National phase of the Patent Cooperation Treaty (PCT): In general and U.S. national phase

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Office of International Patent Cooperation
National phase of the PCT

In general
Decisions to be taken by the applicant

• Whether
  – To proceed with or drop the international application?

• When
  – At the end of 30 months (in some cases 31 months or more)
    • Under Chapter I?*
    • Under Chapter II?
  – Early entry?

• Where (choice limited to designated/elected offices)
  – Which national offices?
  – Which regional offices?

* Luxembourg (LU) and Tanzania (TZ) continue to apply a 20-month time limit
**Time limit for entry in the national phase**

- The time limit applies irrespective of possible delays in the international phase due to:
  - Late international search report and written opinion of the International Searching Authority (ISA)
  - International preliminary examination delayed
  - Late international preliminary report on patentability (Chapter II)
  - Late translation of international preliminary report on patentability (Chapter II)
General national requirements
Article 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 Article 22(1): 30 months from the priority date
  – For additional time, see PCT Applicant’s Guide, National Chapter
  – For exceptions, see www.wipo.int/pct/en/texts/reservations/res_incomp.html

• Time limit under Article 39(1)(a): 30 months from the priority date
  – For additional time, see PCT Applicant’s Guide, National Chapter
Special national requirements
(Article 27 and Rule 51bis.1)

• Time limit under Rule 51bis.3:
  – If requirements are not fulfilled within the time limit for entry into national phase under Article 22 or 39:
    • Invitation by designated Office (DO)
    • At least two months from the invitation
National requirements simplified for PCT applications (1)

• Priority document
  – The applicant does not need to furnish the priority document since the International Bureau (IB) transmits copies to the designated/elected Offices (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 Australia (AU), India (IN), New Zealand (NZ), Singapore (SG) require a “verified” translation

• No special form required (but strongly recommended) for entry into national phase
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:
  - Two months from the date of removal of the cause of the failure to meet the time limit to enter national phase;
  or
  - Twelve months from the date of expiration of the time limit to enter national phase; whichever period expires first
Reinstatement of rights by DO/EOs (Rule 49.6) (3)

- Longer time limits and/or further requirements may apply depending on the applicable national law
- For further details, see for each DO/EO, the relevant national chapter in the PCT Applicant’s Guide
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):
  
<table>
<thead>
<tr>
<th>Country Code</th>
<th>Country Name</th>
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<tbody>
<tr>
<td>CA</td>
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<td>CN</td>
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<td>PL</td>
<td>Poland</td>
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</table>

- 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 of the PCT

Entry into the U.S. national phase
Applicants are those identified in the international stage:

- As applicants for the purposes of the United States (37 CFR 1.46(b)):
  - Unless changed in the national stage (37 CFR 1.46(c))
  - A person who otherwise shows sufficient proprietary interest in the matter must submit a petition including:
    - The fee set forth in 37 CFR 1.17(g)
    - A showing that such person has sufficient proprietary interest and
    - A statement that making the application is appropriate to preserve the rights of the parties (37 CFR 1.46(b)(2))
Once an applicant has been specified under 37 CFR 1.46(b):

- Any request to correct or update the name of an applicant must:
  - Include an application data sheet (ADS) specifying the corrected or updated name in the applicant information section (37 CFR 1.76(b)(7))

- Any request to change the applicant must:
  - Include an ADS specifying the applicant in the applicant information section (§1.76(b)(7)), and
  - Comply with 37 CFR 3.71 and 3.73
  - See 37 CFR 1.46(c)
35 U.S.C. 371 national stage applications: inventorship

• Will be taken from the ADS:
  – If a signed ADS is included with the initial §371 submission

• Otherwise, will be that set forth in the international stage:
  – Including any change effected under Rule 92bis

• See 37 CFR 1.41(e)
A request under §1.48 must include:

- An ADS
- A processing fee (37 CFR 1.17(i))
- An inventor’s oath or declaration for each actual inventor who has not yet executed such oath or declaration
  - Alternatively, a substitute statement under §1.64 may be provided
- Additional requirements if filed after an office action on the merits (37 CFR 1.48(c))
Substitute statements

