

Patent Cooperation Treaty (PCT) Working Group

Nineteenth Session
Geneva, February 2 to 6, 2026

FILING MEDIUM FOR ENTERING THE NATIONAL PHASE BEFORE DESIGNATED OFFICES

Document prepared by the International Bureau

SUMMARY

1. The present document provides proposals for amendments to the Regulations to clarify the circumstances in which a designated Office may require the use of electronic systems for the applicant to perform the acts referred to in Article 22 in order for the application to enter the national phase.
2. Specifically, it should be permitted to make the use of electronic systems mandatory for the purpose of national phase entry, but:
 - (a) there should always be an option available to non-resident applicants without the use of a local agent;
 - (b) it should not be mandatory to provide documents and data beyond what is specified in Article 22; and
 - (c) there should be at least a minimum level of safeguard available in case a national phase entry service is not available (which in principle should apply to any service, not only a sole electronic service).

BACKGROUND

3. Article 22(1) sets out the acts necessary to enter the national phase as follows (“Article 22 acts”):

“(1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each designated Office not later than at the expiration of 30 months from the priority date. Where the national law of the designated State requires the indication of the name of and other prescribed data concerning the inventor but allows that these indications be furnished at a time later than that of the filing of a national application, the applicant shall, unless they were contained in the request, furnish the said indications to the national Office of or acting for the State not later than at the expiration of 30 months from the priority date.”

4. Paragraphs (2) and (3) of Article 22 provide clarifications concerning the case where the International Searching Authority makes a declaration that no international search report will be established and that national laws may fix time limits that expire later.

5. The Article 22 acts include the provision of documents in certain cases and the payment of a national fee in most cases. These are typically separate actions, both (or all, where multiple documents are needed) needing to be performed within the same time limit, though both manual and electronic systems may permit them to be completed simultaneously.

6. At the fifteenth session of the Working Group in October 2022, Brazil presented a proposal to amend Rule 89*bis*.1 and Rule 89*bis*.2 to allow receiving Offices to require that the filing of international applications, the submission of subsequently-filed documents and entry into the national phase be performed only in electronic form and not on paper (see document PCT/WG/15/13). Revised proposed amendments to Rule 89*bis* concerning the filing of international applications and the submission of subsequent-filed documents were discussed at the seventeenth session of the PCT Working Group in February 2024 (see document PCT/WG/17/15) and adopted by the PCT Assembly in July 2024 (see document PCT/A/56/3).

7. The Working Group invited the International Bureau to study the issues concerning electronic-only entry into the national phase (see paragraph 39(ii) of the Summary by the Chair, document PCT/WG/15/19).

8. At the eighteenth session of the Working Group in February 2025, the International Bureau presented a document (PCT/WG/18/4 Rev.) studying the issues concerning electronic-only entry into the national phase. Paragraph 22 of this document sets out the conclusion of this study, as follows:

“22. In the view of the International Bureau, a designated Office may require an applicant to use an electronic system as the only means to effect a national phase entry provided that:

- (a) the electronic system does not require the applicant to provide more information or take more actions than the acts referred to in Article 22(1);
- (b) the system is easily usable by both resident and non-resident applicants without the need to employ a local agent; and
- (c) that safeguards are in place at least covering the case where a failure to meet the time limit for national phase entry is due to an inability to use the electronic service, equivalent to an “interruption in the mail service”.

9. In view of this conclusion, document PCT/WG/18/4 Rev. proposed amendments to the PCT Regulations seeking to provide a clear set of minimum standards for the requirements and safeguards necessary to ensure that an electronic national phase entry system would meet the requirements of the Treaty and provide a service that applicants could rely on.

10. The Working Group was broadly in agreement with the arguments and the desirability of providing amendments to the Regulations to clarify the minimum requirements of an electronic national phase entry system. However, a number of concerns were expressed over details. It was also noted that some issues discussed would apply equally to performing the Article 22 acts other than by electronic means.

REQUIREMENT OF A LOCAL AGENT

11. At the eighteenth session, a number of delegations asked for clarification of the statement that designated Offices may not require the use of a local agent to perform the Article 22 acts on behalf of a non-resident applicant.

12. In the view of the International Bureau, Article 22(1) contains an exhaustive list of requirements that designated Offices can ask applicants to comply with to enter the national phase. This does not include the ability to require the actions to be taken by a local agent. Article 27(7) and Rule 53*bis*.1(b) permit a national Office to require the applicant to be represented by an agent "once the processing of the international application has started in the designated Office". However, this does not apply to performing the Article 22 acts themselves. Rule 51*bis*.3(b) requires (emphasis added) that:

"Where any requirement of the national law applicable by the designated Office which that Office may apply in accordance with Article 27(6) or (7) is not already fulfilled during the same period within which the requirements under Article 22 must be complied with, the applicant shall have an opportunity to comply with the requirement after the expiration of that period."

