

# Learning path for patent administrators

## The PCT procedure: EPAC – entry level

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## Introduction

This publication, "The PCT procedure, EPAC – entry level", is part of the "Learning path for patent administrators" series is edited and published by the European Patent Academy. The series is intended for patent administrators who are taking part in training and certifications organised by the European Patent Office (EPO). It is also freely available to the public for independent learning.

Topics covered include: general aspects of the patent system; the European patent system and the European patent granting procedure; the International Patent System (PCT) and the PCT procedure; European and international publications; filing a European patent application and filing an international application; the formalities during the European and during the international search; the formalities during the European examination and during the international preliminary examination; the formalities during the appeal procedure after refusal (EPC), during the opposition procedure (EPC); national validation (EPC); entry into national/regional phases and entry into the European phase (PCT).

Each chapter focuses on one topic at entry, intermediate or advanced level, as appropriate. The series will be revised annually to ensure it remains up to date.

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All references to natural persons are to be understood as applying to all genders.

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## 1. Learning objectives

Participants in this course will learn about:

- the roles of the different authorities under the PCT
- PCT related fees
- time limits to observe
- legal remedies in the case of a deadline being missed
- the mandatory and optional steps in the PCT procedure

## 2. Abbreviations

DO	designated Office
EO	elected Office
EPO	European Patent Office
IA	international application
IB	International Bureau of WIPO
IFD	international filing date
IPEA	International Preliminary Examining Authority
IPER	international preliminary examination report
IPRP1	international preliminary report on patentability, converted WO/ISA
IPRP2	international preliminary report on patentability, converted IPER
ISA	International Searching Authority
ISR	international search report
PCT	Patent Cooperation Treaty
RO	receiving Office
SEQL	sequence listing
SISA	Authority specified for supplementary international search
SISR	supplementary international search report
WIPO	World Intellectual Property Organization
WO/ISA	written opinion of the International Searching Authority

### Legal references:

Art. 52(2) EPC; Art. 54(3) EPC; Art. 82 EPC

Rule 43 EPC; Rule 128 EPC

GL F-II, 4.2; GL G-IV, 5.3

## 3. The role of the receiving Office (RO)

The main task of the receiving Office (RO) is to receive and process international applications and the related correspondence.

The RO checks that the international application (IA) is complete, complies with the applicable requirements and that the fees have been duly paid.

ROs are also responsible for:

- receiving and processing translations
- handling the requests for restoration of the right of priority
- processing incorporation by reference
- processing and issuing substitute sheets under Rule 26 PCT
- receiving and processing withdrawals of IAs and designations
- receiving and processing changes to priority claims

**Legal references:**

Art. 10 PCT

Rule 19 PCT; Rule 20 PCT; Rule 26 PCT

## **4. The role of the International Searching Authority (ISA)**

The International Searching Authority (ISA) carries out the mandatory international search and:

- discovers relevant prior art
- gives an opinion on the patentability of the invention in terms of novelty, inventive step and industrial applicability
- points out possible defects in the IA that may influence the patentability, e.g. claims lacking clarity or containing subject-matter not required to be searched by the ISA

The ISA's findings are summarised in an international search report:

(ISR) and WO/ISA or, if no meaningful search can be carried out, in the declaration of non-establishment of ISR and in the written opinion of the International Searching Authority (WO/ISA).

The ISA also issues decisions on requests for rectification of obvious mistakes under Rule 91 PCT.

**Legal references:**

Art. 15 PCT; Art. 16 PCT; Art. 17 PCT

Rule 39 PCT; Rule 43 PCT; Rule 43bis PCT; Rule 91 PCT

## **5. The role of the International Preliminary Examining Authority (IPEA)**

The International Preliminary Examining Authority (IPEA) carries out the international preliminary examination (IPE). The IPE is optional. Its aim is to provide the applicant with the possibility to get a deeper insight into the patentability of the invention.

In principle, the ISA standards also apply to the IPE, but it should be carried out on the basis of an amended IA (description, claims, drawings and SEQL).

Ideally, the invention is patentable at the end of the international phase.

**Legal references:**

Art. 32 PCT; Art. 33 PCT; Art. 34 PCT  
Rule 66 PCT

## **6. The role of the Authority specified for supplementary international search (SISA)**

The Authority specified for supplementary international search (SISA) carries out the supplementary international search.

