

Sometimes it is possible for the examiner to determine from the documents on file that the claimed priority is not valid. An example would be when during the search a document is found which shows that the priority document of the searched application is actually not the first application for the claimed invention.

#### **4.3 Use of "E" documents in the written opinion**

Although there are no harmonised provisions in the PCT Contracting States that correspond to Art. 54(3) EPC, such documents will be mentioned under Section VI if they are considered prejudicial to the novelty of at least one claim. If the relevance of the document is independent of the priority being valid or if the priority could be checked and was found invalid, reasons for the novelty objection will be provided, together with an indication that such a document would be relevant when entering the European phase before the EPO.

On the other hand, if the document would be relevant under Art. 54(3) EPC only if the priority is not valid, and this could not be checked, then no reasons need to be given.

#### **5. Unity in relation to the written opinion**

In the case of lack of unity where more than one invention has been searched, for each invention searched one independent claim in each category must be treated in detail.

See GL/PCT-EPO B-VII for further details.

#### **6. The written opinion in cases of a restriction of the search**

The extent of the search as well as the reasons for the restriction will in many cases only be indicated in the WO-ISA. See GL/PCT-EPO B-VIII.3.5, for details of whether an indication under Art. 17 should be made in the ISR or only in the WO-ISA. The opinion given is then normally restricted to what has actually been searched.

Any argumentation and objections presented in the written opinion must be consistent with the restrictions of the search and the reasons therefor. See also GL/PCT-EPO B-VIII.2, GL/PCT-EPO B-VIII.3 and GL/PCT-EPO B-VIII.3.1.

#### **7. Sequence listings**

Where the applicant has not filed an electronic sequence listing conforming to WIPO Standard ST.25 in response to a request from the ISA, or has not paid the late furnishing fee, the WO-ISA will indicate under Section III that the written opinion is limited to the same extent as the search was limited because the applicant failed to comply with Rule 5.2 (no sequence listing) and/or Rule 13ter.1(a) (no computer-readable sequence listing).

Rule 5.2  
Rule 13ter.1(a)  
*OJ EPO 2011, 372*  
*OJ EPO 2013, 542*  
*GL/ISPE 9.39, 15.12*  
*and 15.13*

#### **8. Options open to the applicant following receipt of the ISR and WO-ISA**

See ISPE Guidelines 2.15.