

Rule 26 Checking by, and Correcting before, the Receiving Office of Certain Elements of the International Application

<p style="text-align: right;"><i>[rO]</i></p> <p><i>[rO checks IA for defects and invites applicant to correct; if not corrected IA considered withdrawn]</i></p> <p style="text-align: right;"><i>[IA considered withdrawn]</i></p> <p style="text-align: center;"><i>[what happens if abstract is missing or defective?]</i></p> <p><i>[how and at what stages may claims, description and drawings in IA be amended?]</i></p>	<p>Art.10 Art.14(1)</p> <p>R.29 AG-IP 5.173 AG-IP 11.045</p>
<p>26.1 Invitation under Article 14(1)(b) to Correct</p> <p style="text-align: right;"><i>[rO invites applicant to correct defects in IA]</i></p> <p style="text-align: center;"><i>[defects in IA under Art.14(1)(b): time limit for correction]</i></p> <p style="text-align: right;"><i>[what are main procedural steps at rO?]</i></p> <p style="text-align: right;"><i>[what defects do not influence IFD?]</i></p> <p>The receiving Office shall issue the invitation to correct provided for in Article 14(1)(b) as soon as possible, preferably within one month from the receipt of the international application.</p> <p>In the invitation, the receiving Office shall invite the applicant to furnish the required correction, and give the applicant the opportunity to make observations, within the time limit under Rule 26.2.</p>	<p>Art.14(1)(b) R.26.2 AG-IP 6.001 AG-IP 6.032</p> <p>Art.14(1)(b) AG-IP 6.001 AG-IP 6.032</p> <p>R.26.2</p>
<p>26.2 Time Limit for Correction</p> <p style="text-align: right;"><i>[rO invites applicant to correct defects in IA]</i></p> <p style="text-align: center;"><i>[defects in IA under Art.14(1)(b): invitation to correct]</i></p> <p style="text-align: right;"><i>[what defects do not influence IFD?]</i></p> <p style="text-align: right;"><i>[can time limit fixed by rO be extended?]</i></p> <p style="text-align: center;"><i>[what must be done if applicant is temporarily unavailable to sign IA?]</i></p> <p>The time limit referred to in Rule 26.1 shall be <u>two months</u> from the date of the invitation to correct.</p> <p>It may be extended by the receiving Office at any time before a decision is taken.</p>	<p>Art.14(1)(b) R.26.1 AG-IP 6.032 AG-IP 6.037 AG-IP 11.027</p> <p>R.26.1</p> <p>AG-IP 6.037 <i>[ex officio extension]</i></p>
<p>26.2bis Checking of Requirements under Article 14(1)(a)(i) and (ii)</p> <p style="text-align: right;"><i>[IA is not signed]</i></p> <p style="text-align: center;"><i>[IA does not contain prescribed indications applicant]</i></p> <p style="text-align: right;"><i>[request IA: address of applicant]</i></p> <p style="text-align: right;"><i>[request IA: nationality and residence of applicant]</i></p> <p style="text-align: right;"><i>[request IA: signature]</i></p> <p style="text-align: right;"><i>[where to file IA]</i></p> <p><i>[dO may require confirmation of IA by signature of applicant for designated State who has not signed request]</i></p> <p><i>[dO may require any missing indication required under R.4.5(a)(ii) and (iii) in respect of any applicant for designated State]</i></p> <p style="text-align: center;"><i>[notice of withdrawal must be signed by (all) applicant(s); deemed common representative not entitled to sign on behalf of other applicants]</i></p> <p style="text-align: center;"><i>[must indications in respect of applicants be provided for all applicants?]</i></p> <p style="text-align: right;"><i>[who must sign IA and when?]</i></p> <p style="text-align: right;"><i>[what defects do not influence IFD?]</i></p> <p style="text-align: center;"><i>[what must be done if applicant is temporarily unavailable to sign IA?]</i></p> <p style="text-align: center;"><i>[what is consequence if satisfactory statement explaining lack of signature of applicant/inventor for US cannot be furnished?]</i></p> <p>(a) For the purposes of Article 14(1)(a)(i), if there is more than one applicant, it shall be sufficient that the request be <u>signed by one</u> of them.</p>	<p>Art.14(1)(a)(i) Art.14(1)(a)(ii)</p> <p>R.4.5(a)(ii) R.4.5(a)(iii) R.4.15 R.19.1 R.51bis.1(a)(vi)</p> <p>R.51bis.1(a)(vii)</p> <p>R.90bis.5</p> <p>AG-IP 5.032 AG-IP 5.088 AG-IP 6.032 AG-IP 11.027 AG-IP 11.030</p> <p>Art.14(1)(a)(i) R.4.15 R.51bis.1(a)(vi) AG-IP 5.088 AG-IP 11.030</p>

