



The Patent Cooperation Treaty (PCT)

Update and selected topics of particular interest for paralegals

Dutch Platform for Formalities Officers – Annual Conference

Eindhoven, April 18, 2023

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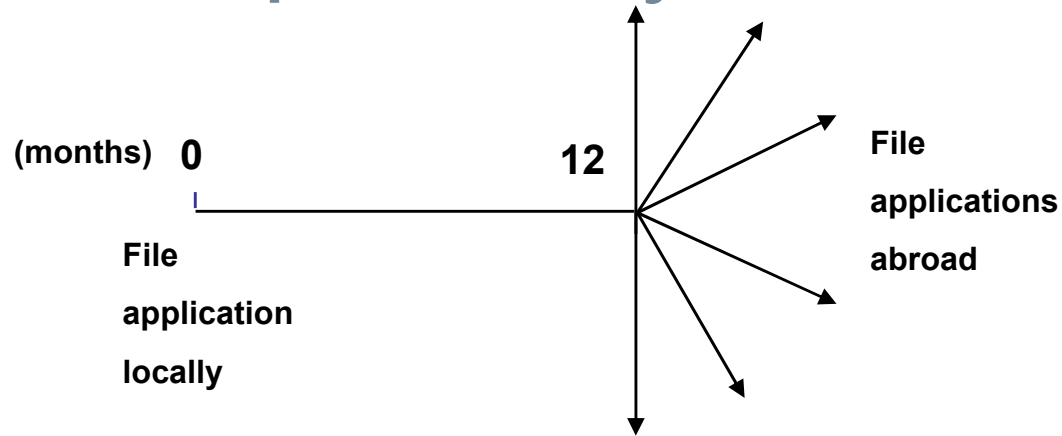
Acronyms

■ IB	International Bureau
■ RO	Receiving Office
■ ISA	International Searching Authority
■ ISR	International Search Report
■ SISA	Authority Specified for Supplementary Search
■ SISR	Supplementary International Search Report
■ IPEA	International Preliminary Examining Authority
■ IPRP I	International Preliminary Report on Patentability Chapter I
■ IPRP II	International Preliminary Report on Patentability Chapter II
■ DO	Designated Office
■ EO	Elected Office



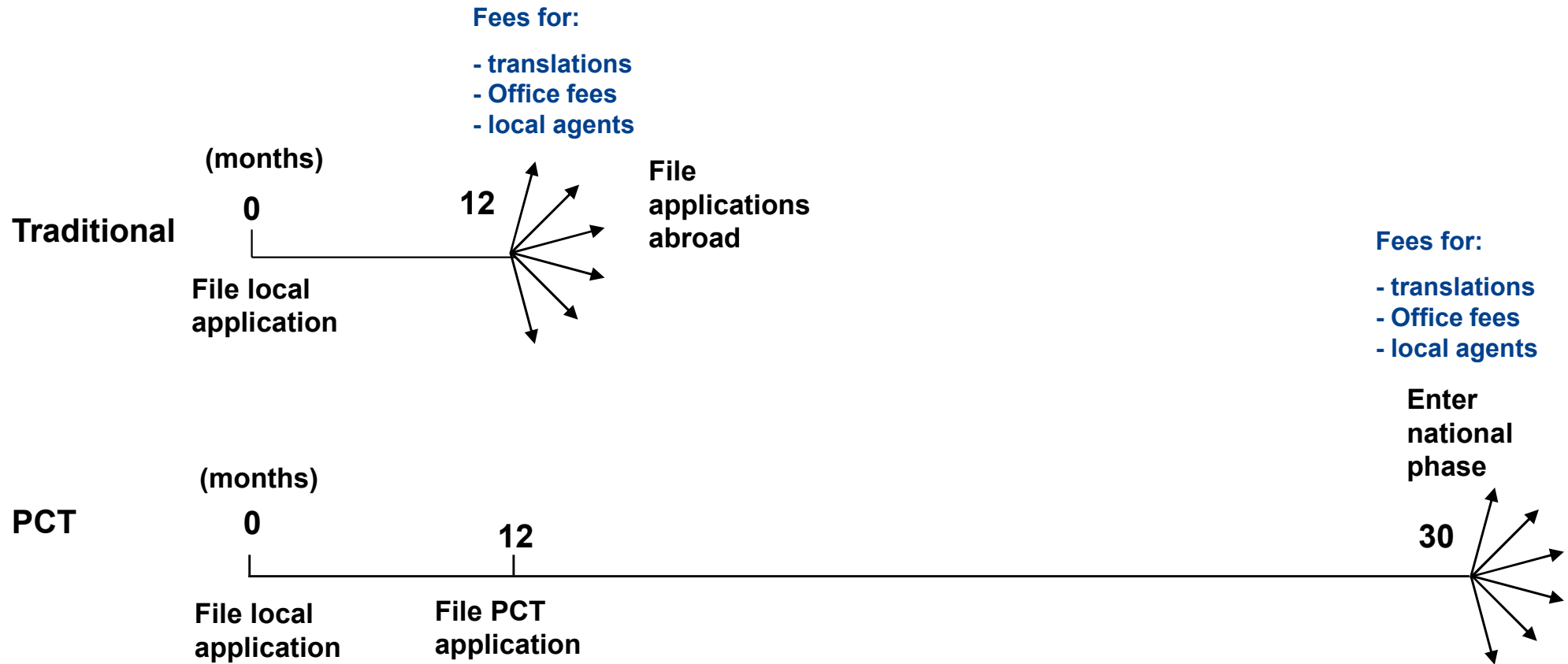
Review of the PCT Procedure and time limits

Traditional patent systems



- Local patent application followed within 12 months by multiple foreign applications claiming priority under Paris Convention:
 - ❑ multiple formality requirements
 - ❑ multiple searches
 - ❑ multiple publications
 - ❑ multiple examinations and prosecutions of applications
 - ❑ translations and national fees required at 12 months
- Some rationalization because of regional arrangements:
ARIPO, EAPO, EPO, OAPI

Traditional patent system vs. PCT system



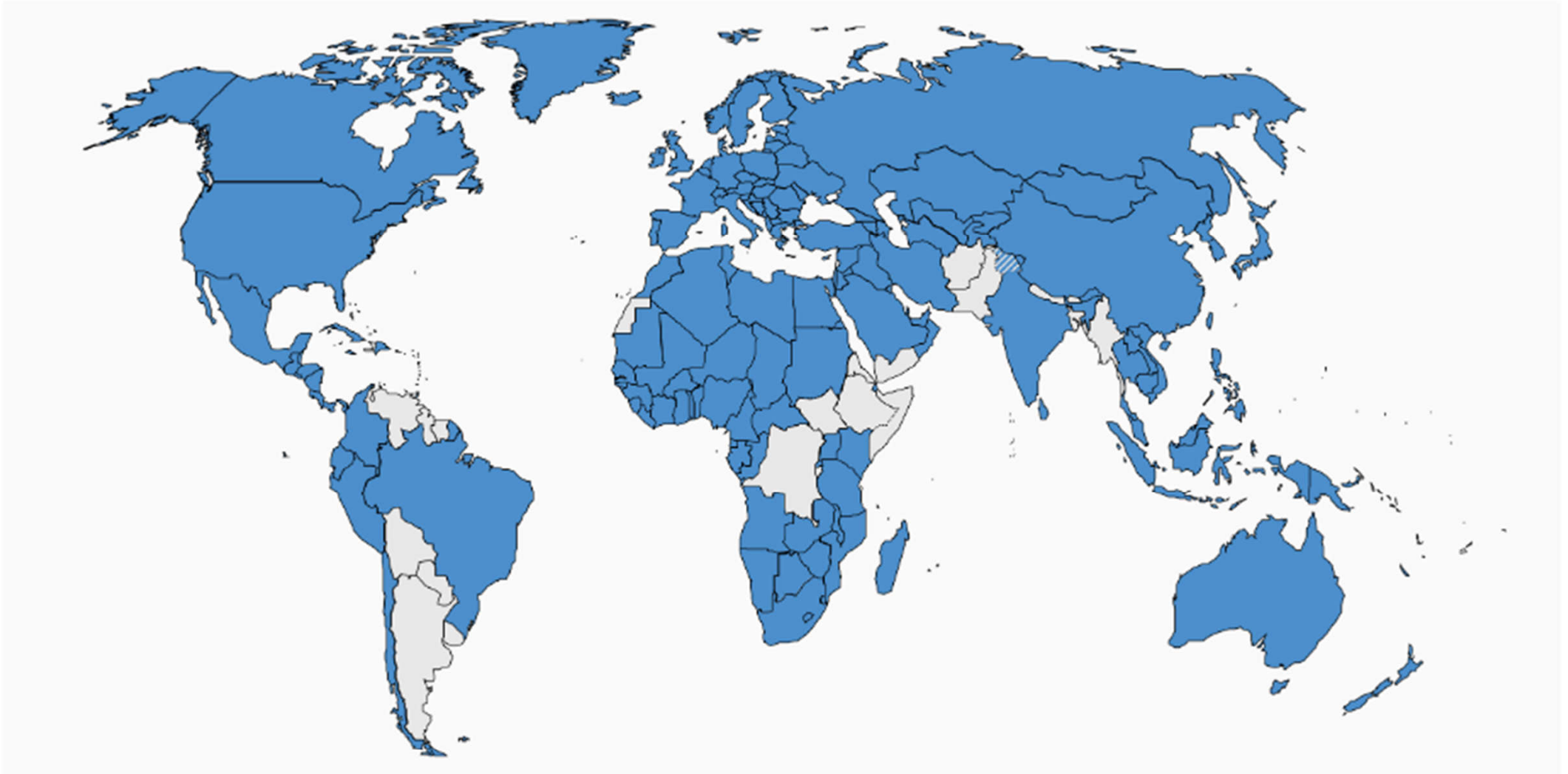
PCT system

Local patent application followed within 12 months by international application under the PCT, claiming Paris Convention priority, with “national phase” commencing at 30 months*:

- one set of formality requirements
- international search
- international publication
- international preliminary examination
- international application can be put in order before national phase
- translations and national fees required at 30 months,* and only if applicant wishes to proceed

* For exceptions, see
www.wipo.int/pct/en/texts/reservations/res_incomp.html

PCT Coverage Today (157 Contracting States)



Recent Accessions

- Mauritius, December 15, 2022
- Cabo Verde, April 6, 2022
- Iraq, January 31, 2022
- Jamaica, November 10, 2021

