



Europäisches  
Patentamt  
European  
Patent Office  
Office européen  
des brevets

# Early Certainty

## 20<sup>th</sup> Rospatent Scientific and Practical Conference

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# Early Certainty ... **from Search (ECfS)**

- **Since July 2014**
  
- Optimise the use of available examiners resources for **maximising legal certainty** in Europe on pending patent applications.
  
- **Early Certainty from Search** in a nutshell:
  - Issue all searches with opinion on time: about 6 months after file reception
  - Expedite grant following positive search opinion
  - Adherence to fast track examination
  - Fast processing of cases of substantiated third party observations
  - Priority to opposition first actions
  - Finish already started examination files before starting new cases
  - Backlog of searches prior to 1/7/2014 being gradually reduced.

# ECfS: already first balance of interests

## Maximising legal certainty for benefit of Europe

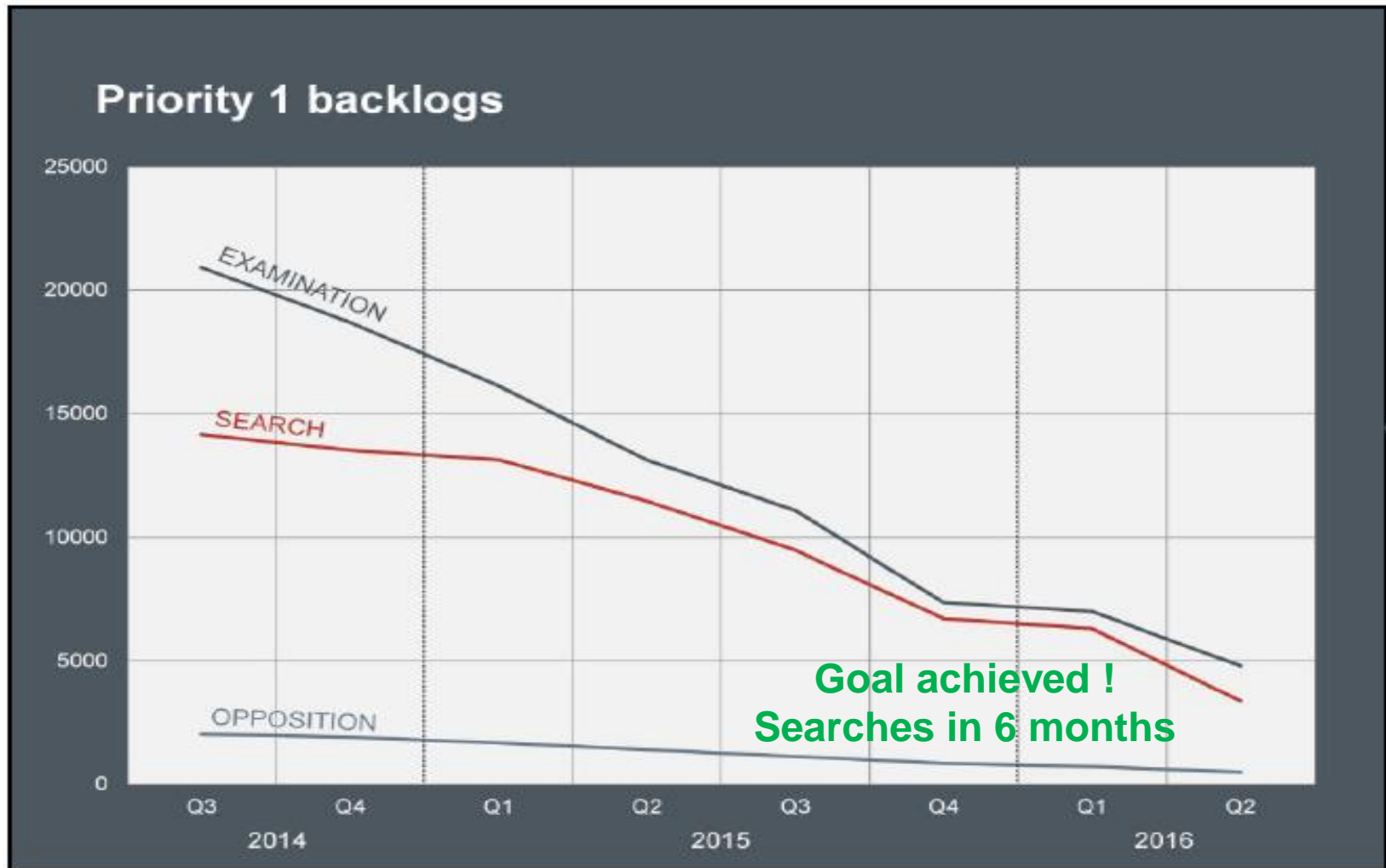
- **Better for applicants:** early search results with written opinion, i.e. first step in “examination”. Written opinion being added to search reports already since 2005. Allows proper decision making by the applicant about next steps.
- **Better for the public:** overview on prior art and patentability very early. Therefore no blind spots in European IP