(b) For the purposes of **Article 14(1)(a)(ii)**, if there is more than one applicant,
it shall be sufficient that the **indications required under Rule 4.5(a)(ii) and (iii)** be provided

in respect of one of them who is **entitled according to Rule 19.1 to file the international application** with the receiving Office.

Art.14(1)(a)(ii)
R.4.5(a)(ii)
R.4.5(a)(iii)
R.51bis.1(a)(vii)
R.19.1
AG-IP 5.032

26.3 Checking of Physical Requirements under Article 14(1)(a)(v)

*[IA does not comply with physical requirements]
[missing drawings]*

Art.14(1)(a)(v)
Art.14(2)

*[physical requirements]
[languages accepted for filing IA]
[translation for purposes of IS]*

R.11
R.12.1
R.12.3
R.12.4
R.48.3

*[translation for purposes of international publication]
[languages of publication: Arabic, Chinese, English, French, German, Japanese, Korean, Portuguese, Russian, Spanish]
[what defects do not influence IFD?]*

AG-IP 6.032

(a) Where the **international application is filed in a language of publication**, the receiving Office shall check:

R.12.1(b)(ii)
R.48.3(a)

(i) the international application for compliance with the **physical requirements referred to in Rule 11** only to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication;

R.11

(ii) any **translation furnished under Rule 12.3** for compliance with the **physical requirements referred to in Rule 11** to the extent that compliance therewith is necessary for the purpose of satisfactory reproduction.

R.12.3
R.11

(b) Where the international application is filed in a language which is not a **language of publication**, the receiving Office shall check:

R.48.3

(i) the international application for compliance with the **physical requirements referred to in Rule 11** only to the extent that compliance therewith is necessary for the purpose of satisfactory reproduction;

R.11

(ii) any **translation furnished under Rule 12.3 or 12.4**

R.12.3
R.12.4

and the **drawings**

Art.14(2)

for compliance with the **physical requirements referred to in Rule 11** to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication.

R.11

26.3bis Invitation under Article 14(1)(b) to Correct Defects under Rule 11

*[rO invites applicant to correct defects in IA]
[physical requirements]*

Art.14(1)(b)

[checking of physical requirements under Art.14(1)(a)(v)]

R.11
R.26.3

The receiving Office shall not be required to issue the **invitation under Article 14(1)(b)**

Art.14(1)(b)

to correct a **defect under Rule 11** where the physical requirements referred to in that Rule are complied with

R.11

to the extent **required under Rule 26.3.**

R.26.3

26.3ter Invitation to Correct Defects under Article 3(4)(i)