Basically, the supplementary international search is an international search performed in addition to the one carried out by the ISA. It is also carried out on the basis of the original IA. There can be more than one SISA for one IA.

The supplementary international search is optional. Its aim is to provide the applicant with the possibility to get a deeper insight into the patentability of the IA.

Ideally, the IA is patentable at the end of the international phase.

**Legal references:**

Rule 45bis PCT

## **7. PCT fees**

During the international phase, PCT fees are generally payable:

- to the receiving Office (RO); and
- to the International Preliminary Examining Authority (IPEA) if a demand for IPE is filed.

There are basically three types of fees payable to the receiving Office in connection with an international application (other fees apply only in specific circumstances):

1. the transmittal fee: for the processing and transmittal of the application by the RO
2. the search fee: for the international search carried out by the ISA
3. the international filing fee: for the various tasks performed by the IB including the international publication

## **8. Possible fee reductions**

The amounts and currencies of the main PCT fees vary depending on the RO, ISA and IPEA chosen, and may be subject to certain reductions.

The respective amounts and currencies for all PCT authorities can be found in the PCT Fee Tables published by WIPO.

The PCT fees payable to the EPO can be found in the corresponding table published by the EPO.

In general, the international filing fee is reduced for electronic filing of the IA and the reduction increases with the degree of readiness for processing. Applicants filing request and specification in XML format will benefit from the highest reduction, followed by the reduction for filing the request in XML format and the specification in PDF format. If both request and specification are filed in PDF format, the lowest possible reduction will be applied.

There are further reductions for applicants from low-income states, which amount to 90% of the international filing fee, subject to certain conditions and a reduction of the international search and examination fee reduction by 75%, again, subject to certain conditions. Details on the conditions will be supplied later on in the course.

#### **Legal references:**

Rule 14 PCT Rule 16 PCT; Rule 45bis PCT Rule 58 PCT

## **9. PCT time limits**

Periods expressed in months end on the day with the same number. For example, 15 January and a two-month period means 15 March.

If there is no such day, the period ends on the last day of the month. For example, 31 August and a one-month period means 30 September.

Periods expressed in days are simply counted, starting on the day after the relevant event.

A period cannot end on a day on which the office concerned is closed for business and will therefore end on the next open day.

The business day of an office usually ends at 23:59:59 hrs, local time.

#### **Legal references:**

Rule 80 PCT

## **10. PCT remedies**

Communications from PCT authorities should be received within seven calendar days. If not, the applicant has the right to an extension of the time limit of one day for every additional day.

Whether evidence has to be filed depends on the authority in question. For the EPO, a simple statement is sufficient.

Missed time limits may be excused for reasons of war, revolution, civil disorder, strike, natural calamity, general unavailability of electronic communication means or similar reasons in the applicant's locality.

Offices affected by unavailability of electronic communication means must publish the relevant times and inform the IB.

**Legal references:**

Rule 80 PCT; Rule 82quater PCT

## 11. International filing and transmittal of copies

The applicant files an IA with an RO of their choice. If priority is claimed the filing should take place within 12 months of priority date.

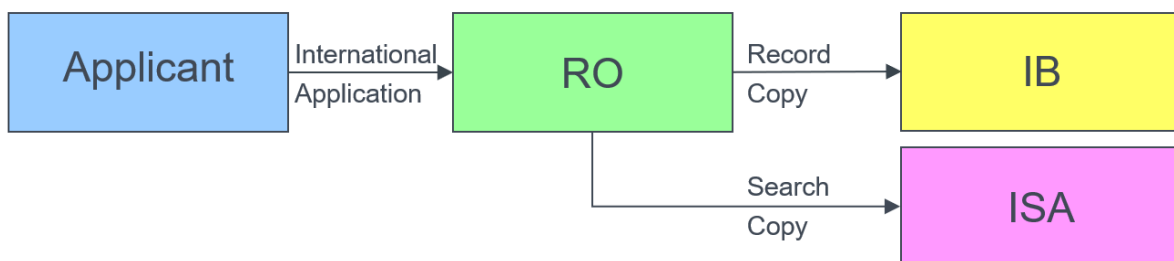
The RO carries out a formal check and a fee check on the IA.

