



## Notice from the European Patent Office dated 5 April 2011 concerning updated Form 1200 (entry into the European phase) and the possibility to waive the right to the communication under Rules 161(1) or (2) and 162 EPC

### URL

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The form for entry into the European phase (EPA/EPO/OEB 1200) has been updated in view of amended Rules 161 and 162 EPC that entered into force on 1 May 2011.<sup>1</sup> The revised form and notes to Form 1200 (version 05.11) will be available on the EPO's [website](#) as of that date.<sup>2</sup>

The change to the 01.11 version is the introduction of section 6.4, in which the applicant can explicitly waive his or her right to the communication pursuant to Rules 161(1) or (2) and 162 EPC.<sup>3</sup>

The EPO will not issue a communication under Rules 161(1) or (2) and 162 EPC only if, in addition to the "waiver", on entry into the European phase the applicant has also fulfilled all the requirements of Rules 161 and 162 EPC (i.e. payment of any claims fees due and, where required, submission of a response under Rule 161(1) EPC) for the application to proceed directly to the supplementary European search or to examination. To accelerate the processing of the application further, the applicant can request accelerated search or examination under the PACE programme.<sup>4</sup>

Where the right to the communication under Rules 161(1) or (2) and 162 EPC has not been validly waived, the communication will be issued and the application will be processed only after expiry of the six-month period provided for under those rules, even if a request under the PACE programme has been filed.

Users of the automatic debiting procedure should bear in mind that, under the automatic debiting procedure, claims fees payable under Rule 162(1) or (2) EPC are considered to have been received on the last day of the six-month period under Rule 162(2) EPC, unless the EPO is instructed otherwise before expiry of the period for payment (see point 6.1(d) of Annex A.1 to the Arrangements for deposit accounts (ADA) in the supplement to OJ EPO 3/2009). Account holders participating in the automatic debiting procedure and waiving their right to the communication under Rules 161(1) or (2) and 162 EPC should therefore pay any claims fees due on entry into the European phase by another permitted means of payment (see point 12 of Annex A.1 to ADA and page 34 of Annex A.2 to ADA in the supplement to OJ EPO 3/2009).

1. Decision of the Administrative Council of 26 October 2010 amending the Implementing Regulations to the European Patent Convention (CA/D 12/10, [OJ EPO 2010, 634](#)).
2. Copies of the previous version of the form for entry into European phase can however be used up without legal prejudice to the applicant.
3. This waiver could also be expressly declared to the EPO in the form of a separate, signed statement. The use of EPO Form 1200, although recommended, is not obligatory.
4. See notice from the European Patent Office dated 4 May 2010 concerning the programme for accelerated prosecution of European patent applications - "PACE", [OJ EPO 2010, 352](#) (356).

Last updated: 29.4.2011