Countries not (yet) PCT Contracting States (36)

Afghanistan

Andorra

Argentina

Bahamas

Bangladesh

Bhutan

Bolivia

Burundi

Democratic Republic of Congo

Eritrea

Ethiopia

Fiji

Guyana

Haiti

Kiribati

Lebanon

Maldives

Marshall Islands

Micronesia

Myanmar

Nauru

Nepal

Pakistan

Palau

Paraguay

Solomon Islands

Somalia

South Sudan

Suriname

Timor-Leste

Tonga

Tuvalu

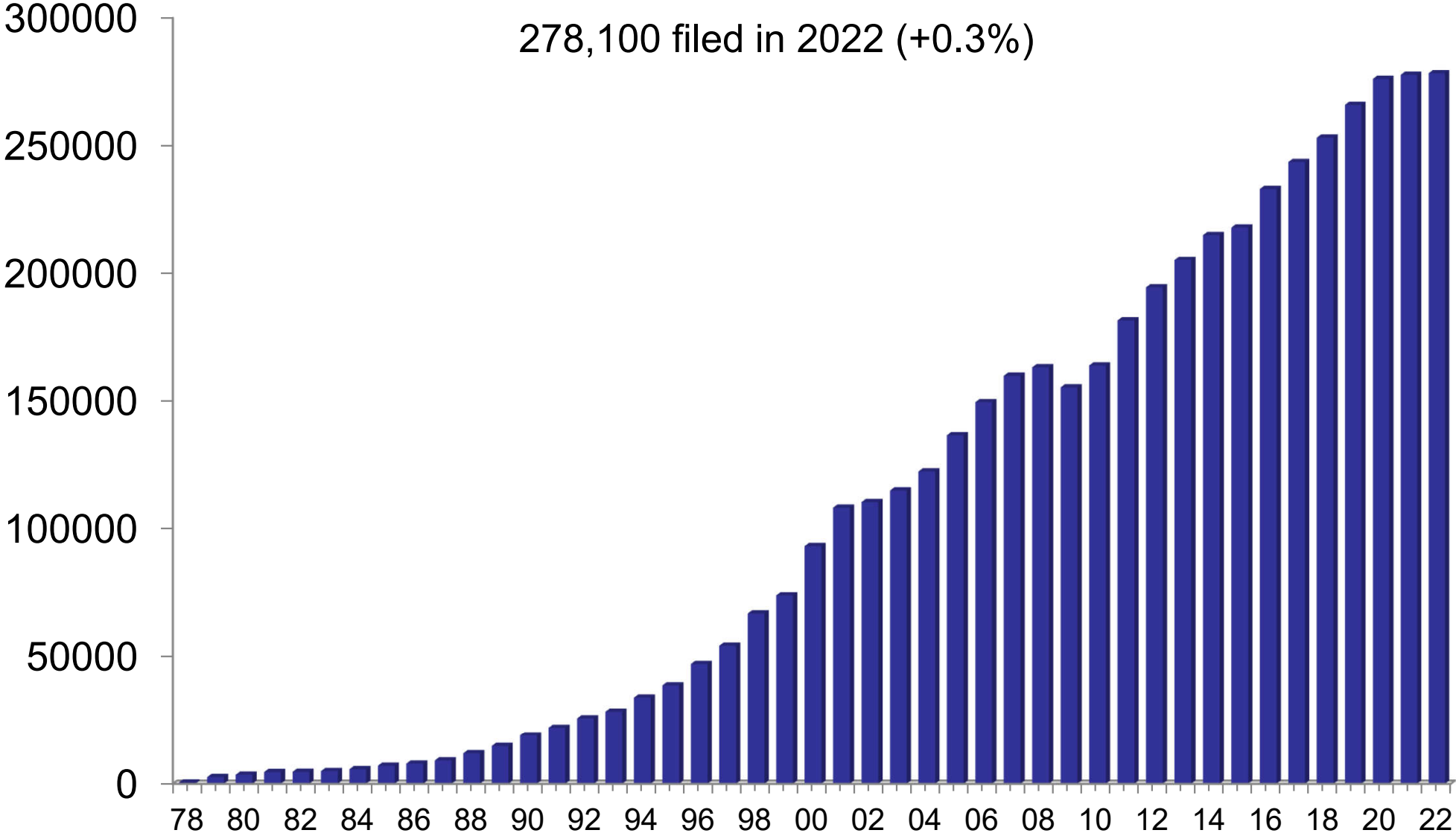
Uruguay

Vanuatu

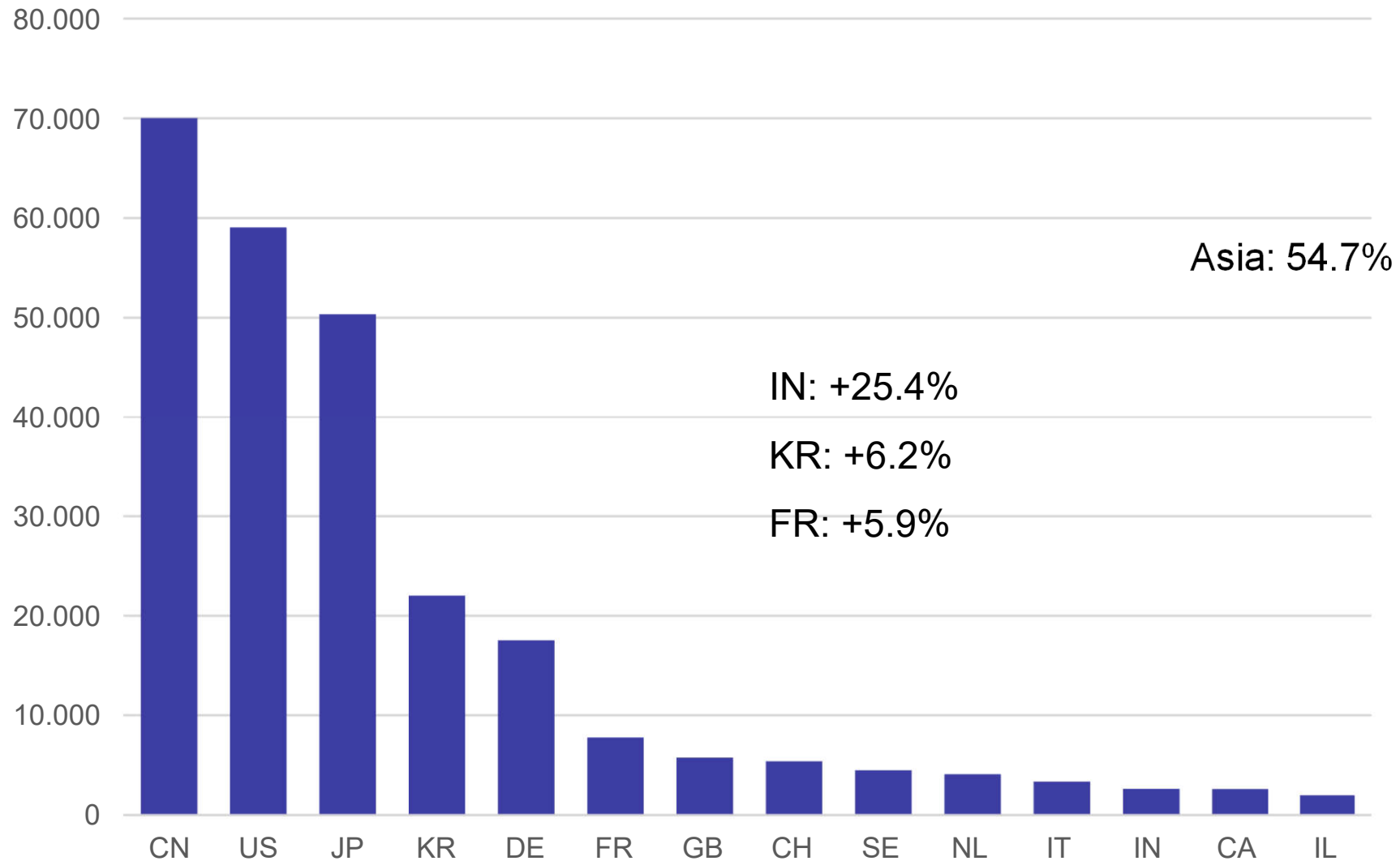
Venezuela

Yemen

Growth in PCT applications 1978-2022



International applications in 2022 by country of origin

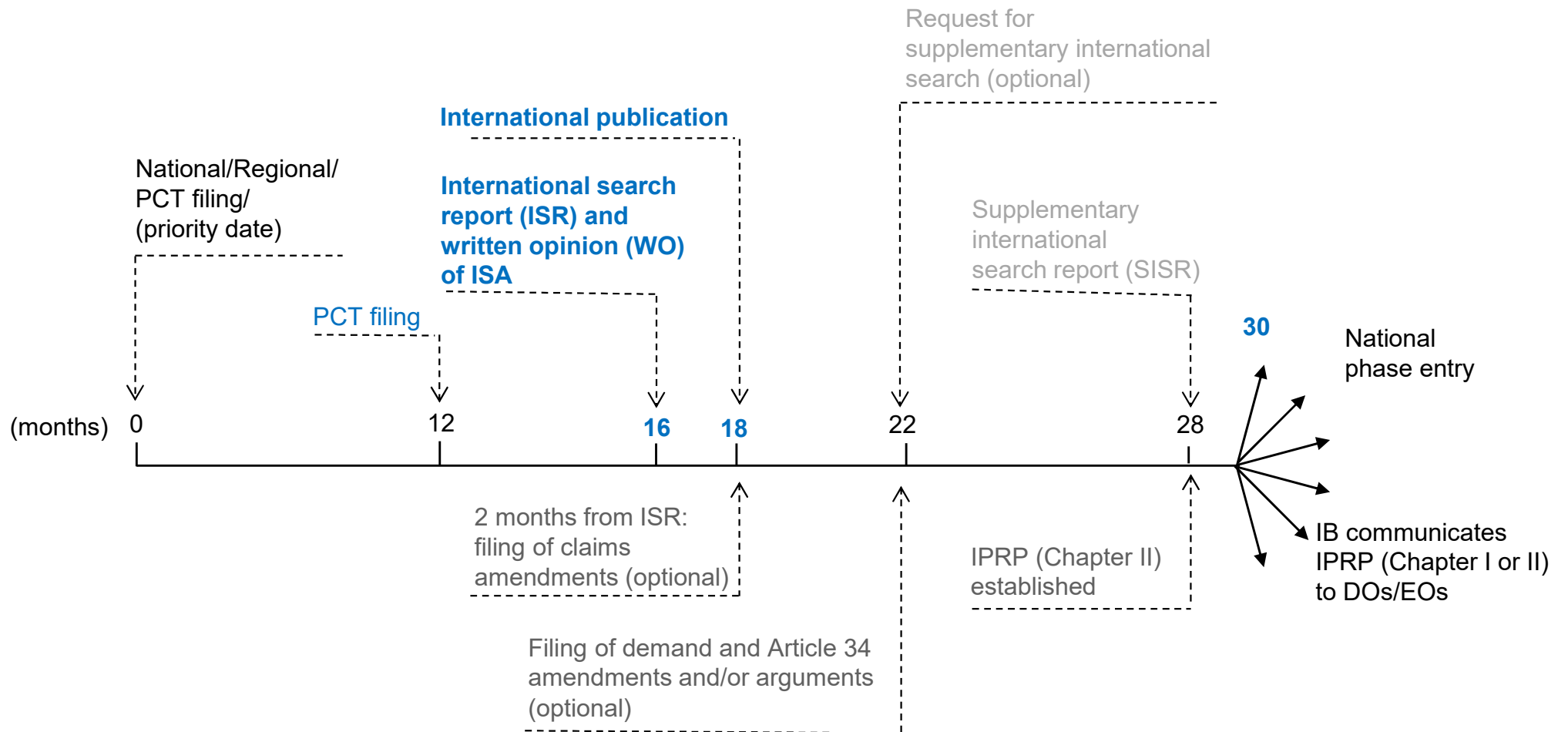


- 25% originating in China, 21% in US, 18% in Japan
- 64% from the top 3 countries, 79% from top 5 countries, 92% of filings from top 15 countries



PCT Timeline

PCT TIMELINE





Priority Claims

- PCT requirements
- Priority documents

Contents of priority claims (Rule 4.10) (1)

■ Earlier national application:

- filing date
- application number
- country party to the Paris Convention or Member of WTO in which earlier application was filed

■ Earlier regional application:

- filing date
- application number
- authority entrusted with the granting of regional patents (in practice, the regional Office concerned)

Contents of priority claims (Rule 4.10) (2)

■ Earlier PCT application:

- international filing date

- international application number

- RO with which the earlier PCT application was filed

■ After filing the PCT application, check [Form PCT/IB/301](#) (Notification of receipt of record copy at IB)

- Does it reflect the correct priority date?

Furnishing of priority documents (Rule 17.1)

- Where the priority of an earlier national, regional or international application is claimed, the applicant must provide a priority document for each corresponding earlier application (that is, a certified copy of the earlier application)
 - by furnishing it directly to the RO or IB (Rule 17.1(a)), or
 - by requesting the RO to prepare and transmit it to the IB (Rule 17.1(b)), if the earlier application was filed with that Office, or
 - by requesting the IB to obtain the priority document from a digital library (Rule 17.1(b-bis)) (only for Offices participating in the Digital Access Service (DAS))

Digital Access Service for Priority Documents (DAS)

■ Legal Basis:

- PCT Rule 17.1(b-*bis*)

- Administrative Instructions 715 and 716

■ Applicants may request the IB to retrieve priority documents from digital libraries (may also be possible at some DOs)

■ Participating Offices: AR, AT, AU, BR, CA, CL, CN, CO, DK, EA, EE, EP, ES, EUIPO, FI, FR, GB, GE, IB, IL, IN, IT, JP, KR, MA, MX, NL, NO, NZ, SE, US

■ For detailed information on DAS, see: www.wipo.int/das/en

Main steps for the use of DAS

- Request the Office of first filing (OFF) to make the earlier application available via DAS
- The OFF (or, in some cases, the IB on behalf of the OFF) provides the applicant with an access code
- Request the IB to retrieve the priority document via DAS by checking the appropriate box on the request form and include the access code (after filing, the request to the IB to retrieve the priority document via DAS can also be made using ePCT)