<p style="text-align: center;"><i>[IA must be in prescribed language]</i></p> <p style="text-align: center;"><i>[abstract]</i></p> <p style="text-align: center;"><i>[languages accepted for filing IA]</i></p> <p style="text-align: center;"><i>[languages accepted for filing IA]</i></p> <p style="text-align: center;"><i>[language of changes in IA]</i></p> <p style="text-align: center;"><i>[translation of IA for purpose of IS]</i></p> <p style="text-align: center;"><i>[defects in IA under Art. 14(1)(b): invitation to correct]</i></p> <p style="text-align: center;"><i>[defects in IA under Art. 14(1)(b): time limit for correction]</i></p> <p style="text-align: center;"><i>[checking of physical requirements under Art. 14(1)(a)(v)]</i></p> <p style="text-align: center;"><i>[invitation to correct defects under Art. 14(1)(a)(v)]</i></p> <p style="text-align: center;"><i>[correction of defects in IA under Art. 14(1)(b): decision of rO]</i></p> <p style="text-align: center;"><i>[finding by rO: IA considered withdrawn]</i></p> <p style="text-align: center;"><i>[languages of publication: Arabic, Chinese, English, French, German, Japanese, Korean, Portuguese, Russian, Spanish]</i></p> <p style="text-align: center;"><i>[what are translation requirements if abstract or text matter in drawings of IA are in language different from language of description and claims?]</i></p> <p style="text-align: center;"><i>[what are translation requirements if request is in language which is not language of publication accepted by rO for purpose of filing request?]</i></p> <p style="text-align: center;"><i>[what defects do not influence IFD?]</i></p> <p>(a) Where the abstract or any text matter of the drawings is filed in a language which is different from the language of the description and the claims, the receiving Office shall, unless</p> <p style="padding-left: 2em;">(i) a translation of the international application is required under Rule 12.3(a), or</p> <p style="padding-left: 2em;">(ii) the abstract or the text matter of the drawings is in the language in which the international application is to be published,</p> <p>invite the applicant to furnish a translation of the abstract or the text matter of the drawings into the language in which the international application is to be published.</p> <p>Rules 26.1, 26.2, 26.3, 26.3bis, 26.5 and 29.1 shall apply <i>mutatis mutandis</i>.</p> <p>(b) If, on October 1, 1997, paragraph (a) is not compatible with the national law applied by the receiving Office, paragraph (a) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997. The information received shall be promptly published by the International Bureau in the Gazette.</p> <p>(c) Where the request does not comply with Rule 12.1(c), the receiving Office shall invite the applicant to file a translation so as to comply with that Rule.</p> <p>Rules 3, 26.1, 26.2, 26.5 and 29.1 shall apply <i>mutatis mutandis</i>.</p>	<p>Art.3(4)(i)</p> <p>R.8</p> <p>R.11</p> <p>R.12.1</p> <p>R.12.2</p> <p>R.12.3</p> <p>R.26.1</p> <p>R.26.2</p> <p>R.26.3</p> <p>R.26.3bis</p> <p>R.26.5</p> <p>R.29.1</p> <p>R.48.3</p> <p>AG-IP 6.018</p> <p>AG-IP 6.019</p> <p>AG-IP 6.032</p> <p>R.8</p> <p>R.11.11</p> <p>AG-IP 6.032</p> <p>R.12.3(a)</p> <p>R.8</p> <p>R.11.11</p> <p>R.48.3</p> <p>R.26.1</p> <p>R.26.2</p> <p>R.26.3</p> <p>R.26.3bis</p> <p>R.26.5</p> <p>R.29.1</p> <p>AG-IP 6.032</p> <p><i>[see Appendix 4: US]</i></p> <p>R.12.1(c)</p> <p>R.12.2(c)</p> <p>AG-IP 6.018-019</p> <p>R.3</p> <p>R.26.1</p> <p>R.26.2</p> <p>R.26.5</p> <p>R.29.1</p>
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(d) If, on October 1, 1997, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997.

The information received shall be promptly published by the International Bureau in the Gazette.

[see Appendix 4:
US]

26.4 Procedure

[how should correction be presented?]
[does correction entail payment of fee?]

