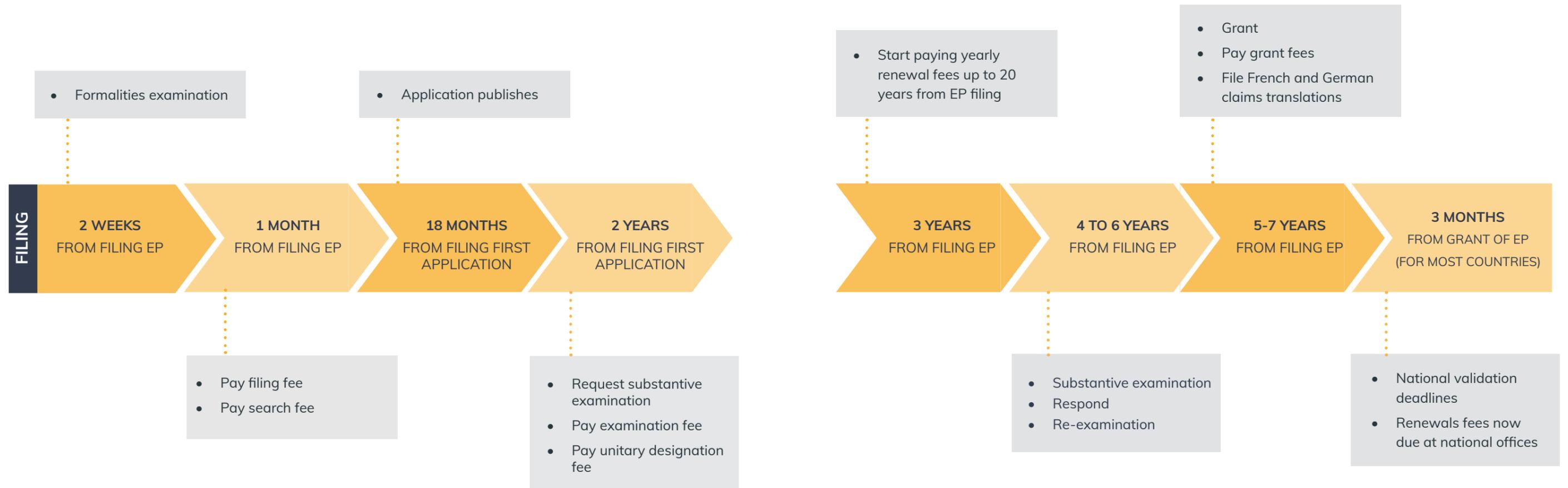




EUROPEAN PATENT BASICS

European Patent Application

Understandably, we receive a lot of questions about how long it takes to get a patent in Europe and when certain formalities are due. Below we discuss the process and outline a general timeline for a European patent application. If the timeline seems a bit long, there are some mechanisms which can be used to speed up prosecution – please don't hesitate to contact us for further information.



A European application is a bundle of national patent applications (including the UK) centrally prosecuted at the European Patent Office. A list of contracting national states can be found here and are different (and independent) from the member states of the European Union.

After filing, the main stages of patent prosecution are search, publication, substantive examination, and grant. The time it takes for a patent application to grant is mostly dependant on how long it takes for the European Patent Office, 'EPO', to examine your application and how many rounds of correspondence it takes for your application to reach an allowable state.

In brief, search of a European application needs to be requested on filing your application and is where a patent examiner searches for worldwide public disclosures to determine whether your invention is new and inventive. The search results are communicated to you in a search report. The search report is usually provided to you before your application publishes and can be useful to decide if you want to continue with an application.

Publication happens around 18 months from filing your application and publication is when

the world is informed of the content of your application, and therefore how your invention works. As a European patent application is not usually the first filed application, your invention will probably already be in the public domain, but if it is the first filing and you don't want the world to know about your invention, let your chosen attorney know at least a couple of months before the publication date so they can withdraw your application and stop the application process altogether.

By 6 months after publication (around 2 years from filing the application), substantive examination needs to be requested if not done so at filing. Substantive examination is the bulk of patent prosecution and is where the patent examiner decides if your application meets the requirements of the European Patent Convention. This involves determining if your invention is novel and inventive, as well as addressing any other objections such as whether your claims are clear or if you have sufficiently disclosed your invention in your application, or if during amendments to the claims, for example, you added subject-matter since filing your application. Usually, there are at least a couple of rounds of correspondence sent

between your attorney and the EPO to negotiate the best allowable scope of protection for your invention.

For a European patent application, renewal fees are due from the third anniversary of filing an application which means you start paying renewal fees before your application is granted. While these renewal fees are payable to the EPO while the application is pending, once granted and after validation of your European patent, renewal fees must be paid to each national patent office where you validated the patent. These renewals fees will be due yearly in each office until the patent expires.

Once granted, a European patent must be validated in each individual EPO contracting state (for example the UK, France, and/or Germany) to be enforceable in those states. In general, the validation process must be completed within 3 months of the grant of a European patent. In dependence on the validation states selected, the process for each state may involve anything between appointing an address for service and filing a translation of the European patent at the relevant national

local patent offices. Once a European patent has been granted, any infringement action must be litigated in the relevant contracting state.

It is also important to note that European patents are susceptible to opposition during the nine months immediately after grant, and if your granted European patent is opposed, you will become party to so-called 'opposition proceedings' which take place before the EPO. Your chosen attorney can give you more information about this and will be able to assist you if you find yourself with an opposed European patent. It is, of course possible for you to oppose a granted European patent belonging to a third party, and your chosen attorney can also assist you with this.

Remember, choosing your route for a patent application will depend on:

- Your invention.
- Your business plans.
- Your available funds.
- Your intended market; and
- The likeliest sources of infringing products.

**If you want to know more, please don't hesitate to contact us.
We will be happy to advise you.**

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