

Patent Cooperation Treaty (PCT) Working Group

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SEQUENCE LISTINGS – IMPLEMENTATION OF WIPO STANDARD ST.26

Document prepared by the International Bureau

SUMMARY

1. This document contains proposed amendments to the Regulations under the Patent Cooperation Treaty (PCT)¹, based on the recommendations of the Sequence Listings (SEQL) Task Force of the Committee on WIPO Standards (CWS).

BACKGROUND

2. The CWS, at its fourth reconvened session in March 2016, adopted WIPO Standard ST.26 “Recommended Standard for the Presentation of Nucleotide and Amino Acid Sequence Listings using XML (eXtensible Markup Language)”. The CWS further revised ST.26, most recently at its seventh session in July 2019. The most recent version of WIPO Standard ST.26 (version 1.3) is available on the WIPO website in Part 3 of the *Handbook on Industrial Property Information and Documentation*.²

¹ References in this document to “Articles” and “Rules” are to those of the PCT and the Regulations under the PCT (“the Regulations”), or to such provisions as proposed to be amended or added, as the case may be. References to “national laws”, “national applications”, “the national phase”, etc., include references to regional laws, regional applications, the regional phase, etc

² <https://www.wipo.int/export/sites/www/standards/en/pdf/03-26-01.pdf>

3. At the fifth session of the CWS in May/June 2017, the CWS agreed on January 1, 2022, as the date for transition from WIPO Standard ST.25 to ST.26, to be applicable to any national or international application filed on or after that date, and requested the SEQL Task Force (see paragraph 18 of the Summary by the Chair of the session, document CWS/5/21):

- (a) to support the International Bureau by providing users' requirements and feedback on the authoring and validation tool;
- (b) to support the International Bureau in the consequential revision of the PCT Administrative Instructions; and
- (c) to prepare necessary revisions of WIPO Standard ST.26 upon request by the CWS.

4. Discussions in the SEQL Task Force identified the efficient and appropriate handling of language-dependent free text in sequence listings as a key issue for allowing WIPO Standard ST.26 to be used in the PCT and across all Member States. Technical revisions to identify "language dependent" free text easily and to allow such text to be represented in any language have been provisionally agreed and are expected to be adopted at the eighth session of the CWS, scheduled to take place from November 30 to December 4, 2020.

PROPOSED AMENDMENTS

5. Implementation of WIPO Standard ST.26 in respect of international applications filed on or after January 1, 2022, will require amendments to the PCT Regulations to be adopted by the PCT Assembly, to enter into force on January 1, 2022, and modifications to be made to the Administrative Instructions.

6. The amendments proposed to the PCT Regulations set out in the Annex to this document are based on proposals previously discussed by the SEQL Task Force and essentially reflect two issues:

(a) It will no longer be possible to file a sequence listing on paper or in an electronic format other than an XML file. As discussed in paragraph 11 below, it will remain possible to obtain a filing date for international applications that disclose sequences but not as an ST.26 compliant sequence listing, as required under the proposed Rule 5.2(a). Rule 13~~ter~~ will remain for handling the situation where sequences in the application as filed are not included in a sequence listing in the required format, but the provision concerning the filing of sequence listings on paper is no longer relevant.

(b) It will no longer be required to repeat language-dependent free text contained in the sequence listing in the main body of the description. In order to allow this text to be viewed and used effectively in the appropriate context, any translations required should be presented within a complete sequence listing. In certain cases, it will be possible to include the language-dependent free text in two language versions within a single sequence listing. Occasionally, it may be necessary to submit a translation of the free text in the form of a further sequence listing in the international phase after filing, for the purpose of international search and preliminary examination or of international publication.

7. The Regulations do not provide the details of processing, but set out certain key principles and provide the basis for the Administrative Instructions to cover the required additional points. The Administrative Instructions will refer in turn to WIPO Standard ST.26 to provide the details of the contents of a sequence listing.

