



Patenting Polymorphs at the European Patent Office

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Polymorphs are separately patentable inventions that are often discovered later in the product development process. The patent term for these polymorphs can therefore extend beyond expiry of the first patent to the chemical in its first form. The European Patent Office (EPO) is commonly considered one of the more difficult offices to bring a polymorph patent application to grant. This is due to the large body of case law that has developed over the years setting out specific requirements for a polymorph to be found patentable. This presentation will explore important considerations when drafting a polymorph patent application and how to navigate the complex legal requirements at the EPO to bring such an application to grant. This will include an analysis of relevant EPO polymorph case law, such as seminal decision T 777/08 (which sets out technical effects that cannot be relied upon for inventive step of a crystalline form) and the more recent related decisions T 1994/22 and T 672/21 (which concern relying on new data after filing an application to support inventive step of a crystalline form).

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