Keltie

Revised EPC Guidelines 2026

The EPO has published a preview of the upcoming changes to the 'Guidelines for Examination', which will be coming into force on **1 April 2026.**

The Guidelines are a key reference point for applicants, representatives and examiners, used in day-to-day practice.

This review introduces the most significant changes, puts the changes in context, and indicates practical implications on proceedings before the EPO.

The key topics of the revisions concern:

Part A - new Chapters XII–XV provide detailed, route specific guidance on entering the European phase. These chapters replace former Chapter E IX (Euro PCT) and consolidate material previously found in the Euro PCT Guide; at the same time, the Euro PCT Guide, the European Patent Guide, and the Unitary Patent Guide have been discontinued.

Parts B and F have been updated to reflect the Enlarged Board of Appeal decision, G 1/24, and Part G has been updated to reflect the Enlarged Board of Appeal decision, G 1/23.

Parts D, E and G have been amended to emphasise the free evaluation of evidence and to remove references to the former binary approach to the standard of proof ("up-to-the-hilt" versus "balance of probabilities").

Also see updates concerning:

General part – Use of artificial intelligence, Euro-direct and Euro-PCT procedures

Part A – Colour and Greyscale drawings, translation certification requirements, signed authorisation requirements

Part C – Euro-PCT applications under Rules 161(1) and 162, Signature requirements, Shared Area, Unity review during examination

Part D – Annexes in Opposition Proceedings

Part E – AI-assisted minutes and recording, abolishment of PACE for Search, postponement of oral proceedings, admitting late-filed requests

Part F – Multiple independent claims

Part H – Amendments with evidence of new technical effect, admissibility of amendments, switching inventions

Keltie

Evaluation of Evidence in EPO Proceedings - Parts D, E and G

The proposed 2026 changes to Parts D, E and G of the Guidelines aim to simplify and harmonise the assessment of evidence in EPO proceedings. The revisions remove the previous references to binary evidentiary standards, such as “up-to-the-hilt” and “balance-of-probabilities”, and replace such references with a single, overarching principle: free evaluation of evidence.

Free Evaluation of Evidence

Under this approach, the deciding body must consider all submitted evidence holistically, determine its probative value, and reach its own conviction on the facts - without being bound by predetermined evidentiary thresholds.

Context for Changes

Historically, although the EPC has always been based on the principle of free evaluation of evidence, EPO case law developed strands suggesting the existence of multiple distinct standards of proof. Most frequently, Boards stated that the “balance of probabilities” applied, requiring the deciding body to conclude that one version of the facts was more likely to be true.

In some situations (particularly where the relevant evidence lies exclusively within the power of one party) Boards regularly referred to higher evidentiary standards, such as “beyond reasonable doubt” or “up to the hilt.”

This created inconsistencies and fuelled procedural disputes, with parties often citing earlier cases to argue that a specific evidentiary standard was mandatory in their situation.

The 2026 changes counter this trend by confirming that it is incorrect for a deciding body to be bound by the evidentiary standard applied in another decision and, instead, the factual assessment must always depend on the circumstances before the deciding body.

Case Law

The change is underpinned by recent case law reviewing the issue of evidentiary standards, including G 2/21.

- G 2/21: The Enlarged Board of Appeal reaffirmed that the principle of free evaluation of evidence is universally applicable in EPO proceedings. It emphasized that the deciding body must assess evidence comprehensively and be personally convinced of the occurrence of an alleged fact, without being constrained by predefined proof standards.

T 1138/20 and T 832/22 reinforced that personal conviction derived from the full evidentiary picture is decisive.

T 768/20 and T 545/08 illustrate the problems created when multiple standards are invoked inconsistently.

T 1023/20 and T 2451/13 caution against importing heightened standards into areas such as public prior use.

Practical Impact of Changes

The changes should make opposition and examination proceedings less encumbered by procedural disputes over the applicable evidentiary standard, and negate appeals on the basis of an incorrect evidentiary standard being applied in the first instance decision.

