

Chapter VII – Unity of invention

1. General remarks

Unity is assessed in the same way in the PCT and European procedures. However, the consequences of a finding of lack of unity at the search and/or examination stages are different under the PCT, as are the actions to be taken by the examiner. In particular, the applicant may be asked to pay additional search and/or examination fees and he may do so under protest.

Furthermore, divisional applications are not allowed under the PCT.

2. Lack of unity at the search stage

If the lack of unity finding is raised at the search stage, a search is conducted for the invention first mentioned in the claims and the applicant is invited to pay additional search fees with Form PCT/ISA/206 (hereafter referred to as "Form 206"). On Form 206 the examiner must also give a complete and self-contained reasoning for the lack of unity. The applicant can then decide to:

Art. 17(3)(a)
Rule 13, 40.1
GL/ISPE 10

- (i) not pay any additional fees,
- (ii) pay some or all fees without protest or
- (iii) pay some or all fees under protest.

At the same time as completing Form 206, the examiner completes the WO-ISA (search opinion) for the searched first invention; both are sent together to the applicant.

OJ EPO 2017, A20

In the case of a doublure (see GL/PCT-EPO B-IV.1.1) where the earlier application also lacked unity, the applicant should be invited to pay additional fees even if all inventions were searched in the earlier application. The amount refunded will then be decided for each invention separately.

3. No request for payment of additional search fees

Exceptionally it might be chosen not to request the applicant to pay additional search fees, even if an objection as to lack of unity occurs. This could be the case when the additional search effort for the other invention(s) is minor. However, it must be borne in mind that the written opinion under Chapter I must be written for all inventions that were searched, including those for which no additional search fees were requested. If additional search fees are not requested, for consistency reasons the examiner should not ask for additional examination fees should a demand for international preliminary examination under Chapter II be filed (see GL/PCT-EPO C-V.3.3). Thus, when deciding on whether to ask for additional search fees, the examination effort for the whole procedure must also be taken into account.