

Amendments of Implementing Regulations to the EPC as of April 1st, 2010

Filing divisional applications

Until now a divisional application could be filed at any time as long as the earlier application was still pending, i.e. was not rejected, withdrawn or granted. Amended Rule 36(1) introduces a new time limit for filing a divisional application, but it remains required that the earlier application is still pending.

A so called “voluntary divisional application” can be filed within a time limit of **24 months** starting from receipt of the first examination report to the earliest application. If a divisional application of a divisional application is filed, the 24 months period starts with the first examination report for the grandparent application and not of the previous divisional application. Notification of the European Search Report containing the search opinion does not cause this 24 months period to start because the examining division is not yet responsible for the application.

A so called “mandatory divisional application” has to be filed within a time limit of **24 months** starting from any communication raising a non-unity objection according to Art. 82 EPC for the first time.

Second- and subsequent generation divisional applications

For the filing of divisional applications based on an earlier application which is itself also a divisional application, the event which starts the 24 months period for voluntary division is the first examination report in respect of the *earliest* parent application for which a communication has been issued. The period for a mandatory division of an application which is itself a divisional application is calculated from the first communication of the examining division raising a specific objection of lack of unity for the first time in respect of the immediate parent application.

Transitional provisions

Concerning European applications, whose time limits have expired before April 1, 2010 or will be expired before October 1, 2010 a transitional period is provided until October 1, 2010, so that the time limits will not expire before this date. For the convenience of our clients we will prepare a list of pending European applications which might be divided before October 1, 2010.

Disclaimer

This information letter contains general information about the amendments of Implementing Regulations to the EPC which could be of interest to our clients and foreign firms and their clients. This is not a legal advice. Additionally, the actual implementation of the amendments by the EPO has not been fully clarified as yet. Therefore, we cannot provide and take over any warranty and liability for the provided information and for the consequences following any action made due to the information provided in these letters.

Please do not hesitate to contact us for further information and also a legal advice or expert opinion which might be charged according to our regular schedule of fees.