct application documents or parts shall be included in the application and the erroneously filed application documents or parts shall remain in the application.

(5) If the applicant:

(a) fails to file the correct application documents or parts within the period under paragraph 1 or 3,

or

(b) withdraws under paragraph 7 any correct application documents or parts filed under paragraph 3,

any filing of the correct application documents or parts shall be deemed not to have been made and the erroneously filed application documents or parts shall remain in the application or be restored to the application. The European Patent Office shall inform the applicant accordingly.

(6) If the applicant fails to comply with the requirements referred to in paragraph 4(a) to (c) within the period under paragraph 3, the application shall be re-dated to the date on which the correct application documents or parts were filed. The filing of the erroneously filed application documents or parts shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.

(7) Within one month of the notification referred to in paragraph 3 or 6, last sentence, the applicant may withdraw the correct application documents or parts filed, in which case the re-dating shall be deemed not to have been made. The European Patent Office shall inform the applicant accordingly.

(8) If the applicant files correct application documents or parts under paragraph 3 or 4 after the European Patent Office has begun to draw up the search report, the European Patent Office shall invite the applicant to pay a further search fee within one month. If the search fee is not paid in due time, the application shall be deemed to be withdrawn."

3. Rule 135(2) shall read as follows:

"(2) Further processing shall be ruled out in respect of the periods referred to in Article 121, paragraph 4, and of the periods under Rule 6, paragraph 1, Rule 16, paragraph 1(a), Rule 31, paragraph 2, Rule 36, paragraph 2, Rule 40, paragraph 3, Rule 51, paragraphs 2 to 5, Rule 52, paragraphs 2 and 3, Rules 55, 56, Rule 56a, paragraphs 1 and 3 to 7, Rules 58, 59, 62a, 63, 64, Rule 112, paragraph 2, and Rule 164, paragraphs 1 and 2."

Article 2

Article 2(1), item 2, first indent, of the Rules relating to Fees shall read as follows:

"– a European or supplementary European search on an application filed on or after 1 July 2005 (Article 78, paragraph 2, Rule 62, Rule 64, paragraph 1, Rule 56a, paragraph 8, Article 153, paragraph 7, Rule 164, paragraphs 1 and 2)"

Article 3

This decision shall enter into force on 1 November 2022.

Rules 56(2) and (3) and 135(2) EPC as amended and Rule 56a EPC as inserted by Article 1 of this decision shall apply to all applications filed on or after this date.

Done at Munich, 14 December 2021

For the Administrative Council
The Chairperson

A handwritten signature in black ink, appearing to read 'J. Kratochvíl', with a large, stylized flourish at the end.

Josef KRATOCHVÍL