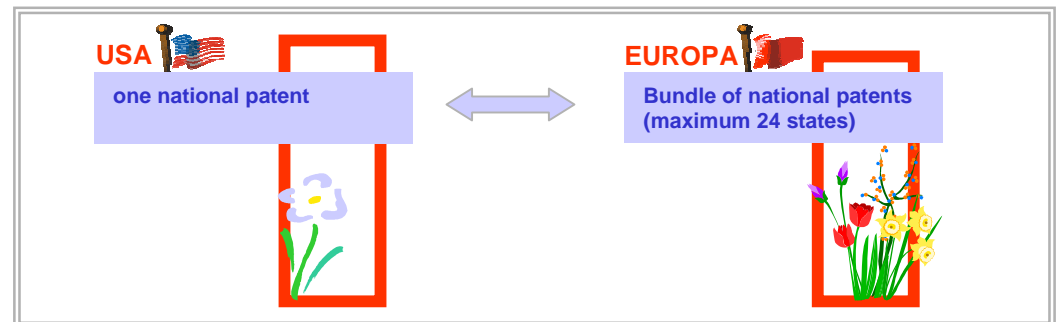


1.1 What are the differences between the US Patent System and the European Patent System?

We are pleased to inform you about important differences between the US Patent System and the European Patent System.

- 1.1 There is not one European patent (EP) which is automatically valid for all 24 EPC (European Patent Convention) countries. The European Patent System of designation of contracting states allows an applicant to indicate those contracting states of the EPC in which he desires to protect his invention. In most cases the applicant will not designate all 24 EPC countries but a relative small number of the most important states such as France, United Kingdom, Germany and Italy.



An European Patent will only be valid in these states, when the designation fees have been paid and when the translation of the specification has been filed with the respective national office. In contrast, the US patent is automatically valid for the whole territory of the United States.

- 1.2 A major difference between the US Patent System and the European Patent System is that the invention must fulfil the requirement of absolute novelty under Art 54 EPC in Europe. The novelty requirement under the EPC is much more restrictive than under the US regulation. An invention shall be considered to be new, if it does not form part of the state of the art. The state of the art means everything made available to the public by means of written or oral description. In Europe an invention can only be patented if it is absolute novel. This means that the invention has not been made available to the public either by written or oral description or in any other way before the priority date of the EP application. An inventor must keep in mind that any information of the invention which is accessible to the public may destroy the novelty of his own invention. Contrary to that there exists a one-year grace period in the United States. In the USA there is a non-extendable deadline for filing an application within one year after the first barring event. The first barring event could be the first offer for sale, a first offer for public use or the publication of the invention. So, if the application is filed after the publication of the invention within a period of one year, one will not get a patent in Europe, however one may still get a patent in the United States.

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What are the differences between the US Patent System and the European Patent System?

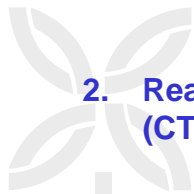
- 1.3 The next major difference between the US Patent System and the European Patent System is that in the United States you have the first-to-invent principle whereas in Europe there is the first-to-file principle. In the United States the patent belongs to the first inventor. In contrast, in Europe the patent is usually awarded to the person with the earliest effective filing date. If two or more persons have made the same invention independently of each other, the differences between the European Patent System and the US Patent System cause that the ownership of the invention will be handled differently in Europe and in the United States. If for instance a person B makes the same invention as a person A on a later date but files the application before person A, in the United States person A who has made the same invention before person B (and can prove this) is entitled to the patent. In contrast, in Europe, person B who has made the invention independently and later than person A but has filed the application first is entitled to the patent.
- 1.4 A further difference between the US Patent System and the European Patent System is that there is no provisional application in Europe. In the United States one may file a provisional application which allows to establish an early effective filing date for a later non-provisional patent application. The provisional application is pending for 12 months from the date of filing and will become abandoned if later no non-provisional application corresponding to the provisional application is filed.
- 1.5 The following chart summarises the main differences between the US-Patent System and the European Patent System:

one national patent for the US	↔	bundle of national patents (in 24 EPcountries)
first-to-invent principle	↔	first-to-file principle
provisional application	↔	no provisional application
grace period of one year	↔	absolute novelty
reexamination procedure	↔	opposition procedure
information disclosure statement	↔	no information disclosure statement
best mode disclosure requirement	↔	no best mode disclosure requirement
Oath or declaration	↔	no oath or declaration
50% fee discount for small entities	↔	no discount

