

## Countdown to April 2010 and the EPC Rule Changes

In our European Patent Team Newsletter of May 2009 we introduced the European Patent Convention (EPC) rule changes that come into force on 1 April 2010. A major change is that divisional applications must be filed within a 2-year time limit calculated from the first report from the European Patent Office (EPO) Examining Division (or, when the divisional application(s) answer(s) a non-unity objection from the EPO Examining Division, from raising the objection).

The new rules apply to all pending applications. The earliest time limit for filing the divisional application(s) on those applications is **1 October 2010**. In the next few months, we will confirm the actual deadline on each pending application for which we have responsibility.

If you have a choice of International Searching Authority (ISA) in PCT applications, there can be an advantage in not using the EPO as the ISA. In that case, the EPO must perform its own search ("supplementary search") after the EP regional phase has been entered. This will delay the issuance of the first report from the EPO Examining Division, and therefore delay the time limit for filing any divisional application(s).

- <http://www.haseltinelake.com/admin/publications/europeanpatentnewslettermay08/DownloadPDF>
- <http://www.epo.org/patents/law/legal-texts/journal/informationEPO/archive/20091015.html>
- <http://www.epo.org/patents/law/legal-texts/InformationEPO/archiveinfo/20090820.html>

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## Consolidated SPC Regulation Published

The EU provisions for Supplementary Protection Certificates (SPCs) for medicinal products have been consolidated into the new EC Regulation 469/2009.

- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:152:0001:0010:EN:PDF>

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## More European Parameter Cases

European patents and applications continue to be revoked or refused by the EPO Boards of Appeal through the use of unclear or insufficiently defined parameters in the claims.

In **T187/07**, the parameter catalyst pore size was held to be unclear because the patent did not say which measurement method to use and two possible methods (absorption of mercury or nitrogen) produced different results. The application was refused.

In **T333/07**, the parameter of "progressively increasing density" between the faces of a fibrous sheet was held to be insufficiently described when the patent taught only a destructive photographic test method, not usable by someone seeking to make the products for subsequent use. The patent was revoked.

In **T55/07**, a test method for fluid absorbency of an absorbent product was only appropriate for absorption of 300-400ml and the patent failed to teach clearly how to adjust the test protocol for other situations. The patent was revoked.

However, in case **T608/07**, the Board held that the polymer parameter "molecular weight" would normally be taken as "weight average molecular weight", and was therefore clear. The patent survived the insufficiency attack but was revoked on other grounds.

- <http://legal.european-patent-office.org/dg3/pdf/t070187eu1.pdf>; <http://legal.european-patent-office.org/dg3/pdf/t070333eu1.pdf>
- <http://legal.european-patent-office.org/dg3/pdf/t070055eu1.pdf>; <http://legal.european-patent-office.org/dg3/pdf/t070608eu1.pdf>

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## ECJ Case C-482/07 Decided

To update the announcement from the January 2008 issue of this Newsletter, we report that the decision of the European Court of Justice in Case C-482/07 has been published.

The Court held that Article 3(c) of Regulation 1768/92 (corresponding to Article 3(c) of Regulation 469/2009) does not prevent the grant of an SPC to the holder of a basic patent for a medicinal product for which, at the time the SPC application is filed, one or more SPCs have already been granted to other patentee(s) on the same product authorisation.

→ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:256:0003:0004:EN:PDF>

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## Investigations Follow EU Commission's Report into the European Pharmaceutical Industry

The outcome of a major sector inquiry by the European Commission into the pharmaceutical industry in Europe was published in July 2009. It contains a detailed analysis of IP and other protective practices in the industry, and indicated that investigations into possible breaches of European competition law would follow.

The patenting practices of drug invention companies have generally been found to be not anti-competitive, but investigations have been commenced by the Commission into certain activities of generic drug companies.

→ <http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/index.html>

→ [http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff\\_working\\_paper\\_part1.pdf](http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff_working_paper_part1.pdf)

→ [http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff\\_working\\_paper\\_part2.pdf](http://ec.europa.eu/competition/sectors/pharmaceuticals/inquiry/staff_working_paper_part2.pdf)

→ [http://www.pharmiweb.com/pressreleases/pressrel.asp?ROW\\_ID=8179](http://www.pharmiweb.com/pressreleases/pressrel.asp?ROW_ID=8179)

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## Judicial Committee of the House of Lords becomes the UK Supreme Court

The UK's new Supreme Court opened in October 2009, taking over the work formerly of the Judicial Committee of the House of Lords, the upper House of Parliament.

The Supreme Court is the final court of appeal in all UK civil litigation, as well as in criminal cases from England, Wales and Northern Ireland. The hearing of cases is at the Supreme Court's discretion and only cases involving important points of law or public interest are likely to be taken.

→ <http://www.supremecourt.gov.uk/index.html>

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