

1. What is the PCT?

- claims eventually granted may be narrower in scope than published claims, or not even granted at all in that State
 - (alleged) infringer may seek compensation for unjustified damage to business
 - (alleged) infringer may take steps to prevent or oppose grant of patent
- ▷ In general, effect of PCT application is based on:
- claims as published in international application - R. 48.2(a)(iii)
 - or based on A. 19 amended claims which are also published by IB - R. 48.2(f)
- ▷ See AG-INT, Annex B for possible effects and requirement for each state. For example:
- If international application is not published by IB - A. 21 - in an official language of a respective State, translated claims must be made available - A. 29(2)
 - Even if publication by IB - A. 21 - is earlier, protection may delayed until 18 months from priority to provide same treatment as for national applications - A. 29(3)
 - National law may require that dO/eO must first receive copy of application - A. 29(4)

Article 11 PCT Filing Date and Effects of the International Application

- ▷ ▲▲ Application must be filed with a prescribed (or competent) rO - A. 10
- ▷ ▼▼ rO checks whether filing date may be awarded - R. 20.1
- ▷ If A. 11(1) requirements are met - R. 20.2, either directly or after correction:
 - applicant will be promptly notified of filing date by rO - R. 20.2(c)
- ▷ If A. 11(1) requirements are not met due to defects - R. 20.3:
 - rO invites applicant to correct and/or incorporate by reference - R. 20.3
- ▷ If A. 11(1) requirements are still not met, application will be not be treated as an international application - R. 20.4

(1) The rO shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the rO,

- ▷ ▲▲ A. 9 (The Applicant)
- ▷ ▼▼ R. 18 (The Applicant)
- ▷ ▲▲ Application must be filed with a prescribed (or competent) rO - A. 10
- ▷ ▼▼ R. 19 (The Competent Receiving Office)

(ii) the international application is in the prescribed language,

- ▷ ▲▲ international application shall be in a prescribed language - A. 3(4)(i)
- ▷ ▼▼ R. 12 (Language of Application and Translations for Search and Publication)
- ▷ rO sends form PCT/RO/103 INVITATION to applicant - R. 20.3(a)
 - 2 months from mailing - R. 20.7(a)(i) - to correct and/or incorporate by reference
- ▷ Applicant may also correct of own motion within 2 months of first elements being filed - R.20.7(b)

(iii) the international application contains at least the following elements:

(a) an indication that it is intended as an international application,

- ▷ ▲▲ indication must be provided as part of the request - A. 4(1)(i)
- ▷ ▼▼ preferably: "The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty" - R. 4.2
 - this formulation is used at top of PCT/RO/101 Form
- ▷ Minimum: clear intent to ask for processing according to PCT - WDC A. 11(1)(iii)(a)

(b) the designation of at least one Contracting State,

- ▷ ▼▼ filing request ⇒ designation of all Contracting States on filing date - R. 4.9(a)(i)
 - Always satisfied since designation fees were officially abolished on 31 Dec 2003