- The IB retrieves the priority document via DAS and sends a confirmation of retrieval to the applicant (Form PCT/IB/304)

Requesting DAS p-doc retrieval

PRIORITY CLAIMS

Add

Type *	National	▼	Option(s) for providing the priority document to the IB *
Country/Office *	US - United States of America	▼	<input type="radio"/> Receiving Office to prepare and transmit to the International Bureau
Filing Date *	29/10/2019	📅	<input type="radio"/> To be provided by the applicant
filing date does not match for US - 61/274654 in DAS.			<input type="radio"/> An electronic copy of the priority document (certified by the issuing Office) will be submitted with this data package at the time of filing
			<input checked="" type="radio"/> International Bureau to obtain from a digital library (DAS)
Application number *			DAS access code *
61/274654			1234
format should be "08/999,999"			<input type="checkbox"/> The receiving Office is requested to restore the right of priority for this earlier application.

Cancel OK

Time limit for furnishing priority documents (Rule 17.1)

- Direct submission by the applicant to the RO:
 - within 16 months from the priority date
- Direct submission by the applicant to the IB:
 - before international publication
- Request to the RO to prepare and transmit the priority document to the IB:
 - within 16 months from the priority date (check-box in Request form)
- Submission via DAS to IB:
 - The priority document must be made available to the IB via DAS and the request to the IB to retrieve the priority document must be made before international publication

Monitor receipt of [Form PCT/IB/304](#) before international publication



PCT-Direct

“PCT Direct” (1)

- Additional service offered by:
 - EPO
 - Israel Patent Office
 - Finnish Patent and Registration Office
 - Spanish Patent and Trademark Office
- During the PCT procedure, applicants can address patentability issues raised in the search opinion established for the priority application by the same office
- Aims at improving the efficiency and quality of the procedure before the ISA
- Further details can be found on the websites of the Offices concerned

“PCT Direct” (2)

■ Requirements:

- the informal comments are filed together with the PCT application
 - with any RO if ISA/EP, ISA/ES, ISA/FI or ISA/IL is chosen
- ISA/EP, ISA/ES, ISA/FI or ISA/IL are selected
- the PCT application claims priority of an earlier application searched by the
 - ISA/EP (European first filing or national first filing)¹
 - ISA/ES
 - ISA/FI
 - ISA/IL

■ Form:

- the informal comments are filed in form of a “PCT Direct Letter” in a single document in PDF format and the words “PCT Direct/informal comments” have been indicated under “Other” in Box IX of the PCT request form (Form PCT/RO/101)

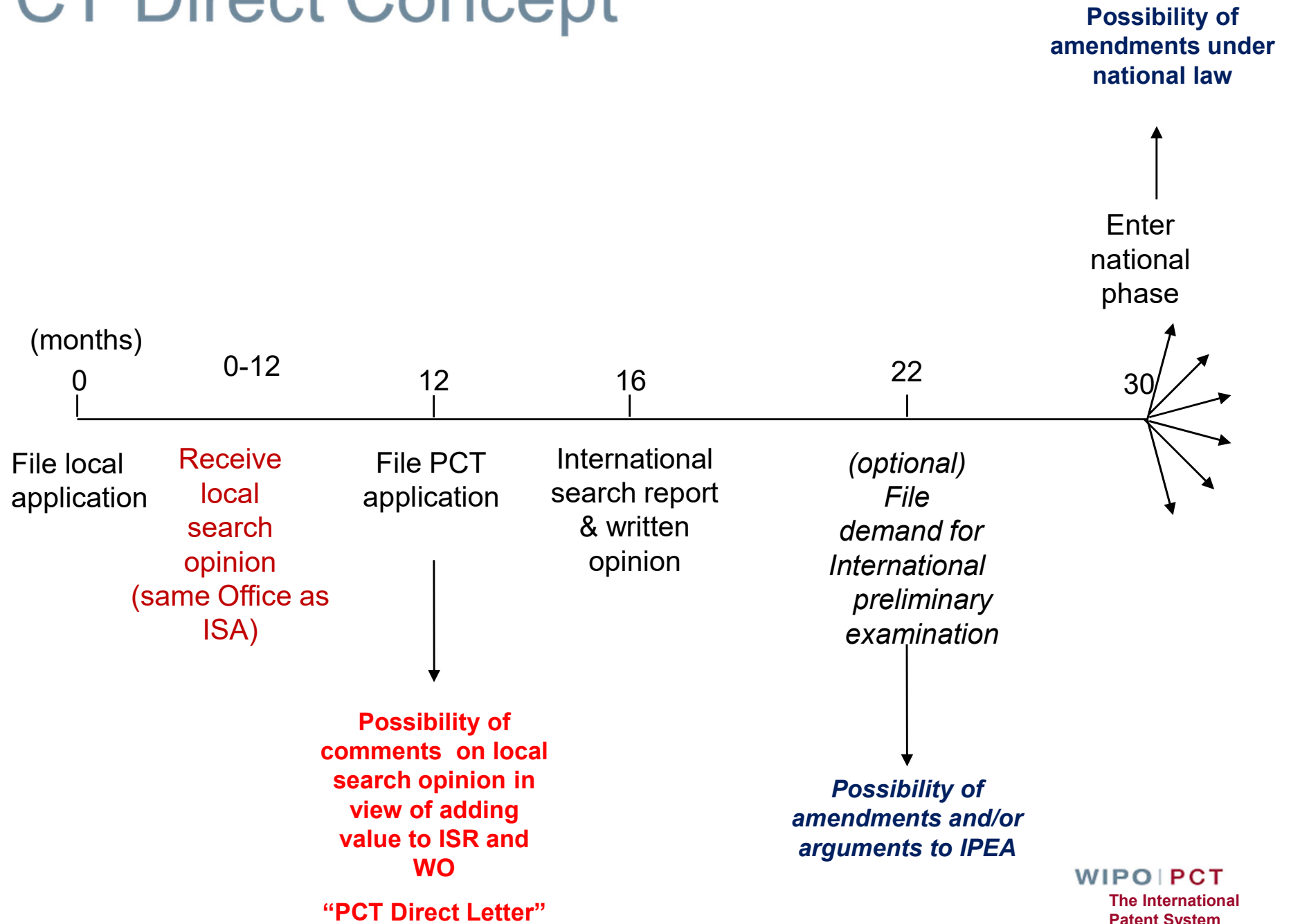
¹ The EPO performs national searches for France, Netherlands, Belgium, Luxembourg, Italy, Turkey, Greece, Cyprus, Malta, San Marino, Lithuania, Latvia and Monaco

