



C. PCT 1283/CWS 09

September 15, 2010

Madam,
Sir,

This Circular is addressed to your Office in its capacity:

- (i) as a receiving Office, International Searching Authority, International Preliminary Examining Authority and or designated or elected Office under the Patent Cooperation Treaty (PCT) with regard to Annex C of the Administrative Instructions under the PCT ("Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in International Patent Applications Under the PCT"); and/or
- (ii) as a member of the WIPO Committee on WIPO Standards (CWS) with regard to WIPO Standard ST.25 ("Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in Patent Applications") (see below).

This Circular is also being sent to certain interested intergovernmental organizations as well as certain non-governmental organizations representing users of the PCT system.

This Circular concerns the promulgation, in accordance with PCT Rule 89.2(a), of modifications to Annex C of the Administrative Instructions under the PCT. It also concerns consultations, under PCT Rule 89.2(b), on proposed further modifications of Annex C of the Administrative Instructions under the PCT.

Promulgation under PCT Rule 89.2(a) of Modifications to Annex C of the PCT Administrative Instructions

In accordance with PCT Rule 89.2(a), modifications to Annex C of the Administrative Instructions under the PCT are hereby promulgated with effect from January 1, 2011. The consolidated text of Annex C of the PCT Administrative Instructions is available on the WIPO website under "PCT Administrative Instructions (as in force from January 1, 2011)" at: www.wipo.int/pct/en/texts/.

The modifications to Annex C of the Administrative Instructions are applicable to international applications filed on or after January 1, 2011.

This follows consultations under PCT Rule 89.2(b), by way of Circular C.PCT 1193/C.SCIT 2671, dated October 14, 2009, with your Office in its capacity as receiving Office, International Searching Authority, International Preliminary Examining Authority, or designated/elected Office, and also with certain non-governmental organizations.

The modifications are as proposed by Circular C.PCT 1193/C.SCIT 2671, except that, as a result of the consultations, the following further changes have been (editorial and minor drafting changes are not specifically mentioned):

- (i) paragraph 2(i-*bis*) of Annex C has been further modified so as to clarify that a sequence listing forming part of the international application may include any sequence listing or part thereof which is included in the international application under Rule 20.5(b) or Rule 20.5(c), or which is considered to have been included in the international application under Rule 20.6(b);
- (ii) paragraph 42(ii) of Annex C has been further modified by deleting the words "a correction under Rule 26" and "a correction (of a formality defect)", consequential on similar changes made to paragraph 2(i-*bis*), noting that it would not appear possible to include a sequence listing in the international application by way of a correction of a formality defect under Rule 26 where no such listing but only sequences were contained in the international application as filed.

Consultation under PCT Rule 89.2(b) on Proposed Further Modifications to Annex C of the PCT Administrative Instructions

During the consultations referred to above, a proposal was made by the European Patent Office to further modify Annex C of the Administrative Instructions by deleting all references in Annex C to sequence listings included in the international application by way of a rectification under Rule 91. According to the European Patent Office, under its practice, it is not possible to submit a sequence listing after the date of filing of the international application by way of a rectification of an obvious mistake under Rule 91. Rather, Rule 13*ter* should be the only applicable legal basis for the submission of a sequence listing after the international filing date. Consequently, the European Patent Office proposed to further modify paragraphs 2(i-*bis*), 3*bis*, 3*ter* and 4*bis* of Annex C as set out in the Annex to this Circular.

The changes proposed by the European Patent Office are of a significantly different nature to those on which Offices were consulted by way of Circular C.PCT 1193/C.SCIT 2671. Consequently it is necessary to begin further consultations under Rule 89.2(b) on those proposed further modifications to Annex C, as set out in the Annex to this Circular. Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. The proposed modifications are shown relative to the text of Annex C as promulgated by way of this Circular with effect from January 1, 2011.

The International Bureau would appreciate receiving any comments on the proposed modifications of Annex C by October 29, 2010. Comments on those proposed modifications should be sent to Mr. Claus Matthes, Director, PCT Business Development Division (e-mail: claus.matthes@wipo.int; fax: +41-22-338 7150).

