Chapter VI – Novelty

1. Prior art pursuant to Art. 33(2)

Art. 33(2)
Rule 43bis.1(a)(i), Rule 64.1, Rule 64.2
GL/ISPE 12.01, 12.02

Under the PCT, an invention is considered to be novel if it is not anticipated by the prior art. Everything which is made available to the public anywhere in the world by means of a written disclosure is considered prior art provided that such making available occurred prior to the relevant date. In cases where the making available to the public occurred by non-written means, it constitutes prior art only if a written disclosure that occurred before the relevant date confirms the non-written disclosure. The relevant date is the international filing date or, where at least one priority has been validly claimed, the date of the earliest priority. It should be noted that in considering novelty (as distinct from inventive step), it is not permissible to combine separate items of prior art together. It is also not permissible to combine separate items belonging to different embodiments described in one and the same document, unless such combination has specifically been suggested, see also ISPE Guidelines 12.06.

For the specific case of selection inventions see ISPE Guidelines 12.10.

Furthermore, any matter explicitly disclaimed (with the exception of disclaimers which exclude unworkable embodiments) and prior art acknowledged in a document, insofar as explicitly described therein, are to be regarded as incorporated in the document.

GL/ISPE 12.06

It is further permissible to use a dictionary or similar document of reference in order to interpret a special term used in a document.

2. Implicit features or well-known equivalents

GL/ISPE 12.04

A document takes away the novelty of any claimed subject-matter derivable directly and unambiguously from that document including any features implicit to a person skilled in the art in what is expressly mentioned in the document, e.g. a disclosure of the use of rubber in circumstances where clearly its elastic properties are used even if this is not explicitly stated takes away the novelty of the use of an elastic material. The limitation to subject-matter "derivable directly and unambiguously" from the document is important. Thus, when considering novelty, it is not correct to interpret the teaching of a document as embracing well-known equivalents which are not disclosed in the documents; this is a matter of inventive step.

3. Relevant date of a prior document

Rule 64.1, Rule 64.2, Rule 33.1(b)

In determining novelty, a prior document should be read as it would have been read by a person skilled in the art on the relevant date of the document. For the purpose of assessing novelty the "relevant" date for written disclosures is the date as defined by Rule 64.1(b), i.e. either the international filing date of the application under consideration or, if a priority has been validly claimed, the application date of that earlier application (if the filing date of the application is within the two-month period after the expiry of the priority period of the earlier application, the relevant date is also the application date of that earlier application); for non-written disclosures see Rules 33.1(b) and 64.2.