Instead, parties will need to focus on producing evidence that is persuasive in its overall context and consider the strength of their own evidence accordingly.

Keltie

Claims – Clarity and Interpretation – Part F

The EPO's 2026 draft Guidelines introduce proposed amendments to Section F-IV, 4.1 (Clarity) and Section F-IV, 4.2 (Interpretation of claims), which are two of the most influential and frequently invoked provisions of the guidelines.

4.1 – Clarity

The 2026 revisions tie the clarity requirement to G 1/24, strengthening the requirement that the meaning of the terms of a claim must, as far as possible, be clear for the skilled person from the wording of the claim alone, without "rescue" via the description.

In particular, Section F-IV, 4.1 has been amended to further recite that:

> *There should be no doubt as to which subject-matter is covered by the claims. The skilled person should be able to establish the scope of the claim without undue burden. Otherwise, the claim lacks clarity; and*
>
> *The correct response to any lack of clarity in a claim is amendment (G 1/24; see also F-IV, 4.2 and F-IV, 4.3).*

Ambiguity that can only be resolved by consulting the description is therefore not acceptable.

4.2 – Interpretation of claims

The 2026 revisions further reflect the order of G 1/24 on Claim interpretation, making it explicit that:

> *The claims are the starting point and the basis for assessing the patentability of an invention under Arts. 52 to 57. The description and any drawings are always referred to when interpreting the claims, and not just in the case of a lack of clarity or ambiguity (G 1/24).*

The revised guidelines contextualise the order of G 1/24, e.g. in view of the underlying reasoning and well-established case law, by further stating that:

However, when assessing patentability, the description and drawings cannot be relied on to read into the claim a restrictive feature not suggested by the wording of the claim.

If, on the other hand, the description provides a special broad definition of a term used in a claim, the claim must be interpreted in the light of that broad definition when assessing patentability, provided this interpretation is technically meaningful. Otherwise, each claim must be read giving the words the meaning and scope which they normally have in the relevant art.

If, in particular cases, the description gives the words a special meaning by explicit definition or otherwise, the division will, so far as possible, require that the claim be amended in such a way that the meaning is clear from the wording of the claim alone.

Together, the amendments to Section 4.1 and 4.2 seemingly provide the most cohesive guidance on clarity and interpretation of the claims, where:

i. The description and drawings must always be consulted for claim interpretation; but

ii. for patentability assessments, the description and drawings cannot be relied on to restrict the scope of the claims, relative to their normal meaning and scope in the relevant art, but will extend the scope of protection when a special broad definition of a term is provided and such an interpretation is technically meaningful; and

iii. if the description gives the words a special meaning, the correct procedural response is to require amendment of the claims that would render such meaning clear from the wording of the claim alone.

Context for changes

Historically, two interpretative traditions coexisted amongst the Boards of Appeal. One tradition favoured the **primacy of the claims**, while others embraced more **contextual interpretation**, allowing varying degrees of recourse to the description. These differing philosophies led to meaningful inconsistencies, creating uncertainty for applicants, examiners and third parties attempting to determine the true scope of protection.

Keltie

This tension has been compounded by decades of decisions that variably permitted the description to resolve ambiguity, expand definitions, or narrow a claim by importing restrictive features. Decisions such as T 190/99, T 223/5, T 197/10, and T 1628/21 illustrate the oscillation between ordinary meaning interpretations and broader or narrower readings derived from the description.

Against this background, the intervention of the Enlarged Board in **G 1/24** provides a clearer distinction between **interpretation** and **amendment**, holding that unclear claim wording must be corrected by amendment, not by interpretative reliance on the description, and yet the description must always be consulted when interpreting the claims. Parallel developments in description amendment practice, and even the EPO President's comments on the referral to the Enlarged Board of Appeal in G 1/25, further emphasise the need to eliminate inconsistencies between the claims and the description for legal certainty.