If the IA passes the formal check, the RO transmits the record copy to the IB.

If the IA passes the fee check, the RO transmits:

- the international filing fee and page fee to the IB
- the international search fee and search copy to the ISA

Time: 0 to 12 months from priority

**Legal references:**

Rule 22 PCT; Rule 23 PCT

## 12. International search

The ISA:

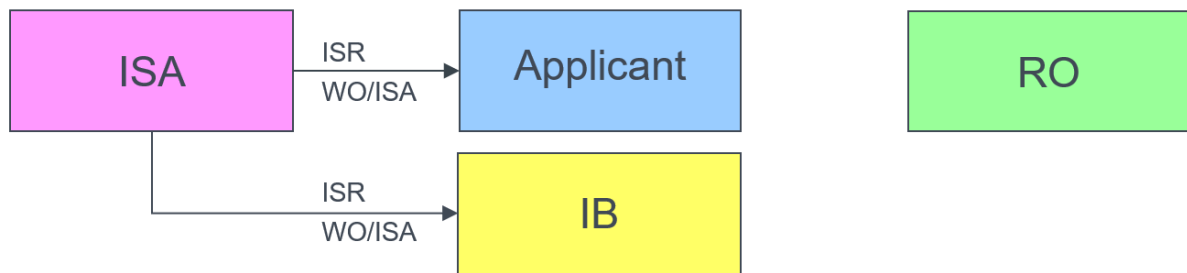
- carries out the international search
- issues the ISR and WO/ISA
- transmits the ISR and WO/ISA to the applicant and to the IB

The IB checks the ISR before international publication.

The RO is involved in the event of outstanding minor formal defects.



Time: 13 to 16 months from priority



#### Legal references:

Art. 16 PCT; Art. 17 PCT

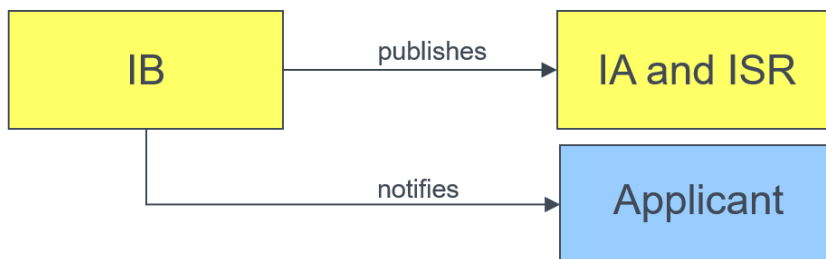
Rule 35 PCT; Rule 42 PCT Rule 43 PCT Rule 43bis PCT Rule 44 PCT

### 13. International publication

The IB publishes the IA and the ISR (if available) on PATENTSCOPE.

The IB notifies the applicant of the publication.

Time: 18 months from priority



#### Legal references:

Rule 48 PCT

### 14. Amending claims under Art. 19 PCT

The applicant may file amended claims with the IB. The time limit for this is:

- 2 months from the date of transmittal of the ISR or
- before completion of the technical preparations for international publication, whichever expires later

Amendments must be accompanied by a statement explaining the amendments.