“PCT Direct” (3)

■ Informal comments:

- ❑ They are arguments regarding the patentability of the claims of the PCT application
- ❑ May include explanations regarding any modifications to the application documents, in particular to the claims, in comparison with the earlier application (e.g. marked-up copy)
- ❑ Aim at overcoming objections raised in the search opinion established for the priority application
- ❑ Do not form part of the PCT application, but are made publicly available on PATENTSCOPE

PCT Direct Concept





Declarations

Declarations under Rule 4.17

- Purpose: possibility to anticipate certain national phase requirements during the international phase (Rule 51*bis*.2)
- Inclusion in request or subsequent filing is optional
- Declarations relate to the following matters (Rule 4.17):
 - identity of the inventor
 - applicant's entitlement to apply for and be granted a patent
 - applicant's entitlement to claim priority of an earlier application
 - declaration as to inventorship (for the US designation only)
 - non-prejudicial disclosures or exceptions to lack of novelty

Formal requirements

- Declarations must use **standardized wording** as prescribed in Sections 211 to 215 of the Administrative Instructions, relating to **situations that existed on the international filing date**
- Where a declaration has been furnished, **no documents or evidence** as to that matter may be required by the designated/elected Office
 - unless that Office may reasonably doubt the veracity of the declaration; and/or
 - evidence concerning non-prejudicial disclosures or exceptions to lack of novelty may be required

Declaration of inventorship (Rule 4.17(iv)) (only for US designation)

- All inventors need to be named in the same declaration
- Declaration must be **signed and dated by all inventors**
- Signatures may appear on different copies of the same complete declaration (in ePCT external signature function)
- Signature does not have to be an original
- DO/US accepts a seal as signature when the international application is filed with ROs which accept seals as signatures

Publication of declarations

- Declarations received within the applicable time limit will be mentioned on the front page of the published international application
- The full text of the declarations will be published as part of the international application

Addition/correction of declarations (Rule 26ter)

- Applicants may correct or add any of the declarations filed under Rule 4.17
- Time limit: until the expiration of 16 months from the priority date (or even later, provided that the declaration is received by the IB before the technical preparations for international publication have been completed)
- The RO or IB may invite the applicant to correct any declaration that is not worded as required or, in the case of the declaration of inventorship (Rule 4.17(iv)), is not signed as required

Declarations referred to under Rule 4.17: Additional issues

- National forms should not be used for declarations in the international phase (for instance, a combined declaration of inventorship/ power of attorney) since they do not use the standardized wording
- When a declaration is furnished after the international filing date, no further page fee would be required
- If a defective declaration is not corrected during the international phase:
 - does not affect the processing of the declaration by the International Bureau
 - DOs/EOs may accept defective declaration
- No provision for the withdrawal of declarations



Correction of defects

Defects which may result in a later international filing date (Rules 20.5 and 20.5(*bis*))

- Missing sheets or furnishing of correct elements of parts of
 - description
 - claims “
 - drawings
- Attention if you receive **Forms PCT/RO/103 or 107**

Defects which can be corrected without affecting the international filing date (1)

- RO not competent because of the **applicant's nationality or residence** (Article 11(1)(i), Rule 19.4(a)(i))
- International application (description and claims) filed in a **language** not accepted by RO (Rule 19.4(a)(ii))
- Errors in the indication of the applicant's nationality and/or residence (Section 329 of the Administrative Instructions)
- Non-admitted language for the request, abstract, text matter in drawings (Rule 26.3ter)
- Incomplete, erroneous or missing priority claim (Rule 26bis)
Attention if you receive **Form PCT/RO110 (or IB/316)**

Defects which can be corrected without affecting the international filing date (2)

- Missing signature in the request (Rule 4.15)
- Incomplete or erroneous declarations under Rule 4.17 (Rule 26*ter*)
- Formal defects (Rules 11 and 26) **Form PCT/RO/106**
- Missing title of the invention
- Missing abstract
- Obvious mistakes (Rectification under Rule 91)
- Unpaid or not fully paid fees (Rule 16*bis*), **Form PCT/RO/133**
- Not timely furnished translation (Rule 12.3(d)) **Form PCT/RO/150**

Questions - Fees

- One month after filing no fee has been paid yet. The RO has backlogs in processing and has not sent any invitation (Form PCT/RO/102) yet. What should you do?
 - A. Wait to receive an invitation
 - B. Pay asap with a late payment fee
 - C. Pay asap without late payment fee



Incorporation by reference

Houston, we have a problem ...



I filed the
wrong
drawings!!!

There is a
page
missing!!!

Incorporation by reference of missing or correct elements and parts of the international application (Rules 20.5 and 20.5*bis*) (1)

- Objective: Enable inclusion of accidentally omitted elements or parts that are contained in a priority application without affecting the international filing date
 - element = all of the description or all of the claims
 - part = part of the description, part of claims or part or all of pages of drawings
- Erroneously filed elements or parts cannot be removed through incorporation by reference

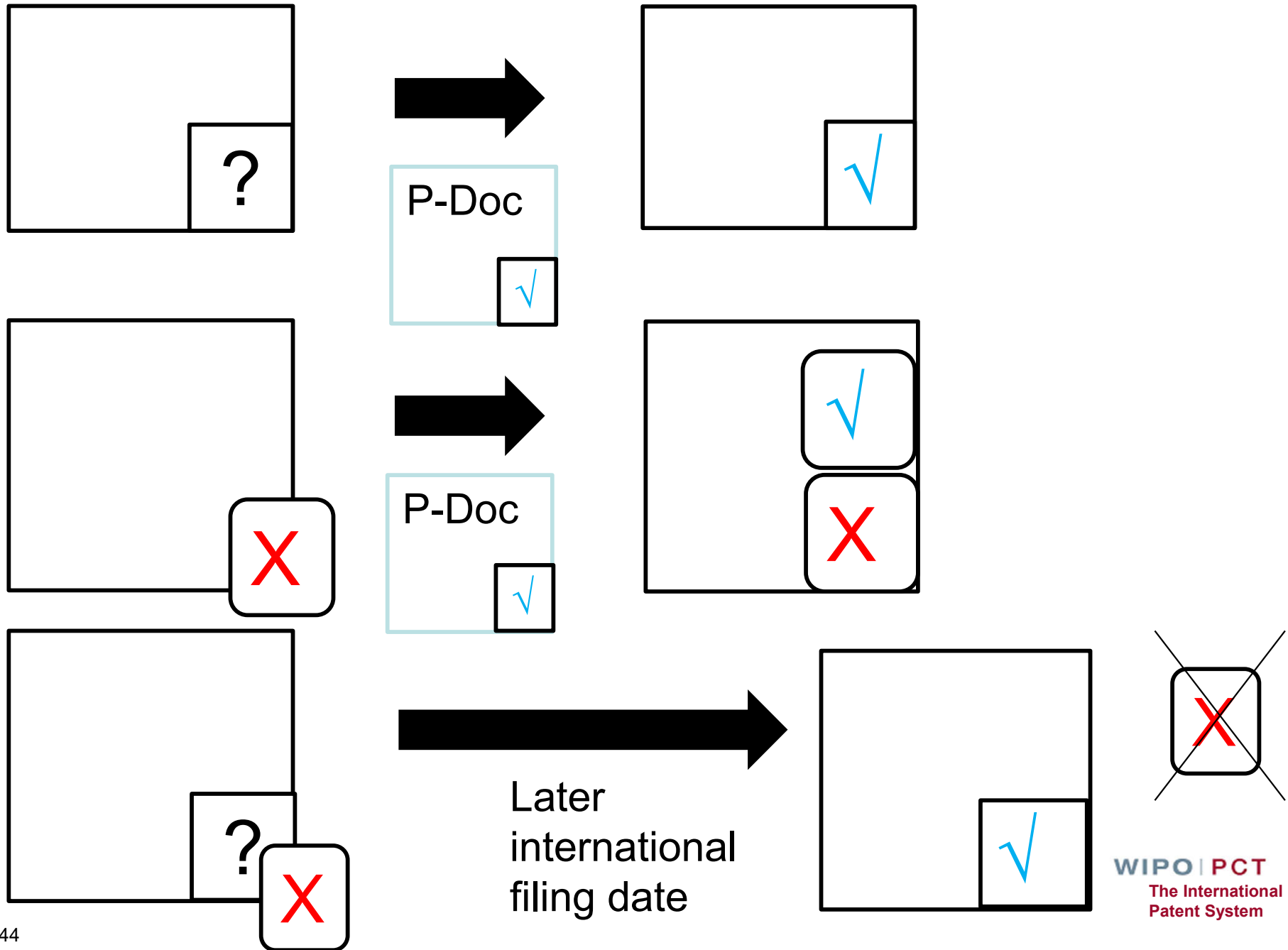
Incorporation by reference of missing or correct elements and parts of the international application (Rules 20.5 and 20.5bis) (2)

■ Conditions:

- priority must have been claimed on the original filing date (Rule 4.18)
- priority application contains the element or part (Rule 20.6(b))
- request contains statement of (conditional) incorporation by reference (Rule 4.18)
- timely confirmation (Rules 20.6 and 20.7)

■ Competent Authority: RO

Missing ≠ erroneously filed ≠ completed/corrected



Confirmation of incorporation by reference (Rules 20.5*bis*, 20.6 and 20.7) (1)

- Time limit: two months from filing or from invitation to correct (Rule 20.7)
- Documents to be filed (Rule 20.6):
 - notice of confirmation
 - missing or correct sheets
 - copy of the earlier application as filed unless the priority document already submitted
 - translation if not in the language of the international application
 - indication as to where in the priority document (and translation) the missing parts are contained

Invitation by RO to correct defect under Article 11(1) (Rule 20.3)

Where the entire description or all claims are missing:
Form PCT/RO/103, RO invites the applicant to either

- furnish a correction under Article 11(2) and the international application is accorded a later filing date or,
- confirm under Rule 20.6(a) that the element is incorporated by reference under Rule 4.18 and the international filing date is maintained

Confirmation of incorporation by reference (Rules 20.5*bis*, 20.6 and 20.7) (2)

- If not all requirements for incorporation by reference are fulfilled (**Form PCT/RO/126**)

(for example, if a missing element or part is not entirely contained in the earlier application):

- the international application is assigned a later filing date (date of receipt of missing or correct element or part),
- applicant may request that missing part or the correct element or part be disregarded (Rule 20.5(e) and Rule 20.5*bis*(e))

- (Rule 20.5bis(b));
- c. the later submitted sheets embodying the missing part are included in the application and the international filing date is corrected to the date on which this receiving Office received those later submitted sheets, that is, to _____ (corrected international filing date) (Rule 20.5(c));
- d. the later submitted sheets embodying the correct element or part are included in the application, the erroneously filed element or part is removed from the application, and the international filing date is corrected to the date on which this receiving Office received those later submitted sheets, that is, to _____ (corrected international filing date) (Rule 20.5bis(c)).

