

2.1 Sequence listings

Rule 5.2

Rule 13ter.2

Rule 66.1(e)

OJ EPO 2011, 372

OJ EPO 2013, 542

GL/ISPE 9.39, 15.12,

15.13 and 17.37

Where no (complete) international search was carried out because the applicant did not file an electronic sequence listing conforming to WIPO Standard ST.25 in response to a request from the ISA or did not pay the late furnishing fee, the IPER will indicate under Section III that the examination is limited according to Rule 13ter.2 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). The examiner also indicates in Section III of the IPER that the examination is also limited according to Rule 66.1(e) because the search was incomplete.

Where a sequence listing in electronic form and compliant with WIPO Standard ST.25 is not available to the EPO as IPEA, the applicant may be invited to furnish such a sequence listing under Rule 13ter.1(a) and to pay the late furnishing fee under Rule 13ter.1(c) within a non-extendable period of one month from the date of the invitation.

3. Positive or negative IPER

As for the WO-ISA, the examiner needs to indicate whether the IPER is to be considered positive or negative. The same criteria apply as in GL/PCT-EPO B-XI, 3.4.

In the special case of a non-unitary application, where all inventions examined (normally after issuance of an invitation to pay additional fees (Form 405); see GL/PCT-EPO C-V, 1) were found novel and inventive, but still lacking unity – as the only remaining objection – the IPER is marked as negative. Under Section V, a positive statement as to novelty and inventive step is given for all examined inventions, and the objection as to lack of unity is reasoned under Section IV.

In this special case, the negative IPER can be sent directly without any further written opinion, as an exception to the general principle outlined in GL/PCT-EPO C-IV, 2.2, that prior to issuing a negative IPER a WO-IPEA (Form 408) is to be sent. The reason for this exception is that the applicant is entitled to have multiple inventions examined in Chapter II if additional fees have been paid, so that there is no objection to be raised in the WO-IPEA.

In the case of a non-unitary application where no additional search fees were paid and the report on the first invention is positive, the IPER is also marked as negative (because the non-unity objection will prevent a direct grant upon entry into the European phase) and can be sent directly. Under Section V, a positive statement as to novelty and inventive step is given for the first invention only. Section IV is not filled out (see GL/PCT-EPO C-V, 2).

4. Rectification of the IPER

Rule 66.4bis

Since an IPER is a non-binding opinion and not a decision, the PCT provides for neither opposition nor appeal against it. Establishment of the IPER is normally the end of the international phase. Any further