

Patenting Polymorphs at the EPO

What do you need to consider?

Novelty

Be aware of inherent disclosures; for example a disclosed methodology may inherently describe the formation of a particular polymorph without giving structural characterisation data.

BUT

Disclosed methodology must necessarily lead to the claimed polymorph to be novelty destroying. Consider providing experimental evidence to demonstrate prior art does not produce the claimed polymorph.

Inventive Step

Advisable to mention advantages of the claimed polymorph in the application as filed, ideally backed up with experimental evidence.

If the polymorph has unexpected properties versus other polymorphs, then the selection of the specific polymorph is less likely to be considered arbitrary. A combination of properties for a specific polymorph can help support an inventive step.

CLARITY

Define crystalline form using suitable physicochemical parameters including measurements conditions.

SUFFICIENCY

If the process to make claimed polymorph requires seeding, the application must also disclose the process to prepare the seed.