

Chapter II – General

1. International search and written opinion under Chapter I

The procedure through which a PCT application proceeds from the filing of the application to the conclusion of the international phase comprises the international search and written opinion under Chapter I, which is mandatory for applicants, and the international preliminary examination under Chapter II, which is optional.

Art. 15

Art. 33

The objective of the international search is to discover the prior art which is relevant for the purpose of determining whether, and if so to what extent, the claimed invention to which the international application relates is or is not novel and does or does not involve an inventive step. The result of the search is communicated to the applicant in the form of an international search report. In some cases the International Searching Authority is not required to establish a search for some or all of the claimed subject-matter, e.g. because more than one invention is claimed or the application covers excluded subject-matter.

Art. 17

Rule 43

GL/ISPE 15 and 16

In its capacity as an International Searching Authority, the EPO is empowered not only to carry out the international search but also to formulate a preliminary and non-binding opinion on whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable. When appropriate, an opinion will also be given on added subject-matter, unity, insufficient disclosure and clarity or support issues, as well as formal defects.

Rule 43bis

GL/ISPE 17

This opinion is sent to the applicant in the form of a written opinion of the International Searching Authority (WO-ISA) together with the search report. If no international preliminary examination report is to be established because the applicant did not file a demand for preliminary examination, or the demand has been withdrawn, the International Bureau will prepare a report, entitled "international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)" having the same contents as the written opinion. Even if the applicant filed any amendments under Article 19, the amendments will not be taken into consideration in the international preliminary report on patentability (PCT Chapter I).

Rule 44bis

GL/ISPE 2.18

The written opinion (and any informal comments filed by the applicant) will be made available to the public by the International Bureau at the same time as the international publication.

Art. 21(3)

Rule 48.2

GL/ISPE 2.17

The EPO is an International Searching and Preliminary Examining Authority for the vast majority of PCT contracting states. All applications are treated in the same manner irrespective of their country of origin.

Art. 16, 32

Rule 35, 59

GL/ISPE 1.13-1.14

Although the PCT procedure differs in some procedural and formal aspects from the European procedure, the criteria for search and examination with respect to novelty, inventive step, industrial applicability, unity, non-patentable subject-matter or exclusions, insufficient disclosure and clarity are in principle the same. This means that search and examination under