AG-IP 6.052
AG-IP 6.053

A correction of the request offered to the receiving Office may be stated in a letter addressed to that Office if the correction is of such a nature that it can be transferred from the letter to the request without adversely affecting the clarity and the direct reproducibility of the sheet on to which the correction is to be transferred;

AG-IP 6.053
[free of charge]

otherwise, and in the case of a correction of any element of the international application other than the request, the applicant shall be required to submit a replacement sheet embodying the correction and the letter accompanying the replacement sheet shall draw attention to the differences between the replaced sheet and the replacement sheet.

26.5 Decision of the Receiving Office

[physical requirements IA]
[checking requirements under Art. 14(1)(a)(i) and (ii)]
[what defects do not influence IFD?]

R.11
R.26.2
AG-IP 6.032

The receiving Office shall decide whether the applicant has submitted the correction within the applicable **time limit under Rule 26.2**, and, if the correction has been submitted within that time limit, whether the international application so corrected is or is not to be considered withdrawn,

R.26.2

provided that no international application shall be considered withdrawn for lack of compliance with the **physical requirements referred to in Rule 11** if it complies with those requirements to the extent necessary for the purpose of reasonably uniform international publication.

R.11

Rule 26bis Correction or Addition of Priority Claim

<i>[definition priority date]</i>	Art.2(xi)
<i>[time limits are calculated from earliest priority date]</i>	Art.2(xi)(b)
<i>[claiming priority]</i>	Art.8
<i>[international publication]</i>	Art.21
<i>[priority claim]</i>	R.4.10
<i>[priority document]</i>	R.17

26bis.1 Correction or Addition of Priority Claim

<i>[early publication of IA on request applicant]</i>	Art.21(2)(b)
<i>[priority claim]</i>	R.4.10
<i>[rectification of obvious mistakes in IA and other documents]</i>	R.91
<i>[how should request for restoration of right of priority be filed with rO?]</i>	AG-IP 5.064
<i>[how should missing elements or parts be incorporated by reference into IA?]</i>	AG-IP 6.028
<i>priority claim must have been made in IA at time of filing.</i>	
<i>adding priority claim under R.26bis.1(a) would not be sufficient.</i>	
<i>[can defects in priority claims be corrected?]</i>	AG-IP 6.038-040
<i>[which mistakes cannot be rectified?]</i>	AG-IP 11.037
<i>[EPO: declaration of priority: addition or correction]</i>	R.52 EPC
(a) The applicant may correct a priority claim or add a priority claim to the request by a notice submitted to the receiving Office or the International Bureau	R.91.1(g)(iv)
	AG-IP 6.038
	AG-IP 6.053
	<i>[free of charge]</i>
within a time limit of <u>16 months</u> from the priority date	
or, where the correction or addition would cause a change in the priority date, <u>16 months</u> from the priority date as so changed,	
whichever 16-month period expires first,	
provided that <u>such a notice may be submitted until the expiration of four months from the international filing date.</u>	AG-IP 6.038
The correction of a priority claim may include the addition of any indication referred to in Rule 4.10.	<i>[in any event]</i>
	R.4.10
(b) Any notice referred to in paragraph (a) received by the receiving Office or the International Bureau after the applicant has made a request for early publication under Article 21(2)(b) shall be considered not to have been submitted,	Art.21(2)(b)
unless that request is withdrawn before the technical preparations for international publication have been completed.	Art.21(5)
	AG-IP 9.013
	<i>[=15 days]</i>
(c) Where the correction or addition of a priority claim causes a change in the priority date, any time limit which is computed from the previously applicable priority date and which has not already expired shall be computed from the priority date as so changed.	AG-IP 6.040

(iii) the international application has an international filing date which is later than the date on which the **priority period** expired,
provided that the international filing date is within the period of two months from that date.

