

4.2 Defects

Art. 11(2)
R. 20
GL/RO 45-48A

If the EPO as receiving Office finds that, at the time of receipt, the international application does not comply with one or more of the requirements under Art. 11 for according an international filing date, it will invite the applicant to file the required correction(s) within two months of the date of the invitation (Form PCT/RO/103). If the applicant complies, the international filing date will be the date of receipt of the correction(s); otherwise, the application will not be treated as an international application (Form PCT/RO/104). For further details on the procedure followed by the EPO as receiving Office in the event of defects under Art. 11(1), see GL/RO 45-48 and 50.

R. 4.18, 20.5

If the defect is the omission of an element (description or claims), the applicant may decide either to furnish the missing element as a correction under Art. 11(2) and R. 20.3(a)(i) as described above or to confirm its incorporation by reference. The second option is described in GL/PCT-EPO A-II.5.

If the time limit for the correction of the purported international application expires after the 12-month priority period, the applicant's attention is drawn to this circumstance in Form PCT/RO/103.

R. 4.18, 20.3, 20.5,
20.6, 20.7

5. Incorporation by reference of missing elements or parts

If the applicant has omitted to file with the international application a part of the description or of the claims, part or all of the drawings or an entire element, i.e. the entire description or all the claims, the omission may be incorporated in the international application by reference.

Firstly, the omission must be completely contained in an application from which priority was claimed on the international filing date. For an omission to be "completely contained", it must be identical to the corresponding text/drawing in the priority document.

Secondly, the PCT request must have contained a statement of incorporation by reference to the priority application. A statement to that effect is already provided for in Box VI of the PCT request form (PCT/RO/101).

Thirdly, the conditions for confirmation in Rules 20.6 and 20.7 must be met.

If all the conditions are met, the omission is incorporated and the international filing date is unaffected.

If the description and/or claims as contained in the priority application do not qualify as missing parts on the grounds that the international application already contained a complete description and/or a complete set of claims, the EPO as receiving Office will proceed to a negative finding under GL/RO paragraph 205D and will not transmit the international application to the IB in accordance with Rule 19.4(a)(iii).

An applicant wishing to add to an international application omitted parts which have no basis in a priority application may do so under Rule 20.5.