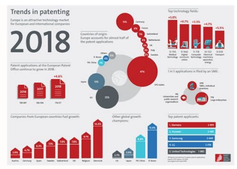
Epo guidelines update 2018



	Spine Phantom								
	High Definition			Array			Fast-Array		
	Area (cm^2)	BMC (g)	BMD (g/cm^2)	Area (cm^2)	BMC (g)	BMD (g/cm^2)	Area (cm^2)	BMC (g)	BMD (g/cm^2)
Mean	53.92	54.78	1.02	53.94	54.42	1.01	54.17	54.51	1.01
SD	0.19	0.22	0.00	0.27	0.43	0.00	0.18	0.35	0.00
Expected	53.36	54.13	1.01	53.36	54.13	1.01	53.36	54.13	1.01
Accuracy	**98.9%**	**98.8%**	**99.8%**	**98.9%**	**99.5%**	**99.5%**	**98.5%**	**99.3%**	**99.2%**
Reproducibility	**99.6%**	**99.6%**	**99.7%**	**99.5%**	**99.2%**	**99.5%**	**99.7%**	**99.4%**	**99.5%**
	Total Hip Phantom								
	High Definition			Array			Fast-Array		
	Area (cm^2)	BMC (g)	BMD (g/cm^2)	Area (cm^2)	BMC (g)	BMD (g/cm^2)	Area (cm^2)	BMC (g)	BMD (g/cm^2)
Mean	47.26	36.39	0.77	47.07	36.26	0.77	47.57	36.67	0.77
SD	0.31	0.32	0.00	0.37	0.29	0.00	0.31	0.31	0.00
Reproducibility	**99.4%**	**99.1%**	**99.6%**	**99.2%**	**99.2%**	**99.7%**	**99.4%**	**99.2%**	**99.6%**
	Femoral Neck								
	High Definition			Array			Fast-Array		
	Area (cm^2)	BMC (g)	BMD (g/cm^2)	Area (cm^2)	BMC (g)	BMD (g/cm^2)	Area (cm^2)	BMC (g)	BMD (g/cm^2)
Mean				5.62	4.05	0.72	5.67	3.95	0.69
SD				0.10	0.06	0.01	0.12	0.08	0.02
Reproducibility				**98.2%**	**98.5%**	**98.6%**	**97.8%**	**98.0%**	**97.5%**

BMC, bone mineral content; BMD, bone mineral density; SD, standard deviation.

For the definition of the accuracy and of reproducibility see Materials and Methods. Missing values were due to the lack of measurements or expected values.