R.2.4
R.26bis.3
AG-IP 6.043

(d) Where the receiving Office or the International Bureau has made a declaration under paragraph (b) or where the priority claim has not been considered void only because paragraph (c) applies,

AG-IP 6.044

the International Bureau shall publish, together with the international application, information concerning the priority claim as prescribed by the Administrative Instructions,

AG-IP 6.044

as well as any information submitted by the applicant concerning such priority claim which is received by the International Bureau prior to the completion of the technical preparations for international publication.

Such information shall be included in the **communication under Article 20**

Art.20

where the **international application is not published by virtue of Article 64(3)**.

Art.64(3)

(e) Where the applicant wishes to correct or add a priority claim but the **time limit under Rule 26bis.1** has expired, the applicant may, prior to the expiration of 30 months from the priority date and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, request the International Bureau to publish information concerning the matter, and the International Bureau shall promptly publish such information.

R.26bis.1
AG-IP 6.044

26bis.3 Restoration of Right of Priority by Receiving Office

[early publication of IA on request applicant]

Art.21(2)(b)

[interpretation of certain words: priority period]

R.2.4

[priority claim]

R.4.10

[correction or addition of priority claim]

R.26bis.1

[effect of restoration of right of priority by rO]

R.49ter.1

[restoration of right of priority by dO]

R.49ter.2

[what are consequences if IA is filed after expiration of priority period?]

AG-IP 5.062

[what is time limit for requests for the restoration of right of priority?]

AG-IP 5.063

[how should request for restoration of right of priority be filed with rO?]

AG-IP 5.064

[what are criteria for restoration applied by rO?]

AG-IP 5.065

[what needs to be included in statement of reasons for request to restore right of priority?]

AG-IP 5.066

[what kind of declaration or evidence is required in support of request for restoration of right of priority?]

AG-IP 5.067

[will there be opportunity for dialogue with rO should that Office intend to refuse request?]

AG-IP 5.068

[can applicant be invited to correct priority claim?]

AG-IP 6.041-044

[can request to restore right of priority also be filed directly with dO?]

AG-NP 6.006

[EPO as rO: re-establishment of rights]

Art.122 EPC

(a) Where the international application has an international filing date which is later than the date on which the **priority period** expired but within the period of two months from that date, the receiving Office shall, on the request of the applicant,

R.2.4

and subject to **paragraphs (b) to (g) of this Rule**,

R.26bis.3(b)-(g)

restore the right of priority if the Office finds that a criterion applied by it ("criterion for restoration") is satisfied,

AG-IP 5.062

AG-IP 5.065

namely, that the failure to file the international application within the **priority period**:

R.2.4

(i) occurred in spite of due care required by the circumstances having been taken; or

Art.122(1) EPC

(ii) was unintentional.

Each receiving Office shall apply at least one of those criteria and may apply both of them.

(b) A request under paragraph (a) shall:

(i) be filed with the receiving Office within the **time limit applicable under paragraph (e)**;

(ii) state the reasons for the failure to file the international application within the **priority period**; and

(iii) preferably be accompanied by any **declaration or other evidence required under paragraph (f)**.

(c) Where a priority claim in respect of the earlier application is not contained in the international application, the applicant shall submit, within the **time limit applicable under paragraph (e)**, a **notice under Rule 26bis.1(a) adding the priority claim**.

(d) The submission of a request under paragraph (a) may be subjected by the receiving Office to the payment to it, for its own benefit, of a fee for requesting restoration, payable within the **time limit applicable under paragraph (e)**.

The **amount of that fee**, if any, shall be fixed by the receiving Office.

The time limit for payment of the fee may be extended, at the option of the receiving Office, for a period of up to two months from the expiration of the **time limit applicable under paragraph (e)**.

(e) The **time limit referred to in paragraphs (b)(i), (c) and (d)** shall be two months

from the date on which the **priority period** expired,

provided that, where the applicant makes a **request for early publication under Article 21(2)(b)**,

any **request under paragraph (a)**

or any **notice referred to in paragraph (c)** submitted,

or any **fee referred to in paragraph (d)** paid,

after the **technical preparations for international publication have been completed** shall be considered as not having been submitted or paid in time.

