



Availability of Post-Grant Central Limitation of European Patents

The European Patent Convention (EPC) is the legislation governing the grant of European patent applications. By 13 December 2007 at the latest, the current version of the EPC will be replaced by a revised version known as "EPC 2000".

When EPC 2000 is adopted, it will be possible for the proprietor of a European patent to limit the scope of the patent claims in a single procedure at the European Patent Office (EPO), rather than having to amend the patent in each country in which it is in force.

Background

In certain instances, a patent proprietor may wish to voluntarily amend the claims of their granted patent, for example in order to take into account newly discovered prior art that affects the validity of the claims.

Currently, once a European patent has been granted by the EPO, unless that Patent is opposed, it is not possible for the patent proprietor to amend the patent of their own volition directly at the EPO. The only way that a patent proprietor can amend their patent, is by filing amendments at each of the national Patent Offices in which the European patent is in force. The procedures involved, and the form of amendment that is permissible, vary from country to country. Accordingly, amending a granted European patent can be difficult, time-consuming and expensive.

Forthcoming Change

When EPC 2000 comes into force, it will be possible for a patent proprietor to limit their granted patent centrally at the EPO instead of via each national Patent Office. Hence, the new procedure will create a much faster and cheaper way to amend a granted European patent.

A patent proprietor may amend either their patent as granted by the EPO, or a patent which has already been amended in opposition proceedings. It will be possible to amend the claims and/or the description, and there is no limit on the number of times the proprietor can limit the patent.

It is important to note that opposition proceedings will take precedence over limitation proceedings. Therefore, a request for central limitation of a patent will be deemed not to have been filed if an opposition is already pending. Furthermore, limitation proceedings initiated soon after grant will be terminated if an opposition is subsequently filed within the opposition period.

Any application for patent limitation will be examined by the EPO to check that the resultant amendments are clear, do not involve added subject matter, and do not broaden the scope of the claims in any way. The limitation procedure will not involve reconsideration of issues such as novelty and inventive step, and so should be relatively straightforward.

Action

As at present, the proprietor of any European patent who becomes aware of prior art that calls into question the validity of the patent should consider whether it is necessary to limit the scope of the patent. Once EPC 2000 comes into force, the procedure for doing this will be greatly simplified.

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