WIPO STANDARD ST.25

Noting that WIPO Standard ST.25 recommends that "Offices apply the provisions set out in the "Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings in International Applications Under the Patent Cooperation Treaty (PCT)" as set out in Annex C to the Administrative Instructions under the PCT *mutatis mutandis* to all patent applications other than the PCT international applications ...", comments on the proposed modifications of Annex C to the Administrative Instructions (see the Annex to this Circular) are also invited by October 29, 2010, from Members of the Committee on WIPO Standards (CWS).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gurry', written in a cursive style.

Francis Gurry
Director General

ANNEX

PROPOSED MODIFICATIONS TO
ANNEX C OF THE PCT ADMINISTRATIVE INSTRUCTIONS
"STANDARD FOR THE PRESENTATION OF
NUCLEOTIDE AND AMINO ACID SEQUENCE LISTINGS
IN INTERNATIONAL PATENT APPLICATIONS UNDER THE PCT"¹

INTRODUCTION

1. [No change]

DEFINITIONS

2. For the purposes of this Standard:

- (i) [No change]

(i-bis) the expression "sequence listing forming part of the international application" means a sequence listing contained in the international application as filed (as referred to in paragraph 3), including any sequence listing or part thereof which is included in the international application under Rule 20.5(b) or (c), which is considered to have been contained in the international application under Rule 20.6(b), or which has been corrected under Rule 26, rectified under Rule 91 or amended under Article 34(2); or a sequence listing included in the international application by way of a ~~rectification under Rule 91 or an amendment under Article 34(2)(b)~~ of the description in relation to sequences contained in the international application as filed (as referred to in paragraphs *3bis* and *3ter*);

- (i-ter) [No change]

- (ii) to (viii) [No change]

¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. The proposed modifications are shown relative to the text of Annex C as promulgated by way of this Circular with effect from January 1, 2011.

SEQUENCE LISTING FORMING PART OF THE INTERNATIONAL APPLICATION

3. [No change]

3bis. Any correction under Rule 26, rectification under Rule 91 or amendment under Article 34(2) of the description submitted in relation to a sequence listing contained in the international application filed on paper and any sequence listing included in the international application by way of a ~~rectification under Rule 91 or an amendment under Article 34(2)(b)~~ of the description in relation to sequences contained in the international application filed on paper shall be submitted in accordance with Rule 26.4, Rule 91 or Rule 66.8, respectively.

3ter. Any correction under Rule 26, rectification under Rule 91 or amendment under Article 34(2)(b) of the description submitted in relation to a sequence listing contained in the international application filed in electronic form and any sequence listing included in the international application by way of a ~~rectification under Rule 91 or an amendment under Article 34(2)(b)~~ of the description in relation to sequences contained in the international application filed in electronic form shall be submitted in the form of a sequence listing in electronic form comprising the entire listing with the relevant correction, rectification or amendment. Any such sequence listing:

(i) to (iii) [No change]

SEQUENCE LISTING NOT FORMING PART OF THE INTERNATIONAL APPLICATION

4. [No change]

4bis. Any correction under Rule 26, rectification under Rule 91 or amendment under Article 34(2)(b) of the description submitted in relation to a sequence listing contained in the international application as filed and any sequence listing included in the international application by way of a ~~rectification under Rule 91 or an amendment under Article 34(2)(b) of the description~~ in relation to sequences contained in the international application as filed shall be accompanied, for the purposes of the international search or international preliminary examination, by a sequence listing in electronic form in an electronic document format in accordance with paragraph 39, comprising the entire listing including any such correction, rectification or amendment, whenever this is required by the competent authority, unless such listing in electronic form is already available to that authority in a form and manner acceptable to it. Any such sequence listing in electronic form:

(i) to (iii) [No change]

(iv) shall be identical to the corrected, ~~rectified~~ or amended sequence listing and be accompanied by a statement that "the information recorded in electronic form furnished under Rule 13~~ter~~ is identical to the corrected sequence listing" (or to the ~~"rectified sequence listing"~~ or the "amended sequence listing", as the case may be).

Where such sequence listing in electronic form and, where applicable, such statement is not available to the competent authority, any such correction, rectification or amendment need only be taken into account by that authority for the purposes of the international search or preliminary examination to the extent that a meaningful search or preliminary examination can be carried out without such sequence listing in electronic form.

5 to 42 [No change]

[End of Annex and of Circular]