Time: 2 months from ISR or later



#### Legal references:

Art. 19 PCT

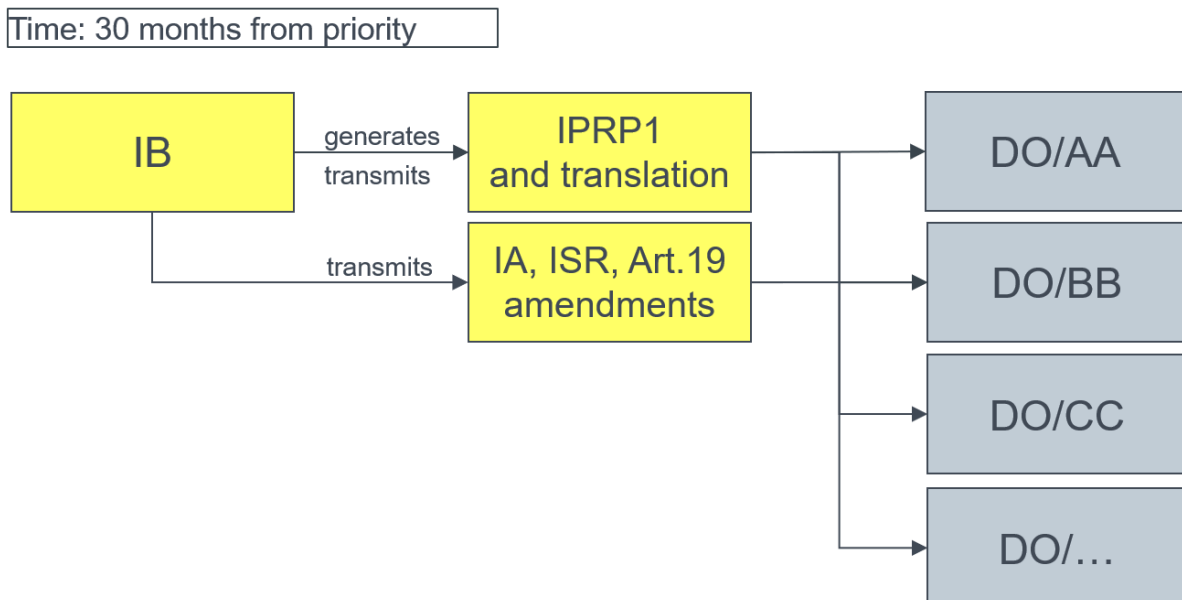
Rule 46 PCT

## 15. Transmittal of IA and IPRP1 to Dos

The IB generates the IPRP1 and transmits it to the designated Offices together with:

- the IA and the ISR
- a possible translation of the IPRP1
- possible amendments under Art. 19 PCT

This is the end of the international phase and national/regional processing starts.



#### Legal references:

Art. 20 PCT

## 16. International preliminary examination

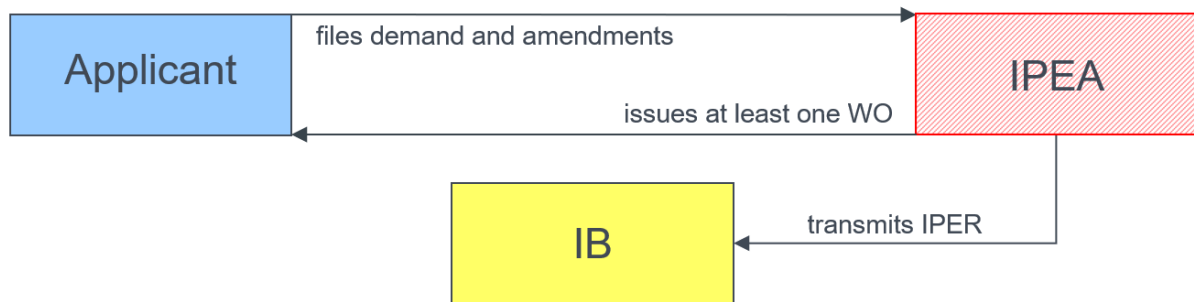
The applicant has the option to file a demand for IPE.

The applicant may amend the description, claims, drawings and SEQL.

The IPEA:

- carries out a formal check and a fee check
- transmits the handling fee to the IB
- carries out the international preliminary examination
- issues one or two written opinions and transmits them to the applicant and the IB