8. To allow applicants to submit sequence listings easily that meet the national language requirements and various policy goals of Contracting States, receiving Offices will be permitted to set language requirements for the language-dependent free text within a sequence listing that differ from the language requirements of the main body of the application. In particular:

(a) It will be allowed (but not required) for receiving Offices to permit applicants to file a sequence listing containing the free text in more than one language, provided that this is done in compliance with WIPO Standard ST.26.

(b) It will be allowed (but not required) for receiving Offices to permit applicants to file a sequence listing with free text only in a language different from that in the main body of the application.

(c) It will not be required to provide a translation of the free text in the sequence listing either for international search or international publication simply because the text does not appear in the language of the main body of the application, provided that it does appear in a language accepted by the International Searching Authority and a language of publication under Rule 48.3(a) (which will commonly be the same language).

9. Though not explicitly specified by the proposed Regulations, the number of languages appearing in any particular listing would be limited to two by the XML structure required by WIPO Standard ST.26 (as proposed to be revised). The Administrative Instructions will specify the possibility of indicating an "original" language in accordance with the Standard to help identify the appropriate action in case differences are later found between the meaning of the two language versions.

10. Receiving Offices would notify the International Bureau of the languages that they accept for language-dependent free text within sequence listings under a new provision in Section 332 of the Administrative Instructions. International Searching and Preliminary Examining Authorities would specify the accepted languages in the Annexes to their agreements with the International Bureau. In both cases, the permitted languages would be assumed to be the same as those for the main body of the application in the absence of a specific notification.

11. In accordance with Rule 89*bis*.1(a), receiving Offices will continue to be required to permit the filing of international applications on paper. Consequently, it will be necessary to accord an international filing date to international applications containing disclosure of sequences filed on paper. It is not proposed to amend Rule 89*bis*, since this remains an important safeguard for exceptional cases where it is essential to obtain a filing date but it has not been possible to prepare a sequence listing according to WIPO Standard ST.26. However, it is assumed that such filings will be exceptional cases. Applicants should be aware that filing in this way will be time consuming and risky since it may in some cases be difficult to prepare a sequence listing to the required standard without being considered to add subject matter. In any such cases, the International Searching Authority would normally require a sequence listing in compliance with ST.26 to be submitted under Rule 13*ter*.1(a) to assist the international search, rather than the issue being raised by the receiving Office, even though the matter is essentially a defect in formalities.

12. The WIPO Sequence software tool will assist in preparing sequence listings containing translations in compliance with WIPO Standard ST.26, where required, whether for international search, international publication, international preliminary examination or the national phase.

13. While WIPO Sequence, WIPO Sequence Validator and ePCT will offer significant assistance to national Offices in processing sequence listings, receiving Offices will not necessarily be expected to check the contents of sequence listings received. Most potential defects should be identified and eliminated prior to filing through effective use of the relevant tools by applicants and integration of validations into the main filing tools. However, Rules 13*ter* and 28, as well as additional details in the Administrative Instructions will provide for other defects to be handled by the International Bureau and International Authorities with minimal assistance from receiving Offices.

14. The Working Group is invited to comment on the proposed amendments to the Regulations set out in the Annex to this document.

[Annex follows]

DRAFT PROPOSED AMENDMENTS
TO THE PCT REGULATIONS³

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³ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 5 The Description

5.1 [No Change]

5.2 *Nucleotide and/or Amino Acid Sequence Disclosure*

(a) Where the international application contains disclosure of ~~one or more~~ nucleotide and/or amino acid sequences that, pursuant to the Administrative Instructions, are required to be included in a sequence listing, the description shall ~~contain a sequence listing~~ include a sequence listing part of the description complying with the standard provided for in the Administrative Instructions ~~and presented as a separate part of the description in accordance with that standard.~~

[COMMENT: The Administrative Instructions will define, in accordance with WIPO Standard ST.26, both the sequences that must be presented as a sequence listing and that the sequence listing part of the description consists of a sequence listing in accordance with WIPO Standard ST.26.]