(f) The receiving Office may require that a declaration or other evidence in support of the **statement of reasons referred to in paragraph (b)(iii)** be filed with it within a time limit which shall be reasonable under the circumstances.

The applicant may furnish to the International Bureau a copy of any such declaration or other evidence filed with the receiving Office, in which case the International Bureau shall include such copy in its files.

(g) The receiving Office shall not refuse, totally or in part, a **request under paragraph (a)** without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances.

Such notice of intended refusal by the receiving Office may be sent to the applicant together with any invitation to file a **declaration or other evidence under paragraph (f)**.

R.26bis.3(e)

R.2.4

R.26bis.3(f)

AG-IP 5.064

R.26bis.3(e)

R.26bis.1(a)

AG-IP 5.065

R.26bis.3(e)

RFees 2(1).13

R.26bis.3(e)

R.26bis.3(b)-(d)

R.2.4

Art.21(2)(b)

R.26bis.3(a)

R.26bis.3(c)

R.26bis.3(d)

Art.21(5)

AG-IP 9.013

[=15 days]

R.26bis.3(b)

R.26bis.3(a)

R.26bis.3(f)

(h) The receiving Office shall promptly:

(i) notify the International Bureau of the receipt of a **request under paragraph (a)**;

R.26bis.3(a)

(ii) make a decision upon the request;

(iii) notify the applicant and the International Bureau of its decision and the criterion for restoration upon which the decision was based.

(i) Each receiving Office shall inform the International Bureau of which of the criteria for restoration it applies and of any subsequent changes in that respect. The International Bureau shall promptly publish such information in the Gazette.

(j) If, on October 5, 2005, paragraphs (a) to (i) are not compatible with the national law applied by the receiving Office, those paragraphs shall not apply in respect of that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by April 5, 2006.

The information received shall be promptly published by the International Bureau in the Gazette.

[see Appendix 4]

Rule 26ter Correction or Addition of Declarations under Rule 4.17

[request IA: declarations relating to national requirements in R.51bis.1(a)(i) to (v)]
[certain national requirements allowed under Art.27]

R.4.17
R.51bis.1

26ter.1 Correction or Addition of Declarations

[can declaration relating to national requirements referred to in R.4.17 be corrected or added during international phase?]

AG-IP 5.083

[can defects in declarations relating to national requirements referred to in R.4.17 be corrected? can declarations be added?]

AG-IP 6.045

[what happens where IB receives correction or addition of declaration relating to national requirements referred to in R.4.17 after applicable time limit?]

AG-IP 6.050

The applicant may correct or add to the request any **declaration referred to in Rule 4.17** by a notice submitted to the International Bureau within a time limit of 16 months from the priority date,

R.4.17

provided that any notice which is received by the International Bureau after the expiration of that time limit shall be considered to have been received on the last day of that time limit if it reaches it before the **technical preparations for international publication have been completed**.

Art.21(5)
AG-IP 9.013
[=15 days]

26ter.2 Processing of Declarations

[which are defects in declarations relating to national requirements made under R.4.17 in respect of which applicant may be invited to submit correction?]

AG-IP 6.046

(a) Where the receiving Office or the International Bureau finds that any **declaration referred to in Rule 4.17** is not worded as required or,

R.4.17

in the case of the **declaration of inventorship referred to in Rule 4.17(iv)**, is not signed as required, the receiving Office or the International Bureau, as the case may be, may invite the applicant to correct the declaration within a time limit of 16 months from the priority date.

R.4.17(iv)

(b) Where the International Bureau receives any **declaration or correction under Rule 26ter.1**

R.26ter.1

after the expiration of the **time limit under Rule 26ter.1**, the International Bureau shall notify the applicant accordingly and shall proceed as provided for in the Administrative Instructions.

R.26ter.1