## ECfS: already first balance of interests

- **Acceleration of examination always possible:** applicants and third party can accelerate procedure on sensitive cases
- Examiner production priority scheme **encourages efficiency in examination:** once a substantive examination is started, it is being pursued speedily with enhanced applicant's cooperation.
- Reward for applicants filing high quality applications: **quick grant after positive search opinion**
- Same for all: the **same service & priority model** for all types of applications which are handled by the EPO

# Early Certainty from Search

## Priority 1 backlogs



- Graph shows priority 1 backlog, 1 file per examiner is the virtual minimum !

# What is next? Early Certainty across all processes

- Early Certainty from ... Search

Prior art search & written opinion within

**ECfS**

**6 months**

- Early Certainty from ... Examination

Grants (up to IGRA) on average within

**ECfE**

**12 months**

- Early Certainty from ... Opposition

Standard Opposition within

**ECfO**

**15 months**

# Why now **ECfE** and **ECfO**?

**Because we should & because we can ...**

- EPO's number 1 user complaint: **timeliness !**
- We followed the right sequence:
  - first **quality focus** (2013-14): assurances in place & fostered by ISO framework
  - then **performance** (2015): e.g. from 'focus on core', new performance management with incentives
- **High EPO performance** in terms of **quality and efficiency** now allows EPO to have high ambitions with respect to timeliness ! Stocks are decreasing in size.
- A reply to **shortening of product life cycles.**

## Early Certainty... **from examination (ECfE)**

- **Creates clarity on patent rights for all applicant, competitor & public**
  - High quality of patents
  - Available insight, so patents delivered in time
    - no blind spots, applicant timely information to decide, ...

### **... patent pending ...**

- **It is the right thing to do** and in line with **EPO Mission Statement:**

*“As the Patent Office for Europe, we support innovation, competitiveness and economic growth across **Europe** through a commitment to high quality and efficient services delivered under the EPC”*

- **and ...**



# Early Certainty **from Examination** → Paris Criteria

- It responds to the request from **Inter-governmental Conference** which is imposed on the EPO.

cf. EPO Official Journal 8-9/1999

*... average  
time to grant  
down to  
three years ...*

## *B – Shortening the grant procedure*

The Intergovernmental Conference,

considering that the conditions of international competition require patents to be granted within a period that is in keeping with the interests of users,

invites the Organisation to undertake every possible effort to shorten procedures, so as to bring the average time it takes to grant a European patent down to three years, whilst maintaining the level of quality.

# Early Certainty today ?

	Actual	Goal	
Search	5,4 months	6 months	
	Actual	Goal	Workload share
<b>Overall duration</b>			
▪ EP direct (1 <sup>st</sup> and 2 <sup>nd</sup> filings)	53,5 months	36 months	25%
▪ E-PCT (EPO is ISA)	64,9 months	49 months	33%
▪ E-PCT (EPO is not ISA)	79,2 months	61 months	33%
▪ Divisionals	34,1 months	24 months	9%

**Search:** from date of receipt to final search report, median duration in months

**Overall duration:** from priority date (date of receipt for divisionals) until the first public announcement of the grant, median duration in months