(b) ~~Where the sequence listing part of the description contains any free text as defined in the standard provided for in the Administrative Instructions, that free text shall also appear in the main part of the description in the language thereof.~~ Language-dependent free text included in the sequence listing part of the description shall not be required to be included in the main body of the description.

[COMMENT: Contrary to the preferred arrangements for applications containing a sequence listing according to WIPO Standard ST.25, the normal position should be that language-dependent free text should be provided only in the sequence listing and any required translation should be made by providing a new listing. This is not intended to preclude the applicant from repeating such free text in the main body of the description where it appears useful to do so.]

Rule 12
Language of the International Application
and Translations for the Purposes of International Search
and International Publication

12.1 *Languages Accepted for the Filing of International Applications*

(a) [No change] An international application shall be filed in any language which the receiving Office accepts for that purpose.

(b) [No change] Each receiving Office shall, for the filing of international applications, accept at least one language which is both:

(i) a language accepted by the International Searching Authority, or, if applicable, by at least one of the International Searching Authorities, competent for the international searching of international applications filed with that receiving Office, and

(ii) a language of publication.

(c) [No change] Notwithstanding paragraph (a), the request shall be filed in any language of publication which the receiving Office accepts for the purposes of this paragraph.

(d) Notwithstanding paragraph (a), any language-dependent free text ~~matter~~ contained in the sequence listing part of the description ~~referred to in Rule 5.2(a) shall be presented in accordance with the standard provided for in the Administrative Instructions~~ shall be filed in a language which the receiving Office accepts for that purpose. Any language accepted under this paragraph but not accepted under paragraph (a) shall meet the requirements of paragraph (b). The receiving Office may permit but shall not require the language-dependent free text to be filed in more than one language in accordance with the Administrative Instructions.

[COMMENT: See paragraph 8 of the main body of this document.]

12.1 *bis* to 12.2 [No change]

12.3 *Translation for the Purposes of International Search*

(a) [No change] Where the language in which the international application is filed is not accepted by the International Searching Authority that is to carry out the international search, the applicant shall, within one month from the date of receipt of the international application by the receiving Office, furnish to that Office a translation of the international application into a language which is all of the following:

(i) a language accepted by that Authority, and

(ii) a language of publication, and

(iii) a language accepted by the receiving Office under Rule 12.1(a), unless the international application is filed in a language of publication.

[\(a-bis\) For any sequence listing part of the description, paragraph \(a\) shall only apply to the language-dependent free text: any translation of the language-dependent free text shall be provided in accordance with the Administrative Instructions.](#)

[COMMENT: The applicant should preferably provide any required translation of the language-dependent free text in the sequence listing at the same time as any translation required of the main body of the description. The Administrative Instructions will make clear that this must be done in the form of a new sequence listing. Ideally, the applicant will (as with normal translations) be aware of the requirements and provide such a translation without invitation and the receiving Office should accept it and pass it on as part of the search copy. However, noting that the receiving Office is not obliged to make detailed checks of the sequence listing, it is proposed to amend Rule 13~~ter~~ to allow the International Searching Authority to invite the direct submission of a translation in the same way that applies at present if the Authority finds a formal defect in a listing.]

(b) Paragraph (a) shall not apply to the request ~~nor to any sequence listing part of the description.~~

(c) [No change] Where, by the time the receiving Office sends to the applicant the notification under Rule 20.2(c), the applicant has not furnished a translation required under paragraph (a), the receiving Office shall, preferably together with that notification, invite the applicant:

(i) to furnish the required translation within the time limit under paragraph (a);

(ii) in the event that the required translation is not furnished within the time limit under paragraph (a), to furnish it and to pay, where applicable, the late furnishing fee referred to in paragraph (e), within one month from the date of the invitation or two months from the date of receipt of the international application by the receiving Office, whichever expires later.

