

## **Patent Cooperation Treaty (PCT) Working Group**

**Seventeenth Session**  
**Geneva, February 19 to 21, 2024**

### **PCT MINIMUM DOCUMENTATION TASK FORCE: STATUS REPORT**

*Document prepared by the European Patent Office and the United States of America*

#### **SUMMARY**

1. This document provides an update on the work of the PCT Minimum Documentation Task Force (“the Task Force”) led by the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO). The Task Force made much progress in its review of the PCT minimum documentation. After intensive work in the Task Force as well as discussions at various sessions of the Meeting of International Authorities under the PCT (MIA) and PCT Working Group, the PCT Assembly, at its fifty-fifth (24th ordinary) session (July 6 to 14, 2023), adopted the set of proposed amendments to Rules 34, 36 and 63 that were presented in document PCT/WG/16/6 (document PCT/A/55/2). The Task Force is now focusing on the preparations required for the timely implementation of the revised legal framework which will govern the PCT minimum documentation as of 2026.

#### **BACKGROUND**

2. In 2005, the MIA decided to set up a Task Force to undertake a comprehensive review of the PCT minimum documentation. The Task Force was mandated to address issues relating to both patent documentation and non patent literature, including traditional knowledge related databases (document PCT/MIA/11/14). However, due to various reasons the process stalled for several years. In January 2016, there was consensus at the MIA to reactivate the Task Force and the International Bureau invited one of the International Searching Authorities (ISAs) to take up the role of Task Force leader. In February 2016, the EPO responded positively to the call of the International Bureau and, thereafter, the Task Force was reactivated under the lead of the EPO.

3. The mandate given to the Task Force (see paragraph 9 of document PCT/WG/9/22), as noted by the PCT Working Group in May 2016, is as follows:

(a) Clarify the extent of the existing PCT minimum documentation, in view of the fact that the WIPO Handbook on Industrial Property Information and Documentation is outdated, the definition and extent of patent literature having last been revised in November 2001, and the definition and extent of non patent literature having last been revised in February 2010.

(b) Make recommendations and draft standards which are reasonable for national offices to adhere to in order to have their national collections included in the PCT minimum documentation, and allow International Authorities and database providers to easily load the necessary information in a timely and reliable fashion. The question of whether utility models should also form part of the minimum documentation shall also be examined.

(c) Propose clearly defined components of patent data that should be present in all patent collections belonging to the minimum PCT documentation list (for example, bibliographic data, abstracts, full text, facsimile images, classification data), as well as the quality and dissemination criteria such data must adhere to, in order to improve searchability and facilitate data exchange between patent offices and commercial database providers.

(d) Define the criteria necessary for a patent collection to become part of the PCT minimum documentation and the extent to which Authorities should be expected to include and search documents where they are in different languages or have equivalent technical disclosures to other patent documents.

(e) Improve the availability of technical information from patent documents, in terms of the technical and linguistic coverage of the documents, and of the searchability of the information contained. This will further improve the quality of international searches, and ensure better access to patent information for third parties.

(f) Make recommendations and propose mechanisms for reviewing and maintaining the non patent literature part of the PCT minimum documentation, by taking into consideration factors such as:

- (i) practicable access to periodicals, including their availability in electronic form;
- (ii) the range of fields of technology covered by periodicals;
- (iii) access conditions applicable to periodicals, including cost and text searchability.

(g) Recommend criteria for the inclusion of non patent literature in the PCT minimum documentation, and in particular, conditions under which traditional knowledge based prior art should be included. Moreover, the Task Force should work with the Indian authorities after receiving their revised detailed proposals for inclusion of the TKDL database in the PCT minimum documentation.

4. For the sake of efficiency, in the work plan endorsed by the MIA in early 2017, the objectives listed above have been grouped as follows (Appendix to document PCT/MIA/24/4):

(a) Objective A: Create an up to date inventory of the patent literature and non patent literature parts of the current PCT minimum documentation.

(b) Objective B: Recommend criteria and standards for including a national patent collection in the PCT minimum documentation.

(c) Objective C: Propose clearly defined bibliographic and text components of patent data that should be present in patent collections belonging to the PCT minimum documentation.

(d) Objective D: Recommend criteria and standards for the review, addition and maintenance of non-patent literature and traditional knowledge based prior art, and afterwards assess, on the basis of the criteria that will have been established, the revised proposal from the Indian authorities on the Indian Traditional Knowledge Digital Library database.

5. At its twenty ninth session (June 20 to 22, 2022), the MIA agreed to add the following three objectives to the Task Force's mandate (see paragraph 22 of document PCT/MIA/29/4 and paragraph 51(c) of document PCT/MIA/29/10):

(a) Guide and support Offices in being technically ready by the date of entry into force of the amended definition of the PCT minimum documentation to make available, in accordance with the technical and accessibility requirements, all patent documents, and where applicable utility model documents, published on or after the said date of entry into force.

(b) Agree on a roadmap over the 10 years following the date of entry into force of the amended definition of the PCT minimum documentation to support Offices in meeting the technical requirements to make available all patent documents, and where applicable utility model documents, published on or after the cutoff date up until the said date of entry into force.

(c) Ensure that the implementation of the agreed roadmap is included in the mandate of the (future) standing Task Force on PCT minimum documentation under the PCT MIA that will start operating after the entry into force of the amended Regulations and new provisions of the Administrative Instructions relating to the PCT minimum documentation.

6. Usually, the Task Force conducts its work using an electronic forum made available by WIPO ("the wiki"). In addition, where felt appropriate to facilitate progress in the discussions, the Task Force meets either physically or virtually. The discussions on Objectives A, B and C are being led by the EPO and the discussions on Objective D are being led by the USPTO.

