

C. PCT 1692

October 9, 2025

Madam,
Sir,

Proposed modifications of the PCT International Search and Preliminary Examination Guidelines ("the ISPE Guidelines")

This Circular is addressed to your Office in its capacity as an International Searching Authority (ISA), an International Preliminary Examining Authority (IPEA), an Authority specified for supplementary search and/or a designated or elected Office under the Patent Cooperation Treaty (PCT). It is also addressed to certain non-governmental organizations representing users of the PCT System.

The purpose of this Circular is to consult on proposed modifications to the ISPE Guidelines to implement the amendments the Regulations under the PCT ("the Regulations") that will enter into force on January 1, 2026, as follows:

- (a) Amendments to Rules 34, 36 and 63, adopted by the PCT Assembly at its fifty-fifth session, held in Geneva from July 6 to 14, 2023 (see document PCT/A/55/2, Annex II, and document PCT/A/55/4, paragraph 32) to set out a revised definition of the minimum documentation that an International Searching Authority is required to consult during international search, along with changes to the minimum requirements that an International Searching and Preliminary Examining Authority needs to satisfy before it can be appointed and that it needs to continue to satisfy during its appointment. Modifications of the Administrative Instructions to implement these amendments were promulgated under Rule 89.2(b) by Circular C. PCT 1672, dated June 19, 2024, and will enter into force on January 1, 2026.

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(b) Amendments to Rules 33 and 64, adopted by the PCT Assembly at its fifty-sixth session, held in Geneva from July 9 to 17, 2024 (see document PCT/A/56/2, Annex IV, and document PCT/A 56/3, paragraph 23) to broaden the definition of relevant prior art for international search and preliminary examination to include non-written disclosures.

Detailed explanations of the proposed modifications to the ISPE Guidelines are provided below, noting that some explanations may not be provided in every case, especially when the proposed modifications are self-evident or of an editorial nature.

Paragraphs 6.06, 11.01, 11.12, 11.13, 11.22, 15.01 and 15.05 are proposed to be modified to reflect that the definition of relevant prior art for the purposes of assessing the novelty and inventive step (non-obviousness) of an invention will no longer be limited to written disclosures.

Paragraph 6.06 is proposed to be modified to remove reference to the importance of the priority right for a non-written disclosure that occurred before the priority date which was indicated by a written disclosure in the period between, and including, the priority date and the international filing date, given that the non-written disclosure will become part of the relevant prior art for the purposes of determination of novelty and inventive step (non-obviousness).

Paragraph 11.12 is proposed to be modified to refer to the need for members of the public to be able to gain knowledge from the content of the disclosure, in place of gaining access to the content of a document.

Paragraph 11.22 is proposed to be modified to provide guidance on how to cite a document in the international search report that reproduces an earlier disclosure, including establishing the date when the earlier disclosure was first made publicly available.

Paragraph 15.93 is proposed to be modified to remove a reference to the language-related exception to the documents that an examiner must consult during international search that no longer applies under the revised definition of the minimum documentation in Rule 34.

A new paragraph 16.78C is proposed to be added, with the present paragraph 16.78C being renumbered to 16.78D. The proposed paragraph 16.78C provides guidance on how to cite oral disclosures, use, exhibition or other non-written means of making available to the public in the international search report. Examples of recommended ways of citing a document in the international search report referring to such earlier disclosures are proposed in paragraph 16.78D.

Paragraph 17.43 is proposed to be modified to provide guidance on how the examiner should refer to non-written disclosures in the reasoned statement with regard to novelty, inventive step and industrial applicability in written opinions and international preliminary reports on patentability.

Paragraph 21.15(i) is proposed to be modified to remove reference to the language facilities of staff capable of searching and examining applications in the required technical field that will be deleted from Rules 36 and 63.

The paragraphs of the ISPE Guidelines which are proposed to be modified or added are set out in the Annex to this Circular.

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Responses to this Circular

You are invited to provide comments on the proposed modifications. Replies should be send by November 7, 2025, preferably by e-mail to the PCT Business Development Division: pct.bdd@wipo.int.

