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Sequence Listings In Divisional Applications – A Comparison Between The EPO and Brazilian Patent Office

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The EPO and BRPTO are adopting the WIPO Standard ST.26 for the submission of sequence listings in national and international applications filed on or after July 1st, 2022. WIPO Standard ST.26 establishes new rules for the presentation of biological sequences in extensible markup language (XML). This format has many advantages over the former ST.25 (TXT) format, such as being compatible with the requirements of *International Nucleotide Sequence Database Collaboration* (INSDC) which establishes uniform and synchronized data content to be assessed by many patent Offices in different databases (*i.e.*, DNA Databank of Japan (DDBJ), the European Bioinformatics Institute (EMBL-EBI), and the National Center for Biotechnology Information (NCBI or GenBank)). Moreover, the new format enables the inclusion of information regarding branched sequences and sequences containing nucleotide analogues or D-amino acids, for instance.

In general, the submission of sequence listings is required when the object of protection of the patent application refers to one or more nucleotide and/or amino acid sequences that are essential for the invention.

There is a relevant difference between the practice before the EPO compared to the BRPTO on sequence listing at this stage.

According to the EPO legal framework, a divisional application is considered as an independent patent application, that is subjected to the requirements applicable on the date of its filing. Therefore, divisional applications filed on or after July 1st, 2022, before the EPO, must include a sequence listing complying with WIPO standard ST.26, regardless of the filing date of the original application.

The BRPTO has a different approach. It considers the filing date of the original application to be the moment for determining the format of the sequence listing for divisional applications. This is because divisional applications, although considered as independent applications, are deemed to be in the same examination moment of the parent patent application.

Hence, the filing date of a divisional application is not relevant. Divisionals from an original application with a filing date before July 1st, 2022 should present the sequence listing in WIPO ST.25 (TXT) format, while those from an original application filed on or after July 1st, 2022 should present the sequence listing in WIPO ST.26 (XML) format. In other words, the sequence listings of

divisional applications should follow the same format submitted for the original application.

It is worth mentioning that the conversion of a sequence listing in a ST.25 (TXT) format into the ST.26 (XML) format may lead to the addition or loss of subject matter. To avoid such risks, the EPO will publish in the Official Journal 11/2023 transitional measures for divisional applications filed after July 1st, 2022, as follows: *(i)* the possibility of filing the ST.25 sequence listing of the original application in PDF format when filing divisional applications; and *(ii)* within two months, submitting a sequence listing file in the ST. 26 format.

Lastly, due to the different practices among patent offices, applicants should take into consideration this specific practice regarding the submission of biological sequences for divisional applications to avoid any objections during the examination procedure.

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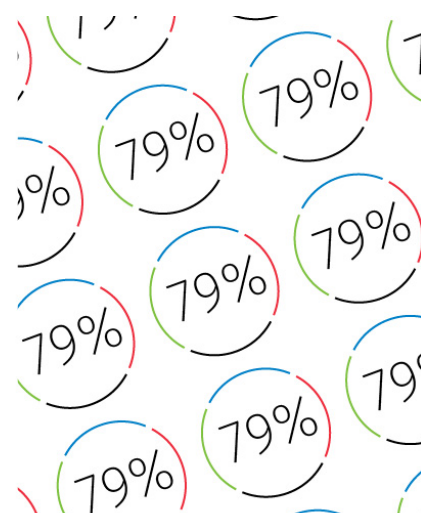
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