

Accelerated patent application processing in Europe

**An overview of the possibilities to accelerate the prosecution of
a national or a regional patent application in Europe**

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Patenttihakemuksen käsittelyn sekä myönnön nopeus voi olla hakijan yksi ensisijaisista prioriteeteistä. Nopeutettuun patenttihakemuksen käsittelyyn on Euroopassa olemassa erilaisia reittejä ja mahdollisuuksia, riippuen lähinnä hakemuksen tekemisreitistä ja kustakin hakemusta käsittelevästä tuomioistuimesta. Tämän työn tarkoituksena on antaa yleiskuva käytettävissä olevista mahdollisuuksista nopeuttaa patenttihakemuksen käsittelyä eri hakemusreiteillä Euroopan alueella. Työ esittää yhteenvedon käytettävissä olevista vaihtoehtoista patenttihakemusprosessin nopeuttamiseksi eurooppahakemuksen (EP-hakemuksen), PCT-hakemusten (keskittyen Eurooppaan alueellisesti) ja kansallisten patenttihakemusten kohdalla. Lukijalle pyritään myös havainnollistamaan tarjolla olevien kansallisten hakemusten nopeutusmahdollisuuksien kirjoa muutamien esimerkkimaiden avulla.

Abstract

A speedy prosecution and grant of a patent can be a priority for the applicant. For the accelerated patent processing within Europe, various routes and possibilities exist, depending mostly on the filing route and the jurisdiction at hand. This work aims to provide an overview of the available possibilities to expedite the patent application procedure along different routes within the European states. It will summarize the available options to accelerate the patent application process along the routes of European (EP) application, PCT application and national applications, with focus on Europe. The disparity of national application acceleration possibilities offered to the applicant is further illustrated to the reader through a few country-specific examples.

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1 Abbreviations used

EP	European Patent
EPC	European Patent Convention
EPO	European Patent Office
GPPH	Global Patent Prosecution Highway
GPTO	German Patent Office
ISR/WO	Written Opinion of the International Searching Authority
IPRP	International Preliminary Report on Patentability
IPER	International preliminary examination report
ISA	International Searching Authority
OEE	Office of Earlier Examination
OFF	Office of First Filing
OLE	Office of Later Examination
OSF	Office of Second Filing
PACE (EPO)	Programme for Accelerated Prosecution of European Patent Applications
PCT	Patent Co-operation Treaty
SISA	Supplemental International Searching Authority
SIS	Supplementary International Search
SISR	Supplementary International Search Report
TRIPS	The Agreement on Trade-Related Aspects of Intellectual Property Rights
WIPO	World Intellectual Property Organization
WO/IPEA	Written Opinion of the International Preliminary Examining Authority
WO/ISA	Written Opinion of the International Searching Authority

2 Patent application prosecution acceleration in Europe

Obtaining patent protection in Europe is mostly achieved through filing a European patent application through the European Patent Office (EPO), an international Patent Co-operation Treaty (PCT) application through the World Intellectual Property Organization (WIPO) and thereafter a national phase application within European countries, or a direct national patent application through national patent offices within Europe. This means, different patent laws also co-exist within Europe, comprising the European Patent Convention (EPC), PCT and an array of national patent laws. Many routes to accelerate the prosecution of a patent application exists in Europe and comprehension of the available options requires a lot of background work and effort. Acceleration of the processing of a patent application in Europe is possible through several routes.

A popular route to seek patent protection in Europe in general, is by filing a European Patent application (EP application) which enables patent protection in countries of the EPC. As presented in this work, means to accelerate the prosecution of an EP application are available. Another common route to seek patent protection in Europe is through the PCT procedure in the European contracting states. The processing of an international application (PCT application) entering a national phase in Europe can also be expedited through a few available process steps, even though no official acceleration program exists within the PCT. Additionally, different European countries provide various national programs through which accelerated processing of the national applications can be requested.

This work aims to provide an overview of the different options for expedited processing of the application along the routes applicant can take, while pursuing patent protection in Europe, national or regional. Special acceleration programs, as well as smaller process steps enabling faster

processing are discussed. The definition of the word “Europe” used in this work is rather loose and somewhat depends on the context used but can be considered as the member states of the European Patent Convention. The current work cannot go into detail with each European country in terms of accelerated procedures, but rather aims to deliver the reader the big picture of the available options.

2.1 Where to find information?

Perhaps the easiest access to information regarding the acceleration programs is provided on the websites (in English) of the well-known programs such as EPO PACE [1], PPH [2] and PCT-PPH [3]. Further information concerning national acceleration programs and country specific Patent Prosecution Highway (PPH) agreements and requirements can often also be found on the respective patent office's website. A good source of general information on national patenting procedures within Europe and links (in English) to national PTO websites are also available at www.epo.org/applying/national. For Finnish applicants, the [website of the Patent and Registration Office \(PRH\)](#) offers a good source of information about the possibilities to accelerate a Finnish national application, as well as about the currently standing PPH agreements in Finland [4] [5].

Finding detailed information about the various possibilities to accelerate the patent application processing is nonetheless not always straight forward. The information provided on the websites is not always up to date and links to source websites are not updated, as the acceleration programs evolve. As an example, the new updated website of PPH Portal operated by the Japanese Patent Office was launched in July 2020, but some of the content remains the same and has not been updated in years, e.g., information about PPH requirements. [6] The national patent office websites may also simply not offer enough information about the available fast-track programs. Another common problem is that the language of the website is not correct to the user who seeks information. Furthermore, some patent offices within Europe may offer informal routes to accelerate the patent application processing, and much written information about these options therefore does not even necessarily exist. Therefore, the best source of information is still often a local patent attorney who knows the specifics of the current patent law and the local practice. Alternatively, the national patent offices usually offer contact details

for customer consultations for any questions customers may have, although, the responses are sometimes only provided in the local language.

3 Accelerated procedures at the European Patent Office (EPO)

A popular route to obtain patent protection for an invention in Europe is through an EP-patent application route. Filing a single European patent application (EP application) enables obtaining a patent protection in validation countries which have joined the European Patent Convention (EPC). The grant of the EP-patent is not necessarily the fastest, when compared with some of the national patent applications within the area wherein the EP-patent can be validated. There are, however, ways to accelerate the application processing at the EPO. At the European Patent Office, the applicant can select between two distinct schemes for speeding up the EP-patent application prosecution, namely the PPH and EPO PACE programs.