Yours sincerely,

A handwritten signature in dark ink, reading "Lisa K. Jorgenson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Lisa Jorgenson
Deputy Director General
Patents and Technology Sector

Enclosures: Annex — Proposed modifications to the International Search and Preliminary Examination Guidelines

PROPOSED MODIFICATIONS TO THE PCT INTERNATIONAL SEARCH AND PRELIMINARY EXAMINATION GUIDELINES

Chapter 6 Priority

6.01 to 6.05 [No change]

Determining Priority Dates

6.06 As a general rule, the examiner, in preparing a written opinion or an international preliminary examination report, should not make any investigation as to the validity of a right to priority, in which case, Box No. II ("Priority") of the opinion or report would not normally be included (see paragraph 17.28). However, the priority right assumes importance if subject matter relevant with regard to the determination of novelty or inventive step (non-obviousness) of the claimed invention:

(i) has been ~~published~~ disclosed within the meaning of Rule 64.1 on or after the priority date claimed and before the international filing date; or

~~(ii) forms part of the content of a non-written disclosure within the meaning of Rule 64.2, that is, a non-written disclosure which occurred before the priority date and which was indicated in a written disclosure in the period between, and including, the priority date and the international filing date; or~~

(iii) forms part of the content of an application or patent within the meaning of Rule 64.3, that is, an application or patent which was published on or after that date but was filed earlier than the international filing date or claimed the priority of an earlier application which was filed prior to the international filing date.

In such cases (that is, cases where the art in question would be relevant if of earlier date), the examiner must satisfy himself that the priority date(s) claimed may be accorded to the appropriate parts of the international application he is examining and, where appropriate, will also consider the validity of any priority date claimed for the application or patent within the meaning of Rule 64.3 (see also Rule 70.10, last sentence).

6.07 to 6.17 [No change]

Chapter 11 Prior Art

Prior Art Generally

Article 33(2); Rule 33.1

11.01 The prior art for the purposes of assessing the novelty (see Chapter 12) and inventive step (whether or not the invention is obvious; see Chapter 13) of an invention is defined as "everything made available to the public anywhere in the world by any means ~~of written disclosure (including drawings and other illustrations)~~" before the "relevant date." The scope of this definition should be noted. There are no restrictions whatsoever as to the geographical location where, or the language or manner (including ~~written disclosures~~ s posted on the Internet or an on-line database) in which, the relevant information contained in the ~~written~~ disclosure was made available to the public. There are no restrictions as to the age of the prior art ~~document~~ (whether it is 100 years old or was published one day prior to the "relevant date") so long as ~~the document~~ it was made available to the public before the "relevant date." If the applicant makes an admission, the subject matter mentioned in the admission (for example, a figure in an international application labeled as "prior art") may

constitute prior art. The presumption that the admission constitutes prior art may be rebutted by the applicant.

11.02 to 11.11 [No change]

Form of Disclosure

Availability of ~~Written~~ Disclosures to the Public

Rules 33.1(c), 64.3, 70.10

11.12 A ~~written~~ disclosure, ~~that is, a document~~, is regarded as made available to the public if, at the relevant date (see paragraphs 11.02 to 11.05), it was possible for members of the public to gain ~~access to~~ knowledge from the content of the ~~document~~ disclosure, and there was no bar of confidentiality restricting the use or dissemination of knowledge gained thereby. Whether the absence of an index or a catalogue of the ~~document~~ disclosure constitutes inaccessibility of the content of the ~~document~~ disclosure to the public is determined in accordance with the above principle. Where the ~~document~~ disclosure only provides the month or the year, but not the specific date, which the ~~document~~ disclosure was made available to the public, the content of the ~~document~~ disclosure is presumed to have been made available to the public on the last day of that month or that year, respectively, unless evidence is provided to prove otherwise.

Disclosure on the Internet

11.13 Prior art disclosure on the Internet or on an on-line database is considered in the same manner as other forms of ~~written~~ disclosure. Information first disclosed on the Internet or on-line database are considered to be publicly available as of the date the disclosure was publicly posted (for Internet disclosures that provide evidence of an earlier disclosure, see paragraph 11.22). When citing an Internet disclosure (content on a web page), problems may arise in establishing the date of publication and whether or not the disclosure has been modified over time. When establishing the publication date of content on a web page, it is important to distinguish between two types of Internet disclosure, viz: those made on the web sites of trusted publishers and those made on web sites of unknown reliability.