(d) and (e) [No change]

12.4 *Translation for the Purposes of International Publication*

(a) [No change] Where the language in which the international application is filed is not a language of publication and no translation is required under Rule 12.3(a), the applicant shall, within 14 months from the priority date, furnish to the receiving Office a translation of the international application into any language of publication which the receiving Office accepts for the purposes of this paragraph.

[\(a-bis\) For any sequence listing part of the description, paragraph \(a\) shall only apply to the language-dependent free text; any translation of the language-dependent free text shall be provided in accordance with the Administrative Instructions.](#)

[COMMENT: The main effect of this is equivalent to the arrangement proposed in Rule 12.3. However, in this case, where the need for a translation is not initially identified, the International Searching Authority would have no reason to request a translation and instead the International Bureau would need to follow the matter up under Rule 28. This situation is expected to be very rare, if it occurs at all. Consequently, it is not proposed to make special allowance to deal with it more efficiently. This can be reviewed if the situation is found to occur more frequently than expected.]

(b) Paragraph (a) shall not apply to the request ~~nor to any sequence listing part of the description.~~

(c) [No change] Where the applicant has not, within the time limit referred to in paragraph (a), furnished a translation required under that paragraph, the receiving Office shall invite the applicant to furnish the required translation, and to pay, where applicable, the late furnishing fee required under paragraph (e), within 16 months from the priority date. Any translation received by the receiving Office before that Office sends the invitation under the previous sentence shall be considered to have been received before the expiration of the time limit under paragraph (a).

(d) and (e) [No change]

Rule 13ter
Nucleotide and/or Amino Acid Sequence Listings

13ter.1 *Procedure before the International Searching Authority*

(a) Where the international application contains disclosure of ~~one or more~~ nucleotide and/or amino acid sequences that, pursuant to the Administrative Instructions, are required to be included in a sequence listing, the International Searching Authority may invite the applicant to furnish to it, for the purposes of the international search, a sequence listing ~~in electronic form~~ complying with the standard provided for in the Administrative Instructions, unless such listing ~~in electronic form~~ is already available to it in a form, language and manner acceptable to it, and to pay to it, where applicable, the late furnishing fee referred to in paragraph (c), within a time limit fixed in the invitation.

[COMMENT: Noting that the receiving Office will not be obliged to make detailed checks on sequence listings and may therefore not invite the applicant to provide a translation required under Rule 12.3, the International Searching Authority should have the power to request such a translation without going back to the receiving Office, in the same way that it can for formal defects.]

(b) [Deleted] ~~Where at least part of the international application is filed on paper and the International Searching Authority finds that the description does not comply with Rule 5.2(a), it may invite the applicant to furnish, for the purposes of the international search, a sequence listing in paper form complying with the standard provided for in the Administrative Instructions, unless such listing in paper form is already available to it in a form and manner acceptable to it, whether or not the furnishing of a sequence listing in electronic form is invited under paragraph (a), and to pay, where applicable, the late furnishing fee referred to in paragraph (c), within a time limit fixed in the invitation.~~

[COMMENT: Since WIPO Standard ST.26 only provides for an electronic form, this paragraph will no longer be relevant. Consequential amendments are shown to paragraphs (c) to (e), below.]

(c) The furnishing of a sequence listing in response to an invitation under paragraph (a) ~~or (b)~~ may be subjected by the International Searching Authority to the payment to it, for its own benefit, of a late furnishing fee whose amount shall be determined by the International Searching Authority but shall not exceed 25% of the international filing fee referred to in item 1 of the Schedule of Fees, not taking into account any fee for each sheet of the international application in excess of 30 sheets, ~~provided that a late furnishing fee may be required under either paragraph (a) or (b) but not both.~~

(d) If the applicant does not, within the time limit fixed in the invitation under paragraph (a) ~~or (b)~~, furnish the required sequence listing and pay any required late furnishing fee, the International Searching Authority shall only be required to search the international application to the extent that a meaningful search can be carried out without the sequence listing.

