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Ms. Ann de Clercq  
Biotechnology Committee  
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## WIPO Standard ST.26 and divisional applications

Dear Ms de Clercq,

Thank you for the paper written by the Biotechnology Committee of 21 June 2022, setting out the epi position on the implementation of WIPO Standard ST.26. Your comments have been carefully considered and discussed amongst the relevant legal and technical departments and it has been decided not to change the transitional regime for divisional applications for the time being. A review of the regime is foreseen for the first half of 2023. It will allow applicants and the EPO to get used to the new system and get experienced with transformations from ST.25 to ST.26.

The EPO carried out two public consultations, in 2012 and at the end of 2016, on the development and implementation of WIPO Standard ST.26. The results of these consultations, and consultations conducted by i.a. the USPTO, were shared and discussed at the international level. These consultations were determining factors in WIPO's decision to develop a software tool for creating standard-compliant sequence listings. Moreover, in response to comments at the user consultations, two guidance annexes were added to the standard, namely Annexes VI and VII, guiding in particular on how to avoid added subject matter.

The applicant may choose to file a sequence listing in PDF on the filing date, or to file the divisional application by reference to the description of the parent application, and thus to file the ST.26 sequence listing only for search purposes under Rule 30(3) EPC. This prevents added subject matter issues from arising but an additional fee may fall due, reflecting the additional burden on the side of the EPO.

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The transitional regime chosen by the EPO for divisional applications allows benefits of the new standard to materialize sooner while reducing the necessary IT support for the old standard as far as possible. It corresponds to the transitional regime in the USA, Japan, Germany, Denmark and Norway and is in line with the decision taken at the WIPO level that priority claims are irrelevant for determining whether the new standard applies to an application. In these cases the transformation of sequence listings from St. 25 to St. 26 is also required. Under the EPC legal framework a divisional application is an independent application, subject to the procedural requirements applicable on the date of its submission.

Finally, the fee for late furnishing of sequence listings lies within the competence of the Administrative Council. There is no legal basis to waive this fee. It is noted that the fee is not charged if the applicant submits the sequence listing after the date of filing but before an invitation is sent.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ficsor Mihály', written in a cursive style.

Mihály Ficsor