- May be executed with respect to an inventor whose signature cannot be obtained on a declaration:
  - 37 CFR 1.64
  - Can be submitted where the inventor is:
    - Deceased, legally incapacitated, cannot be found or reached after diligent effort, or refuses to execute
      - Divergent from old 37 CFR 1.42, §1.43, and §1.47 practice
    - No petition is required to execute the substitute statement
    - The office has forms for this purpose
      - PTO/AIA/02
Assignment-statement

• An assignment may serve as the inventor’s oath or declaration ("assignment-statement"):   
  – Where it contains the required information and statements
  – No USPTO form has been provided for this purpose
Recordation of the assignment statement

- Application number must be on the Electronic Patent Assignment System (EPAS) cover sheet
  - Not the executed assignment statement
- The box in EPAS must be checked for placement of a copy of the assignment statement in the application file
- The assignment statement must identify the application in some way
  - e.g., name of inventors, attorney docket number, or title of the invention on the specification as filed
35 U.S.C. 371 (c) requirements

(1) National stage fees

(2) Copy of the international application* and an English translation (if not in English)

(3) Copy of Article 19 amendments and translation (if not in English)

(4) Oath or declaration of inventor(s)

(5) Translation of annexes** to the international preliminary examination report (IPER) (if not in English)

* not required if the international application (IA) was filed in RO/US or published by the IB

** amendments that formed the basis of the report
Commencement of U.S. national stage

- Thirty months from earliest priority date
  - From either Chapter I or Chapter II
  - 37 CFR 1.495

- Early commencement
  - At applicant’s express request
  - 35 U.S.C. 371(f)

- See PCT Applicant’s Guide, National Chapter (U.S.)
Entry into U.S. national stage

- **WIPO transmission to the USPTO upon national stage entry by the applicant**

  - Published international application containing:
    - copy of international application as originally filed (bibliographic data, description, claims, abstract, drawings)
    - copy of international search report and English translation (if not already in English)
    - copy of any amendments to the claims under Article 19 (and any statement)
    - copy of declarations filed under PCT Rule 4.17(iv)

  - Copy of SISR, if available, and English translation

  - Copy of priority document (except where U.S. priority)

  **For IAs in which a Demand was NOT filed**
  - Copy of the IPRP (Chapter I) and any informal comments

  **ONLY under Chapter II (where a Demand WAS filed)**
  - Copy of the IPRP (Chapter II) including any annexes
  - English translation of the IPRP (Chapter II), if not in English, but no translation of annexes is provided

  *WIPO transmission to the USPTO upon national stage entry by the applicant*
Entry into U.S. national stage (cont.)

- Applicant’s submission to USPTO for national stage entry

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**Applicant**

- Payment of the national fees (basic fee and other fees)
- English translation of the international application (description, claims, abstract, text matter of drawings) as originally filed (if IA filed in a non-English language)
- For early entry into the national stage (i.e., before international publication and if USPTO was not RO), a copy of the international application
- **ONLY under Chapter I** - English translation of any claims as amended (and any statement) under Article 19
  - amendments disregarded if translation not filed.
- **ONLY under Chapter II** - English translation of the annexes to the IPRP (Chapter II)
  - amendments disregarded if translation not filed.
- Information disclosure statement (IDS), optional
- Where applicable, a nucleotide and/or amino acid sequence listing, the CRF, and the required statement
- Inventor’s oath/declaration, if not filed under PCT Rule 4.17, submission may be delayed if certain conditions are met
- Application Data Sheet (ADS), if required

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Entering U.S. national stage

• To avoid abandonment of the IA:
  – The following must be furnished no later than 30 months from the priority date:
    • The basic national fee (see § 1.492(a))
    • A copy of the IA, unless the IA:
      – Has been published by the IB; or
      – Was filed in RO/US
    • See 37 CFR 1.495
Notice of missing requirements

• If the basic national fee and a copy of the IA have been submitted by 30 months:
  – The office will notify applicant of any missing requirements:
    • Translation of the IA, if not in English
    • Oath/Declaration, if not submitted in IA (see 37 CFR § 1.495(c)(3))
      – May be postponed where certain conditions met
    • Search fee (see 37 CFR § 1.492(b));
    • Examination fee (see 37 CFR § 1.492(c)); and
    • Application size fee (see 37 CFR § 1.492(j))
    • Claim fees (see 37 CFR § 1.492(d), (e), (f))