# Early Certainty ... from Examination

*... average time to grant down to three years ...*

*in accordance with the inter-governmental request*

- **Step-by-step** move towards Paris Criteria: 5 years

- “Paris criteria” translate into **examination on average in 12 months.**

e.g. application published at 18 months + 6 months to file

examination request + 12 months examination until proposal to grant

- 12 months on average = Time between ...
  - valid examination request (fees paid, examination confirmed, reply to WO)until
  - proposal of grant published in file inspection

# Early Certainty ... from Examination: how ?

- EPO pursues its **Quality Efficiency Strategy**
- **Within five years** the Paris Criteria will be reached by taking the necessary actions: maintained / improved performance, quality and fostering early withdrawals.
- Situations **per technical field** will be different ! The goal is **average** delivery in 12 months.
- Now proactively remind applicants of possible **withdrawal options** & incentives (fee refund possibilities changed)
- Streamlining **patent practice, workflows & procedures** will support the goal: aiming towards further simplification of procedure: in progress !

# EPO has the highest Quality focus

- No certainty without quality !
  
- **Maintain or increase our EPO quality by:**
  - Pursuing **ISO QMS processes**: plan – do – check – act: pursue quality actions plans. Continuous improvement !
  
  - Extra **management tools** being put in place to address quality issues: e.g. “procedural data visualisation”.
  
  - Increased focus on **training**: eLearning, measures to support effectiveness of training, quality and efficiency, ...
  
  - ...

# Built-In Quality of EPO Work Products

## Highly qualified, trained and experienced examiners

- technical expertise
- work in the three EPO official languages

## 100% peer-review of positive opinions

- three person division

## World class tools for search and examination

- high-performance search tools

## Immense directly & easily available collection of documents

- 1 billion records of patent and non-patent literature
- 101 Million documents
- 2.6 million standards documents
- databases updated daily

## Consistent standards for all applications

- Guidelines

## ISO 9001 certified Quality Management System

- entire patent process

# Streamlining patent practice, workflows & procedures

- **Increase the chances of getting an early positive opinion (PCT Direct)**
  - Build on search and written opinion of first filing in PCT second filing
  
- **Increase dialogue with users**
  - more use of the telephone
  - Make positive suggestions & proposals
  
- **Increase examination efficiency**
  - Harmonise on best practice treatment of auxiliary requests