A median average time for the issuance of the EP application search was in 2019 5.5 months, and the median average duration from the examination request until the dispatch of the intention to grant communication, was in the same year 28.1 months at the EPO. When using the possibilities to accelerate the application process, the median average duration from the start date of the examination procedure, until the examiner's first communication or the decision to grant, was 2.6 months (no differentiation between EPO PACE or PPH). [7]

3.1 EPO-PACE

EPO PACE is a special acceleration program for the European patent application prosecution, provided by the EPO. The applicant requiring a faster search or examination must make a request for the application to be processed under the PACE program.

3.1.1 Accelerated search and examination

An acceleration request according to PACE can be filed once prior to the issuance of the search report, and once during examination. This means a PACE request that is filed during search will not have an influence on the speed of the examination. This also means, that if an application is removed from the PACE route (for example, as a result of an extension request), it is not possible to re-instate the application into PACE. Even though PACE may require diligence on the part of the applicant, it has the benefit of being available to the applicant once the examination has started in case the acceleration need is first realized late.

The applicant must neither give any specific reasoning as to why the application processing should be accelerated, nor are there any specific requirements for qualification to PACE program, and the acceleration request does not cause any extra official fees to the applicant. Nonetheless, the PACE program has certain limitations of availability to the applicant. If the workload of examiners is at the time of PACE request high in the technical field of the application, the request may not be granted. The number of accepted PACE requests will also be limited by the EPO, for applicants with several applications, and who are requesting accelerated prosecution for all or most of their applications. [1]

For the EP applications filed after 1 July 2014 (including PCT applications entering the European phase where the EPO did not act as (S)ISA), the accelerated search request through the PACE is not necessary according to EPO website, as EPO strives to issue the extended/partial European search report within six months from the filing date. [8]

For the accelerated examination a PACE request must be filed as soon as the application has entered the examination phase, which in practice means, the accelerated examination can be requested once the examining division has assumed responsibility for the application ([Rule 10\(2\)\(3\) EPC](#)). The EPO aims to produce an examination report within three months of receipt by the examining division of the application, the applicant's response under [Rule 70a](#) or [161\(1\) EPC](#), or the request for accelerated examination (whichever is later). Any subsequent examination communications are produced as well within three months of receipt of the applicant's response, provided that the application is still being processed under the PACE program. [9]

3.2 Waiving EPO Communications

Other possibilities to accelerate the processing of an EP application are also available, besides the EPO PACE program. Waving rights for certain communications provided by the EPO, the patent application process may progress quicker as certain phases are skipped. However, the applicant must understand what waiving these rights means for the application, and what consequences these may have. [10]

3.2.1 Waiving the invitation under Rule 70(2) EPC

Prior to receiving the European search report, the applicant can optionally pay the examination fee and waive the invitation under [Rule 70\(2\) EPC](#) to proceed further with the application. This is possible, irrespective of the results of the search. If this waiver option is applied, the supplementary European search report is dispatched without written opinion. Hence, the applicant will give up the right to comment on the written opinion and to amend the application at this stage. The first examination communication by the examining division is dispatched shortly after dispatching the search report, after which the applicant may amend the application when responding to the communication from the examining division. This process step saves the applicant in a hurry some time but means losing an opportunity to get a clearer picture of the allowable claims, and comment on the findings of the search. [10]

3.2.2 Abolition of the option to waive the right to a further communication under Rule 71(3) EPC

The EPO has decided to abolish the option to wave the right to a further communication under [Rule 71\(3\) EPC](#) (EPO communication of intention to grant) when filing amendments/corrections in response to an initial communication under Rule 71(3) EPC. This decision was effective as of 1st of July 2020. The applicant can file corrections or amendments to the application after receiving the communication under Rule 71(3) EPC. If amendments or corrections are filed, a new communication of intention to grant is issued. Before the above-mentioned decision, it was possible to wave the right to receive the further communication under Rule 71(3) EPC, and the applicant would have received the grant of a patent a few weeks earlier. [11]

[10]

3.3 Euro-PCT

This section summarizes the process steps to take, in order to accelerate a PCT application entered into the European phase.

3.3.1 Early entry into the European phase

When a PCT application enters the national phase as an EP application, the EPO will not process an international application before the expiry of the 31-month time limit from the filing date, or, from the priority date of the application. The applicant may request the start of the application processing before the expiry of this time limit by filing a request for early processing (Articles [23\(2\)/40\(2\)](#) PCT). In case a PACE request is made for the same application, it has to be requested separately. [10]

3.3.2 Accelerated search and waving the right to communication under Rules 161 and 162 EPC

In PCT applications entering the European phase, the applicant can wave the right to the communication under [Rules 161\(1\) or \(2\) EPC](#) and [162 EPC](#), which would allow the applicant to file amendments during a time period of six months after the notification of the communication. By doing so, the EPO will not issue a communication under Rules 161(1) or (2) and 162 EPC, and the EPO may start immediately the supplementary European search or examination when the amendments in response to the International Preliminary Examination Report (IPER) or Supplementary International Search Report (SISR) are filed and claim fees are paid. In case the communication under Rules 161(1) or (2) EPC and 162 EPC has already been issued, but the applicant does not want to wait until the end of the six-month response period, an immediate start of the search or examination may still be requested (informally) waiving the rights to the remaining time of the six-month period. Should the right to the communication under Rules 161(1) or (2) and 162 EPC be invalidly waived, the application will be processed only after the expiry of the usual six-month period for filing amendments. A filed PACE request has no effect on this mandatory six-month period.