• To avoid abandonment, missing requirements must be submitted within the response period.
# U.S. national stage fees

- **Basic national fee**: $320*

- **Search fee**

<table>
<thead>
<tr>
<th>Description</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Written Opinion (WO) of the U.S. as the International Searching Authority (ISA/US) or IPER prepared by the U.S. as the International Preliminary Examining Authority (IPEA/US) indicates that all claims satisfy the provisions of Article 33(1)-(4)**</td>
<td>$0</td>
</tr>
<tr>
<td>International search fee paid to USPTO as ISA</td>
<td>$140*</td>
</tr>
<tr>
<td>International search report (ISR) prepared by an ISA other than the U.S. and provided to U.S., or previously communicated to the U.S. by the IB</td>
<td>$540*</td>
</tr>
<tr>
<td>All other situations</td>
<td>$700*</td>
</tr>
</tbody>
</table>

* reducible by 60% for small entities and 80% for micro entities
** novelty, inventive step and industrial applicability
National stage fees, continued

- Examination fee

| Written Opinion (WO) of the ISA/US or IPER prepared by the IPEA/US and indicates that all claims satisfy the provisions of Article 33(1)-(4)** | $0 |
| All other situations | $800* |

*reducible by 60% for small entities and 80% for micro entities

**novelty, inventive step and industrial applicability
<table>
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<th>Fee</th>
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</thead>
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</tr>
<tr>
<td>For each claim in excess of 20</td>
<td>$100*</td>
</tr>
<tr>
<td>For each application containing a multiple dependent claim</td>
<td>$860*</td>
</tr>
<tr>
<td>Search fee, examination fee, or oath or declaration received after the date of commencement of the national stage</td>
<td>$160*</td>
</tr>
<tr>
<td>English translation received after 30 months from priority date</td>
<td>$140*</td>
</tr>
<tr>
<td>For every 50 sheets or fraction thereof of the SPEC and DRW that exceeds 100 sheets, excluding any sequence listing or computer program listing filed using an electronic medium</td>
<td>$420*</td>
</tr>
<tr>
<td>For submission of a sequence listing text file of 300-800MB</td>
<td>$1060*</td>
</tr>
<tr>
<td>For submission of a sequence listing text file that is more than 800MB</td>
<td>$10,500*</td>
</tr>
</tbody>
</table>

* reducible by 60% for small entities or 80% for micro entities
English translation of the international application

• May be filed
  – By 30 months from the priority date
  – In response to a Notice of Missing Requirements
    • Time limit set in Notice may be extended under 37 CFR 1.136(a)
  – After the 30-month date
    • With processing fee of $140
      – Reducible by 60% for small entity and 80% for micro entity

• Translation must be an accurate translation of the international application as originally filed
  – No changes permitted
Copy of Article 19 amendments* and English translation

• Due by 30 months from the priority date
• Canceled if translation not timely submitted
  – May still be made by preliminary amendment

* copy of the Article 19 amendment not required if communicated to the DO/EO/US by the IB
Oath or declaration

- May be filed as
  - Part of the PCT Request form, that is, Box No. VIII (iv), or within the time period set in PCT Rule 26ter
    - IB will provide DO/EO/US with PCT Request declaration of inventorship sheets upon national stage entry
  - USPTO-generated
    - Form PTO/AIA/01 or PTO/AIA/08 (AIA (Oath/Dec))
  - Applicant-created form
  - For AIA (Oath/Dec) applications
    - Substitute statements
    - Assignment as the oath/declaration
Time for Filing of oath/declaration-(Oath/Dec) (1)

• May postpone submission until application is in condition for allowance (37 CFR 1.492(c))
  – If an ADS is filed identifying
    • Each inventor by his or her legal name
    • For each inventor, a mailing address where the inventor customarily receives mail
      – And residence, if the inventor lives at a location different than the mailing address
  – If postponed, must be filed no later than the time period set in the “Notice of Allowability” to avoid abandonment
Time for Filing of oath/declaration - (Oath/Dec) (2)