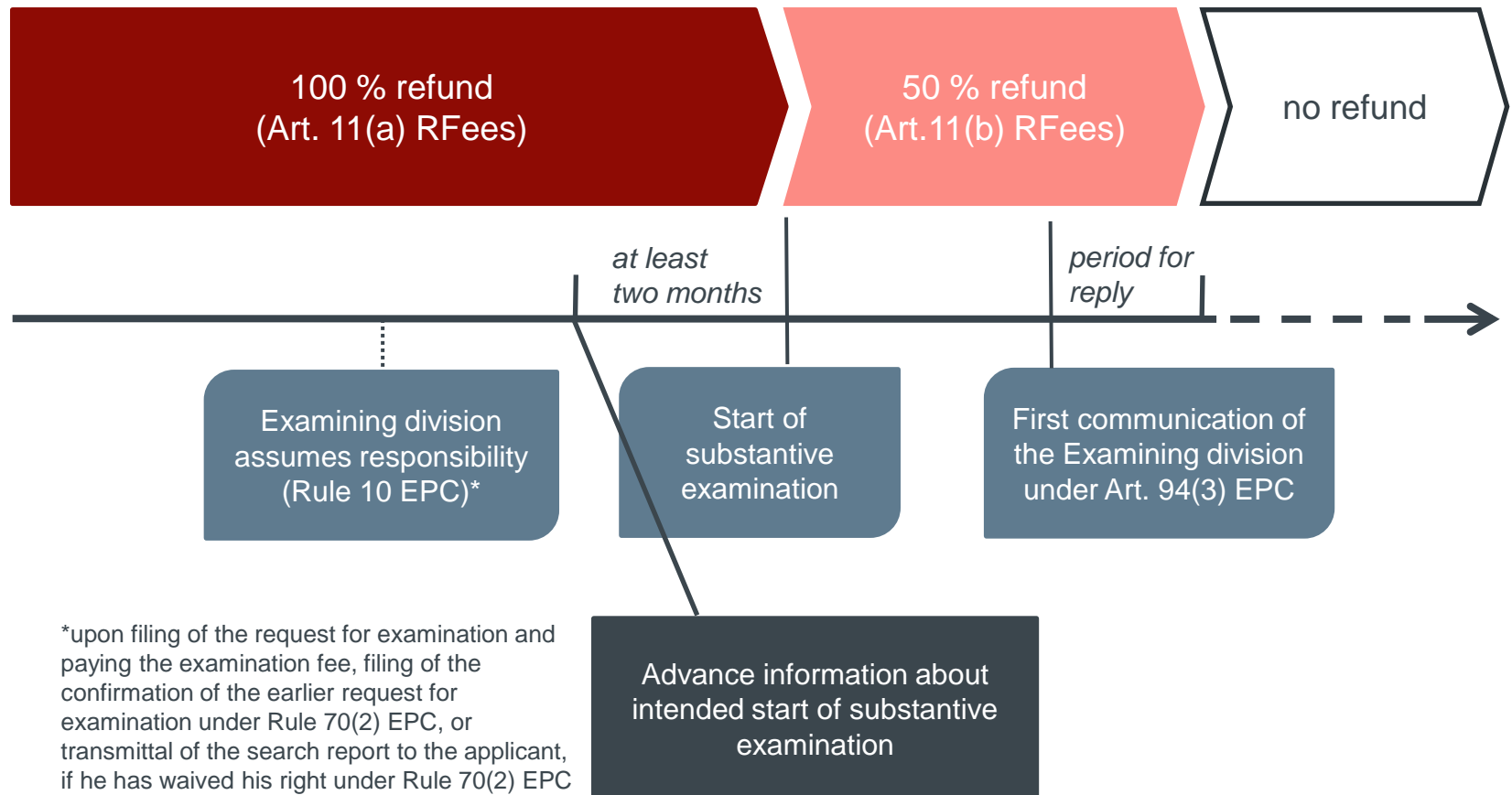
# EPO Predictability of work

- Delivery of search report within 6 months after date of receipt means:
  - **Complete classification** of the application: new classes are rarely added afterwards.
  - **Complete prior-art search**: new documents are rarely cited afterwards.
  - **Thorough written opinion** on patentability (equivalent to the first step in examination): new objections are rarely introduced afterwards.
- As the examination backlog is being tackled and whenever operationally possible, applicants will be **informed about the imminent start of examination** (Form 2919).



