

Chapter VI – Priority

1. The right to priority

For the establishment of the WO-ISA in relation to the priority claim, see GL/PCT-EPO B-XI.4 and subsections.

1.1 Filing date as effective date

See ISPE Guidelines 6.01.

Art. 11, 14
Rule 20

1.2 Priority date as effective date

When an international application claims the right of priority of the date of filing of an earlier application, the priority date (i.e. the filing date of the earlier application) will be used to calculate certain time limits.

Art. 2(xi)

The priority claim must refer to an earlier application. The day of filing of the earlier application not being included in the priority period (Art. 8(2) PCT in conjunction with Article 4C(2) of the Paris Convention and Rule 2.4(a) PCT), the priority period starts on the day following the date of filing of the earlier application. Thus, an "earlier" application is to be understood as an application that has been filed at least a day before the application claiming priority.

Art. 8(1)
Rules 2.4, 17.1
and 80

Furthermore, the priority date becomes the effective date for the purposes of international examination, i.e. the written opinion (of either the ISA or the IPEA) and the international preliminary examination report. The relevant date for the purposes of the international search is always the international filing date.

Rules 33.1, 43bis.1,
64.1
GL/ISPE 11.02-11.05

See ISPE Guidelines 6.02.

1.3 Validly claiming priority

See ISPE Guidelines 6.03.

Art. 8(1)
Rules 2.4, 4.10
Rule 26bis.2

1.4 Subsequent application considered as first application

See ISPE Guidelines 6.04.

Art. 8(2)(a)

Examples of applications that cannot be recognised as a "first application" are:

- (i) US applications which are a "continuation" of a previous application ("con");
- (ii) US applications which are a "continuation in part" of a previous application ("cip"), in so far as the subject-matter in question was already disclosed in the original US application;
- (iii) national applications claiming priority from a previous national application or national utility model.