

5. Conflict with other applications

5.1 Prior art pursuant to Rules 33.1(c) and 64.3

Under the PCT, the prior art does not comprise the content of other applications filed or validly claiming a priority date earlier than – but published on or after – the date of filing or valid date of priority of the application being examined. However, attention must be drawn to such applications in the international search report and, where applicable, the preliminary examination report, as they may become relevant under Article 54(3) EPC (see also GL/PCT-EPO B-XI, 4.3). By the "content" of an application is meant the whole disclosure, i.e. the description, drawings and claims, including:

GL/ISPE 11.07-11.09
Rule 33.1(c),
Rule 64.3,
Rule 70.10

- (i) any matter explicitly disclaimed (with the exception of disclaimers for unworkable embodiments);
- (ii) any matter for which an allowable reference (see GL/EPO F-III, 8, penultimate paragraph) to other documents is made; and
- (iii) prior art insofar as explicitly described.

However, the "content" does not include any priority document (the purpose of such document being merely to determine to what extent the priority date is valid for the disclosure of the international application).

5.2 Co-pending applications

The PCT does not deal explicitly with the case of co-pending international applications of the same applicant of the same effective date, see ISPE Guidelines 11.10.

6. Prior art made available to the public anywhere in the world by non-written disclosure

A non-written disclosure is not considered part of the prior art for the purposes of Art. 33(2) and (3) if the date of that non-written disclosure is indicated in a written disclosure which has been made available to the public on or after the relevant date of the application (i.e. on or after the international filing date or, if a priority has been validly claimed, the earliest priority date).

Rule 33.1(b),
Rule 64.2
GL/ISPE 11.22

6.1 Types of non-written disclosure, in particular use, and instances of prior art made available in any other way

Making available to the public may occur by means of an oral disclosure, use, exhibition or other non-written means. Use may be constituted by producing, offering, marketing or otherwise exploiting a product, or by offering or marketing a process or its application or by applying the process. Marketing may be effected, for example, by sale or exchange.

Rule 33.1(b),
Rule 64.2

Prior art may also be made available to the public in other ways, as for example by demonstrating an object or process in specialist training courses or on television.