- Exceptions to postponement of oath/dec until allowance
  - Early commencement under 35 U.S.C. 371(f)
  - Request for Continued Examination (RCE)
    - PUBLIC LAW 106-113-APPENDIX I 113 STAT. 1501A-560 (SEC. 4403) adds section (b) to 35 U.S.C. 132
      - Which grants the Director [of the USPTO] the ability to prescribe regulations for continued examination of patent applications
    - However, PUBLIC LAW 106-113-APPENDIX I 113 STAT. 1501A-561 sets forth the applicability of 35 U.S.C. 132(b) to
      - “[...] all applications complying with section 371 of title 35, United States Code, [...]”
    - 35 U.S.C. 371(c) requires the filing of an oath/dec of the inventor
English translation of Annexes to the International Preliminary Report on Patentability (IPRP) (Chapter II)

- **Due by**
  - 30 months from the priority date or
  - Within any time period set to furnish
    - Translation of application
    - Oath or declaration
    - Any outstanding national stage fee

- **Canceled if not timely submitted**
  - May still be made by preliminary amendment

- **If provided after 30-month date**
  - Processing fee of $140
    - Reducible by 60% for small entity and 80% for micro entity
A surcharge of $160 is required if any of the Search fee, Examination fee, or Oath or declaration is filed after the date of commencement. The surcharge is reducible by 60% for small entity and 80% for micro entity.
Abandonment in the United States

• Abandonment results from failure to
  – Submit by the 30-month date
    • Basic national fee
    • A copy of the international application
      – If not published by the IB or not filed in RO/US
  – Timely furnish
    • The proper reply to the Notice of Missing Requirements and other notices

• May be possible to revive (37 CFR 1.137)
  – Petition fee - $2100
    • Reducible by 60% for small entity and 80% for micro entity
Preliminary amendments

• Made in accordance with 37 CFR 1.121
  – May be used in lieu of translating
    • Article 19 amendment and/or annexes to the IPER
  – To eliminate multiple dependent claims
  – To reduce the number of claims

• See PCT Applicant’s Guide, National Chapter–US, The Procedure in the National Phase, paragraph US.34
  – For details regarding amendments and claim status identifiers
Dates in a national stage application

- International filing date (IFD)
- 35 U.S.C. 371(c) date
International filing date (IFD)

- 35 U.S.C. 363 states that
  - An international application designating the United States shall have the effect,
  - From its IFD,
  - Of a national application for patent regularly filed in the Patent and Trademark Office
35 U.S.C. 371(c) Date

- Date of completion of 35 U.S.C. 371(c)(1) & (c)(2) requirements
  - Date listed as the “filing or 371(c) date” on the filing receipt
  - The “filing or 371(c) date” on the filing receipt no longer based on date of receipt of oath/declaration
Foreign priority claims in a §371 application (1)

- Must be in accordance with 35 U.S.C. 119(a) and the PCT and its regulations.
  - See 35 U.S.C. 365(b)

- Must have been made:
  - In Box No. VI of the request, or
  - Within the time limit set forth in PCT Rule 26bis

- Foreign priority claim omitted in the IA may be added by petition:
  - Under (37 CFR 1.55(e))
Foreign priority claims in a §371 application (2)

• Must be identified in one of:
  – (Preferably) ADS,
  – 1st page of published international application, or
  – PCT request

• An ADS filed with the initial submission under §371 without the foreign priority claim is considered a deletion of the foreign priority claim

• See 37 CFR 1.55 and 37 CFR 1.76(c)
Certified copy of foreign application

- World Intellectual Property Organization (WIPO) will provide a copy to DO/EO/US
  - If timely filed during the international stage
  - The copy satisfies the requirement of 37 CFR 1.55(f)(2)
  - The Notice of Acceptance will indicate presence
- If a certified copy was not filed during the international stage
  - Applicant will be given the opportunity to provide one during the national stage
    - See 37 CFR 1.55(f)(2) for required time period for furnishing
Claim to benefit of an earlier U.S. filing date (1)