Accelerated search through EPO PACE is possible for the Euro-PCT application, regardless of whether the EPO has acted as International Searching Authority (ISA) or Supplementary International Searching Authority (SISA). The European search report should be provided within six

months from the receipt of the PACE request for Euro-PCT applications. [10]
[8]

3.3.3 Accelerated Examination

For PCT applications entering the European phase, accelerated examination through EPO PACE can be requested at any time, provided that the EPO also acted as (S)ISA. For instance, the request can be made when application enters the European phase or when responding to the WO-ISA, IPER or SISR. The EPO should issue the next office action within three months' time from the receipt of the Euro-PCT application, or the request for accelerated examination. Accelerated examination through EPO PACE is also possible for application where EPO did not act as (S)ISA. In this case the request for accelerated examination cannot be filed on entry into the European phase but only after the applicant has declared the intention to proceed further to examination (Rule 70(2), 70a(2) EPC). [9] [12]

3.4 PPH at the EPO

Certain PPH agreements are also available for EP applications at the EPO (see further information about the PPH in the section 4 hereafter). These agreements include regular/normal PPH and Mottainai PPH, IP5 PPH and PCT-PPH (for the Euro-PCT applications). The PPH Portal homepage offers a current list of PPH implementation relationships between EPO and other countries, regarding the normal PPH, Mottainai PPH and PCT-PPH. [13]

The accelerated processing of an EP application through PPH programs at the EPO can be requested based on a positive national application work product from a PPH partner office (also a positive national application work product from a PCT application, which has entered the national phase). In case of a Euro-PCT application, it is also possible to request a PPH based on a PCT work product i.e., an International Search Report (ISR) or an IPER. For Euro-PCT application, where EPO acted as the ISA (and/or IPEA) and the claims of the PCT application were considered patentable/allowable by the EPO, it is possible to request accelerated examination through the PPH program at the EPO's PPH partner offices, based on the positive ISR/IPER. (see Fig. 1). [12]

A PPH request for an EP application, can be based on an allowance of a parent patent in the IP5 offices in China, Japan, Korea, USA, or offices in Canada, Australia, Russia, Mexico, Singapore, Malaysia, the Philippines, Colombia, Peru, Israel or the Eurasian Patent Office. The Global PPH (GPPH) is not available for EP applications. Regardless of whether the PPH request is granted or not, the EPO still conducts its own search and examination for the application and considers independently the patentability of the application under the EPC. [14] [15] [12]

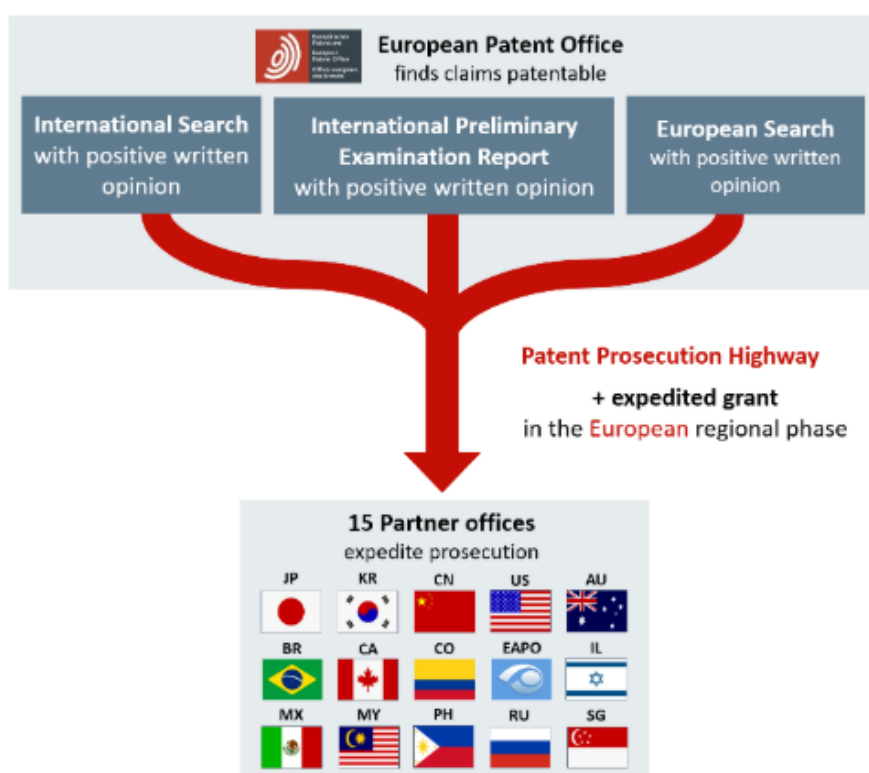


Figure 1. PPH request can also be based on the latest PCT work product at the Euro-PCT application route. ([figure from EPO.org](http://www.epo.org)) [12]

4 Patent Prosecution Highway (PPH)

The Patent Prosecution Highway (PPH) is an international cooperation scheme, based on bilateral and multilateral agreements between patent authorities allowing information sharing between patent offices. The PPH agreements aim to accelerate the patenting process through information sharing. The basic idea of PPH is to base the PPH acceleration request on a previous allowance or a grant of an earlier application, to which the later application is linked to, in one way or another. However, the PPH request being accepted does not automatically mean the patent application will be granted. Instead, all the participating offices are allowed to examine the applications and make their own decisions on the patentability of the application if they will. The offices are therefore not bound to the opinion of the other (earlier) patent offices and their examination results. The PPH program also permits the exchange of information between offices, and each office to exploit the work previously done by the other office thereby producing less overlapping search and examination and improving patent quality. In fact, one of the aims of the PPH agreements is to limit the examination phase in the Office of Later Examination (OLE) as much as possible. The patent offices do not generally request any fees for the PPH programs, as these programs do not require additional work from the examiner, but rather on the contrary, ease the workload. The PPH agreements are generally bilateral agreements between two patent offices, or multilateral agreements between several patent offices forming a PPH-network (e.g., Global PPH). Various PPH agreements have been in place for years, whereas new bilateral programs as well as existing ones are still being developed continuously. [2]

The requirements for an application to be accepted to the PPH route, comprise generally at least: 1) The application filed to the Office of First Filing (OFF) or Office of Earlier Examination (OEE) must be linked in a certain way with the application to the Office of Second Filing (OSF) or Office of Later

Examination, (OLE). For instance, the application to OLE claims priority from the application to the OEE. 2) At least one claim should be found allowable in the application judged by the OEE. 3) All the claims in an OLE application must correspond to the allowable claims by an OEE. In practice these requirements mean, no PPH will be granted for an application comprising even one patent claim, which has not been previously allowed by an OEE. Also, corrections to the already filed PPH request may be allowed, depending on the receiving patent office. Most offices allow corrections at least once. Some offices allow corrections twice or even unlimited rounds of corrections (such as the Finnish Patent Office), whereas the others do not allow corrections at all. Further country specific rules and details exist, and detailed information on the practices can be searched on the respective patent office's website. A table listing country-specific requirements for the acceptance to the PPH and PCT-PPH program, the documents to be submitted along with the application and other useful details, is also available at the PPH Portal website. Statistics from some of the participating patent offices, indicating the timelines of the applications participating in the PPH programs, are collected on the PPH Portal website. These statistics give an impression of the time potentially saved, when using the PPH route. [2] [16] [17]

4.1 PPH agreements

In the following are presented the types of PPH agreements that are of relevance when applying for a patent at Patent offices within Europe.