(e) Any sequence listing not contained in the international application as filed, whether furnished in response to an invitation under paragraph (a) ~~or (b)~~ or otherwise, shall not form part of the international application, but this paragraph shall not prevent the applicant from amending the description in relation to a sequence listing pursuant to Article 34(2)(b).

(f) [Deleted] ~~Where the International Searching Authority finds that the description does not comply with Rule 5.2(b), it shall invite the applicant to submit the required correction. Rule 26.4 shall apply mutatis mutandis to any correction offered by the applicant. The International Searching Authority shall transmit the correction to the receiving Office and to the International Bureau.~~

[COMMENT: This provision was rarely used, but intended to invite applicants to add free text to the main body of the description. Rule 5.2(b) as proposed to be amended discourages such text, but the International Searching Authority should not invite the removal of language-dependent free text where the applicant has considered it useful to include it in the main body of the description.]

13ter.2 and 13ter.3 [No Change]

Rule 19.4
The Competent Receiving Office

19.1 to 19.3 [No change]

19.4 *Transmittal to the International Bureau as Receiving Office*

(a) Where an international application is filed with a national Office which acts as a receiving Office under the Treaty but

(i) that national Office is not competent under Rule 19.1 or 19.2 to receive that international application, or

(ii) that international application is not in a language accepted under Rule 12.1(a) or the language dependent free text contained within the sequence listing part of the description is not in a language accepted under Rule 12.1(d) by that national Office but is in a language accepted under that Rule by the International Bureau as receiving Office, or

[COMMENT: Consequential on the amendment of Rule 12.1(d) – the language requirements of Rule 12.1(a) would effectively be split across the two paragraphs and the receiving Office should be entitled to transfer the application to the receiving Office of the International Bureau in exactly the same way if a failure to meet the language requirements is identified in any part of the application.]

(ii-bis) all or part of the international application is filed in electronic form in a format not accepted by that national Office, or

[COMMENT: This provision is intended primarily to allow receiving Offices that do not have the capability of processing international applications filed on physical media to pass occasional applications to the receiving Office of the International Bureau more easily. This is most likely to happen in cases where either: (i) applicants are required, for example due to national security restrictions, to file at a particular receiving Office that does not have provision for electronic filing; or (ii) a sequence listing is too large to upload to a receiving Office's online filing systems.]

(iii) that national Office and the International Bureau agree, for any reason other than those specified under items (i) ~~and~~ (ii) and (ii-bis), and with the authorization of the applicant, that the procedure under this Rule should apply, that international application shall, subject to paragraph (b), be considered to have been received by that Office on behalf of the International Bureau as receiving Office under Rule 19.1(a)(iii).

(b) and (c) [No change]

Rule 49

Copy, Translation and Fee under Article 22

49.1 to 49.4 *[No change]*

49.5 *Contents of and Physical Requirements for the Translation*

(a) *[No change]*

(a-*bis*) No designated Office shall require the applicant to furnish to it a translation of any text matter contained in the sequence listing part of the description if such sequence listing part complies with Rule 12.1(d) and ~~if the description complies with Rule 5.2(b)~~ includes the language-dependent free text in a language which the designated Office accepts for the purpose, save that a designated Office which supplies published sequence listings to database providers may require a translation of the sequence listing part of the description into English, in accordance with the Administrative Instructions, where the language-dependent free text is not included in English.

[COMMENT: Designated Offices would remain free to require translations of the language-dependent free text into their national languages on national phase entry, but should not request a new listing if that language version is included in the sequence listing part of the description from the international phase, even if the relevant sequence listing also contains the text in a second language. Designated Offices whose language of national processing is not English may require a translation of the language-dependent free text into English as well as the national language if this is required to supply the information to database providers.]

(b) to (l) *[No change]*

49.6 *[No change]*

[End of document]