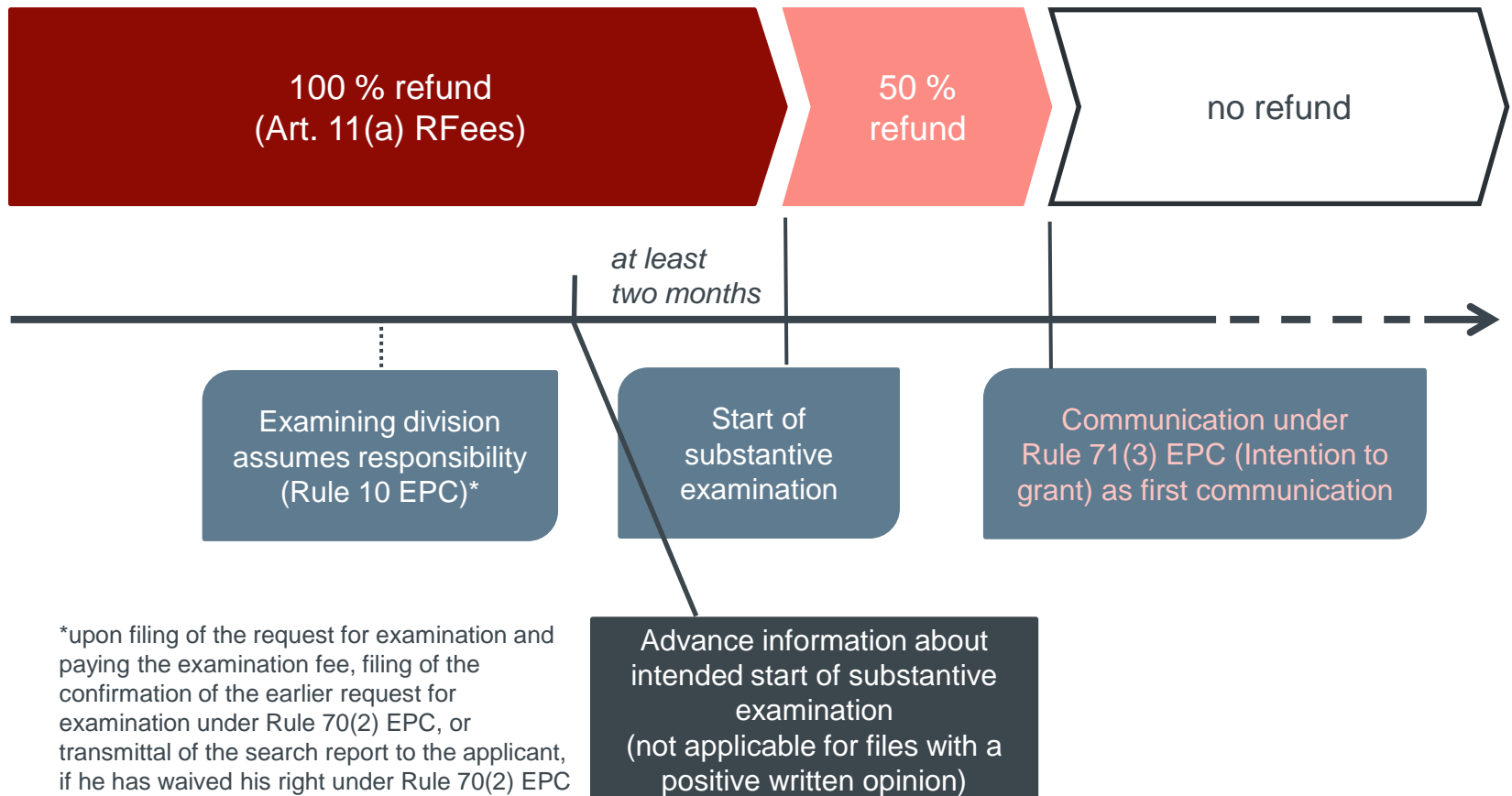
# Refund of the examination fee – new situation