13. The International Bureau agrees that a non-resident applicant would be well advised to employ a qualified local agent to prepare the international application for national phase entry and to perform the Article 22 acts in order to avoid making mistakes that could be difficult to correct. Nevertheless, it must be possible for non-resident applicants to submit any required documents and to pay any national fee required to cause national phase processing to begin.

14. This does not mean that all electronic systems made available by designated Offices for entering the national phase must be usable by non-residents and those who are not locally qualified attorneys. However, if they are not, then a practical alternative to the system must remain available.

SAFEGUARDS

15. At the eighteenth session, there was general agreement that designated Offices must offer safeguards such that applicants should not lose rights as a result of electronic systems being unavailable. However, the specific proposals were considered in some cases to lack clarity and in other cases to be too specific without necessarily giving the appropriate effect.

16. Following further consideration, the International Bureau believes that the specific requirements of a safeguard provision are likely to depend on factors specific to individual Offices, such as what alternative means of national phase entry might be available and how practical they are to use at short notice if the primary electronic route is unavailable. Furthermore, it does not appear practical to set out a specific length of time for which a system should be unavailable before remedies are required to be offered. A "fair" length of unavailability to trigger a remedy will depend on factors such as the time of the outage, the typical length of time that using the system would take and, for applicants seeking to use a system from another country, the time of day in that country.

17. It is therefore proposed to include a requirement that highlights the need for a safeguard and provides certain parameters but leaves the detail to be decided based on what the designated Office considers appropriate. Such safeguards should give the designated Office some degree of flexibility to accept late national phase entries based on circumstances of the case, normally being handled administratively without requiring argument and evidence.

18. This matter should not generally be left to reinstatement of rights under Rule 49.6 since this can be an onerous procedure to deal with a case where the Office would normally already be aware of the problem that caused the delay. Furthermore, 10 designated Offices have notified this provision as being incompatible with their national laws.

CONSISTENCY WITH THE PATENT LAW TREATY

19. As discussed in document PCT/WG/17/15, the actions required to meet the time limit to enter the national phase under Article 22 are not subject to the PLT. However, as a matter of consistency, it is likely that PLT Contracting Parties would permit documents required for national phase entry to be submitted on paper. There might, however, be a requirement to follow this up by resubmitting the same documents electronically. In the case of filing the international application, this option has been explicitly provided for in Rule 89*bis*.1(d-*ter*) since July 1, 2025. In general, the Regulations do not attempt to standardize procedures for designated Offices as closely as those for receiving Offices and it does not appear necessary to provide such a specific provision here.

CENTRALIZED SERVICES FOR ELECTRONIC NATIONAL PHASE ENTRY

20. At the ninth session of the Working Group, the International Bureau demonstrated a “proof of concept” of a platform aimed at allowing applicants to use ePCT to help enter the national phase before participating designated Offices (see document PCT/WG/9/24). This service was not taken further forward at the time but could be built on to offer either a main electronic national phase entry system for Offices, or an alternative to ensure options remain open. However, it should be noted that the ePCT service does not yet offer the option of centralized payment of fees for national Offices, only handling payment of fees expected to be collected by the International Bureau.

PROPOSED RULE CHANGES

21. The Annex contains proposed amendments to Rule 49.4 to clarify the obligations of designated Offices wishing to require the use of electronic systems for national phase entry. It also introduces safeguards that should apply in any case. In principle, the proposed safeguard requirements extend to performing the acts referred to in Article 22 in person or through the mail. However, compliance with Rules 80.5 (expiration on a non-working day in the case of the Office being closed) or 82 (irregularities in the mail service) should generally be sufficient to cover such cases.

22. Proposed paragraph (a) takes the existing text of Rule 49.4 and allows for an exception to the indication that it cannot be mandatory to use a national form since, in principle, any electronic system allowing the applicant to enter or confirm data could be considered a form.

23. Paragraph (b) goes on to provide that Offices may specify whatever means they wish for performing the Article 22 acts, but must provide at least one means that is available for use by non-resident applicants without a local agent and without having to fill in a specific form beyond providing the necessary information to identify the application and allow communication with the applicant or agent.

24. Some Offices run services that retrieve data in real time (normally using PATENTSCOPE web services) to fill in a large “form” onscreen, which the applicant then checks and accepts. The words “without the need to provide any data beyond ...” are intended to confirm that such arrangements should be considered acceptable even within a mandatory service, but that the applicant should not be required to fill in all the details within the Article 22 time limit in the event that the data retrieval fails.

