

## Notice from the European Patent Office dated xx xx 2023 concerning the handling of ST.25 sequence listings filed as a safeguard as part of divisional applications to which WIPO Standard ST.26 applies

### I. Introduction

1. WIPO Standard ST.26 applies to divisional applications submitted on or after 1 July 2022.<sup>1</sup> Consequently, if a Standard ST.25-compliant sequence listing is part of the parent application, it must be converted into one complying with WIPO Standard ST.26. The EPO recommends that applicants use the WIPO Sequence software to generate ST.26-compliant sequence listings and strictly follow the guidance on conversion provided in Annex VII to WIPO Standard ST.26<sup>2</sup> and on the EPO website.<sup>3</sup> However, in spite of these recommendations, concerns persist about the risk of adding and/or losing subject-matter when converting sequence listings from ST.25 to ST.26.

### II. Safeguard for applicants

2. To avoid the risk of adding and/or losing subject-matter, the EPO permits applicants, as a safeguard, to file the parent application's ST.25 sequence listing in PDF format as part of the divisional application.<sup>4</sup> Alternatively, the divisional application may be filed by reference to the parent application (Rule 40(1)(c) EPC). In doing so, applicants have the guarantee that the ST.25 sequence listing, which is part of the application, does not contain any additional subject-matter as prohibited under Article 76(1) EPC.

3. Applicants making use of the above safeguard mechanism are required to provide the ST.26 sequence listing subsequent to filing, either on their own initiative or upon invitation by the EPO pursuant to Rule 30(3) EPC. The late furnishing fee will not have to be paid if the ST.26 sequence listing is filed before the invitation under Rule 30(3) EPC is issued.<sup>5</sup>

4. Currently, pages of ST.25 sequence listings from parent applications are taken into account when calculating the additional fee for pages in excess of 35 ("page fee").<sup>6</sup> The EPO has decided to revise this practice as explained below.

### III. Conditions for excluding ST.25 sequence listings filed as part of divisional applications from the page fee calculation

5. A sequence listing filed on the filing date is part of the description. When calculating the additional fee for pages under [Rule 38\(2\) EPC](#) and [Article 2\(1\), item 1a, RFees](#), page fees do not fall due if the ST.26 sequence listing is filed as a separate part of the description in XML format as required by WIPO Standard ST.26.

6. Under the new practice, the pages of a parent application's ST.25 sequence listing filed as a safeguard with the divisional application are excluded from the page fee calculation, provided the following conditions are met:

- (a) the sequence listing is filed as a separate part of the description in PDF format or is part of the certified copy under Rule 40(3) EPC if the description of the divisional application is replaced by a reference to the parent application;
- (b) the sequence listing provided for the parent application complies with ST.25.

If the sequence information is reproduced in the description or in other parts of the application as filed in a manner that is not standard-compliant, e.g. as a table, the pages concerned will be taken into account in the calculation of the additional fee.

7. This new practice applies to all divisional applications for which the page fee has not yet been paid. Page fees already paid for pages of sequence listings not complying with WIPO Standard ST.26 will not be refunded.

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<sup>1</sup> Article 6(1) of the decision of the President of the European Patent Office dated 9 December 2021 concerning the filing of sequence listings, [OJ EPO 2021, A96](#).

<sup>2</sup> See [Annex VII to WIPO Standard ST.26](#).

<sup>3</sup> See <https://www.epo.org/en/service-support/faq/law-practice/sequence-listings>.

<sup>4</sup> See footnote 3.

<sup>5</sup> See [Rule 30\(3\) EPC](#) and Guidelines for Examination in the EPO, [A-IV, 5](#).

<sup>6</sup> [Article 2\(1\), item 1a, RFees](#), point I.9 of the notice from the European Patent Office dated 9 December 2021 concerning the filing of sequence listings, [OJ EPO 2021, A97](#).