## Non-direct grant cases (at least one examiner communication)



# Refund of the examination fee – new situation

## Direct grant cases

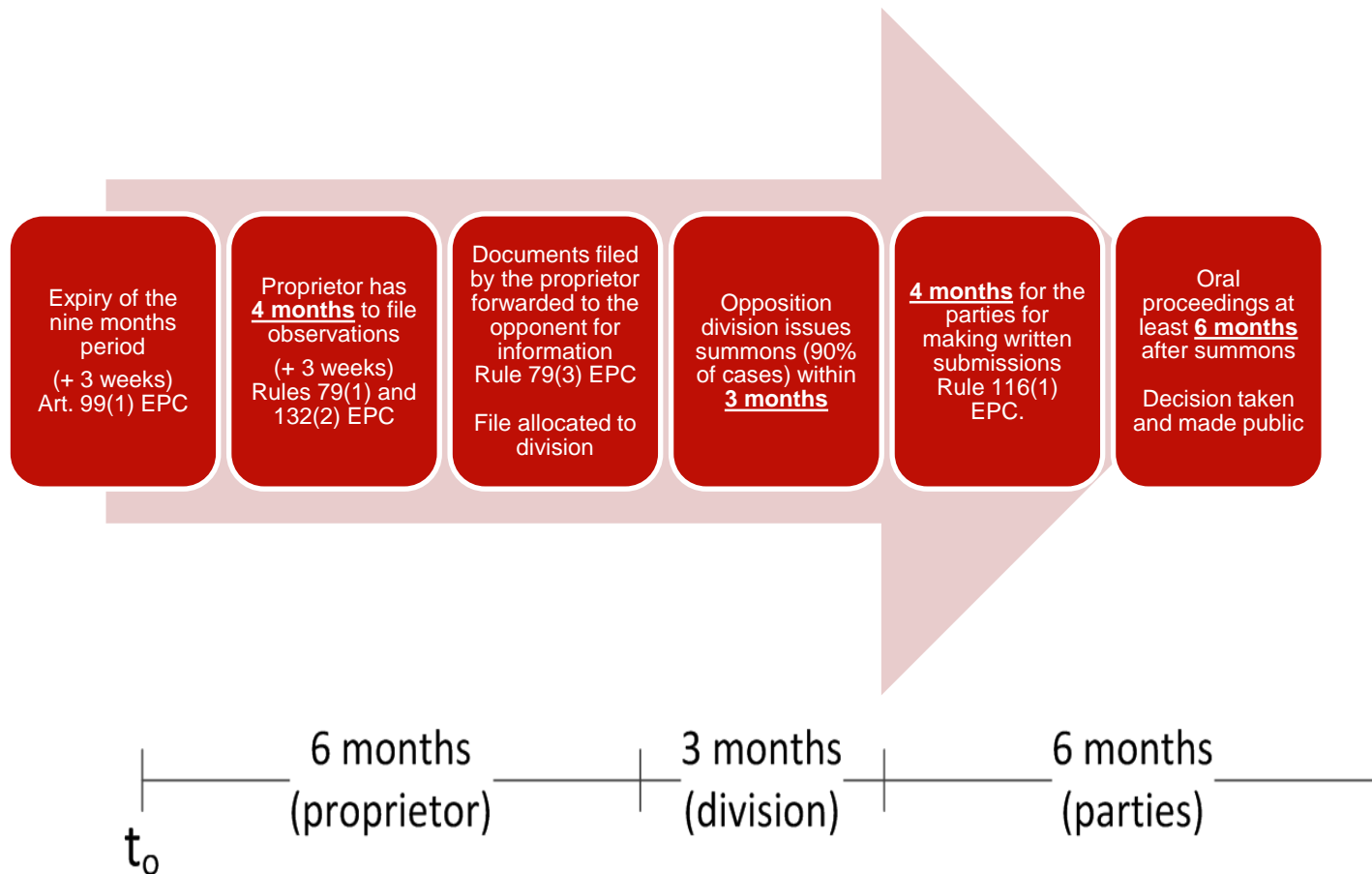


\*upon filing of the request for examination and paying the examination fee, filing of the confirmation of the earlier request for examination under Rule 70(2) EPC, or transmittal of the search report to the applicant, if he has waived his right under Rule 70(2) EPC

Advance information about intended start of substantive examination (not applicable for files with a positive written opinion)

# Early Certainty ... from Opposition: 15 months !

- New opposition procedure: reach decision within 15 months from expiration of the 9 months for filing opposition (standard case)



## So to summarise - **Early Certainty** means....

By 2020 we should be in a position to deliver on the following timeliness goals:

- **Early Certainty from ... Search**

Prior art search & written opinion within

**ECfS**

**6 months**

- **Early Certainty from ... Examination**

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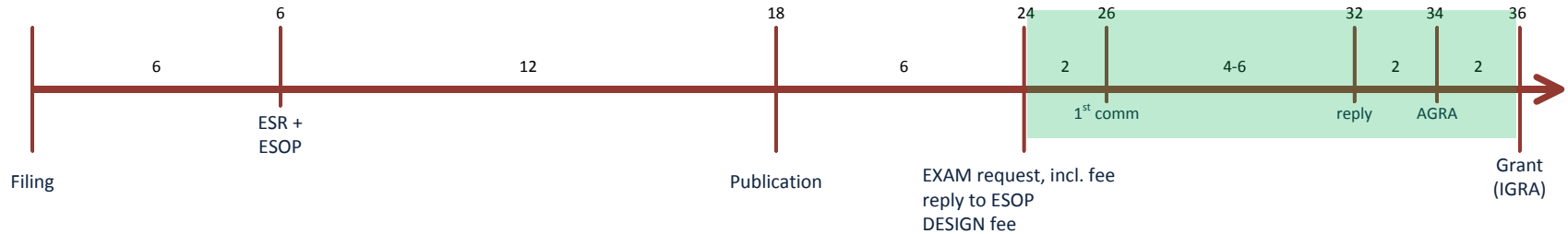
**ECfO**

