

M. Inspection of files, European Patent Register and stay of proceedings

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1. Inspection of files

1.1. General

Art. 128 EPC governs the inspection of European patent applications. Art. 128(1), (2) and (5) EPC regulate file inspection prior to publication of the application under Art. 93 EPC and are therefore exceptions, as an application must normally be kept secret until it is published. Thus prior to publication, file inspection may be granted under Art. 128(1) EPC if the applicant consents, or without the consent of the applicant under Art. 128(2) EPC where any person can prove that the applicant itself has invoked its rights under the application against them.

Art. 128(3) and (4) EPC, on the other hand, regulate file inspection after the application has been published. R. 144 EPC sets out the parts of the file excluded from file inspection under Art. 128(4) EPC (see also Decision of the President of the EPO dated 12 July 2007 concerning documents excluded from file inspection (OJ SE 3/2007, 125), see in this chapter III.M.1.2.).

According to J 5/81 (OJ 1982, 155), Art. 128 EPC establishes that the confidential treatment of patent applications ceases on publication of the application, not on expiry of the 18-month period mentioned in Art. 93(1) EPC.

According to J 14/91 (OJ 1993, 479), rights under a European patent application could be considered invoked under Art. 128(2) EPC where their invocation was formulated in relation to the first filing in a contracting state but the subsequent European application was mentioned at the same time. Any dispute between the applicant and a third party