

Correcting minor errors at the EPO

Notice of Allowance/communication under Rule 71(3) EPC - Change in Procedure

It is now necessary to balance the desire to correct minor errors in a communication under Rule 71(3) EPC against the delay correcting them will cause and the remote chance that it could reopen the prosecution procedure.

Background

The final stage of prosecution of a patent application at the European Patent Office (EPO) is for the EPO to propose the applicant the text in the form that they intend to grant the patent. It is a last chance to check that an unfortunate error has not crept into claim 1 – or anywhere in the application. The applicant can either approve the text for grant or disapprove it and replace it with an amended text.

If the text proposed for grant is disapproved, and the EPO is willing to allow that text, if there are issues / EPC.

If the EPO is not in agreement with the proposed changes, the application will be remitted for further examination.

Docketing a second rule 71(3) communication, reviewing it to see what else might have changed and whether the EPO has introduced any errors, and reporting it, are all extra work on a new office action. It will also delay grant by a couple of months at least (more if you want it to – see later).

Delay can be good...

The other side of the coin is that sometimes delay can be good. Delaying the decision on the countries in which to validate and delaying the associated cost for another 4–6 months (or longer if you want to delay as a tactic) can be especially useful to a client in some situations. The validation step is post-grant, and can be one of the more expensive steps, depending on the number of countries chosen. Therefore, delaying grant delays the validation costs and decisions.

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Conclusion

You should still check the text offered for grant in a Rule 71(3) EPC communication carefully. It is a last safety check. But there might be times when you decide a minor imperfection is worth accepting compared to the consequences of changing anything at that stage.

What next?

If you would like more information, then please get in touch. You can email us info@barkerbrettell.co.uk or call us on **+44 (0)121 456 0000**.

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