The amendments are therefore influenced by G 1/24 but also reflect the EPO's broader efforts to ensure clarity and consistency in claim interpretation and the alignment of claims with the description.

Practical Impact of changes

The revised guidelines clarify the EPO's approach to interpreting the claims, whilst also placing a greater responsibility on all parties for ensuring applications satisfy the EPO's clarity requirements to provide legal certainty.

Applicants might expect:

- More frequent clarity objections where claim language invites reliance on the description.
- More stringent requirements to amend claims when the description defines terms in a special way.
- Reduced tolerance for ambiguity or internal inconsistency between claims and description.
- Greater emphasis on ensuring fallback positions are fully reflected in the wording of dependent claims.

Impact on Further Sections

The emphasis on the requirement for the scope of the claims to be clear from their wording alone also shapes how relative terms, approximating expressions, and broad claims should be assessed and used.

Relative terms (F IV, 4.6), such as "thin," "strong," "fast," or "high quality", are affected because the updated clarity framework demands that the skilled person must be able to determine the scope of the claim without undue burden.

Under the revised clarity standards, the use of such terms is only acceptable where they carry a generally recognised meaning in the relevant art or the meaning is clear to the skilled person in the context of the whole disclosure of the application or patent. Moreover, relative terms are to be interpreted in the least restrictive way (taking account of the description and drawings). Taking account of the above sections on clarity and claim interpretation, practitioners should be careful when preparing the description not to suggest that relative terms have a broader meaning than that generally recognised in the art, unless this is truly intended, and claim amendment will be required to restrict the scope to relatively narrow definitions of relative terms.

Similarly, **terms such as "about," "approximately," and "substantially" (F IV, 4.7.2)** remain permissible, but only where the application does not suggest that the scope of a value or term is extended beyond the established tolerances in the relevant field, otherwise a clarity issue arises requiring amendment.

The section on **broad claims (F IV, 4.2.5)** is also directly impacted. The Guidelines reiterate that broad claims are not unclear merely because they are broad. However, a claim will lack clarity if its breadth prevents the skilled person from determining, without undue burden, where the limits of the claim lie. The updates therefore bring breadth analysis into tighter alignment with clarity, sufficiency, support, and the interpretative principles of F IV, 4.1–4.2: breadth is acceptable, but **indefiniteness** is not. As a result, applicants must ensure that broad claims remain technically meaningful and rely less on the description to supply limiting context.

Keltie

State of Art - Enabling Disclosure - Part G - Chapter IV, Section 2

The 2026 revisions are primarily driven by the Enlarged Board's decision in G 1/23, integrating the central principle that a commercially available product, once placed on the market, is fully reproducible and therefore part of the state of the art, reciting:

> *A product put on the market before the date of filing of a European patent application cannot be excluded from the state of the art within the meaning of Art. 54(2) for the sole reason that its composition or internal structure could not be analysed and reproduced by the skilled person before that date (G 1/23, order 1). The requirement of reproducibility (enablement, see G1/23, summary V) is inherently fulfilled, as it is satisfied by the skilled person's ability to obtain and possess the marketed product (G 1/23, reason 73). A product put on the market is thus part of the state of the art and all analysable properties of that product are also part of the state of the art (G1/23, Reasons 74 and 91). In this context, the term "product put on the market" includes man-made products as well as naturally occurring materials (G1/23, Reasons 30). Such products are usually relied upon as prior use, see G-IV, 7.2. Technical information about such a product (e.g. a technical brochure, non-patent or patent literature) which was made available to the public before the filing date forms part of the state of the art within the meaning of Art. 54(2), irrespective of whether the skilled person could analyse and reproduce the product and its composition or internal structure before that date (G 1/23, order 2).*

The 2026 draft includes extensive new passages explaining that reproducibility in this context is "inherently fulfilled" because it is satisfied by the skilled person's ability to obtain the marketed product and analyse it, also elaborating on the enabling requirements of technical information disclosed in relation to the marketed product.

