

Chapter I – The right to amend

Chapter H-I deals with the right to amend, while Chapters H-II and H-III deal with the allowability of amendments. Chapter H-IV is dedicated to the rectification of obvious mistakes.

1. Introduction

Notwithstanding the possibility to amend the claims before the IB under Art. 19, an international application may be amended during the PCT Chapter II procedure. There are a number of important aspects to consider.

Firstly, the amendments filed must be such that they can be taken into consideration by the EPO in its capacity as IPEA. The conditions governing timing and formal aspects are explained in GL/PCT-EPO H-I.2 to GL/PCT-EPO H-I.6.

Any change in the claims, the description or the drawings, other than a rectification of obvious mistakes under Rule 91, a correction under Rule 26 or the furnishing of missing parts under Rule 20.5 or correct elements or parts under Rule 20.5bis, is considered an amendment. Unless withdrawn or superseded by later amendments, any change considered an amendment must be taken into consideration for the purpose of the international preliminary examination.

Art. 19
Art. 34(2)(b)
Rule 66.5
GL/ISPE 20.04

Secondly, amendments must be allowable, which means that they must not:

- (i) add to the application subject-matter which was not disclosed in the application as originally filed Art. 19(2)
Art. 34(2)(b)
- (ii) introduce other deficiencies (such as lack of clarity in the claims). GL/ISPE 20.09

2. Amendments before receipt of the search report

There is no right to amend the application until after the international search report has been established. Obvious mistakes, on the other hand, may be corrected (see GL/PCT-EPO H-IV).

3. Amendments prior to the start of international preliminary examination

When filing the demand, the applicant should indicate on Form PCT/IPEA/401 which documents should form the basis for international preliminary examination. These may be:

Art. 19
Art. 34(2)(b)
Rule 53.9
Rule 66.1
GL/ISPE 20.01-20.02

- the international application as originally filed, or
- amendments to the claims under Art. 19 and/or
- amendments to the claims, the description and/or sequence listings filed as a part thereof and/or the drawings under Art. 34(2)(b).