



Institut der beim Europäischen Patentamt zugelassenen Vertreter  
Institute of Professional Representatives before the European Patent Office  
Institut des mandataires agréés près l'Office européen des brevets

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**Position paper of epi concerning the national/regional phase entry using ePCT**

Dear Mr Quan-Ling Sim,

The European Patent Practice Committee of the Institute of Professional Representatives before the European Patent Office (**epi**) has prepared a position paper concerning the national/regional phase entry using ePCT. The document was approved by the Council of the **epi** during at its 78<sup>th</sup> session, held on 25<sup>th</sup> April 2015.

Please find attached the indicated position paper. We hope to have the opportunity to present it during the forthcoming meeting of the PCT /WG.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Antonius Tangena', written over a horizontal line.

Antonius Tangena  
President

Encl.: Position paper of **epi** concerning the national/regional phase entry using ePCT



## **Position paper of epi concerning the national/regional phase entry using ePCT**

1. In general, the ePCT interface for “centralized” national entry, will be used
  - (a) by applicants, who i) either decide late to enter the National Phase and do not have the time to find a local professional representative (PR), or ii) who wish to delay the appointment of a PR,
  - (b) by a PR, who has the right to represent before the DO
  - (c) by persons acting on behalf of the applicant, who have not the right of representation before the designated office (DO).
2. Such an interface, provided that it handles properly all requirements for national phase entry as well as it is used by persons, who have experience in processing applications in the DO, facilitates the national phase entry. However, it should be considered whether there are hazards linked with the use of the interface, in particular by users who are not familiar with the procedures of the DO.
3. The interface encourages the national phase entry without appointing a PR having the right to practice before the DO. Such a practice, although it may be followed without problems by experienced applicants, is generally not recommended, as mistakes and omissions during national phase entry may be a source of deficiencies that have an impact on the fate of the application, for the reasons presented below:
  - (a) Particular requirements of some DO's, such as calculation of fees and filing of certified translations, may result in deficiencies during national phase entry.
  - (b) The appointment of a PR after the national phase entry, limits the available time that the representative will have to correct deficiencies that may occur during entry. Such a situation may increase the cost of entry for the applicant, in comparison to the cost when the entry is performed by a PR.
  - (c) Applicants may not receive communications from the DO, which communications may be critical for the fate of the application (for example, invitations to comply with requirements listed in Rule 51bis, PCT).
4. Further, the use of an interface that will be administrated by an authority that is not the DO, may create confusion as to who is responsible in case there is an error or a malfunction during the transmission of the request submitted by the user, i.e. the administrating authority or the DO.

5. Having considered the above, *epi* concludes that the interface may be a useful tool for persons, who are familiar with the international legislation, the national legislation of the DO and the respective procedures, but there are hazards, when it is used by persons that are not familiar with them and who will be encouraged to delay the appointment of a PR after the entry in national phase. Further, it may be an incentive for the establishment of service providers that will perform automatically the national phase entry in many states and who will not be liable for the procedural steps that they perform.
  
6. If the national authorities agree on receiving requests for national phase entry through an interface that will be administrated by the IB and the project continues, the following should be carefully considered:
  - (a) Define which authority, the IB or the DO, is responsible, if the interface is not compliant with the national requirements of a DO.
  - (b) Provide a unique help desk, which will be competent to provide the users with information of both technical and legal/procedural information regarding the national phase entry.
  - (c) It would be helpful to encode the requirements of DOs in the interface as far as possible, i.e. the interface should not accept the request for national phase entry unless the basic requirements are fulfilled.
  - (d) The interface should be comprehensive as to the requirements of each DO. It will be very helpful, if it handles the requirements related to the duty of the applicant to disclose known prior art.
  
7. It is anticipated that the interface will simplify the transmission of data to DO's. Provided that the national authorities accept to receive requests via such a tool and that it will be decided to proceed with the development of the interface, *epi* will monitor the progress and will provide you with its opinion and comments, in order to minimize any hazards associated with its use.

*Abbreviations:*

- DO: Designated (or Elected) Office  
IB: International Bureau  
PR: Professional representative