

Rule 19.4(a)(iii)
Rule 20.5bis(a)(ii)
Rule 20.8(a-bis)
PCT Gazette
30.01.2020, 11-12

Similarly, an applicant therefore also has the possibility to request the correction of erroneously filed parts of the application and/or entire elements without affecting the international filing date by requesting their incorporation by reference to the priority document. This latter possibility is, however, not available before all ROs. In particular, the EPO acting as RO has notified the IB of the incompatibility of Rule 20.5bis(a)(ii) and Rule 20.5bis(d) with the legal framework under the EPC; see GL/PCT-EPO A-II, 6. This notification does not have any impact on the activity of the EPO as ISA and IPEA, which depends on the decisions taken by the RO with regard to the international application and its filing date (see GL/PCT-EPO B-III, 2.3.3 and GL/PCT-EPO B-III, 2.3.4, and GL/PCT-EPO B-XI, 2.1).

Rule 4.18
Rule 20.3
Rule 20.5
Rule 20.5bis
Rule 20.7

A request for incorporation by reference can only be filed before the RO within two months of the date of receipt of the purported international application (or at the invitation of the RO) provided that the priority claim was present at that initial date of receipt and only if the applicant can show that the missing or correct part(s) and/or element(s) was (were) completely contained in the priority document. Missing or correct parts and/or elements which have been accepted under this criterion are considered to be part of the application documents "as originally filed" (see GL/PCT-EPO B-III, 2.3.4 and GL/PCT-EPO B-XI, 2.1).

Rule 20.5(e)
Rule 20.5bis(e)

If the RO finds that the "completely contained" criterion is not met, the filing date of the application will be the date on which the part(s) and/or the element(s) was (were) subsequently furnished (unless, in the case of missing parts or of correct elements and/or parts, the applicant withdraws the subsequently furnished elements and/or parts). Where the EPO is (S)ISA or IPEA, the examiner must check (as far as the documents needed are available) whether the RO's assessment of the "completely contained" criterion was correct.

See also GL/PCT-EPO A-II, 5.

2.2.2.1 Test for "completely contained"

Rule 20.5(a)(ii)
Rule 20.5(d)
Rule 20.5bis(a)(ii)
Rule 20.5bis(d)
OJ EPO 2020, A81
GL/RO 205D
GL/ISPE 15.11

The test for "completely contained" is stricter than the test for added subject-matter since it is a test whether the subsequently filed missing or correct part(s) and/or element(s) was (were) identical to the corresponding extract in the priority document, or a translation thereof.

Although the RO is responsible for the decision on whether the missing or correct part(s) and/or element(s) was (were) completely contained in the priority document, the examiner must check (as far as the documents needed are available) that the decision taken was correct.

If the EPO is the RO, the examiner is only required to check for additional technical content. This entails ensuring that the missing text has been inserted into the application in such a position that it has exactly the same meaning as it had in the priority document.