11.14 to 11.21 [No change]

Documents Reproducing an Earlier ~~Oral Description~~ Disclosure

11.22 Where a document (including video, audio and multimedia representations retrieved from the Internet) reproduces an oral ~~description~~ disclosure (for example, public lecture) or a disclosure from a prior use or sale (for example, display at a public exhibition) that was publicly available before the relevant date of the international application ~~but a document, which reproduces the oral description or gives an account of the prior use or sale, was published on or after the relevant date of the international application~~, that document ~~may~~ should be cited in the international search report with the date that the earlier disclosure was first made publicly available indicated as the date of publication. For a publication on the Internet of an earlier disclosure, the content is considered to be publicly available as of the date of the earlier disclosure if this can be established, for example, by a written reference to the date that a video or audio of a public event was recorded, or an indication of the date of disclosure within the recording itself. If a date of the earlier disclosure cannot be established, that disclosure should be considered to be publicly available as of the date it was posted on the Internet. The content of the oral disclosure or information regarding a prior use or sale where the established date of disclosure is before the relevant date is ~~The earlier lecture, display or other event is not treated as~~ part of the prior art for purposes of the opinion on novelty and inventive step under Article 33(2) and (3). Attempting to establish the date of the earlier disclosure will therefore be important if the document was published on or after the relevant date of an international application but the earlier disclosure referred to in the document took place before the relevant date. ,but ~~T~~ the written opinion and international

preliminary examination report [also](#) calls attention to such non-written disclosure in the manner provided for in Rule 70.9.

11.23 to 11.26 [No change]

Chapter 15 The International Search

Objective of the International Search and Supplementary International Search

Article 15(2), (4); Rules 33.1(a), 34

15.01 The objective of the international search is to discover relevant prior art, which consists of everything which has been made available to the public anywhere in the world by [any](#) means of ~~written~~ disclosure ~~(including drawings and other illustrations)~~ (see Chapter 11) and which is capable of being of assistance in determining that the claimed invention is or is not new (see Chapter 12) and that it does or does not involve an inventive step (that is, that it is or is not obvious; see Chapter 13), provided that the making available to the public occurred prior to the international filing date. The International Searching Authority endeavors to discover as much of the relevant prior art as its facilities permit, and in any case consults the minimum documentation specified in Rule 34.

15.02 to 11.04 [No change]

Non-Written Disclosures

Article 15(2), (4); Rules 33.1(a), 34

15.05 ~~A non-written disclosure such as an oral disclosure, use, exhibition or other means of disclosure is not relevant prior art for the purposes of the international search unless it is substantiated by a written disclosure made available to the public prior to the international filing date and it is the written disclosure which constitutes the prior art. However, i~~ [If the date on which the a](#) written disclosure refers to a non-written disclosure such as an oral disclosure, use, exhibition or other means of non-written disclosure, and that written disclosure was made available to the public ~~was~~ on or after the filing date of the international application under consideration, the search report should separately mention that fact and the date on which the written disclosure was available, even though such a written disclosure does not meet the definition of relevant prior art in the international phase, so long as the non-written disclosure was made available to the public on a date prior to the international filing date (see paragraph 11.22) ~~since such a non-written disclosure may be considered to be prior art under national law in the national phase.~~

15.06 to 15.92 [No change]

Extent of Search

Rule 45bis.5(f)

15.93 The minimum extent ~~scope~~ of a supplementary search is set out in the agreement between the International Bureau and the Authority specified for supplementary search. This may be different from the PCT minimum documentation under Rule 34 since it is expected that the main international search should, subject to the language related exceptions in paragraph (e) of that Rule, cover that documentation effectively. Where the main international search report is not received before the start of the supplementary international search (see paragraph 15.82), the examiner may need to make assumptions about the scope which the main international search will have in order to decide the extent of the search which he should conduct. Any comments on this matter may be recorded on the supplementary international search report (see paragraph 15.96).

15.94 to 15.97 [No change]

Chapter 16 International Search Report

Objective of the International Search and Supplementary International Search

16.01 to 16.78B [No change]

16.78C Identification of an oral disclosure, use, exhibition or other non-written means of making available to the public should be made according to WIPO Standard ST.14, indicating the earliest date of the disclosure to the public, applying the provisions of WIPO Standard ST.2 where year, month and day are available. This could be the date of a public oral presentation, use or exhibition, or in the case of a private audio or video recording, the date the recording was posted on the Internet (see paragraph 11.22). Later dates of disclosure that could be relevant for the disclosure such as the date of publication of written conference proceedings or the date of posting on the Internet of a public event should also be included, along with the date of retrieval for an Internet citation e.g. "retrieved on [2010-04-05]". In the case of an audio or video recording, the examiner could indicate specific sections of the timeline of the recording, e.g. "from 01:22 to 01:56".