- Domestic benefit may be claimed to:
  - A provisional application under 35 U.S.C. 119(e)
  - A nonprovisional application under 35 U.S.C. 120
  - An IA designating the US under 35 U.S.C. 365(c)
Claim to benefit of an earlier U.S. filing date (2)

• The 371 application must:
  – Contain or be amended to contain a reference to any prior-filed applications:
    • Provisional application number
    • Nonprovisional application number and its relationship (e.g. continuation (CON), continuation-in-part (CIP), divisional (DIV)) to the later-filed application
    • The prior-filed international application number, its IFD, and its relationship (e.g. CON, CIP, DIV) to the later-filed international application
  – See 37 CFR 1.78

– See 37 CFR 1.78
Claim to benefit of an earlier U.S. filing date (3)

• Can be made within the later of:
  – Four months from commencement under 35 U.S.C. 371(b) or (f),
  – Four months from initial 371 submission, or
  – 16 months from the earlier filing date

• Can be added later:
  – Only by petition when unintentionally delayed

• See 37 CFR 1.78
Restoration of right of priority in the international stage

- For an international application filed on/after April 1, 2007
  - International filing date may be
    - More than 12 months from the priority date, but
    - Within two months of the expiration of the priority period
  - Under the PCT, a priority claim that is restoration eligible
    - Establishes the priority date for timeline purposes
    - Remains in the international application, despite
      - Failure to request restoration, or
      - Refusal of a request for restoration
Restoration of right of priority in the US national stage (1)

- Restoration of the right of priority has been effective for all applications in the U.S.

- Restoration by RO/US or any other RO under unintentional or due care criterion **is effective** in the corresponding U.S. national stage application
  - Form PCT/RO/159 issued by the receiving office indicating restoration of the right of priority is satisfied
Restoration of right of priority in the US national stage (2)

• Where priority was not restored in the international application, applicant can petition to
  – Restore the right of priority to a foreign application
    • 37 CFR 1.55(c)
  – Restore domestic benefit to a provisional application
    • 37 CFR 1.78(b)

• The delay in filing the international application must have been unintentional
Restriction

• The unity of invention standard is applied for restriction in a national stage application

• More claims may be kept together if multiple inventions present
Interim final rule regarding PTA

- Published April 1, 2013
- Implements several changes made to PTA statue by the America Invents Act (AIA) Technical Corrections Act of January 14, 2013
- Alters how PTA is calculated
AIA Technical Corrections Act

- The 14 month PTA period will be measured from the date of commencement of the U.S. national stage under 35 U.S.C. 371
- Applies to any patent granted on or after January 14, 2013
“Bypass route”—an alternative to 35 U.S.C. 371

• A U.S. application under 35 U.S.C 111(a)
  – Can claim benefit under
    • 35 U.S.C 365(c)
    • 35 U.S.C 120, or
    • 35 U.S.C. 121

  of an international application that designates the US

• See MPEP sections 1895 and 1896
National stage vs. bypass route

Priority Application Filed

0 (months)

Filing Date

PCT Filing Date

12

Publication

18

National Stage Entry

30

Patent Issues

(national stage)

PCT Filing Date

Publication

(national stage)

(CON, CIP, or DIV of PCT Filed)

(bypass route)
Conflicting instructions: 111(a) or 371

• Prior to September 16, 2012
  – An initial application submission containing conflicting information as to treatment under 35 U.S.C. 111(a) or 371 was treated as a new U.S. national patent application under 35 U.S.C. 111(a)

• On or after September 16, 2012
  – An initial application submission containing conflicting information as to treatment under 35 U.S.C. 111(a) or 371 will be treated as a U.S. national stage application under 35 U.S.C. 371

• 37 CFR 1.495(g)
Advantages of bypass route

- Exact translation of the international application not required
- New matter may be added to the disclosure by filing a CIP
- Extension of time for payment of basic filing fee
  - 37 CFR 1.136(a)
- Foreign priority claim omitted in the international application may be added (37 CFR 1.55) without petition
- Track 1 prioritized examination and accelerated examination procedures available
- May postpone oath/dec submission without exception
Disadvantages of bypass route

