

Summary of the Patent Cooperation Treaty (PCT) (1970)

The Patent Cooperation Treaty (PCT) makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a PCT Contracting State. It may generally be filed with the national patent office of the Contracting State of which the applicant is a national or resident or, at the applicant's option, with the International Bureau of WIPO in Geneva.

If the applicant is a national or resident of a Contracting State party to the European Patent Convention, the Harare Protocol on Patents and Industrial Designs (Harare Protocol), the Bangui Agreement, or the Eurasian Patent Convention, the international application may also be filed with the European Patent Office (EPO), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI) or the Eurasian Patent Office (EAPO), respectively.

The Treaty regulates in detail the formal requirements with which international applications must comply.

Filing a PCT application has the effect of automatically designating all Contracting States bound by the PCT on the international filing date. The effect of the international application is the same in each designated State as if a national patent application had been filed with the national patent office of that State.

The international application is subjected to an international search. That search is carried out by one of the competent International Searching Authorities (ISA) under the PCT [1] and results in an international search report, that is, a listing of the citations of published documents that might affect the patentability of the invention claimed in the international application. In addition, a preliminary and non-binding written opinion on whether the invention appears to meet patentability criteria in light of the search report results is also issued.

The international search report and written opinion are communicated to the applicant who, after evaluating their content, may decide to withdraw the application, in particular where the content of the report and opinion suggests that the granting of patents is unlikely, or the applicant may decide to amend the claims in the application.

If the international application is not withdrawn, it is published by the International Bureau, together with the international search report. At the same time, the written opinion is made available on PATENTSCOPE.

Before the expiration of 22 months from the priority date, the applicant has the option to request a Supplementary International Searching Authority (SISA) (an ISA willing to offer this service) to carry out an additional search of relevant documentation, specifically focusing on documents in the particular language in which that authority specializes. The goal of this additional search is to reduce the likelihood of further documents coming to light in the national phase that would make granting the patent unlikely.

An applicant that decides to continue with the international application with a view to seeking national (or regional) patents can, in relation to most Contracting States, wait until the end of the thirtieth month from the priority date to commence the national procedure before each designated office by furnishing a translation (where necessary) of the application into the official language of that office, paying to it the necessary fees and acquiring the services of local patent agents.

If the applicant wishes to make amendments to the application – for example, in order to address documents identified in the search report and conclusions made in the written opinion – and to have the potential patentability of the "as-amended" application reviewed – an optional international preliminary examination may be requested. The result of the preliminary examination is an international preliminary report on patentability (IPRP Chapter II) which is prepared by one of the competent International Preliminary Examining Authorities (IPEA) under the PCT [2] and which contains a preliminary and non-binding opinion on the patentability of the claimed invention. It provides the applicant with an even stronger basis on which to evaluate the chances of obtaining a patent and, if the report is favorable, a stronger basis on which to continue with the application before national and regional patent offices. If no international preliminary examination has been requested, the International Bureau establishes an international preliminary report on patentability (IPRP Chapter I) on the basis of the written opinion of the ISA and communicates this report to the designated offices.

The procedure under the PCT has numerous advantages for applicants, patent offices and the general public:

- (i) applicants have up to 18 months more than if they had not used the PCT to reflect on the desirability of seeking protection in foreign countries, appoint local patent agents in each foreign country, prepare the necessary translations and pay national fees;
- (ii) applicants can rest assured that, if their international application is in the form prescribed by the PCT, it cannot be rejected on formal grounds by any designated office during the national phase;
- (iii) on the basis of the international search report and the written opinion, applicants can evaluate with reasonable probability the chances of their invention being patented;
- (iv) applicants have the possibility, during the optional international preliminary examination, to amend the international application and thus put it in order before processing by the various patent offices;
- (v) the search and examination work of patent offices can be considerably reduced or eliminated thanks to the international search report, the written opinion and, where applicable, the international preliminary report on patentability which are communicated to designated offices together with the international application;
- (vi) applicants are able to access fast-track examination procedures in the national phase in Contracting States that have PCT-Patent Prosecution Highway (PCT-PPH) agreements or similar arrangements;
- (vii) since each international application is published with an international search report, third parties are in a better position to formulate a well-founded opinion about the potential patentability of the claimed invention; and
- (viii) for applicants, international publication on PATENTSCOPE puts the world on notice of their applications, which can be an effective means of advertising and looking for potential licensees.

Ultimately, the PCT:

- brings the world within reach;
- streamlines the process of fulfilling diverse formality requirements;
- postpones the major costs associated with international patent protection;
- provides a strong basis for patenting decisions; and
- is used by the world's major corporations, research institutions and universities in seeking international patent protection.

The PCT created a Union which has an Assembly. Every State party to the PCT is a member of the Assembly. Among the most important tasks of the Assembly are the amendment of the Regulations issued under the Treaty, the adoption of the biennial program and budget of the Union and the fixing of certain fees connected with the use of the PCT system.

The Assembly of the PCT Union has established a special measure to benefit (1) an applicant who is a natural person and who is a national of and resides in a State that is listed as being a State whose per capita gross domestic product is below US\$ 25,000 (according to the most recent 10-year average per capita gross domestic product figures at constant 2005 US\$ values published by the United Nations), and whose nationals and residents who are natural persons have filed less than 10 international applications per year (per million population) or less than 50 international applications per year (in absolute numbers) according to the most recent five-year average yearly filing figures published by the International Bureau, and (2) applicants, whether natural persons or not, who are nationals of and reside in a State that is listed as being classified by the United Nations as a LDC. That benefit consists of a reduction of 90 per cent of certain fees under the Treaty.

Details concerning the PCT can be obtained by consulting the [PCT website](#), the [PCT Applicant's Guide](#), published by WIPO in English and French and the [PCT Newsletter](#), published by WIPO in English.

The PCT was concluded in 1970, amended in 1979 and modified in 1984 and in 2001.

It is open to States party to the Paris Convention for the Protection of Industrial Property (1883). Instruments of ratification or accession must be deposited with the Director General of WIPO.

[1] The patent offices of Australia, Austria, Brazil, Canada, Chile, China, Egypt, Finland, India, Israel, Japan, the Philippines, the Republic of Korea, the Russian Federation, Singapore, Spain, Sweden, Turkey, Ukraine, the United States of America, the European Patent Office, the Nordic Patent Institute and the Visegrad Patent Institute act as International Searching Authorities under the PCT (status on May 20, 2019).

[2] The patent offices of Australia, Austria, Brazil, Canada, Chile, China, Egypt, Finland, India, Israel, Japan, the Philippines, the Republic of Korea, the Russian Federation, Singapore, Spain, Sweden, Turkey, Ukraine, the United States of America, the European Patent Office, the Nordic Patent Institute and the Visegrad Patent Institute act as International Preliminary Examining Authorities under the PCT (status on May 20, 2019).