WARNING: Where item c. or d. is checked, the applicant may, in a notice submitted to the receiving Office within one month from the date of mailing of this notification, request that the later submitted sheets be disregarded, in which case the later submitted sheets shall be considered not to have been furnished and the correction of the international filing date shall be considered not to have been made and, where applicable, the erroneously filed element or part shall be considered not to have been removed from the application (Rule 20.5(e) or 20.5bis(e)).

3. As the date of receipt of those later submitted sheets is not within two months from the date of the invitation issued under Rule 20.5(a) or 20.5bis(a) (Form PCT/RO/107, dated _____) or, where no such invitation was issued, is not within two months from the date on which one or more elements of this international application referred to in Article 11(1)(iii) were first received by this receiving Office, the later submitted sheets will not be included in the application and will not be taken into account for the purposes of international processing.

4. A copy of this notification has been sent to:

the International Bureau

the International Searching Authority

Name and mailing address of the receiving Office

Authorized officer

Facsimile No.

Telephone No.

Effect of incorporation by reference in the national phase (Rule 82*ter*.1(b))

- DOs may, to a limited extent, review the decision allowing the incorporation by reference
- Declarations of incompatibility with the national law (reservations) were made by a number of ROs and DOs
See WIPO website at:
www.wipo.int/pct/en/texts/reservations/res_incomp.html
 - DOs and missing elements/parts (Rule 20.8(b)):
CN, CU, CZ, DE, ID, **KR**, MX, TR
 - DOs and erroneously filed elements/parts (Rule 20.8(b-bis)):
CL, **CN**, CU, CZ, DE, ES, ID, **KR**, MX, TR (EP withdrew its notification of incompatibility from 1 November 2022)



Correction and addition of priority claims

Correction/addition of priority claims

■ What can be the problem?

- missing priority claim
- missing priority date
- missing indications of the date, number or country of filing
- filing date of earlier application more than 12 months before the international filing date
- earlier filing not in a country party to the Paris Convention or a Member of WTO

■ Applicable provisions:

- Article 8
- Rules 4.10, 26*bis*, 48.2(a)(vii) and 91

Correction/addition of priority claims affecting the priority date (Rule 26*bis*) (1)

■ Cases concerned:

- adding a priority claim with an earlier filing date than any priority claim present in the application
- correction of the filing date of the earliest priority claim

Correction/addition of priority claims affecting the priority date (Rule 26bis) (2)

■ Applicable time limit:

- ❑ within 4 months from the international filing date; or
- ❑ possibly later, if the earlier of the following two time limits expires later than the 4-month time limit:
 - 16 months from the priority date before the correction or addition
 - 16 months from the priority date after the correction or addition
- ❑ any correction received before the RO or IB has declared the priority claim to be void and not later than one month after the expiration of the above time limit, will be considered as timely received (Rule 26bis.2(b))

NOTE: This does not apply to late additions of priority claims

Correction/addition of priority claims not affecting the priority date (Rule 26*bis*) (1)

■ Cases concerned:

- corrections which do not affect the filing date of the priority claim
- adding a priority claim with a later filing date than the earliest priority claim present in the application (e.g. second priority claim)
- corrections of the filing date of a priority claim which is not the earliest one

Correction/addition of priority claims not affecting the priority date (Rule 26*bis*) (2)

■ Applicable time limit:

□ Rule 26*bis*.1(a):

- within 4 months from the international filing date; or
- within 16 months from the priority date, whichever time limit expires later
- any correction received before the RO or IB has declared the priority claim to be void and not later than one month after the expiration of the above time limit, will be considered as timely received (Rule 26*bis*.2(b))

NOTE: This does not apply to late additions of priority claims

□ Rule 91: within 26 months from the priority date

Invitation to correct by RO or IB (1)

■ Forms:

receiving Office: Form PCT/**RO/110**

International Bureau: Form PCT/**IB/316**

■ Invitation (Rule 26*bis*.2(a)), is issued if:

priority claim does not comply with requirements of Rule 4.10

any indication in the priority claim is inconsistent with the corresponding indication appearing in the priority document

International application has an international filing date outside the priority period

Invitation to correct by RO or IB (2)

- The RO will also draw the attention of the applicant to the possibility to request restoration of the priority right (Rule 26*bis*.3) if the international filing date is outside of the priority period but within a period of two months from the date of expiration of the priority period
- If the applicant does not correct the priority claim in response to the invitation, the priority claim concerned will be considered void, for the purposes of the procedure under the PCT (Rule 26*bis*.2(b)) – with exceptions on the following slide

Invitation to correct by RO or IB (3)

- However, a priority claim will not be considered void only because (Rule 26*bis*.2(c)):
 - the indication of the number of the earlier application is missing; or
 - an indication in the priority claim is not the same as the corresponding indication appearing on the priority document; or
 - the international filing date is outside of the priority period but within a period of two months from the date of expiration of the priority period

Publication related to priority claims (Rule 26bis.2(e))

- After the expiration of the applicable time limit to correct or add a priority claim, applicant may request the IB (Rule 26bis.2(e)) to publish information concerning the priority claim concerned:
 - ❑ within 30 months from priority date; and
 - ❑ subject to the payment of a fee
- The publication will not correct the priority claim but serve to alert third parties that correction/addition may be attempted in the national phase.



Restoration of the right of priority

Restoration of the right of priority - Competent Authorities

- RO during the international phase
(Rule 26*bis*.3)
- DO during the national phase
(Rule 49*ter*.2)

Restoration by RO (Rule 26*bis*.3)

■ Conditions:

- request to restore must be filed with the RO
- time limit: within a period of 2 months from the date of the expiration of the priority period
- filing of statement of reasons for failure to comply with the time limit
- statement should preferably be accompanied by a declaration or other evidence to support such statement
- where applicable, payment of the required fee

Restoration of the right of priority

Applicable criteria

- Applicable Rules: *26bis.3(a)* and *49ter.2(a)*
- Two possible criteria for restoration:
 - failure to file the application within the priority period occurred in spite of due care required by the circumstances having been taken
 - failure to file the application within the priority period was unintentional
- All Offices must apply at least one of these criteria and may apply both; DOs may also apply a more favorable criterion in accordance with their national law

PCT Receiving Office Guidelines, para. 166M

166M. While each receiving Office must engage in its own case-by-case analysis for each restoration request, the application of the “due care” criterion to the following factual circumstances (based on the experience of the International Bureau) may be of assistance:

(a) Lack of Knowledge by the Applicant

A prudent applicant acquires the requisite knowledge of the PCT system in order to be able to timely file a complete international application, and/or appoints a competent agent to file on his behalf if the applicant lacks the requisite knowledge. An applicant who failed to file the international application within the priority period due to a lack of knowledge concerning the operation of the PCT system or concerning the 12 months priority period as set out in Article 4C of the Paris Convention generally did not act with “due care”.

(f) Human Error by the Agent’s or Applicant’s Staff

An applicant or agent may entrust administrative staff (non-attorneys such as assistants or paralegals) with the performance of certain administrative tasks. A prudent applicant or agent carefully chooses, trains and monitors the work of a reliable, experienced, adequately trained and supervised employee. A human error by an assistant in the docketing, monitoring, preparation or filing of the international application is not attributed to the applicant or agent if the applicant or agent can show that “due care” was exercised in the management of the assistant and the failure to file within the priority period in this particular case was an isolated human error. In the statement of reasons, the applicant or agent should usually outline the number of years the assistant has been entrusted with the particular task, the level of training and supervision provided to the assistant and whether the assistant has performed all his duties diligently in the past.

(g) Docketing System Error

Docketing system errors can be divided into human entry errors (see paragraphs (c) and (f) above) and technical errors (e.g. software malfunction or server crashes). Where the applicant or agent failed to timely file the international application due to a technical error, the applicant or agent may have acted with all “due care” if he demonstrates that he set up a reliable and well-functioning reminder system, had sufficient knowledge of the use and operation of the system, sufficiently trained and supervised staff on the use of the



The screenshot shows the top navigation bar with links for IP Services, Policy, Cooperation, Resources, About IP, and About WIPO. Below the navigation bar is a breadcrumb trail: Home > PCT System > Legal Texts. The main heading is "Guidelines for Authorities and Offices". Below this is the subtitle "PCT Receiving Office Guidelines (as in force from July 1, 2022)". At the bottom of the screenshot, there are two links: PDF and HTML.

