Chapter I – Patentability

1. General disclaimer

Under Art. 150(2) EPC, an international application filed under the PCT may be the subject of proceedings before the EPO. In such proceedings, the provisions of the PCT and its Regulations are applied, supplemented by the provisions of the EPC. In case of conflict, the provisions of the PCT and its Regulations prevail.

The EPO, acting as ISA or IPEA, has established practice on how the examiner assesses novelty and inventive step. For most subject-matter this practice is identical to that used in proceedings for European patent applications. However, for some subject-matter the ISPE Guidelines deviate from the practice in European proceedings, and for other subject-matter they recognise that different offices adopt different approaches. As a result of Art. 150(2) EPC, the EPO as ISA/IPEA will, for the assessment of novelty and inventive step, generally apply the provisions of the PCT and, where these are not sufficient, will base its assessment on its established practice. In the latter case, these Guidelines then state that "the principles as laid down in the corresponding section in the Guidelines for Examination in the EPO apply *mutatis mutandis*."

It should be borne in mind that when an international application validly enters the regional phase before the EPO, it is considered as a European patent application. Consequently, the EPO will apply its criteria for examination as laid down in the Guidelines for Examination in the EPO for any subject-matter.

2. General remarks

The aim of the PCT is to allow the applicant to obtain a preliminary and non-binding opinion on the patentability of the claimed subject-matter before entering the regional phase. The PCT procedure cannot serve the purpose of granting a patent as is the case for example under the EPC.

Art. 33(1)
Rule 43bis.1(a)