## **STATE OF PLAY**

7. The discussions on Objective A were successfully concluded by end 2017, i.e., when the up-to-date inventory of the current PCT minimum documentation was adopted by the Task Force members. The up-to-date inventory of both the patent literature and the non-patent literature part of the PCT minimum documentation is available on the WIPO website. Since 2018, the Task Force has been working on Objectives B, C and D through a series of discussion rounds in the wiki.

8. The discussions soon revealed that Rules 34 and 36 would need to be amended and that such Rule changes would need to be accompanied by new provisions of the PCT Administrative Instructions dealing with the technical criteria.

9. After intensive work in the Task Force as well as discussions at various sessions of the MIA and PCT Working Group, at the sixteenth session of the PCT Working Group (February 6 to 8, 2023), the EPO and the USPTO submitted revised proposals to amend the PCT Regulations and modify the PCT Administrative Instructions (document PCT/WG/16/6). These

proposed amendments to Rules 34, 36 and 63, and the draft Understanding regarding the interpretation of Rules 36 and 63 were adopted (document PCT/A/55/2 and paragraph 32 of document PCT/A/55/4 Prov.) by the PCT Assembly at its fifty-fifth (24th ordinary) session (July 6 to 14, 2023). They will enter into force on January 1, 2026. With the adoption by the Assembly of the amendments to the PCT Rules, the International Bureau will consult in 2024 on the proposed modifications to the PCT Administrative Instructions through Circular C. PCT 1660 based on the text in Annex III to document PCT/WG/16/6.

10. The Task Force held its sixth session from May 22 to 25, 2023. At that session, the Task Force endorsed the proposed modifications to the PCT Administrative Instructions contained in document PCT/WG/16/6, with a small amendment. Otherwise, that Task Force session focused on the implementation of the proposed revised legal framework that will govern the PCT minimum documentation as of 2026. In that regard, the Task Force agreed on the implementation roadmap proposed by the EPO for the patent documentation. Moreover, the Task Force approved the roadmap for the non-patent literature aspects and the review cycle of the future permanent Task Force, which were proposed by the USPTO (document PCT/MD/6/6, attached as an Appendix to document PCT/MIA/30/2).

11. Concerning the implementation roadmap for patent documentation, this consists of two phases.

(a) Phase 1 “Preparatory activities” covers actions up to the end of 2025 for patent Offices to be ready to meet the PCT minimum documentation requirements in force from January 1, 2026. This will involve preparing the Authority File under WIPO Standard ST.37 to indicate the availability of the abstract, description and claims in text searchable format for patents published after that date. Each Office with a patent collection belonging to the PCT minimum documentation will also need to create a repository from where an ISA can bulk download PCT minimum documentation data, requiring all patent documents published on or after January 1, 2026, to be in text searchable format. All ISAs will also need to ensure that they can bulk download other PCT minimum documentation bulk collections from their repositories.

(b) Phase 2 “Operational activities” covers actions from 2026 onwards in terms of operational activities to handle patent documents published from January 1, 2026, and transition activities up until the end of 2035 to digitize back file publications published from January 1, 1991. For new publications, an Office will be required to include the additional Authority File information, store patent data in text searchable format in the repository at the latest two months after the publication date, and bulk download other PCT minimum documentation collections. In terms of transition activities, an Office will need to have included the additional information in its Authority file for patent documents published from January 1, 1991, and digitized these patent documents and stored the data in text searchable format in the repository of the Office before December 31, 2035.

12. For the implementation roadmap covering non patent literature aspects, the future permanent Task Force would identify an ISA coordinator to lead/host a comprehensive review of the list of non-patent literature items in the PCT minimum documentation in November 2025, and then meet for the first comprehensive review in May 2026. The Task Force would then present its first revised list of items of non-patent literature for adoption at the Meeting of International Authorities later in 2026 in order for the International Bureau to publish the updated list in January 2027. ISAs would need to comply with the new list within two years of its adoption. Annual reviews of the list to remove obsolete and discontinued resources, as well as make metadata updates, would take place in May each year, chaired by a volunteer ISA on a rotational basis. The second comprehensive review would take place in May 2031. The public would also be able to suggest non patent literature items for the Task Force to consider for inclusion in the PCT minimum documentation at the following comprehensive review.

13. At the thirtieth session of the MIA (November 1 to 3, 2023), the EPO and the USPTO presented a status report on the Task Force's work (document PCT/MIA/30/2). Authorities welcomed the progress made. The USPTO offered to be the ISA to coordinate and lead the first comprehensive review of the non-patent literature items in the PCT minimum documentation by the permanent Task Force in May 2026. The USPTO invited the International Bureau to set up a virtual workspace for non-patent literature experts from the ISAs to collaborate on the preparations for this review (paragraph 36 of document PCT/MIA/30/10). The MIA noted the contents of document PCT/MIA/30/2 and accepted the offer of the USPTO to lead the first comprehensive review of non-patent literature items in the PCT minimum documentation (paragraph 37 of document PCT/MIA/30/10).

14. The Task Force is now focusing on the preparations required for the timely implementation of the revised legal framework of the PCT minimum documentation. As agreed at the last Task Force session, in order to facilitate the implementation of the roadmap for the patent documentation, in January 2024, the EPO posted on the wiki a checklist which will be used for monitoring the Task Force's progresses on the basis of quarterly checkpoints in the wiki.

15. The next session of the Task Force is tentatively planned for April 22 to 26, 2024.

*16. The Working Group is invited to take note of the contents of the present document.*

[End of document]