

GL/ISPE 19.33

In practice, if the applicant's reply is received after the time limit set in the WO-IPEA (Form 408) but before an IPER (Form 409) has been started, the late-filed reply is taken into consideration for drawing up the IPER.

If a reply is received after the IPER has actually been started and the applicant has not met all the objections set out in the last written opinion, the late reply is not considered and the IPER is drawn up on the basis of the conclusions set out in the last WO-IPEA.

If a reply is received after the IPER has actually been started and all the objections set out in the last WO-IPEA have been met, the late-filed reply is taken into consideration for drawing up the IPER.

If no reply has been received, the IPER is drawn up on the basis of the conclusions set out in the last WO-IPEA.

4. Consequences of a restriction of the search

4.1 Submissions prompted by a restriction of the search or a declaration that no search is possible

Rule 66.1(e)

If the search covered only some claims or part of one or more claims (see GL/PCT-EPO B-VIII), only the subject-matter which has been searched - as indicated in the ISR (GL/PCT-EPO B-X.8) and/or in the WO-ISA (GL/PCT-EPO B-XI.6) - can be the object of the international preliminary examination. It should always be made clear which claims have been examined.

Art. 17(2)(a)(i) and (ii)

After a restriction of the search, either because subject-matter is excluded from the search or because a meaningful search is not possible, or after a declaration that no search at all is possible, the applicant's reply may, at subsequent stages of the procedure, challenge the ISA's findings.

However, the IPEA has no responsibility for actions taken by the ISA, and there is no provision in the PCT for an IPEA review of, or for an appeal against, such an ISA decision.

Any written arguments from the applicant relating to the completeness of the search are not to be treated as a communication with the IPEA, unless the applicant's reply contains a complaint against the findings at the search stage when the EPO acted as ISA (see GL/PCT-EPO C-IX.4).

If the reply to the WO-ISA contains arguments challenging the findings at the search stage related to the restriction of the search, the examiner will mention in the WO-IPEA or IPER (under Section III) that the findings of the ISA cannot be reviewed by the IPEA.

Rule 66.1(e)

If the applicant phones the examiner to discuss the issue orally, the examiner will inform the applicant that this is a matter which is the responsibility of the ISA under Chapter I of the PCT and that the procedure before the ISA is closed.