CONTRIBUTOR To print this article, all you need is to be registered or login on Mondaq.com. Since 2012, the EPO has each year updated the Guidelines to follow changes to the European Patent Convention and its rules and also to follow developments in case law and evolution in EPO policies and practices. The 2018 edition of the Guidelines[1], in force on 1 November 2018, includes extensively revised sections and newly added sections[2]. Computer-implemented inventions (CII) CII generally involve software developments and can relate to almost any field of technology. An EPO report ("Patents and the Fourth Industrial Revolution, The inventions behind digital transformation" December 2017) recognizes that "innovation in the enhancement of products and processes is increasingly taking place in the virtual layer of software, rather than in any hardware components." and "A large proportion of current inventions are therefore based on software implementation." How the EPO deals with CII is probably of greater importance now than at any earlier time. In the 2018 Guidelines, a group of sections relating to CII have been significantly revised and newly added:- New section added concerning practice for assessing inventions realised in a distributed computing environment (F IV, 3.9.3) Substantially redrafted section aimed at clarifying the assessment of claims comprising mathematical methods (G II, 3.3) New section added about the field of artificial intelligence and machine learning, aimed at better defining the criteria for their patentability (G II, 3.3.1) New section added about the assessment of claims directed to methods of simulation, design, or modelling (G II, 3.3.2) New section introduced concerning the assessment of claims comprising schemes, rules, and methods for performing mental acts (G II, 3.5.1) New section introduced concerning the assessment of claims comprising schemes, rules, and methods for playing games (G II, 3.5.2) New section introduced concerning the assessment of claims comprising schemes, rules, and methods for doing business (G II, 3.5.3) Substantially redrafted section aimed at clarifying practice for assessment of claims to programs for computers (G II, 3.6) New section added concerning examples of further technical effects produced by a computer program (G II, 3.6.1) New section added about information modelling, activity of programming and programming languages (G II, 3.6.2) Substantially redrafted section provided to incorporate case law about the assessment of claims comprising features related to data retrieval, formats and structures (G II, 3.6.3) These CII sections of the Guidelines are all concerned more or less directly with what are considered by the EPO to be "non-technical" subject-matters. These subject-matters are excluded (only) "as such" from patentability at the EPO (by Article 52(2) EPC) and include:- mathematical methods programs for computers presentations of information schemes, rules, and methods for performing mental acts, playing games, or doing business Issues pertaining to these "non-technical" subject-matters arise not infrequently in relation to CII. The aim for EPO examiners and applicants is to assess and ensure that a claimed CII does not fall on the "non-technical" (and hence inherently unpatentable) side of the line but falls on the "technical" (and hence potentially patentable) side of the line. The relevant EPO policies and practices for distinguishing between "non-technical" and "technical" have evolved over many years. Briefly, to fall on the "technical" side of the line, the claimed invention should find application in a field of technology and involve some aspect of "technicality" - technical character, technical contribution, or technical purpose. Although the revised and newly added sections of the 2018 Guidelines, as listed above, do not seem to signal a change to established EPO policies or practices, they may offer considerable assistance in understanding those policies and practices. In particular, the revised and newly added sections include numerous additional examples as aids to understanding. For example, the redrafted section concerned with mathematical methods provides a variety of examples of such methods serving technical purposes, e.g.: determining from measurements how a machine should be operated; analysing or enhancing audio, image, or video data; improving data transmission or storage encryption techniques; providing a diagnosis based on physiological measurements; or simulating the behaviour of technical items. The new section concerned with AI indicates that, as examples, the use of the neural network in heart monitoring apparatus for the purpose of identifying irregular heartbeats, and the use of a neural network in classification of digital images based on low-level features, are considered technical applications. Further examples, falling on both the "technical" and "non-technical" sides of the line, are provided in the revised and added sections concerned with CII. For completeness it is noted that some sections of the Guidelines relevant to CII, with illustrative examples, were substantially revised or newly introduced in 2016 and 2017, remaining unchanged or with only minor amendments in the 2018 Guidelines:- Substantially redrafted section concerning user interfaces (G II, 3.7.1, updated in 2017) New section concerning claims directed to computer-implemented inventions (F IV, 3.9, introduced in 2016) New sub-section concerning cases where all method steps can be fully implemented by generic data processing means (F IV, 3.9.1, introduced in 2016) New sub-section concerning cases where method steps require specific data processing means and/ or require additional technical devices as essential features (F IV, 3.9.2, introduced in 2016) Unity of invention Findings by the EPO that applications fail to satisfy the requirement for unity of invention at least complicate examination, likely involve payment of additional search fees, and possibly mean that divisional applications will be needed. The Guidelines provide insight into policies and practices of the EPO concerning unity of invention which may assist in responding to – or possibly avoiding – non-unity objections. The 2018 version of the Guidelines includes new sections concerning the EPO's approach to unity of invention:- New introductory section explaining why the requirement of unity is present in the EPC and the general principles (F V, 1) New sections aimed at explaining the substantive assessment of unity of invention (F V, 2; F V, 2.1) New examples added to illustrate the EPO interpretation of the requirement of unity in particular situations (F V, 2.2; F V, 2.2.2; F V, 2.2.2.1; F V, 2.2.2.2; F V, 2.2.2.3; F V, 2.2.2.4) New and amended sections defining non-unity "a priori" and "a posteriori" (F V, 4; F V, 4.1; F V, 4.2; F V, 4.2.1) New sections explaining the procedure in case of lack of unity during search (F V, 6; F V, 6.1; F V, 6.2) Some further detailed issues on which the Guidelines have been updated are:- Essentially biological processes for the production of plants or animals Such processes are excluded from patentability at the EPO (Article 53(2) EPC). The 2018 Guidelines include sections (F IV, 4.12; G II, 5.2; G II, 5.4) that have been amended to include an explicit statement that:- "If a technical feature of a claimed plant or animal, e.g. a single nucleotide exchange in the genome, might be the result of either a technical intervention (e.g. directed mutagenesis) or an essentially biological process (a natural allele), a disclaimer is necessary to delimit the claimed subject-matter to the technically produced product." An example of a disclaimer has been added in a related section (G II, 5.4.1). Oral proceedings Changes introduced in the 2018 version of the Guidelines:- Clarify the limited conditions under which a summons to oral proceedings may be issued as a first action in examination at the EPO, and that even requests filed "late" by the applicant are to be considered by the EPO (C III, 5) Provide minor clarifications in relation to other aspects of oral proceedings (E III, 2; E III, 6; E III, 8.9; E III, 10.3; E IV, 1.6.1; E V, 1; E V, 5) Opposition proceedings Changes introduced in the 2018 version of the Guidelines:- State that EPO Oppositions are handled in directorates dedicated to opposition proceedings (D II, 1) Explicitly state that extension of the time limit for the patent proprietor to reply to the notice(s) of opposition will only be granted in exceptional cases on the basis of a duly substantiated request (in line with "Early Certainty from Opposition" introduced by the EPO in mid-2016) (D IV, 5.2) State that "In particular in opposition proceedings the structure of the problem-solution approach is not that of a forum where the opponent can freely develop as many inventive step attacks as he wishes in the hope that one of said attacks has the chance of succeeding." (G VII, 5.1) Affirm that prior art and arguments from oppositions that have been withdrawn or deemed inadmissible may still be considered if the opposition proceedings continue (D I, 6) Provide minor clarifications in relation to other aspects of oppositions (H IV, 4.3; H VI, 2.1.1; H VI, 3.3; H VI, 3.5; D IV, 5.5; D V, 4; D VI, 7.2.2) Many other more detailed points have been updated to a greater or lesser extent in the 2018 Guidelines. For example they include new and amended sections relating to the content of description and claims:- Use of general statements, "spirit of invention" and claim-like clauses in the description (F IV, 4.4) How relative terms are to be construed and when an objection of lack of clarity may apply (F IV, 4.6.1; F IV, 4.6.2) How the term "about" and similar terms are to be construed and when an objection of lack of clarity may apply (F IV, 4.7.1; F IV, 4.7.2) How optional features are to be construed and when an objection of lack of clarity may apply (F IV, 4.9) Interpretation of claims comprising expressions like "Apparatus for ...", "Method for ..." (F IV, 4.13) Interpretation of claims defined by reference to (use with) another entity (F IV, 4.14; F IV, 4.14.1; F IV, 4.14.2) How the terms "comprising", "consisting of" and "consisting essentially of" are construed in a claim (F IV, 4.21) Practice regarding replacement or removal of features from a claim ("essentiality test") (H V, 3.1) Undisclosed disclaimers (in view of G1/16) (H V, 4.1) Deletion of redundant claims from the application by the examining division in preparation of the notice of allowance (Rule 71(3) EPC) without consulting the applicant (C V, 1.1) The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances. AUTHOR(S) POPULAR ARTICLES ON: Intellectual Property from UK The IP In NFTs – What Is Being Purchased? 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