Context for changes

The changes to the enabling disclosure section stem from long standing uncertainty in EPO case law concerning what is considered "made available to the public" and what the skilled person must be able to derive from a disclosure - including a marketed product - without undue burden.

Traditionally, novelty under Article 54 EPC required that the prior art disclose subject matter directly and unambiguously.

The difficulty arose in cases involving commercially available products whose composition or structure was not fully described: Boards disagreed on whether public availability alone sufficed, or whether only the analysable, reproducible properties of such products formed part of the state of the art. This divergence led to inconsistent approaches in fields where products are complex or only partially characterizable, such as polymers, biologics and advanced materials.

The Enlarged Board's decision in **G 1/23** resolved this doctrinal split by holding that reproducibility of a marketed product is inherently satisfied because the product is publicly accessible, and therefore forms part of the state of the art.

Practical impact of changes

The 2026 revisions improve legal certainty and reduce complexity in relation to disclosures by public use, particularly with products on the market.

Opponents benefit from a more predictable framework: they can argue lack of novelty by demonstrating that the product was obtainable and the technical features were analysable, and further technical information about the product, available before the filing date, also forms part of the state of the art irrespective of whether such information could have been determined by analysis of the product.

Keltie

Novelty of Selection Inventions (Sub-Ranges) – Part G - Chapter VI, Section 7

The 2026 revisions introduce a decisive shift in how novelty is assessed for selection inventions, particularly for numerical sub ranges.

Historically, the EPO has applied the "two limb test," requiring that a claimed sub range be **(i)** narrow compared with the prior art range and **(ii)** sufficiently far removed from any specific examples. EPO practice also asked whether the skilled person would "seriously contemplate" working within the selected range.

The 2026 revision move decisively away from this framework to fully align the novelty assessment of sub ranges with the EPO's "gold standard" of disclosure.

Under this approach, a claimed sub range is novel o**nly if it is *not directly and unambiguously derivable*** from the prior art, taking into account the skilled person's common general knowledge.

This alignment creates a unitary disclosure test across novelty and added matter assessments, replacing structural or purposive criteria with a single question: what does the prior art disclose, explicitly or implicitly, to the skilled person?

Context and Rationale

Selection inventions have long sat at the boundary between explicit disclosure and implied teaching. For decades, the EPO recognised that disclosure of a broad range did not automatically disclose every sub range, prompting the development of the "narrow/far removed" and "seriously contemplate" criteria.

However, these tests attracted criticism: some Boards considered them too permissive; others argued that they lacked a strong foundation in the EPC's disclosure driven framework, risking a shift of novelty analysis toward inventive step.

The Enlarged Board's decision in G 2/10 formally articulated the "gold standard" for assessing added-matter: only subject matter 'directly and unambiguously derivable' is disclosed.

T 1688/20 developed the novelty reasoning of G 2/10 and applied the "gold standard" to selection inventions, emphasizing that a subrange is not novel if it can be directly and unambiguously derived from the prior art.

The 2026 Guidelines reference both cases and formalise this convergence, restoring disclosure as the sole criterion for novelty.

Practical Implications of Changes

Arguments about technical preferences or whether the skilled person would "seriously contemplate" a region fall away; the analysis now focuses squarely on disclosure, with particular attention on prior art endpoints, disclosed examples, implicit teachings and measurement tolerances.

The changes may have a substantial effect on novelty assessments, with prior novelty proscriptions being removed to ensure consistency across EPC doctrine - novelty depends on what is disclosed, not what might be technically sensible.

Keltie

Honourable Mentions

Use of artificial intelligence

General Part – 5

The 2026 Guidelines expand the General Part to include new material on the EPO's internal and procedural use of artificial intelligence. The revisions clarify that parties remain responsible for their submissions even when assisted by AI and refers to the EPO's planned integration of tools.

