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### PCT 経由ヨーロッパ出願の追加サーチ復活について

拝啓 時下ますますご清栄のこととお慶び申し上げます。

さて、分割出願の期間制限の廃止に続き、ヨーロッパ特許庁（EPO）のウェブサイトに、PCT 経由ヨーロッパ出願の追加サーチを復活させる規則改正に関する決定が公表されました。

EPO では、2007 年改正以降、PCT 経由のヨーロッパ出願について、EPO 移行後のサーチ段階で発明に単一性がないと判断された場合、規則 164 条に基づき、最初の請求項に記載の発明又は該発明と関連性のある発明群についてのサーチ結果のみを記載する「supplementary European search report」が作成され、他の発明についてのサーチは分割出願をしなければ行われない、という制度が採用されておりました。

今般の決定により規則 164 条が改正され、2007 年改正前とほぼ同様の制度が復活します。出願人は、単一性欠如による部分サーチレポート（partial supplementary European search report）が発行された場合、2ヶ月以内に追加費用を払うことによって、出願を分割することなく他の発明についてもサーチ結果を得ることが可能になります。

改正規則の施行日は 2014 年 11 月 1 日です。なお、EPO が PCT 段階の国際調査機関（ISA）でない場合、改正規則は 2014 年 11 月 1 日以降に「supplementary European search report」が作成される出願に適用されます。

また、EPO が PCT 段階の国際調査機関（ISA）である場合に、国際段階で EPO に対し追加の国際調査費用を納付しなかった場合でも、2014 年 11 月 1 日時点で EPO から審査通知を受けていなければ、ヨーロッパ移行後のサーチ段階で追加サーチを請求することができます。

ご質問等がございましたら弊所までご連絡ください。

敬具

添付：EPO2013 年 10 月 24 日付公表の決定(CA/D 17/13)



## Decision of the Administrative Council of 16 October 2013 amending Rule 135 and 164 of the Implementing Regulations to the European Patent Convention (CA/D 17/13)

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### URL

<http://www.epo.org/law-practice/legal-texts/official-journal/ac-decisions/archive/20131014b.html>

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[Archive](#)    24 October 2013 (b)

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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) thereof,

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

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 164 shall read as follows:

"Rule 164

Unity of invention and further searches

(1) If the European Patent Office considers that the application documents which are to serve as the basis for the supplementary European search do not comply with the requirement of unity of invention, it shall:

(a) draw up a partial supplementary search report on those parts of the application which relate to the invention, or the group of inventions within the meaning of Article 82, first mentioned in the claims;

(b) inform the applicant that, for the supplementary European search report to cover the other inventions, a further search fee must be paid, in respect of each invention involved, within a period of two months; and

(c) draw up the supplementary European search report for the parts of the application relating to inventions in respect of which search fees have been paid.

(2) If the supplementary European search report is dispensed with and the Examining Division considers that in the application documents which are to serve as the basis for examination an invention, or a group of inventions within the meaning of Article 82, is claimed which was not

searched by the European Patent Office in its capacity as International Searching Authority or Authority specified for supplementary international search, the Examining Division shall:

(a) inform the applicant that a search will be performed in respect of any such invention for which a search fee is paid within a period of two months;

(b) issue the results of any search performed in accordance with paragraph (a) together with:

- a communication under Article 94, paragraph 3, and Rule 71, paragraphs 1 and 2, in which it shall give the applicant the opportunity to comment on these results and to amend the description, claims and drawings, or

- a communication under Rule 71, paragraph 3,

and

(c) where appropriate, in the communication issued under paragraph (b), invite the applicant to limit the application to one invention, or group of inventions within the meaning of Article 82, for which a search report was drawn up by the European Patent Office in its capacity either as International Searching Authority or as Authority specified for supplementary international search, or for which a search was performed in accordance with the procedure under paragraph (a).

(3) In the procedure under paragraph 2(a), Rules 62a and 63 shall apply *mutatis mutandis*.

(4) Rule 62 and Rule 70, paragraph 2, shall not apply to the results of any search performed in accordance with paragraph 2.

(5) Any fee paid under paragraphs 1 or 2 shall be refunded if the applicant requests a refund and the Examining Division finds that the communication under paragraphs 1(b) or 2(a) was not justified."

2. 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, 58, 59, 62a, 63, 64, Rule 112, paragraph 2, and Rule 164, paragraphs 1 and 2."

## Article 2

Rules 164 and 135 EPC as amended by Article 1 of this decision shall enter into force on 1 November 2014.

## Article 3

(1) Rule 164(1) EPC as amended by Article 1 of this decision shall apply to any application for which the supplementary European search report under Article 153(7) EPC has not been drawn up at the date of its entry into force.

(2) Rule 164(2) EPC as amended by Article 1 of this decision shall apply to any application for which the first communication under Article 94(3) EPC and Rule 71(1) and (2) EPC or, as the case may be, Rule 71(3) EPC has not been drawn up at the date of its entry into force.

Done at Munich, 16 October 2013

For the Administrative Council  
The Chairman

*Jesper KONGSTAD*