4.1.1 Regular PPH

The first PPH program was launched as a work sharing framework pilot between the patent offices of Japan (JPO) and USA (USPTO) in 2006. The pilot program was aimed for Paris convention applications and the main purpose of the PPH pilot was to reduce the duplicate work done by the parallel patent offices, but also to speed up the examination process. Since then, many other bilateral PPH agreements have been made between patent offices, which are considered as “regular” or “normal” PPH agreements. The applicant may request the accelerated processing of the patent application from the OLE based on the positive opinion or grant of the corresponding patent claims by the OEE. Also, the positive opinion given by the OEE, may be a work product of PCT-national phase. The currently standing bilateral regular PPH agreements can be checked from the PPH Portal website. The

homepages of the national offices may, however, provide more up to date information on the latest PPH agreements, as at the time of writing this, the list of bilateral PPH agreements found at the PPH Portal, did not match the data found at the homepages of some of the National offices checked. [13] [18]

4.1.2 MOTTAINAI

Mottainai is a type of PPH program that was initiated in 2011 by eight patent offices. The Mottainai program is also based on bilateral agreements between two countries. The goal of the Mottainai agreement, is to further accelerate the application processing and to avoid the waste of time and resources used for searches. The offices taking part to Mottainai agreement, agree to make a PPH request available for allowable/patentable applications, regardless of the office where it was first filed. Therefore, the OEE, may not necessarily be the office where the application was first filed, as it is the case in the regular PPH path. This allows the patent office with more resources to initiate the examination without delay first, and the other office as well as the applicant benefit from this. Some patent offices that implement PPH agreements, may still not implement Mottainai PPH, hence, confirming the standing PPH agreements carefully beforehand is recommended. The PPH Portal homepage offers an easily accessible updated list of PPH implementation relationships between multiple countries for this purpose. [19] [13]

4.1.3 The Global PPH

The Global Patent Prosecution Highway (Global PPH/ GPPH) is a plurilateral pilot program, which in fact comprises three types of PPH programs: the Normal PPH, Mottainai PPH, and the PCT-PPH programs (see details [below](#)). The GPPH was based on the earlier Mottainai system, aiming to simplify the PPH system. This means the global PPH allows filing of a PPH request based on patent claims which were found allowable by any of the contracting parties, regardless of the OFF. All patent offices participating in the Global PPH accept a PPH request from any other Global PPH member patent office, based on the examination results of the application. The participating offices have uniform requirements for the PPH requests and common guidelines for their processing. The GPPH may be requested based on the work products of any one of the participating offices, including also PCT work products (WO-ISA or IPER).

The 27 offices participating in GPPH as of July 6th 2020 are Austria, Canada, Denmark, Germany, Estonia, Hungary, Israel, Chile, Peru, Portugal, Australia, New Zealand, Singapore, Iceland, Japan, South Korea, Norway, NPI (Nordic), Poland, Finland, Sweden, Russia, Colombia, Spain, UK, USA and Visegrad. [13] [20]

The uniform requirements set for the applications accepted to the GPPH program comprise at least:

- a) The OEE- and the OLE applications need to have a specific relation with each other. Both, OEE- and the OLE applications shall have the same earliest date (priority date or a filing date).
- b) The OEE application has one or more claims that are considered patentable/allowable by the OEE.
- c) All the claims of the OLE application for which the PPH is requested, must sufficiently correspond to one or more of the claims indicated as patentable/allowable by the OEE. The claims of the OLE application may have the same as, or narrower scope than the claims in the OEE application have. This effectively means, that the OLE application can not contain any claims, which do not sufficiently correspond to a claim accepted by OEE.

Depending on the OEE and OLE selected, some other criteria may exist, regarding the time points related to the OLE examination start, filing of the request for Substantive Examination, and publication of the OLE application. [16]

As an example, the first application examined by the OEE contains 20 claims, of which 1-15 were found patentable by the OEE. The claims 16-20 were not accepted. If the second, application examined by the OLE contains 10 claims, which correspond to claims 1-10 of the OEE application, the GPPH request would be most likely accepted, assuming all the other acceptance criteria of the application are fulfilled. However, if the said second application would contain all the claims corresponding to claims 1-20 of the application examined by the OEE, the GPPH request would be rejected, as the claims 15-20 were not accepted by OEE.

As a second example, the first application examined by OEE contains 20 claims, of which all 20 were found patentable by OEE. The second

Virhe. Määritä Aloitus-välilehdessä Heading 1, jota haluat käyttää tähän kirjoitettavaan tekstiin.

application contains the claims 1-12, which correspond to claims 1-12 of the first application examined by the OEE, and new claims 13-16 which have not yet been examined by any OEE. In this case, the GPPH request for the second application would also be rejected, as the application claims 13-16 do not have corresponding claims that were previously found acceptable by any OEE.