Time: 22 to 28 months from priority



**Legal references:**

Art. 33 PCT; Art. 34 PCT

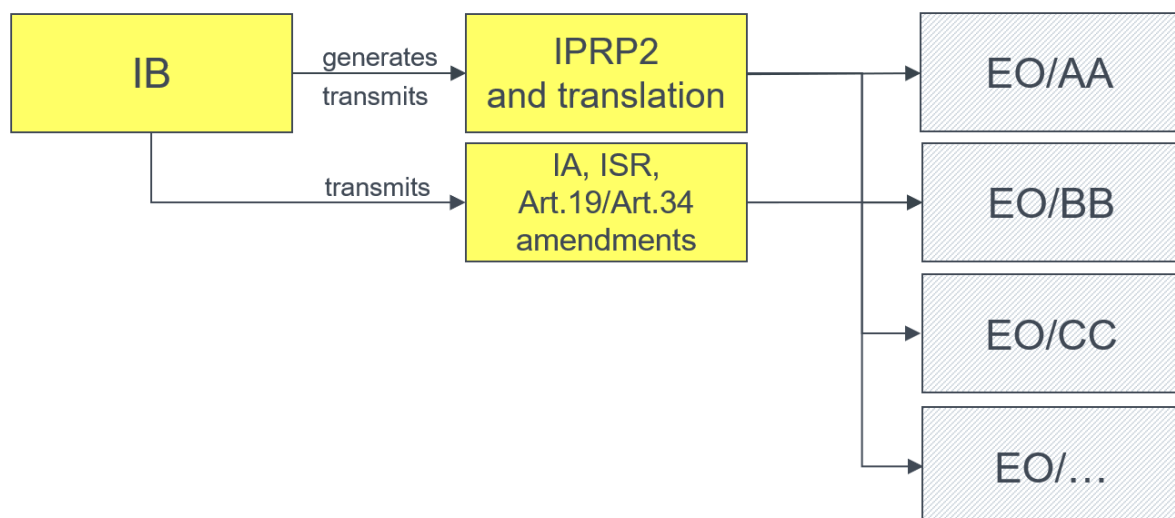
## 17. Transmittal of IA and IPRP2 to Eos

The IB generates the IPRP2 and transmits it to the elected Offices together with:

- the IA and the ISR
- if necessary, a translation of the IPRP2 into EN
- amendments under Art. 19 PCT and/or Art. 34 PCT

This is the end of the international phase and national/regional processing starts.

Time: 30 months from priority



**Legal references:**

Art. 36 PCT

## 18. Requesting a supplementary international search

The applicant has the option to file one or more SIS requests:

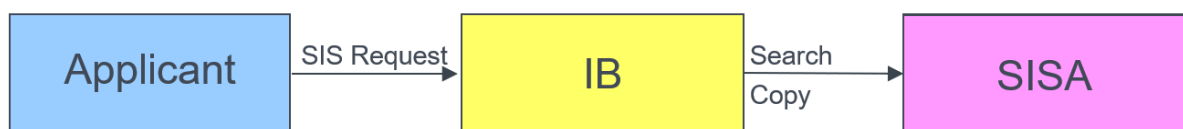
- with the IB, before expiry of 22 months from priority
- subject to a handling fee and a supplementary search fee

The IB carries out a formal check and a fee check.

After receipt of the ISR or the expiry of 17 months from priority, whichever happens first, the IB transmits to the SISA:

- the search fee, SIS request, IA, ISR, WO/ISA, any invitation to pay additional fees
- if necessary, translations of the IA and the WO/ISA

Time: 17 to 22 months from priority



#### Legal references:

Rule 45bis PCT

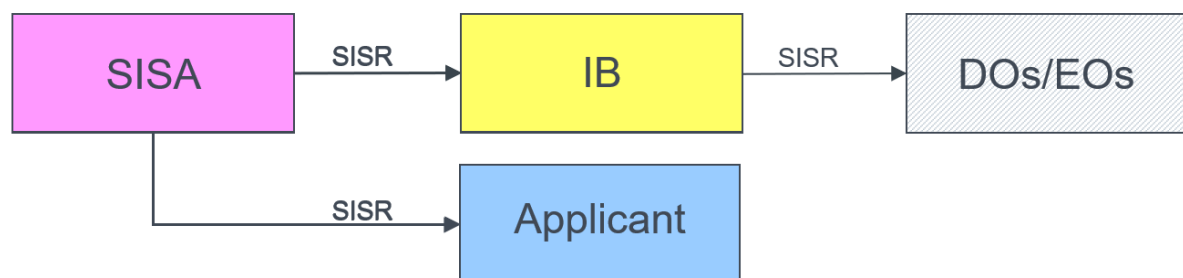
## 19. Supplementary international search and the SISR

The SISA carries out the supplementary international search and transmits the SISR to the applicant and the IB.

In the event of lack of unity of invention, the SISA will not issue an invitation to pay additional fees, but the applicant has the right to request a review, which might result in a reviewed SISR.

The IB transmits the SISR to the DOs/EOs at the end of the international phase.

Time: 17 to 22 months from priority



**Legal references:**

Rule 45bis PCT

## **20. Beyond the course**

You can deepen what you have learned during this course with the following further reading:

- PCT Applicant's Guide, Chapter 3: international phase

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