Restoration by RO

Communication of documents to the IB

- General Rule: Obligation of the RO to forward to the IB all documents received from the applicant in relation to a request to restore the priority right
- Exception:
 - Upon reasoned request by the applicant or on its own decision, the RO may not forward information, if
 - it does not obviously serve the purpose of informing the public about the international application,
 - publication of or public access to such information would clearly prejudice the personal or economic interests of any person, and
 - there is no prevailing public interest to have access to that information
 - The applicant may be required to submit replacement sheets

Effects of refusal to restore by RO (Rule 26bis.3)

- Any priority claim to an earlier application filed less than 14 months before the international filing date
 - will not be declared void even if priority is not restored by the RO (Rule 26bis.2(c)(iii))
 - will serve as a basis to calculate time limits during the international phase
- The validity of such a priority claim in the national phase is not assured

Effects of restoration in the national phase (Rule 49ter.1)

- Effect of restoration by RO in the national phase:
 - ❑ RO restoration based on the “due care” criterion is effective in all DOs
 - ❑ RO restoration based on the “unintentional” criterion is effective in those DOs which apply that criterion (or a more lenient one)
 - ❑ RO restoration is not conclusively binding on DOs: limited review by DOs is possible
 - ❑ RO refusal to restore is not binding on DOs
- For declarations of incompatibility with the national law (reservations), see the WIPO website at:
www.wipo.int/pct/en/texts/reservations/res_incomp.html

Reservations made by Offices

The following Offices have notified the IB of the incompatibility of Rule 26*bis*.3(a) to (i), Rule 49*ter*.1(a) to (d) and/or Rule 49*ter*.2(a) to (g) with their national/regional law:

- ❑ Incompatibility as RO (Rule 26*bis*.3(j)):
BR, CO, CU, CZ, DE, DZ, GR, ID, IN, KR, PH
- ❑ Incompatibility of the effect of decision of RO on DO
(Rule 49*ter*.1(g)):
BR, CN, CO, CU, CZ, DE, DZ, ID, IN, KR, LT, MX, PH
- ❑ Incompatibility as DO (Rule 49*ter*.2(h)):
BR, CA, CN, CO, CU, CZ, DE, DZ, ID, IN, KR, MX, PH

See the Table of “PCT Reservations, Declarations, Notifications and Incompatibilities” www.wipo.int/pct/en/texts/reservations/res_incomp.html

Restoration of the right of priority by receiving Offices (RO) and designated Offices (DO) under PCT Rules 26bis.3 and 49ter.2 (Last updated 24 February 2023)

A B C D E F G H I J K L M N O P Q R S T U V Z

Two-letter code	Contracting State or Organization	Does the Office accept requests for the restoration of the right of priority?		If yes, which criteria does the Office apply?	Is there a fee?
		as receiving Office	as designated Office		
AE	United Arab Emirates	See IB¹	Yes	Please refer to the Office for the applicable criteria and/or any fee payable for such requests.	
AG	Antigua and Barbuda	See IB¹	Yes	As DO, due care and unintentional	XCD 800
AL	Albania	Yes	Yes	Due care	ALL 7,000
AM	Armenia	Yes	Yes	Unintentional	AMD 10,000
AO	Angola	See IB¹	Please refer to the Office	Please refer to the Office for the applicable criteria and/or any fee payable for such requests	
AP	African Regional Intellectual Property Organization	Yes	Yes	Please refer to the Office for the applicable criteria and/or any fee payable for such requests	
AT	Austria	Yes	Yes	Due care and unintentional	As RO, EUR 229 As DO, EUR 269

Questions – priority claims

- On 8 April 2022 you filed a first patent application and on 6 April 2023 a PCT application. You have omitted to claim priority to the first filing. What can be done ?
 - A. Submit a notice to IB to add the priority claim
 - B. Request restoration of priority right
 - C. Request publication of information concerning a priority claim which can no longer be added.



Recording of changes under Rule 92*bis*

Rule 92*bis*: cases covered

- Change of name
- Change of address
- Change of nationality
- Adding/deleting an inventor
- Change of applicant (assignment, addition, deletion)
- Change of agent

Request for recording of a change under Rule 92*bis*

- ePCT action
- Generally no evidence of the change is required during the international phase (the DOs may, however, require that evidence (for example, assignment) be submitted once the national phase has been entered)
- The IB will notify the applicant that the requested change has been recorded
- Monitor receipt of [Form PCT/IB/306](#)

Recording of a change in the person of the applicant under Rule 92*bis*

- Where such request is made by a person not yet named in the request (“the new applicant”) without the written consent of the (“old”) applicant, a copy of an assignment or other documentary evidence supporting the change in person must be filed with the request for the change
- Where such request is made by an agent of the new applicant, a power of attorney signed by the new applicant must be furnished at the same time

Time limit under Rule 92bis (1)

- The request must reach the IB before the expiration of 30 months from the priority date
 - Therefore, it is recommended to file it directly with the IB even though it is possible to file it also with the RO
- If it reaches the IB after the expiration of the applicable time limit, the change will not be recorded and the applicant will have to proceed with such request before each DO or EO concerned

Time limit under Rule 92*bis* (2)

- If the applicant wishes that a particular change be taken into account for the international publication, the request for change must reach the IB before the completion of technical preparations for international publication (15 days before the actual date of publication)

Questions – corrections/rectifications

- On the day of international publication you notice a typographical error in the date of the only priority claim. Can it still be corrected and if so, how?
 - A. Yes, submit a notice to the IB to add the priority claim
 - B. Yes, submit to the IB a request to record a change (Rule 92*bis*)
 - C. Request the ISA to authorize a rectification of an obvious mistake (Rule 91)
 - D. No, but you can ask the IB to publish information about a priority claim which can no longer be corrected (Rule 26*bis*.2(e))



Entry into the national phase

General national requirements

Art. 22(1) and 39(1)(a)

- Requirements:
 - ❑ Translation, if applicable
 - ❑ Payment of national fee
 - ❑ Copy of international application in particular circumstances only

- Time limit under Art. 22(1): 30 months from the priority date
 - ❑ For additional time, see PCT Applicant's Guide, national phase summaries
 - ❑ For exceptions, see www.wipo.int/pct/en/texts/reservations/res_incomp.html

- Time limit under Art. 39(1)(a): 30 months from the priority date
 - ❑ For additional time, see PCT Applicant's Guide, national phase summaries

Special national requirements (Art. 27 and Rule 51*bis*.1)

■ Time limit under Rule 51*bis*.3:

- If requirements are not fulfilled within the time limit for entry into national phase under Art. 22 or 39:
 - Invitation by DO
 - At least 2 months from the invitation

Examples of special requirements under Rule 51*bis*.1 (1)

■ Oath or declaration by the inventor (US only):

Where the corresponding declaration has been furnished during the international phase or directly to the DO/EO, no documents or evidence as to that matter may be required by DO/EO/US unless that Office may reasonably doubt the veracity of the declaration

■ Assignment documents (of the priority rights or of the application):

Where the corresponding declaration has been furnished during the international phase or directly to the DO/EO, no documents or evidence as to that matter may be required by the DO/EO unless that Office may reasonably doubt the veracity of the declaration

Examples of special requirements under Rule 51*bis*.1 (2)

- Translation of the priority document may only be required (Rule 51*bis*.1(e)):
 - where the validity of the priority is relevant to the determination whether the invention is patentable
 - in cases of incorporation by reference
- Appointment of local agent and submission of power of attorney
- Translation or other documents relating to the international application in more than one copy
- Certified translation of the international application (only where the Office may reasonably doubt the accuracy of the translation)

National requirements simplified for PCT applications (1)

■ Priority document

- The applicant does not need to furnish the priority document since the IB transmits copies to the DO/EOs
- If the DO/EO did not receive a copy of the priority document from the IB, it must request a copy from the IB (not from the applicant)

■ Drawings

- If the drawings do not contain any text matter to be translated, a simple copy of the drawings as filed is required by a few DOs
- If the drawings contain text matter to be translated, a set of drawings containing the translated text matter needs to be furnished

National requirements simplified for PCT applications (2)

- No legalized or certified translation of the international application
 - Otherwise, a simple translation is required
 - A few Offices (such as, AU, GB, IN, NZ, SG, ZA) require a "verified" translation
- No special form required (but strongly recommended) for entry into national phase

Furnishing by IB of copies of priority documents (Rule 17.2(a))

- The International Bureau provides copies of priority documents to designated Offices:
 - upon request
 - after international publication, unless the applicant made a specific request for early processing under Article 23(2)
- Almost all Offices request a copy of the priority document only after the application entered the national phase
- Only the European Patent Office systematically receives copies of all priority documents

Recommendations for preparing entry into the national phase (1)

- Leave sufficient time, where necessary, to prepare the translation of the international application
- Send your local agent, copies of the (relevant) documents on file: the published international application, the international search report and written opinion by the ISA, the international preliminary examination report, priority documents; note that none of these documents are required to be filed by the local agent at the local patent office

Recommendations for preparing entry into the national phase (2)

- Where you would prefer avoiding paying additional claims fee or other fees that are applicable under any particular national law, prepare the application, and any amendments thereof, according to the national practice
- Even though several DOs/EOs provide for longer time limits, it is preferable to docket the 30-month time limits for all Offices (See www.wipo.int/pct/en/texts/reservations/res_incomp.html for exceptions under Article 22(1))

A few further tips to remember

- Remember to monitor time limits for entering national phase
 - they apply irrespective of delays in the international phase
- Make necessary indications that application is entering the national phase, i.e., that it is not a direct national filing
- Translation of the international application must be correct and complete (no subject matter may be added and/or deleted)
- Pay the required fees (amount may be different from that applicable to direct national filing)

Reinstatement of rights by DO/EOs (Rule 49.6) (1)

- Available in certain DO/EOs, where the applicant has missed the time limit under Article 22 or 39(1) to enter the national phase:
 - unintentionally
 - or - at the option of the Office -*
 - in spite of due care required by the circumstances

Reinstatement of rights by DO/EOs (Rule 49.6) (2)

- Applicants may submit a request for reinstatement and enter the national phase within:
 - 2 months from the date of removal of the cause of the failure to meet the time limit to enter national phase; or
 - 12 months from the date of expiration of the time limit to enter national phase;
- whichever period expires first

DO/EOs to which Rule 49.6 does not apply

- Notifications of incompatibility with respective national law were filed in accordance with Rule 49.6(f):

CA Canada

LV Latvia

CN China

MX Mexico

DE Germany

NZ New Zealand

IN India

PH Philippines

KR Republic of Korea

PL Poland

- The national law applicable by some of these Offices may nevertheless provide for other forms of protection against loss of rights - for further details, see for each DO/EO, the relevant National Chapter in the *PCT Applicant's Guide*, National Phase

Additional cases of protection against loss of rights

- Other than the (minimum) protection under Rule 49.6:
excuse of delays in meeting time limits by DOs/EOs
(Article 48 and Rule 82*bis*)
- Rectification by DOs/EOs of errors made by RO or IB
(Rule 82*ter*)
- Review by and opportunity to correct before the DOs/EOs
(Articles 24(2), 25, 26, 39(3) and 48, Rules 82*bis* and
82*ter*)

Non-applicability of time limit of 30 months under Article 22(1)

- The Offices of the following two States have notified the IB that they do not apply the 30 month time limit under Chapter I, as of 1 April 2002, for as long as modified Article 22(1) is not compatible with their national law:

LU Luxembourg

TZ United Republic of Tanzania

- If no demand for international preliminary examination is filed before the expiration of 19 months in respect of above States, the national phase will have to be entered before the expiration of 20 or 21 months from the priority date
- As distinct from the national phase in LU and TZ, the regional phase can be entered within 31 months at the EPO and ARIPO respectively for those countries