16.78D Examples of identifying documents cited in the international search report in the situations described in the preceding paragraphs and in other situations are found in WIPO Standard ST.14. In the case of documents referring to an earlier oral disclosure, use, exhibition or other means, such as conference proceedings or a posting on the Internet (citation category "O", followed by "X", "Y" or "A" as appropriate – see paragraphs 11.12 and 16.70), the details of the earlier disclosure should preferably be provided first, followed by the document that refers to the prior disclosure. One way of citing such documents could therefore be the following:

SMITH et al. Digital demodulator for electrical impedance imaging. IEEE Engineering in Medicine & Biology Society, 11th Annual Conference. November 9-12, 1989. In: Proceedings of the IEEE Engineering in Medicine & Biology Society, 11th Annual Conference. Edited by Y. Kim et al. New York: IEEE, 1989, Vol.6, p. 1744-5.

HOEL, Lester A. Urban commodity flow report of a conference. Conference on Urban Commodity Flow, December 6-9, 1970. Published in: Highway Research Board Special Report, 1971, Vol.120, p. 5-8.

Sapolsky, Robert. Introduction to Human Behavioral Biology. Stanford: University of Stanford, March 29, 2010. Published on: YouTube [online] [video] [uploaded on 2011.02.01] [retrieved on 2015.09.15]. Retrieved from <<https://www.youtube.com/watch?v=NNnIGh9q6fA>> from 23:22 to 24:56.

Chapter 17 Content of Written Opinions

17.01 to 17.42 [No change]

Rules 43.5(e), 70.7(b); Section 604

17.43 Explanations should clearly indicate, with reference to the cited documents, the reasons supporting the conclusions that any of the said criteria is or is not satisfied. If only certain passages of the cited documents are relevant or particularly relevant, the examiner should identify these, for example, by indicating the page, column or the lines where such passages appear. In the case of a patent document in a language other than English, the examiner should preferably also indicate the corresponding part or passage of the English member of the patent family if such a member is available. In the case of a citation that refers to a non-written disclosure, the examiner should describe the most relevant elements of the disclosure, and indicate spatial, temporal or any other relevant references, for example, by specifying a section of an audio or video recording of particular relevance using timestamps.

17.44 to 17.73 [No change]

Chapter 21 Common Quality Framework for International Search and Preliminary Examination

21.01 to 21.14 [No change]

3. Resources

21.15 Each Authority should be able to accommodate changes in workload and should have an appropriate infrastructure to support the search and examination process and comply with the QMS requirements and these Guidelines. To those ends, the Authority should have:

– *Sufficient Human Resources:*

(i) a quantity of staff sufficient to deal with the inflow of work and which maintains the technical qualifications to search and examine in the required technical fields ~~and the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated;~~

(ii) appropriately trained/skilled administrative staff at a level to support the technically qualified staff and facilitate the search and examination process, and for the documentation of records;

– *Sufficient Material Resources:*

(iii) appropriate equipment and facilities, such as IT hardware and software, to support the search and examination process;

(iv) possession of, or access to, at least the minimum documentation referred to in Rule 34, properly arranged for search and examination purposes, on paper, in microform or stored on electronic media;

(v) comprehensive and up-to-date instructions to help staff understand and adhere to the quality criteria and standards and follow work procedures accurately and consistently;

– *Sufficient Training Resources:*

(vi) an effective training and development program for all staff involved in the search and examination process to ensure they acquire and maintain the necessary experience and skills and are fully aware of the importance of complying with the quality criteria and standards; and

– *Oversight over its Resources:*

(vii) a system for continuously monitoring and identifying the resources required to deal with demand and comply with the quality standards for search and examination.

21.16 to 21.25 [No change]

8. Search Process Documentation

21.26 For internal purposes each Authority should document its search process which may include *inter alia*:

- (i) the databases consulted (patent and non-patent literature);
- (ii) the keywords, combinations of words and truncations used;
- (iii) the language(s) in which the search was carried out;
- (iv) the classes and class combinations searched, at least according to the IPC or equivalent; and
- (v) a listing of all search statements used in the databases consulted.

~~(vi)~~ Each Authority should further document at least for internal purposes special cases such as:

- ~~(vii)~~ limitation of search and its justification;
- ~~(viii)~~ lack of clarity of the claims; and
- ~~(viii)~~ lack of unity.

21.27 to 21.33 [No change]

[End of Annex and of Circular]