

In the special case where the search report cites P and/or E documents but the priority could not be checked and there are no other objections, the WO-ISA is considered positive (since the examiner in the European phase first has to evaluate the validity of the priority and then decide whether a grant is still possible).

On the other hand, if the relevance of the document is independent of the priority being valid, detailed reasons for the novelty objection will be given, as well as an indication to the applicant that such a document would be relevant when entering the European phase before the EPO.

In the case of method of treatment claims which can easily be reformulated into an allowable format (see also GL/PCT-EPO B-VIII, 2.1), the above applies as well; i.e. if this is the only objection, the WO-ISA will be considered positive since such a reformulation can be done by the examiner at the grant stage in the European phase before the EPO.

In the special case of a non-unitary application, where all inventions searched were found to be novel and inventive, but still lacking unity – as the only objection – the WO-ISA is marked as negative.

4. Priority claim and the WO-ISA

GL/ISPE 17.28-17.29

Normally, priority need only be checked if a relevant P or E document is found during the search. However, there may also be cases where the examiner immediately realises that the priority is not valid (e.g. in the case of an alleged doublure (see GL/PCT-EPO B-IV, 1.1) or a continuation-in-part (see GL/PCT-EPO F-VI, 1.4)). Also, in case of restoration of priority rights, the examiner may insert a comment in Box II (see GL/PCT-EPO B-XI, 4.1).

4.1 Restoration of priority

Rule 26bis.3

See GL/PCT-EPO F-VI, 3.7.

If the examiner notices that the filing date exceeds the earliest priority date plus twelve and two months this may be indicated in the WO-ISA.

4.2 Use of "P" documents in the written opinion

GL/ISPE 17.29(b)

If the priority document is not available, the opinion will be established on the assumption that the claimed priority is valid. In this case, no comments need be made regarding "P" documents, but the "P" documents will nevertheless be indicated under Section VI. For potentially conflicting patent documents which might give rise to an objection under Art. 54(3) EPC in the European phase, the statements in GL/PCT-EPO B-XI, 4.3, below regarding "E" documents apply.

GL/ISPE 17.29(c)

If the priority document is available, the examiner will check the validity of the priority and indicate any negative finding under Section II. Should the priority be found not to be valid, detailed comments will be made for these documents with respect to novelty and inventive step of the claimed subject-matter under Section V, since these documents then become prior art under Rule 33.1(a).