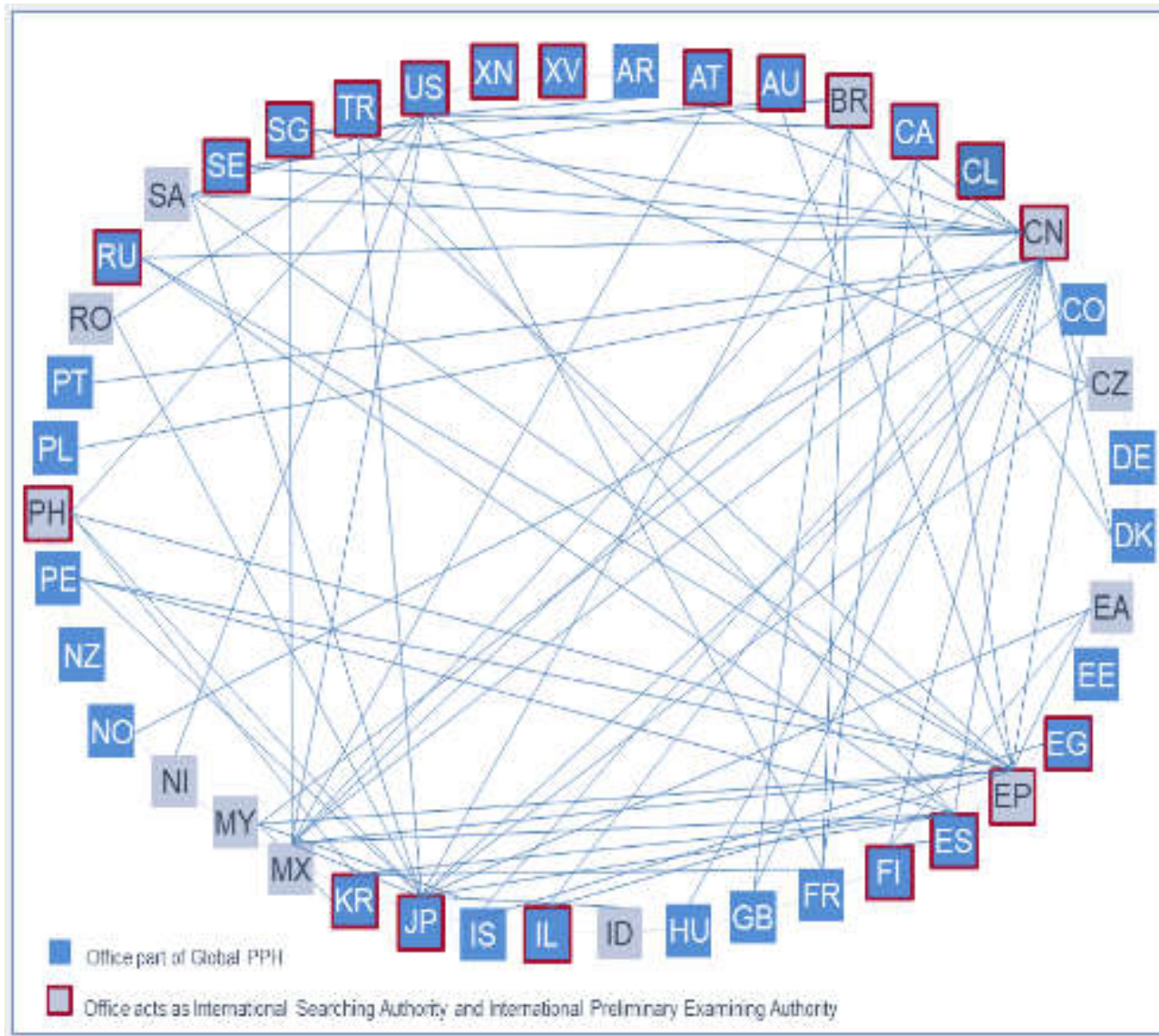


Patent Prosecution Highway (PPH) and PCT

Patent Prosecution Highway (PPH) and PCT

- Accelerated examination in the national phase based on a positive work product of an International Authority (written opinion of the ISA or the IPEA, IPRP (Chapter I or II))
- Conditions:
 - At least one claim has been determined by the ISA or the IPEA to meet the PCT criteria of novelty, inventive step and industrial applicability; and
 - ALL the claims must sufficiently correspond to the claims deemed to meet the PCT criteria (they are of the same or similar scope or they are of narrower scope than the claims in the PCT application)
- Global PPH and PCT:
 - Introduction of Global PPH Pilot in January 2014
 - Single set of qualifying requirements that simplifies the existing PPH network so that it is more accessible for users

Patent Prosecution Highway (PPH) and PCT



Patent Prosecution Highway (PPH) and PCT

- Global PPH complements existing bilateral PPH agreements
- Information on the PCT Website:
www.wipo.int/pct/en/filing/pct_pph.html
- Information on the PPH Portal:
www.jpo.go.jp/ppph-portal/index.htm
- Information on procedures and forms can be found on the websites of the participating Offices
- The IB requests feedback on experience with PCT-PPH at pct.legal@wipo.int

■ **New WIPO Standard ST.26**

New requirement for presenting nucleotide and amino acid sequences

for applications filed on or after July 1, 2022

Why a new Standard?



- Compliance with international sequence database standards
- Reflect advances in biotechnology
 - E.g., branched sequences, D-amino acids and nucleotide analogs
- Structured data allows automated validations and facilitates data exchange
- Harmonize practices across all patent offices

ST.26 Sequence Listing

```
<SequenceData sequenceIDNumber="5">
  <INSDSeq>
    <INSDSeq_length>12</INSDSeq_length>
    <INSDSeq_moltype>DNA</INSDSeq_moltype>
    <INSDSeq_division>PAT</INSDSeq_division>
    <INSDSeq_feature-table>
      <INSDFeature>
        <INSDFeature_key>source</INSDFeature_key>
        <INSDFeature_location>1..12</INSDFeature_location>
        <INSDFeature_qual>
          <INSDQualifier>
            <INSDQualifier_name>organism</INSDQualifier_name>
            <INSDQualifier_value>synthetic construct</INSDQualifier_value>
          </INSDQualifier>
          <INSDQualifier>
            <INSDQualifier_name>mol_type</INSDQualifier_name>
            <INSDQualifier_value>other DNA</INSDQualifier_value>
          </INSDQualifier>
        </INSDFeature_qual>
      </INSDFeature>
      <INSDFeature>
        <INSDFeature_key>misc_feature</INSDFeature_key>
        <INSDFeature_location>12</INSDFeature_location>
        <INSDFeature_qual>
          <INSDQualifier>
            <INSDQualifier_name>note</INSDQualifier_name>
            <INSDQualifier_value>cytosine attached to a C3 spacer, which is joined to another nucleic acid</INSDQualifier_value>
          </INSDQualifier>
        </INSDFeature_qual>
      </INSDFeature>
    </INSDSeq_feature-table>
    <INSDSeq_sequence>atgcatgcatgc</INSDSeq_sequence>
  </INSDSeq>
</SequenceData>
```

PCT requirements (Rule 5.2(a))

- WIPO Standard **ST.26** replaces ST.25 since July 1, 2022
- Amended Rule 5.2(a): Where the international application contains disclosure of nucleotide and/or amino acid sequences that, pursuant to the Administrative Instructions, are **required to be included in a sequence listing**, the description shall include **a sequence listing part of the description** complying with the **standard** provided for in the Administrative Instructions.
- ST.26 is the Standard provided for in Annex C of the Administrative Instructions

Sequence listing filed on international filing date

- Can only be considered a sequence listing part of the description if filed in the **correct format (XML)**
 - Application filed electronically
 - Separate XML file containing sequence listing
 - Application filed on paper
 - sequence listing in XML on physical media
- RO only required to confirm the correct file type (XML)
- If filed in ST.25, cannot simply replace with ST.26
 - Applicant may only add the content as sheets of the description

Non-compliant file type submissions

- RO informs the applicant that the sequence listing must be filed in XML under ST.26
- Invites the applicant to confirm addition of the content as sheets of the main part of the description
 - May require additional fee (sheets in excess of 30)
- If no confirmation/payment, the submission will not be part of the international application

Sequence listing language requirements (Rule 12)

- Only applies to the language-dependent free text
- Each RO determines the language(s) it accepts
 - May be different from the language of the main body of the application
 - RO/IB accepts any language
- RO may permit more than one language
 - English + another
- Transmittal to RO/IB under Rule 19.4

Sequence listing for search purposes (Rule 13ter.1) (1)

- International Authorities may invite the applicant to furnish a standard-compliant sequence listing
 - in a language accepted by the ISA
 - with a statement that it does not go beyond the original disclosure
 - late furnishing fee
- If the applicant fails to furnish a standard-compliant sequence listing, the ISA is only required to search to the extent a meaningful search can be done without the sequence listing

Sequence listing for search purposes (Rule 13ter.1) (2)

- A sequence listing furnished for search (Rule 13ter) does not form part of the international application
- The ISA forwards any Rule 13ter sequence listing to the International Bureau, to be made available on PATENTSCOPE

International publication

- Sequence listing published as a separate XML file
- WIPO has develop a sequence listing reader integrated into PATENTSCOPE

1 Sequence Listing Information

1-1	File Name	SARS-COV-2-Ab-ZJU.xml
1-2	DTD Version	V1_3
1-3	Software Name	WIPO Sequence
1-4	Software Version	2.1.0
1-5	Production Date	2022-07-18

2 General Information

2-1	Current application: IP Office	
2-2	Current application: Application number	
2-3	Current application: Filing date	
2-4	Current application: Applicant file reference	P2022040Z
2-5	Earliest priority application: IP Office	CN
2-6	Earliest priority application: Application number	202110888463.6
2-7	Earliest priority application: Filing date	2021-08-03
2-8zh	Applicant name	浙江大学医学院附属第一医院
2-8en	Applicant name: Name Latin	The First Affiliated Hospital, Zhejiang University School of Medicine
2-9	Inventor name	
2-9en	Inventor name: Name Latin	
2-10zh	Invention title	人源化广谱高中和活性抗新型冠状病毒单克隆抗体及应用
2-11	Sequence Total Quantity	16

3-1 Sequences

3-1-1	Sequence Number [ID]	1
3-1-2	Molecule Type	AA
3-1-3	Length	125
3-1-4-1	Features Location/Qualifiers	source 1..125 mol_type=protein organism=Homo sapiens
3-1-5	Residues	<p>QMQLVQSGPE VKKPGTISVKV SCRASGTFIT NSAMQWVRQA RGQRLEWVGV IVVASGNANS 60</p> <p>ARRFHDRVTI TSDMSTSTAY LELSSLRSED TAVYYCALNH CSNTTCLDGF DIWGQGTMVS 120</p> <p>VSSAS 125</p>

3-2 Sequences

3-2-1	Sequence Number [ID]	2
3-2-2	Molecule Type	DNA



National phase requirements (Rules 13ter.3 and 49.5(a-bis))

- No DO/EO may require a sequence listing other than one complying with WIPO Standard ST.26
- Offices may require translation of the free text contained in the sequence listing:
 - into a language the Office accepts for the free text contained in the sequence listing
 - may also require translation into English if required by database providers

WIPO Sequence Software

- WIPO Sequence (for users)
 - Free desktop tool developed by WIPO to support authoring, validation, and generation of ST.26 compliant sequence listings
 - <https://www.wipo.int/standards/zh/sequence/index.html>
 - Subscribe for updates
- Remember to always validate the sequence listing before filing!

