

# WIPO



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OBSERVATIONS OF THE EUROPEAN PATENT OFFICE (EPO) CONCERNING THE HANDLING  
OF COMPARATIVE TEST/RESULTS DURING INTERNATIONAL PRELIMINARY EXAMINATION

*Proposal by the EPO*

1. Results/data from comparative tests submitted by the applicant during the international preliminary examination is often very important for the outcome of the examination not only during the international phase but also in the regional phase.
2. International phase: To come to a positive statement in the international preliminary examination report the results are decisive. Nevertheless they cannot be enclosed as a part of the international preliminary examination report, but are merely briefly referred to in the international preliminary examination report.

Questions:

- (a) How extensively is one allowed to refer to such results in the international preliminary examination report? Would it be possible to have the results completely added to the international preliminary examination report? Translation then of them would be the responsibility of the International Bureau.
- (b) Added but no translation? Of course problem if we get it in, e.g., Japanese?

3. Regional phase; Results from comparative tests are of course equally necessary in the regional phase to justify a grant. If an introduction of the results is the only thing before a grant one would of course like to avoid a communication only to introduce the data. Two options are apparently open:

(a) either introduce the data during the international phase as part of the international preliminary examination report, which would mean that the data would then also be directly available in the regional phase (questions as above), or

(b) introduce the data on entry in the regional phase, preferably automatically; i.e., without any extra communication.

For the time being the regional phase entry option is pursued by the EPO. A first step is to modify the notes and in a second step then the EPO Form 1200<sup>1</sup> itself will be modified. The effect of these modifications would be such as to allow the EPO as an elected Office a direct introduction of data/results from comparative tests in the regional phase if the applicant does not explicitly say no and where the EPO has been the competent International Preliminary Examining Authority. Where another International Preliminary Examining Authority has been competent, the Form 1200 would recommend the applicant to file the data/results or a translation thereof on entry into the regional phase.

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<sup>1</sup> Recommended Form for use when performing the acts referred to in PCT Article 22 or 39.