4.1.4 IP5 PPH

Initially, the IP5 PPH program was started, as some of the major patent offices choose not to join the global PPH program. The IP5 PPH route is formed between the five largest intellectual property offices in the world: JPO (Japan), CNIPA (China), EPO (Europe), KIPO (South Korea), and USPTO (USA). Through the multilateral IP5 program, three different types of PPH requests are available: the regular PPH, Mottainai PPH, and PCT-PPH. The five participating offices all set their own requirements for the admittance to the PPH program. These criteria concern the PPH request period in relation to the substantive examination start of the application, and the number of opportunities given to the applicant to correct certain specific defects in the PPH application. The PPH request under the IP5 PPH program can be based on a previous 1) PCT work product (WO-ISA or IPER), 2) a national work product of a national application (the work product of a PCT application in a national phase also eligible) or 3) EPO work product. [21] [22]

4.1.5 PCT-PPH

The PCT-Patent Prosecution Highway acceleration program is still in fact, a pilot program. The PCT-PPH comprises a group of bilateral agreements between patent offices and the World Intellectual Property Organization (WIPO). The PCT-PPH enables patent applications to receive accelerated processing upon entering the national phase. The PCT-PPH request can be based on the written opinion of the International Searching Authority (WO/ISA), the written opinion of the International Preliminary Examining Authority (WO/IPEA), or the International Preliminary Examination Report (IPER) issued within the framework of the PCT. The PPH request can be made as soon as the PCT application enters the national phase. A comprehensive list of the national offices where the PCT international phase work products can be utilised when making a PPH-request, can be found in the WIPO website as well as in the PPH Portal. [13] [20]

4.1.6 Pros and cons of PPH

In the best-case scenario, attending a PPH route will simplify the examination of the patent application and shorten the time period until grant. The statistics collected between July and December in 2019 and exhibited at the PPH Portal show, that participation to PPH programs (data only from the national and/or PCT PPH routes is exhibited) increases the first office action allowance and grant rate of the applications. Participation to PPH programs also decreases the average time from PPH request to first office action and to final decision, and the overall number of office actions. This is at least the case for most of the patent offices included in the statistics. Attending the PPH program can also reduce the costs of the granting procedure, as the number of issued office actions tends to decrease. [17]

One of the downsides of the PPH programs, is the lack of harmonization. Despite the efforts, especially with the bilateral PPH agreements between national offices, specific local rules may still apply, which makes it harder for the applicant to weigh the available options when deciding whether or not to apply for the PPH, or which patenting strategy and route to follow. Unharmonized interpretation might exist in consideration of the eligibility criteria of the OEE. Differences between the patent offices also exist in the consideration of the substantive requirements of the claims. Generally, the claims filed under the PPH request to the OLE, should sufficiently correspond to those considered acceptable by the OEE. The interpretation of what is “sufficiently” however can vary from office to office, differences existing for instance when considering the multiple dependencies of the claims or reformulated claims (such as therapeutic use claims). Even though filing a PPH request generally accelerates the total examination procedure of the application, and average number of office actions issued during examination, major differences between the patent offices still exist in these areas. Some offices still perform a comprehensive examination for the application and evaluate the patentability of the application, regardless of the results obtained by the OEE. Hence, the time saved in the total examination of the application may not be significant for the applicant. [23]

5 Patent Cooperation Treaty (PCT)

The Patent Cooperation Treaty (PCT), governed by WIPO provides a unified filing route for patent applications for seeking patent protection in large number of contracting states world-wide. The PCT enables an international application to access the national phase also in several European contracting states and/or the regional phase at the EPO.

5.1 Possibilities for accelerated processing of PCT application

There is no provision under the PCT to enable accelerated processing of a patent application during the international phase. An applicant in a hurry, may nonetheless, take small steps that decrease the chances of delays in the application process.

Filing a PCT application as a first application, rather than filing first a national application and then filing a PCT application within the priority year, increases the chances of receiving the ISR and the written opinion at the earliest possible time point. The ISR and the written opinion are established 9 months from the priority date or 3 months from the receipt of the international application by the ISA (search copy), whichever is the latest ([Rule 42 PCT](#)). Therefore, unless filing the PCT application soon after the first filed national application, the first filing of PCT application will result in a quicker ISR and written opinion for the application. When filing a PCT application, selection of Receiving office (RO) and ISA may have also a small effect on the speed of the processing. By filing the international application with a RO that also acts as an ISA (if only possible), the delays in transferring the application from RO to the ISA can be avoided. Alternatively, the RO may be selected based on the track record of transmitting the search copy to the ISA quickly (the performance indicators of the offices including this data are annually updated by the WIPO). [24] [25]

The international PCT applications enter a national/regional phase generally by the time limit of 30 or 31 months from the date of priority. However, entry time limits may slightly vary depending on the contracting state where the application is entered. After the issuance of the ISR and written opinion, the applicant can make a request to the designated (or elected) Office(s) for early national processing of the application, provided that certain formalities are fulfilled and fees are paid ([Art 22 PCT](#)). In normal circumstances, the IB transmits the written opinion (IPRP Chapter I) to the designated office not before the expiration of 30 months from the priority date ([Rule 44bis.2\(a\) PCT](#)). This time can be preponed by making a request for early national processing under [Art 23\(2\) PCT](#). [25] [26]

Details about the acceleration possibilities of a Euro-PCT application process is reviewed in section [3.3 Euro-PCT](#).

5.2 PCT Direct

PCT Direct is a service offered by the EPO and also by the Finnish and Israel Patent Offices. PCT Direct enables the applicants filing a PCT application claiming priority from an earlier application, to address informally in a written commentary any patentability issues raised in the search opinion established for the priority application by the same office. The requirements for PCT Direct at the EPO are that: (1) the informal commentary is filed together with the international application at a competent receiving Office, and (2) the international application claims priority of an earlier application searched by the EPO. The requirements for PCT Direct at the Finnish Patent Office (PRH) are similar, and the PRH allows the service for applications where WIPO or PRH acts as the Receiving Office, and where PRH acts as the International Searching Authority (ISA/FI).

The aim of the service is to improve the efficiency of the procedure of the PCT application process, but it may as well eventually enable faster grant of a patent. The PCT Direct may improve the chances of a positive ISR being issued on a PCT application that claims priority from an application searched, for example, by the EPO. The positive ISR, on the other hand, can help the application to proceed quicker to grant during the national phase, thereby accelerating the grant process. [27] [28]

5.3 A direct entry of a PCT application to a national phase denied

When planning the country filing program for an application, and if the speed of the processing is of essence, the applicant must keep in mind that the national law of several EPC contracting states prevents the direct entry of a PCT application to a national phase in these countries. Instead, only European patent can be obtained in these countries, and hence, obtaining patent protection in these countries may take longer through a PCT route. The countries where national patent protection for a PCT application can only be obtained through an EP application route were in January 2020: Belgium, Cyprus, France, Greece, Ireland, Italy, Latvia, Lithuania, Monaco, Malta, Netherlands, San Marino and Slovenia. [12] (As of 1st of July 2020, a national application in Italy can be accessed through a PCT application. [29]).