ST.25 versus ST.26

ST.25	ST.26
ASCII .txt with numeric identifiers	XML with elements and attributes
Not required to include: <ul style="list-style-type: none">- D-amino acids- Linear portions of branched sequences- Nucleotide analogs	Must include: <ul style="list-style-type: none">- D-amino acids- Linear portions of branched sequences- Nucleotide analogs
Annotation of sequences: <ul style="list-style-type: none">- Feature keys only	Annotation of sequences: <ul style="list-style-type: none">- Feature keys and qualifiers
Permitted to include sequences: <ul style="list-style-type: none">- < 10 specifically defined nucleotides- < 4 specifically defined amino acids	Prohibited sequences: <ul style="list-style-type: none">- < 10 specifically defined nucleotides- < 4 specifically defined amino acids

Questions – Sequence listings (SL)

- A PCT application was filed before July 2022 with an ST.25 txt listing. Should the applicant now furnish an ST.26 XML sequence listing when the application enters the national phase?

No, ST.25 continues to apply to applications filed before July 1, 2022

- A PCT application is filed now, claiming priority to an application with an ST.25 txt listing. Is it necessary to convert it to ST.26 XML format for the PCT filing?

Yes

- After July 2022 an application was erroneously filed with an ST.25 txt listing. Can it be considered a sequence listing part of the description under Rule 5.2(a)?

No, only a standard compliant XML listing filed on the international filing date can become a sequence listing part of description satisfying Rule 5.2(a) (while the content of ST.25 could be included as normal pages of the description)

Questions – Sequence listings (SL)

- What is the situation if an ST.26 XML is subsequently furnished ?

It cannot become part of the application without affecting the international filing date (unless incorporation by reference applies).

If the international filing date is to be maintained, the XML listing will be used for search only (Rule 13ter).

It may become part of the application later, as an amendment under Art. 34, if a demand for international preliminary examination is filed, or as a national phase amendment.



■ ePCT Update (January 2023)


Introduction

- New version released on 24 January 2023
- [What's New for Applicants in ePCT](#)
 - ❑ New process for requesting access rights
 - ❑ WIPO Standard ST.26 for Sequence Listings
 - ❑ ePCT-Filing: .zip file type for XML specification; new online payment method for RO/IB
 - ❑ Action: Rule 92bis change request; File reference update
 - ❑ Others: Declarations under Rule 4.17; Workbench - Filters; ePCT Messages

Request Access Rights after Filing (1)

- Access rights requests are no longer sent to the IB but instead are sent to the e-mail for correspondence for the applicant/agent on record at the IB

FIND IA OUTSIDE OF MY WORKBENCH

International Application Number *	International Filing Date *	
PCT/IB2022/040040	01/02/2022	

Reason *

- Request access rights
- Upload Documents
- View contents
- Third Party Observations

Request Access Rights after Filing (2)

- ePCT compares the e-mail of the WIPO Account of the current user with the e-mail for correspondence for the applicant/agent on record at the IB
 - If both e-mails are the same, access rights are automatically granted to the current user and any access rights group that was selected as part of the request
 - If the e-mails are not the same, the user is presented with an online form to submit the access rights request to the applicant/agent
 - applicant/agent to approve or refuse the access rights request via a link to a dedicated webpage

ePCT Filing: SL in ST.26 Format

- At the time of adding a sequence listing file in ST.26 format, the applicant/agent's file reference and the applicant name is extracted and temporarily displayed in the interface to help the user spot if perhaps the wrong file was added in error

Sequence listing part of the description
ST26_SEQ1.xml 4 KB
Applicant/agent's file reference ABC123
Name O'Neill, KIM LESLIE

ePCT Filing: Online Payment of Filing Fees for RO/IB

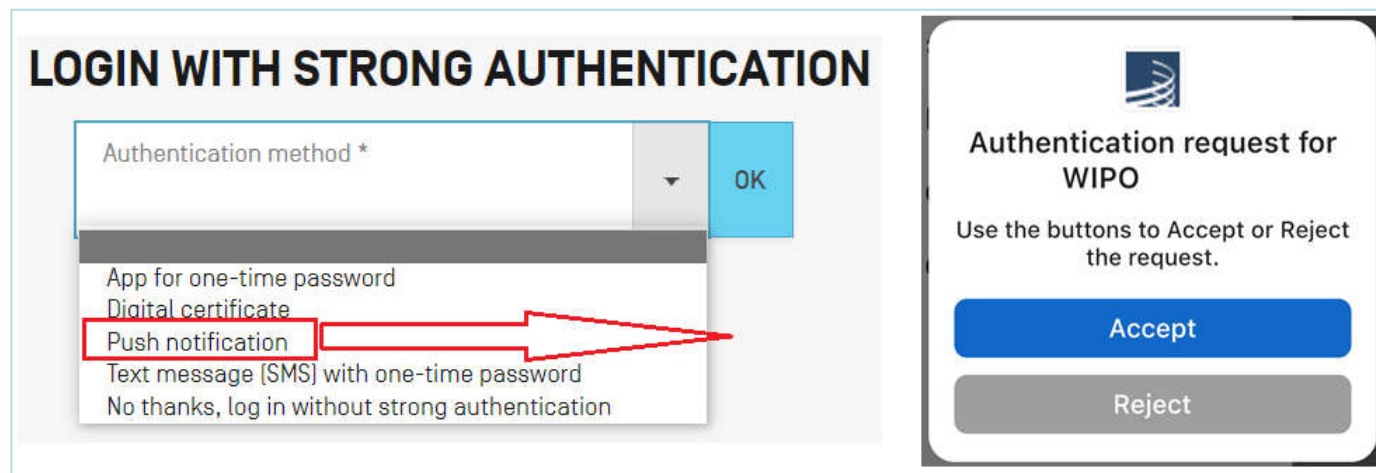
- Bank payment online (secured by SOFORT)
 - A new [online payment method](#) on the WIPO Pay platform for the payment of filing fees in Swiss francs (CHF) to the RO/IB
 - Can be used by applicants who have accounts with participating banks in a number of European countries
 - Use of SOFORT as an [online](#) banking transaction is strongly encouraged where possible
 - it enables WIPO's accounting systems to process payments more efficiently than offline bank transfers as the WIPO Pay reference data is already automatically included as part of the process

Declarations under Rule 4.17(iv)

- Process improved for Declarations of inventorship
 - Possible to manage the external signature requests per declaration
 - for example, to delete individual external signature requests if required, without affecting the external signature status of the other declarations

WIPO Account – Push notification

- New strong authentication option - [Push notification](#)
 - Install the ForgeRock app on a mobile device and then register it with your WIPO Account



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Questions and Answers Report [PDF](#)
- Everything you need to know about ePCT webinar series: ePCT Open Q&A Session (4 and 6 October 2022) [PDF](#)

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Miscellaneous

Omission of sensitive information from publication/public file access (Article 21, Rules 48 and 94)

- Omission of sensitive information which was accidentally included in the PCT application/file
 - Reasoned request of applicant to IB (Form IB/384 may be used)
 - Accompanied by replacement sheets
 - Time limit for a request to omit:
 - from publication: completion of technical preparations (Rule 48.2)
 - from public file access under Rule 94.1: any time
 - Information qualifies for omission, if
 - it does not obviously serve the purpose of informing the public about the international application,
 - Publication/public access would clearly prejudice the personal or economic interests of any person, and
 - there is no prevailing public interest to have access to that information

Color drawings (1)

- Applications containing color or greyscale content
 - Not permitted in PCT applications (Rule 11)
 - However, applications often contain color or greyscale content:
 - **ePCT-Filing** will automatically detect color or greyscale content and warn the applicant that the application content should be in black and white
 - A dedicated preview function in ePCT is available to allow applicants to view the application content as it will be rendered by the IB
 - <https://pctdemo.wipo.int/DocConverter/pages/pdfValidator.xhtml>

Color drawings (2)

■ Publication of applications containing color or greyscale content

- The application will be converted into black and white format for further processing and publication by the IB

- If the application contained color or greyscale content, the front page of the published PCT application will contain a notice to that effect

- Any original color or greyscale content will be made available on PATENTSCOPE as part of the public application file

■ Attention:

- DOs are not obliged to take the color or greyscale content into account, and may rely on the PCT application as published in black and white

Future developments



- Proposal of the PCT Working Group to the PCT Assembly meeting in July 2023 to amend Rule 26 to clarify the procedure for (rare cases of) “mixed-language applications”
 - Background: generally, description and claims must be in one and the same language, as a condition for an international filing date (Article 11(1)(i), Rules 12.1(a) and 20.1(c))
 - Where description and claims are not in the same language or parts of description/claims are filed in a language different from the remainder of the element, but the languages concerned are languages accepted by the RO, the proposed amendments provide for an invitation/correction procedure
 - Where the languages concerned are not accepted by the RO, the application is transmitted to RO/IB under Rule 19.4 (current procedure remains)

Best means of communication with IB

■ For submissions to RO/IB or IB:

- Use ePCT

- In the event that the service is not available, uploaded through the “Contingency Upload Service” (see <https://pct.wipo.int/ePCTExternal/pages/UploadDocument.xhtml>)

- No fax



Where to get help

Where to get help



- General questions about the PCT

PCT Information Service

+41 22 338 83 38

pct.infoline@wipo.int

- Questions about ePCT:

eServices Help Desk

+41 22 338 95 23

pct.eservices@wipo.int

- Contact the Speaker:

Eva Schumm

+41 22 338 93 93

eva.schumm@wipo.int