Euro-direct and Euro-PCT procedures

GENERAL PART 3.1 - 3.3, 6.1, 6.2

Part A XII-XV

Part C II-1.2.1, II-1.2.2, III-3.2.4, III-4.1.3

The 2026 Guidelines more clearly **separate Euro direct and Euro PCT procedures**, restructuring chapters so that each route has its own steps, requirements and timelines. Filing, formalities, search, entry into the European phase, representation, fee handling, and document processing rules are now distinguished, eliminating prior intermingling. Euro PCT sections emphasise PCT specific acts (Rule 159/161/162, supplementary search, translations, DAS retrieval), while Euro direct guidance focuses on EPC only requirements. The overall change improves navigability, reduces ambiguity, and should ensure applicants and examiners follow route specific workflows rather than relying on shared or cross referenced instructions.

Colour and greyscale drawings

Part A II 5.4.2, II 6.5, IV 1.2, IX 10 and more

The 2026 updates clarify the circumstances in which colour and greyscale drawings are permitted, reflecting recent procedural changes for electronic filings. These provisions ensure consistency between initial filings, later corrections, and replacement pages, particularly for Euro PCT entries – noting that added matter restrictions apply where new information can be derived by the addition of colour detail. The updates also provide guidance on the limitations of scanned or converted images, preventing unintended loss of information.

If black and white drawings are filed initially, care should be taken to ensure that any subsequent colour drawings, intended to replace the original drawings, must not disclose additional subject matter. This consideration also applies, in particular, to the validity of a priority claim from an application with black and white figures.

Translation certification requirements

Part A VII 7

Section A VII 7 confirms that the EPO may require certification of only the relevant portions of a translation rather than the entire application. The EPO must specify the required scope of certification, providing clarity and predictability. The change reduces some of the cost and administrative burden for applicants, particularly in long or highly technical applications.

Signed authorisation requirements

Part A VIII 1.7

The update to A VIII 1.7 clarifies when a signed authorisation is required, specifically where a change of representative occurs without the EPO being notified by the previous representative that their authorisation has terminated.

Signature requirements

Part C VII 3.3

Updated guidance confirms that, during consultations and oral proceeding held by videoconference, documents that require a signature (such as amended application documents) may be submitted with a signature applied to the attached document or accompanying email. Typewritten signatures or facsimile signatures are acceptable.

Applicants may therefore respond more efficiently in urgent correspondence without requiring formal handwritten signatures for routine procedural steps.

Encouragement to utilise the Shared Area

Part C VII 2.6

The 2026 updates emphasise greater use of the Shared Area for collaborative drafting during consultations with examiners. This includes discussing proposed Rule 71(3) amendments or resolving issues in applications that are close to allowance. The approach improves transparency and reduces misunderstandings by allowing real time text exchanges. This may signal a change in practice in alignment with the EPO's increasing use of videoconferencing.

Changes to communications of Annexes in Opposition Proceedings

Part D IV 5.4

Section D IV 5.4 confirms that the EPO will no longer automatically forward annexes to communications in opposition proceedings, including annexed amendments. Instead, parties must retrieve such documents via the electronic Register, reflecting a shift toward transparency through centralised file access.

The change modernises the process but places a slightly higher duty of vigilance on opponents and proprietors to avoid overlooking submissions on the Register.

AI assisted minutes and recordings

Part E III 10.1

The Guidelines now formally address the production of minutes with AI assistance during videoconference oral proceedings. They confirm that sound recordings made for AI supported minute drafting will be deleted once the final minutes are issued and will not be provided to parties.

PACE requests limited to examination

Part E VIII 4

The updated Guidelines clarify that a PACE request is no longer available for the search phase. Instead, PACE can only be requested during the examination phase. EPO Form 1005 will now only have a single check box for accelerated examination. Requests for acceleration remain unpublished and remain excluded from file inspection.

The EPO explains that the "mean time" to issue the extended European Search Report in 2024 was only five and a half months, meaning that accelerated search is no longer seen as a necessary option for the applicant.

Allowability of Amendments – new technical effect

Part H V-2.2

The 2025 Guidelines stated that any effect provided by the invention can be taken as a basis for reformulating the technical problem, provided the effect is encompassed by the technical teaching and embodied by the same originally disclosed invention, even if that effect is not literally disclosed in the application as originally filed - referencing G 2/21.