25. In general, references in the Rules to communication with the applicant are understood to mean communication with the agent, where one has been appointed. Following comments in the eighteenth session of the Working Group, paragraph (b)(iii) explicitly refers to both the applicant and any agent, since the difference might be significant in this case.

26. Paragraph (c) introduces an obligation on the part of the designated Office to ensure that there is a safeguard such that delays in performing the Article 22 acts are excused if they are due to unavailability of a specified means of performing those acts.

27. Contrary to the draft Rule 82.2 proposed in document PCT/WG/18/4 Rev., the Rule now proposed does not seek to refer to a “significant period of time” of unavailability, either in general or as a defined period. Instead, the form of this safeguard is left to a matter of national law, but should take into account three factors (or provide more lenient alternatives that make them irrelevant):

(a) “resulting from the unavailability”: There should be a reasonable assumption that the unavailability of the system was a significant factor in any delay – systems being unavailable for a very short period of time should not necessarily excuse the delay in performing the acts.

(b) “unless an alternative means of performing the acts was practically available to the applicant”: Applicants could be expected to try an alternative service that was readily available to them. The possibility of submitting paper is not generally a practical option if an electronic system is unavailable on the final day of the time limit under Article 22, nor would use of an alternative service that required a registration process with a manual review before the service could be used, or a service that had not been indicated in the *PCT Applicant’s Guide* and consequently might not have been known to the applicant.

(c) “The applicant shall not be required to provide evidence of any unavailability that was known to the designated Office”: The Office will usually be aware of outages in its services. Where an outage was known and the actions are taken promptly afterwards (on the next working day after the end of the outage), excuse of delays should normally be applied administratively without any special action by the applicant, assuming that the outage was the reason for the delay. In any case, the applicant should not be required to provide evidence of the delay being “unintentional” or “despite due care” as would be the case for restoration of rights under Rule 49.6.

28. Paragraph (d) requires that designated Offices notify new options to the International Bureau for publication in the *PCT Gazette*. The information would also be included in the *PCT Applicant’s Guide*. Where a new service is being introduced to replace an old one, such as an electronic filing system becoming mandatory, leaving the paper option unavailable, the old service should remain available for at least two months after publication of the relevant notification in the *PCT Gazette*. To avoid the need for all designated Offices to make notifications concerning existing conventional requirements, a transitional arrangement would clarify that the Rule only applies to the case where requirements are changed after the Rule comes into force. Designated Offices are nevertheless strongly encouraged to check the existing information in the relevant national chapter of the *PCT Applicant’s Guide* and to inform the International Bureau of any errors or omissions that should be corrected.

29. Rule 49.4 is drafted in terms of actions at the designated Office. Existing Rule 76.5 will act to apply the equivalent provisions also to elected Offices without any need for consequential amendments.

30. The Working Group is invited to comment on the proposed amendments to the Regulations set out in the Annex to document PCT/WG/19/5.

[Annex follows]

PROPOSED AMENDMENTS TO THE PCT REGULATIONS¹

Rule 49 Copy, Translation and Fee under Article 22	2
49.1 to 49.3 <i>[No change]</i>	2
49.4 <i>Means to Perform the Acts Referred to in Article 22</i> <i>Use of National Form</i>	2
49.5 and 49.6 <i>[No change]</i>	2

¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 49

Copy, Translation and Fee under Article 22

49.1 to 49.3 *[No change]*

49.4 Means to Perform the Acts Referred to in Article 22 ~~Use of National Form~~

(a) Subject to paragraph (b), No applicant shall be required to use a national form when performing the acts referred to in Article 22.

(b) Any designated Office may prescribe requirements for the means of performing the acts referred to in Article 22, provided that at least one of the means does not require the applicant to:

(i) have a residence or address in the State of the designated Office;

(ii) appoint an agent having the right to practice before that Office; or

(iii) provide any data beyond the minimum required to identify the international application and communicate with the applicant or, where applicable, with the agent.

(c) When one of the means referred to in paragraph (b) is unavailable for use by applicants for performing the acts referred to in Article 22, designated Offices shall excuse any delays resulting from the unavailability unless an alternative means of performing the acts was practically available to the applicant. The applicant shall not be required to provide evidence of any unavailability that was known to the designated Office.

(d) Each designated Office shall notify the International Bureau of any prescribed requirements, referred to in paragraph (b). The International Bureau shall publish any notification in the Gazette. Any requirements that restrict existing options for performing the acts referred to in Article 22 shall take effect no earlier than two months from their date of publication in the Gazette.

49.5 and 49.6 *[No change]*

[End of Annex and of document]