

## Chapter VIII – The IPER

### 1. Opinion given in the IPER (Form 409)

Art. 35(2) specifies that the report shall not contain any statement on the question of whether the claimed invention is or seems to be patentable or unpatentable according to any national law. Moreover, the purpose of the preliminary examination is merely to give an opinion, but it does not lead to a grant or a refusal of the application. In these circumstances, therefore, the report should not give the impression that any part of the application may or may not be allowable. It will only state whether or not the claims meet certain criteria.

Art. 35(2)  
GL/ISPE 19.48

### 2. Completing the IPER

The IPER is drafted in the same way as the WO-ISA, i.e. a positive or negative opinion will be given for all claims, taking into account the arguments and/or amendments submitted by the applicant.

Therefore, the same criteria apply to the IPER as to the WO-ISA with respect to all examination issues (see also GL/PCT-EPO B:XI).

In particular the IPER will only be established for claims which have been searched (as indicated in the WO-ISA); any amended claims that are directed to subject-matter not searched will not be considered and an indication will be made in Section III of the IPER (non-establishment of opinion), with reasons given on the separate sheet.

Rule 66.1(e)  
GL/ISPE 19.25

If no reply has been received to a written opinion or the objections raised in a previous written opinion are still valid, the comments contained in that written opinion can be transferred to the corresponding section in the IPER. However, if the applicant has submitted arguments in favour of the claims, then even if the objections previously raised are still valid, the examiner should, in a neutral way (i.e. without direct reference to the letter of reply in the sense of "see reply/arguments from the applicant"), deal with at least the main arguments from the applicant in order to ensure that the applicant knows that his arguments have been considered.

If arguments, facts and evidence, such as the results of a comparative test, produced by an applicant in response to a written opinion are of crucial importance in assessing inventive step, the examiner may base the argumentation in the IPER on the applicant's response. This is of importance to other offices which need to know why a particular conclusion has been reached. However, since the IPER should be written in a neutral way and should be self-contained, the examiner should not append to the IPER portions of the applicant's reply or refer directly to the applicant's letter of reply.