6 Accelerated processing of National Patent Applications in Europe

6.1 General

Each European country has its own national patent office, enabling a grant of national patents, offering patent protection within their national territory. The national patent law in each European country dictates the terms for the grant of patents in each respective country. The substantive patent law across national laws in between European countries, including the countries of the European Union (EU) has been *de facto* harmonized to a certain extent. This means the harmonization of the patent laws between the European states exist in practice, even though not necessarily officially recognized by the national laws. The harmonization was brought forward significantly by the Paris Convention agreement for the Protection of Industrial Property in 1883, signature of the Strasbourg Patent Convention (The Convention on the Unification of Certain Points of Substantive Law on Patents for Invention) in 1963, the signature of the European Patent Convention (EPC) in 1973, and by the TRIPs Agreement (the Agreement on Trade-Related Aspects of Intellectual Property Rights) entry into force in 1995.

Depending on the country, the national patent applications are either substantively examined or granted based on registration upon a registration system. The Offices that use the registration system, either perform the search for the application as a standard procedure, perform an optional search, or do not search the applications at all. Some of the European national patent offices use the EPO for performing the search of the applications and therefore, the applicant can trust the quality of the search is on a high level. The examination takes either place automatically, or needs to be separately requested, in offices performing the examination. The grant of the national patents in countries where the grant is based on a registration system can be quicker (although not necessarily) than in countries where substantive examination is performed,

when compared, for example, with the EP application or the PCT application process. [30]

However, due to the less harmonized national procedural law/ patent practice within Europe, for some national patent applications several possibilities to accelerate the process may exist in parallel, whereas for some others, no available acceleration routes are offered. The following presents the possibilities to expedite the national patent application process in a few selected European countries. The examples given hopefully bring forth the disparity in the acceleration possibilities offered to the applicant, and indicate that effort must be made, when clarifying the available possibilities for acceleration.

6.2 Germany

The average national patenting procedure takes 30-36 months in Germany. However, this time frame only applies, if the examination request has been filed within four months from filing (in Germany the examination must be requested separately), the fees have been paid in time and all actions are taken without time limit extensions. German Patent Office (DPMA) offers several alternative routes for patent prosecution acceleration, thereby enabling the procedural time needed up to final decision to be shortened. [31]

6.2.1 Patent Prosecution Highway (PPH)

The DPMA currently participates in several PPH agreements including Global PPH program, Mottainai PPH, and PCT-PPH, through which an accelerated national patent grant in Germany is possible. As the participating offices have uniform requirements for the GPPH requests and common guidelines for their processing, the conditions for the Global PPH request acceptance at the DPMA are the same as for any other application entering the [GPPH program](#). While it is not necessary that all claims in the application examined by OEE received acceptance (although at least one claim must), each of the claims of the German application need to correspond to at least one claim that has been accepted by the OEE, in order to qualify for accelerated examination within the PPH program. [14] [16] [32]

The acceleration based on GPPH/ PCT-PPH can be requested after the application date/ date of entry into the national phase in case of PCT, as long

as DPMA has not begun with the examination of the application. That is, a PPH request can be made until the first written opinion / search report has been issued by the DPMA. Further, the application for which the PPH request is made, may be corrected until the issuance of the first written opinion. [16] [33]

The first office action allowance rate of all the German national patent applications participating in PPH route was in 2019 10.7 %, whereas the average pendency from the PPH request until the final decision for the application was 26.1 months and the overall grant rate of the German national applications participating in PPH route was 88.2 %. In the light of these numbers, the PPH route would appear to be a useful route for accelerating the patent application processing in Germany. [17].

6.2.2 Informal personal interview with the Examiner

The DPMA also offers the applicant a possibility to accelerate the patent application procedure in an informal personal interview with the examiner in charge. Usually, this means the representative of the applicant (patent attorney) contacts the examiner personally or via phone, to discuss any outstanding objections to the pending patent claims. These discussions help the applicant to understand the examiner's position and the scope of claims that could be considered acceptable. This acceleration possibility may be used instead of filing a PPH request, even though the requirements set by the examiner to the pending patent claims may be the same. The expedited processing of the application can be requested from the examiner based on earlier acceptance of the claims by the OEE. Alternatively, the examiner may be contacted directly after receiving the first substantive office action for the application, to discuss the standing issues and the possibilities to amend the pending claims. The examiners do generally accept the invitations to discuss the applications in an informal meeting and it seems to be a common route to speed up the application process. However, as these meetings neither follow a specific protocol nor are they part of a program, the outcome can potentially be more unpredictable. [14] [34]

6.2.3 Request for accelerated search and examination

Prosecution of individual process steps, such as search and examination, can be accelerated on request at the DPMA. However, for the acceleration request

of these steps to be accepted, the applicant must indicate good reasoning as to why the prosecution should be accelerated. Acceptable reasoning may be the urgency of the applicant to get the patent granted in cases where, for example, ongoing license- or sales negotiations depend upon it. Also, this service is available against a fee. [14] [34]

6.2.4 Utility model in Germany

In some European countries, Germany included, it is possible to obtain protection more quickly by filing a utility model application. In Germany both, a utility model and a patent application, can be filed in parallel. The utility model application must meet many of the same criteria set for a patent application (industrial applicability, novelty and inventive step), but it is registered without the time consuming substantive examination and it can provide protection only for product claims, for the maximum duration of ten years. Utility model protection may therefore be obtained quickly within 2-3 months from filing, which is considerably faster compared with the average 30-36 months processing time of the German patent application. The utility model application can also be divided from a pending European or German patent application, even up to a few months after grant or barring disclosure from the patent office. Also, a six month grace period from the disclosure of the invention (§3(1) of German Utility Act) is allowed. [35]

6.3 Austria

The average national patenting procedure takes ~2 years in Austria. The Austrian Patent Office (APO) also, has several routes to expedite the national patent prosecution. [36]