Because of the major differences between the US Patent System and the European Patent System an inventor who seeks patent protection either in Europe or in the United States must under all circumstances comply with the following rules:

- 1. **Never publish an invention before you have filed at least a provisional application in the United States if you intend to get also a patent in Europe.**
- 2. **During the research, document the progress of your research so that you are able to prove the date when you actually made the invention (first-to-invent principle in the United States).**
- 3. **If you have made the invention, file a patent application as soon as possible to establish a priority date (first-to-file principle in Europe).**
- 4. **If you have already published your invention, don't forget to file a US application within the grace period of one year.**





2. Reasons for filing a Community Trademark Application (CTM)

Since 1996 about 300,000 Community trademark applications (CTM) have already been filed with the Office of Harmonization in the Internal Market (OHIM).

Have you ever considered the benefits of a CTM registration? The following summary informs you about the advantages of one of the most successful supranational IP protection systems.

2.1 Unitary protection

A single application provides trademark protection in all 15 member countries of the European Union. A registered CTM will automatically cover additional member states after they have joined the European Union.

2.2 Easy-to-handle filing system

There is no necessity any more for you to correspond with many national patent and trademark offices having different regulations. OHIM in Alicante is the only responsible office which offers the following benefits:

- a single application and file to be managed;
- a single language of filing, e.g. English or German;
- a unitary and harmonized law;
- a centralized opposition procedure.

2.3 Reduction of costs

The filing fee for a CTM application is €975 for three classes of goods and services. A registration fee of €1100 is due when the community trademark is registered. In comparison to 15 separate national application procedures the for a CTM fees are low. With a minimum of costs a CTM offers a maximum of legal protection in all member states of the European Union.

2.4 Search for conflicting trademarks

An official search without any additional costs is made by OHIM and the member states of the EU (except F, IT and DE) for potential conflicting prior trademarks.

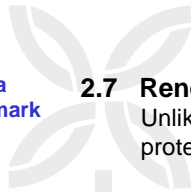
2.5 Priority right

As OHIM is a member of the Paris Convention, a priority right may be claimed within six months from the filing date of a national trademark.

2.6 Seniority right

National trademarks or international trademarks filed in accordance with the Madrid Agreement or Madrid Protocol designating a Member State of the EU may be incorporated into the Community trademark even after the six months priority period. All prior rights are preserved, and it will not be necessary any more to renew the national or international trademark.





2.7 Renewal fees

Unlike a European patent, only a single renewal fee has to be paid every ten years to maintain protection for all EU countries.

2.8 Opposition

There is no official examination regarding conflicting prior trademark rights. However, third parties may file an opposition within three months after publication of the CTM application. Case law shows that OHIM is rather restrictive in finding two trademarks confusingly similar. Hence, there is a high probability of success for the applicant to succeed even in an opposition.

2.9 Conversion into a national trademark

If the CTM application cannot be registered because of a prior trademark right, it is admissible to convert the CTM application into national trademarks without losing the priority right.

2.10 An easy to meet obligation of use

A Community trademark has to be used in commerce within five years after its registration to avoid a cancellation request due to non-use. However, use in a single member state of the EU is sufficient to avoid revocation of the community trademark because of non-use. There is no obligation for using the community trademark in more than one member state of the European Union.

2.11 Registration of retail services

While in most EU national patent offices a registration of retail services is prohibited, OHIM allows retail services to be registered in international class 35. Examples are "retail services in respect of food and beverages", "retail services of a department store", "retail services of a supermarket" etc.

2.12 Registration of slogans

The registration of slogans is easier before the OHIM compared to many national EU trademark offices. For instance the following slogans have been considered as being registrable: "Ihr Partner für eine gesunde Zukunft" ("Your partner for a healthy future") (pharmaceuticals), "Das Prinzip der Bequemlichkeit" ("The principle of comfort") (furniture), "A passion for iron and steel" (chemical and metallurgical products).

2.13 Infringement of a CTM

Infringement proceedings may be brought before the Community trade mark courts, which are national courts designated by the member states of the Union. Decisions of a Community Trademark Court are applicable throughout the European Union. This avoids the need to prosecute infringers separately in each member state. Only the Community trade mark offers such a protection in the whole territory of the European Union.



Summarizing, the CTM system offers an attractive and simplified protection system for the European market with a minimum of costs for the applicant.