**15 months**

**Thank you !**

# Euro-direct

## First filings @36 months



## Second filings @36months

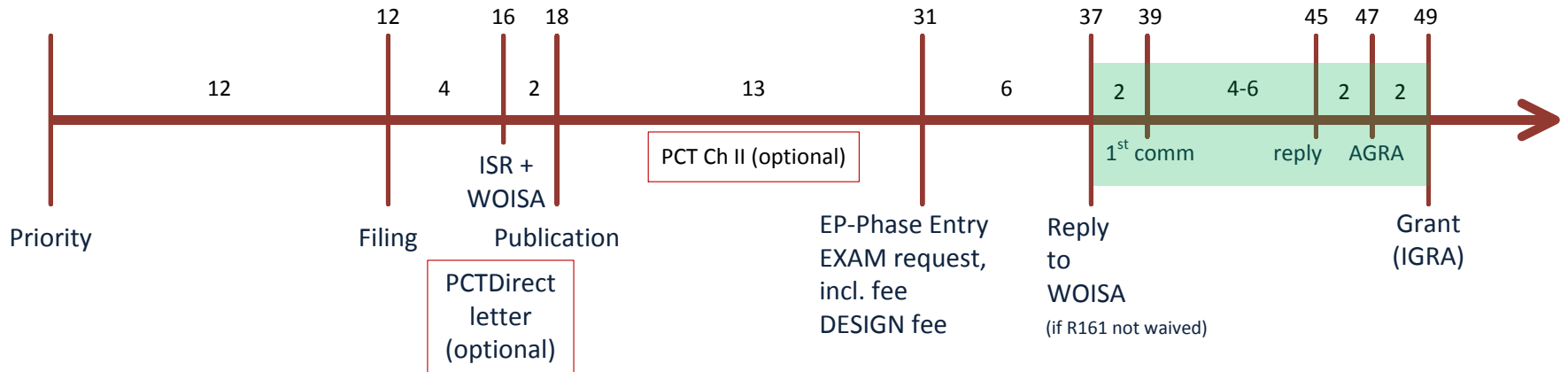


## Divisionals @24 months after receipt of divisional

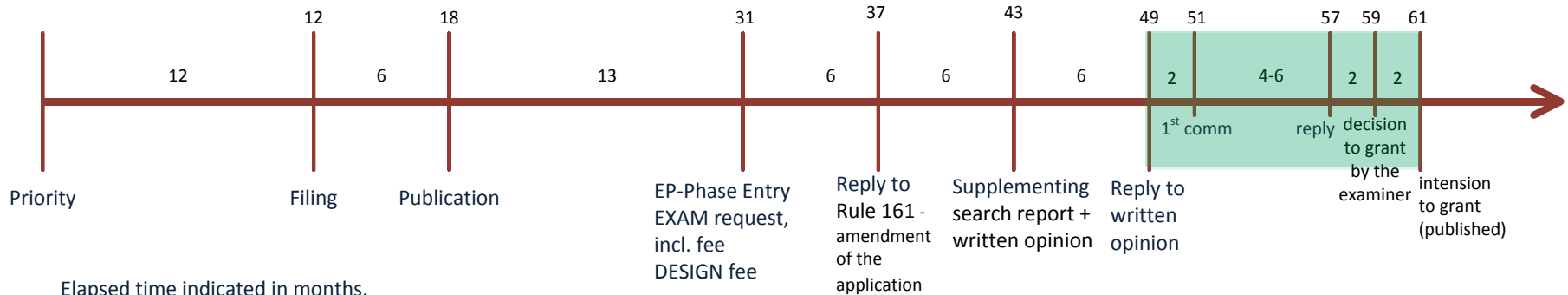


# Euro-PCT

## Euro-PCT, EPO ISA, with/without PCT CHII @49 months



## Euro-PCT, EPO not ISA, with/without PCT CHII @61 months



Elapsed time indicated in months.