6.3.1 Patent Prosecution Highway (PPH)

The APO participates in the Global PPH program (Mottainai PPH, PCT-PPH) and several individual bilateral PPH agreements. The requirements for the PPH program access set by the APO are: at least one claim in the application was determined patentable by the OEE; each claim in the Austrian application needs to correspond to at least one claim that has been examined by OEE, and at the time of the PPH request the OLE has not yet begun the substantive examination/ issue a final decision yet. The current list of APOs PPH-partner patent offices can be checked from the APOs website, as well as from the

PPH Portal, along with the specific requirements and necessary documents required for the PPH program. [37] [13]

6.3.2 Patent Fast-track

The APO also offers a patent fast-track pilot program for expedition the national Austrian patent application process. The access to the fat track program requires stating a reason to justify treatment under the fast-track program. For instance, ongoing license negotiations or an early search report for foreign filings could be considered as acceptable grounds for the access. Additionally, any relevant prior art should be cited and a description of the state of the art should be provided. The request is free of charge. [38]

6.3.3 Informal personal interview with the Examiner

Similarly, to GPTO, the APO currently offers applicants the possibility to apply for the expedited patent application procedure through an informal personal interview with the examiner in charge. The requirements set by the examiner to the pending patent claims may be similar as to a PPH program attendance in general and the acceleration can be requested based on the earlier acceptance of the claims by the OEE. The invitations to discuss the applications in an informal meeting are generally accepted by the Examiner. However, as the interview is not part of an official program, the requirements may vary slightly depending on the case and the Examiner in charge.

6.4 France

It takes on average 30-40 months until the final decision of the national patenting procedure in France. The French Patent Office (INPI) offers only a national acceleration program to expedite the national patent prosecution. In France, no PPH agreements are applicable. [14] [13] [39]

6.4.1 Accelerated Examination of a French National Patent Application

In France it is possible to request an accelerated examination and grant of a patent application if the patent application fully complies with all requirements of the French patent law. The regular application process route takes approximately 30-40 months until the grant of a national patent. With the accelerated processing, a French national patent application may receive the final decision within 20 months from the filing date, if all the requirements

Virhe. Määritä Aloitus-välilehdessä Heading 1, jota haluat käyttää tähän kirjoitettavaan tekstiin.

set for the application are met. In case the French Patent office (INPI) raises objections in the preliminary search report, or if any third-party objections are filed, most likely the accelerated time goal aiming at the final decision in 20 months does not apply. The accelerated processing route is available for French national application filed under priority and for first filed French national applications.

The request for the accelerated processing must be filed electronically within 10 months from the filing date of the patent application. An additional requirement for the accelerated patenting process in France is to request an early publication of the patent application (unless the publication has occurred already). Moreover, the accelerated processing route availability is limited only for applications claiming priority with a previous search report from the OEE citing no relevant prior art. The form of the application and the claims must indeed allow a rapid examination. This means the claims must be clear, and the applicant must respond to office action promptly. Any amendments to the claims after filing the acceleration request, even removing some of the claims, or requesting an extension of time to respond to a communication risk the acceleration request to be rejected, or the application to drop out from the accelerated route. Taken together, the criteria set for the acceleration route are rather strict. [40] [39]

6.5 UK

In the United Kingdom, it is possible to accelerate the application process of a national patent application through three possible routes. The prosecution of a national patent application in the UK takes on average 30 months, or even longer with specific technological areas. Through the available acceleration routes, the applicant can obtain a patent considerably faster. [41]

6.5.1 Green Channel

The Green Channel was introduced in 2009 for inventions with environmental benefit, to promote and benefit green technologies, by accelerating the prosecution procedure of applications with environmental focus. The Green Channel aims to make these technologies available on the market quickly. Applications in the Green Channel route are processed like all other UK patent applications, except at a faster pace. A patent application accepted to the Green Channel route may receive a search report within two

months and be granted within nine months from the application filing date according to UKIPO.

The request for the Green Channel can be filed at any stage during the prosecution, and the applicant may select the specific actions, which should be accelerated, i.e. search, examination, and/or publication. The admission to the program is free of charge. The applicant must, however, indicate in which way the invention is “green” or “environmentally-friendly”, and the environmental benefit may arise in any area of technology. [42] [43]

6.5.2 PCT(UK) Fast-track

The international PCT applications can enter a national phase in the UK through an accelerated processing route since 2010. The acceleration of the application processing is however available only, if the claims have been found to be acceptable in the Written Opinion of the ISA, or in the IPRP, irrespective of which International Authority issued the opinion. The claims of the UK national application must also correspond sufficiently to one or more claims indicated as acceptable in the WO/ISA or IPRP. The request needs to be submitted to UKIPO prior to the start of the examination. The UKIPO conducts a full examination to the applications in the national phase and an examination report is issued within 2 months from the submission of the acceleration request. [44]

6.5.3 Patent Prosecution Highway (PPH)

Using a PPH route for expediting the patenting process is also possible in the UK if a positive opinion of the claims has already been received at another intellectual property office. The UK is currently participating in GPPH, Mottainai PPH and PCT-PPH programs. The request for examination must be made at the UKIPO latest at the time of the PPH request, and the PPH request must be made at the latest when UKIPO has started the examination of the application. The application for which the PPH is requested, may be corrected for deficiencies unlimited times. [14] [2] [45]

The first office action allowance rate of all the UK national patent applications participating in PPH route in 2019 was 9 %, whereas the average pendency from the PPH request until the final decision for the application was only 8.67 months and the overall grant rate of the UK national

applications participating in PPH route was 95 %. Hence, if the PPH route is available for the application, it is well worth exploring, as it can make the patenting process in the UK considerably faster. [17]

6.5.4 Other Acceleration services

The UKIPO provides the applicant with three options to accelerate the application processing without applying to a specific application acceleration program. There are no additional acceleration fees included in any of these three options: 1) combined search and examination; 2) accelerated search and/or examination and 3) accelerated publication.

