

Chapter XI – The written opinion

1. The written opinion

Under Chapter I, at the same time as establishing the search report the search examiner must establish the written opinion of the ISA (WO-ISA) to be sent to the applicant together with the search report. The WO-ISA gives a preliminary and non-binding opinion on whether the claimed invention appears to be novel, to involve an inventive step and to be industrially applicable. When appropriate, an opinion will also be given on added subject-matter, unity, insufficient disclosure and clarity or support issues, as well as formal defects.

Rule 43bis
GL/ISPE 17

The findings of the written opinion must be consistent with the document categories assigned in the search report and must also be consistent with any other issues raised in the search report, such as lack of unity of invention or limitation of the search.

If there are no defects in the application, the WO-ISA will state the reasons why the application is considered to fulfil the requirements of novelty, inventive step and industrial applicability.

The written opinion (and any informal comments filed by the applicant) will be made available to the public by the IB at the same time as the international publication.

Art. 21(3)
GL/ISPE 2.17

If the application subsequently enters the EP phase, the applicant is obliged to reply to any negative WO-ISA or IPRP/IPER. The WO-ISA is thus comparable to the ESOP in the European procedure.

2. Basis of the written opinion (WO-ISA)

The applicant cannot amend his application before the search report has been communicated to him. Consequently, the WO-ISA will always relate to the application documents as originally filed or a translation thereof, and subject to the possibility of sequence listings being furnished later for the purposes of international search (see Rule 13ter.1). Furthermore, any reply filed by the applicant in response to an invitation for informal clarification (see GL/PCT-EPO B-VIII.3.4) will also be taken into consideration when drawing up the written opinion.

GL/ISPE 17.13

Replacement pages or sheets, filed in response to an invitation by the receiving Office to correct defects in the international application, are deemed to be part of the international application "as originally filed". These sheets are identified with a stamp "SUBSTITUTE SHEET (RULE 26)" (see GL/PCT-EPO H-IV.1). Also, replacement pages or sheets for rectification of obvious mistakes under Rule 91 (see GL/PCT-EPO H-IV.2) are deemed to be part of the international application "as originally filed". These sheets are identified with "RECTIFIED SHEET (RULE 91.1)".

Rule 26
Rule 91.1
GL/ISPE 17.16

See GL/PCT-EPO H-IV.2, for the procedure to follow if the rectified sheets contain added subject-matter.