The 2026 update to Part H V, 2.2 confirms that even if a newly submitted technical effect is not allowed into the application itself, due to Art. 123(2) EPC restrictions, the technical effect may still be taken into account as evidence for inventive step.

Start of substantive examination

Part C II 1.2

This section includes new subsections on Euro-PCT applications with and without a supplementary European search report and related subsections on acceleration of the proceedings by waiving the right to the communication under Rules 161(1) and 162. The section standardise procedure for both Euro direct and Euro PCT applications.

Keltie

Unity review during examination

Part C III 3.2.4

The 2026 revisions to Part C III, 3.2.4 clarifies that, in both Euro direct and Euro PCT applications, the Examining Division must reassess unity independently of the Search Division's earlier findings. The revision makes explicit that unity must be evaluated on the claims pending in examination, i.e. after Euro PCT applicants complete their Rule 161/162 obligations and after any post search amendments in Euro direct cases. If this re evaluation shows that the earlier lack of unity objection was incorrect: (i) any additional search fees must be refunded or (ii) if the additional search fees were not paid, additional searches must be arranged.

Multiple independent claims

Part F IV 3.3

The 2026 revisions not only refine when Rule 43(2) EPC permits multiple independent claims per category; they also raise the reasoning standard for refusals. The Examining Division is expected to engage with the applicant's arguments in full and to explain expressly why none of the three exceptions in Rule 43(2)(a)–(c) applies—i.e., why the claims do not (a) solve different problems, (b) represent mutually incompatible solutions, or (c) require multiple claims due to specific technical circumstances (e.g., regulatory frameworks). A blanket assertion of non compliance is inadequate.

Postponement or Oral Proceeding for New Objections

Part E-III, 8.11.1

Where new and major objections are unexpectedly raised shortly before or during oral proceedings, and the applicant or proprietor cannot reasonably be required to make the necessary amendments there and then, a request for postponement or to continue proceedings in writing should be granted.

Admitting Late-filed Requests

Part E-VI, 2.2.1

This revision is seemingly in the wrong place and should be moved, e.g. to Part E-VI, 2.2.2. However, the revision makes explicit the requirement that the Opposition Division must review the contents of an auxiliary request when considering whether to refuse it for being late-filed. This ensures an assessment is made as to whether the request is a fair attempt at overcoming objections, and whether it is prima facie allowable.

Admissibility of amendments and switching inventions

Part H II 2.3; H II 3.1, H II 5; H IV 4.1.2

The 2026 draft clarifies **Part H II, 2.3** by tightening the Examining Division's discretion under **Rule 137**: non admission of amendments requires an **explicit prima facie** analysis identifying the concrete defect (e.g., Art. 84/123(2), Art. 54/56, or **Rule 137(5))** and addressing the applicant's arguments; if the reasoning necessarily becomes detailed, the request should be admitted and decided on the merits.

H II, 2.3.1 adds examples guiding **Rule 137(3)** discretion (e.g., late, complexity increasing, or plainly unsearched shifts vs amendments that squarely overcome an objection).

H II, 2.3.2 clarifies that switching to a second, unsearched invention after search is not admitted (Rule 137(3) in conjunction with **137(5))**, directing applicants to Rule 164 paths or divisionals.

H II, 2.3.3 introduces a warning: repetitive requests that do not meet the objections—or oscillate between inventions—risk non admission and progression to refusal.

H II, 5 confirms that if, after amendment and argument, claims still encompass non searched subject matter and the applicant's case is unconvincing, refusal follows (the **137(5)** bar is not cured by mere description support).

H IV, 4.1.2 clarifies the ISA based exemption: where the EPO acted as ISA **(or via Rule 164(2))**, claiming searched alternatives is not blocked by **137(5)**, though Rule **137(3)** may still justify non admission (e.g., late procedural switch).