No access requirements are to be fulfilled for the combined search and examination service and it allows the applicant to receive the combined report within 6 months of requesting combined search and examination. This can speed up the application process considerably, as the search request in the UK is not due until 12 months from the filing date or priority date of the application, and the examination request is not due until six months from the publication of the application. As the application is made public after 18 months, the last time point examination request is possible, is two years from the priority date of the application. [43]

A request for an accelerated search and/or examination at UKIPO is also possible but requires the applicant to provide reasoning why the application process should be accelerated. Acceptable reasoning is estimated case by case, but reasons, such as a need to stop a potential infringer or need to secure an investor, are viewed positively. If the request is accepted, the UKIPO aims to issue a report within 2 months from the request. [43]

Applying for an early publication of the patent application is also possible. In the UK, a patent can first be granted 3 months after the application has been made public, and therefore a preponed publication allows a quicker grant of a patent. [43]

It is also worth noticing, in case patent protection in the UK is sought through a national validation of an EP-patent, that the exit of the UK from the European Union (Brexit) has no impact on the EPO membership of the UK, and hence on the validation procedure in the UK. The acceleration possibilities of an EP application apply also to applications eventually validated in the UK. [46]

6.6 Italy

In Italy, the national first filing patent applications undergo both formal and substantive examination and the search is conducted by the EPO. The Italian first filing applications are granted usually after about 3 years from the filing date. Officially no acceleration programs exist for national patent applications. However, on request, the Italian PTO (IPTO) may agree for an accelerated examination and/or grant of a patent, especially in occasions where court actions are based on the patent application concerned. [14] [47]

Italian national patent applications claiming foreign priority are not subjected to any examination and are granted under a registration system. For the national patent applications claiming foreign priority, no possibilities to accelerate the process exist.

Concerning PCT applications, as of the 1st of July 2020 it has been possible to access a national phase in Italy directly through a PCT application route, and the EP application in between is no longer required. This means, protection via PCT route may be obtained in Italy somewhat faster now. [29]

No PPH agreements are currently applicable in Italy. [14]

7 Afterword

How exactly to select the proper route leading to the optimally accelerated grant of the patent depends, of course, mostly on the specific application and the availability of the options. If expedited grant of a patent is of essence to the applicant, figuring out whether the patent offices of the selected countries have existing acceleration programs in force, and what is required from the application to be accepted to the programs, needs to be thoroughly investigated.

In case several fast-track options exist simultaneously for the applicant, the comparison between the different routes and time ultimately saved, may be challenging. Even though many of the fast-track programs available in Europe do lead to final decision in a considerably shorter time as the “normal” application process would, it is not guaranteed to be the case. The time frames announced on the national Patent office websites in context of the acceleration programs are often announced as average or mean durations, or even as target time frames for the processing. Also, various actions from the applicants’ part can delay the application process and result in rejection of the acceleration request or push the application off the fast-track (by which time, applying to another fast-track program may be too late). Therefore, the applicant cannot know beforehand how effective the acceleration programs are eventually in practice.

Different patenting strategies are utilized by different applicants. The expedited grant of a patent may be of importance for example to applicants from small companies or start-ups, who are currently raising capital and trying to convince the investors. However, a fast grant can be of interest to all applicants, regardless of the product field or company size. The applicant might, for example, want to pursue after a selected group of national patents within Europe, instead of an EP-patent through the European Patent Office, as it may eventually be cheaper to file the application to a rather limited

number of European national offices, than to EPO, as the EPO is known to have relatively high fees.

In case the applicant is in the position to choose a fast track between, for example, EPOs PACE program and PPH program, the PACE program has the benefit that it is granted without any conditions, unlike the PPH. For the PPH request to be accepted, the claims of the EP application must correspond to the allowable claims of an earlier application. Therefore, if no earlier application is available, or the earlier application has not received an allowance, other available acceleration resources must be investigated. The PPH programs are also known to be arduous, and inflexible in terms of claims that may be presented for examination, at least when compared with the PACE program. Furthermore, the PPH request is visible in the public file of the application, which is not the case for the PACE request. Therefore, there are advantages to using PACE rather than PPH program. [48]

On the other hand, when considering any application claiming priority (not only an EP application), if the intention of the applicant is to file exactly the same claims as in an earlier application which has already received an allowance, and the main aim is to seek an accelerated processing of the application, filing a PPH request can be effective, if the suitable PPH agreements are in place. The PPH programs can in right circumstances significantly accelerate the examination and are relatively inexpensive. However, the effectiveness largely depends on the specific patent offices acting as an OEE and an OLE. As mentioned earlier, the patent offices do not necessarily rely on the examination done by the OEE, and instead make the examination themselves regardless of the results obtained by the OEE. If some of the claims accepted by the OEE need to be reformulated, for example to comply better with the local practice, or even significantly reformulated in order to obtain broader scope for the claims, it can be wiser to use another acceleration procedure instead of PPH, as it may otherwise be very hard to convince the examiner the claims “sufficiently correspond” to the allowed claims.

The national patent offices in Europe operate either a registration system of patents, wherein no examination is taking place, or an examination is part of the application process. Some national offices within Europe perform an examination only to the first filed applications, whereas the applications

claiming priority are granted based on registration, which makes a difference when considering the estimated time up to the final decision of the process. Furthermore, in some of the national offices, the examination needs to be separately requested, from the national office. Hence, an early request for examination, could further shorten the time needed for the processing in some of the jurisdictions. In countries, where only a registration system is at place, the grant of a patent can be quick, and no need for a specific acceleration program is essentially required. An overview of such countries can be found at www.epo.org/applying/national.

Concerning national acceleration programs, sometimes it is only possible to access some of them with a national first filed application (e.g. in Sweden). Alternatively, the national fast-track programs may be limited to applications, wherein the applicant is able to provide satisfactory grounds of why the application should be allowed to enter the fast-track, or the program is only available to applications concerning “green technologies”, which means only a rather restricted amount of applications is able to take advantage of these programs. Moreover, in certain European countries, no official acceleration programs for national patent application process exists (e.g. Belgium and Italy). [14]

Another important aspect to keep in mind, is that accessing a national application phase in some countries is not possible when the parent application is a PCT application (see further information in the section [PCT](#)). In case a PCT application entry into a national phase is sought in such countries the only possibility is through an EP application, which is of importance if the patenting strategy is planned with emphasis on the fast grant. Furthermore, it should be noted that even if no specific acceleration program exists for a patent application in a specific European country, other means to accelerate the prosecution might be available for a request. For instance, certain individual process steps might be either combinable, or available for acceleration (e.g., search or examination, publication). Finally, acceleration requests are accepted by some national offices in form of informal interviews, which offers a convenient opportunity to discuss personally with the examiner, and which may be helpful in advancing the application procedure quicker.

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