

## Chapter VI – The state of the art at the search stage

### 1. General

The general considerations relating to the state of the art with regard to the determination of novelty and inventive step are set out in GL/PCT-EPO G-IV.

### 2. State of the art – oral disclosure, etc.

According to Rule 33.1(a) and Rule 33.1(b), oral disclosure, use, exhibition, etc. are recognised as prior art only when this is substantiated by a written disclosure, contrary to Art. 54 EPC.

Rule 33.1(a), (b)

See also ISPE Guidelines 11.22 and 15.05.

Where a non-written disclosure occurs and both the non-written disclosure and the written account of it are published before the relevant date as defined in Rule 64.1(b), the examiner will cite the written account in the search report and give the date of the written disclosure on the search report. In this case, the written disclosure constitutes the prior art.

Rule 64.1(b)

If the written disclosure was made available to the public on or after the filing date of the international application concerned, the written disclosure will be cited in the international search report together with the date on which it was available, provided that the non-written disclosure was made available to the public prior to the filing date of the international application. The written opinion and the international preliminary examination report will draw attention to the non-written disclosure in Box No. VI (Certain documents cited).

Rule 64.2, 70.9

Where a non-written disclosure occurs but is not followed by any written account, it is not cited in the international search report, because it is not considered to be state of the art under the PCT. The examiner makes a note of this non-written disclosure and will reconsider its status if the application enters the European phase before the EPO (see GL/EPO B-VI, 2).

### 3. Priority

Section B-VI, 3, in the Guidelines for Examination in the EPO applies *mutatis mutandis*.

GL/ISPE 11.02-11.03

### 4. Conflicting applications

#### 4.1 Potentially conflicting European and international applications

Generally, where the international search is concluded less than eighteen months after the international filing date of the application, it will not be possible at the time of the search to make a complete search for potentially conflicting European and international applications. This search therefore has to be completed during the mandatory top-up search if a demand under Chapter II PCT has been made (see GL/PCT-EPO C-IV, 5) or alternatively