- A complete application must be filed
  - Including any required formal drawings
- Certified copies of any foreign priority documents must be filed*
  - Within the time period set forth in 37 CFR 1.55(f)(1)
- Restriction based on the U.S. independent and distinct standard
  - Instead of broader unity of invention standard
- Petition under 37 CFR 1.78(d) required for benefit claim where
  - The international application claims benefit but does NOT specify its relationship (CON, DIV, CIP) to the earlier application filed under 35 U.S.C. 111(a)

Advantages of national stage entry under 35 U.S.C. 371

• Restriction standard is unity of invention
  – More claims/inventions may stay together

• Ease of filing
  – Applicant provides
    • Transmittal letter and fees
  – IB provides
    • Copy of the international application (if nationalized after publication)
    • Priority document (if provided to IB at international stage)
    • ISR and IPRP

• Search fee and examination fees may be $0
  – Where written opinion (WO) of ISA/US or IPER of IPEA/US indicates all claims satisfy the criteria of Article 33(1)-(4)
Disadvantages of national stage entry under 35 U.S.C. 371

• Cannot add subject matter
  – Which goes beyond the IA as filed

• Literal English translation of IA required

• May need extensive preliminary amendment
  – Clean up translation
  – Reduce/eliminate multiple dependent claims

• Must pay basic national fee by 30 months

• Requires oath/dec submission for
  – Early commencement
  – RCE filing
Helpful hints (1) - ADS

- For a 371 application, applicability of the pre-AIA (FTI) or AIA (FITF) is determined by the international filing date
  - NOT the date of initial submission under 35 U.S.C. 371
- Include a signed ADS with the initial §371 submission
  - If inventorship has changed
  - To indicate the relationship (continuation or CIP) to any non-provisional US application to which benefit was claimed in the international application
    - See the following slides for screen shots
Helpful hints (2) - ADS

• Instructions on ADS form PTO/AIA/14:

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<th>Domestic Benefit/National Stage Information:</th>
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<td>Continuity Type</td>
</tr>
<tr>
<td>Prior Application Number</td>
</tr>
<tr>
<td>Filing Date or 371(c) Date</td>
</tr>
<tr>
<td>Prior Application Status</td>
</tr>
<tr>
<td>Add Domestic Priority Data</td>
</tr>
<tr>
<td>Remove Domestic Priority Data</td>
</tr>
</tbody>
</table>
Helpful hints (3) - ADS

• Select the relationship between patent applications by selecting one of seven available relationship buttons

**Domestic Benefit/National Stage Information:**

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) or indicate National Stage entry from a PCT application. Providing benefit claim information in the Application Data Sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78.

When referring to the current application, please leave the “Application Number” field blank.

<table>
<thead>
<tr>
<th>Prior Application Status</th>
<th>Application Number</th>
<th>Continuity Type</th>
<th>Prior Application Number</th>
<th>Filing or 371(c) Date (YYYY-MM-DD)</th>
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<td><strong>Add</strong></td>
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Additional Domestic Benefit by selecting the Add button.

Continuation of
Division of
Continuation in part of
a 371 of international
substitution of
reissue of

EFS Web 2.2.13
Helpful hints (4) - ADS

• Benefit to U.S. provisional

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**Domestic Benefit/National Stage Information:**

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) or indicate National Stage entry from a PCT application. Providing benefit claim information in the Application Data Sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78.

When referring to the current application, please leave the “Application Number” field blank.

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Additional Domestic Benefit/National Stage Data may be generated within this form by selecting the **Add** button.
Helpful hints (5) - ADS

- Benefit to U.S. nonprovisional

**Domestic Benefit/National Stage Information:**

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) or indicate National Stage entry from a PCT application. Providing benefit claim information in the Application Data Sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78. When referring to the current application, please leave the “Application Number” field blank.

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Additional Domestic Benefit/National Stage Data may be generated within this form by selecting the **Add** button.
Helpful hints (6) - ADS

- Foreign priority

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Foreign Priority Information:

This section allows for the applicant to claim priority to a foreign application. Providing this information in the application data sheet constitutes the claim for priority as required by 35 U.S.C. 119(b) and 37 CFR 1.55. When priority is claimed to a foreign application that is eligible for retrieval under the priority document exchange program (PDX), the information will be used by the Office to automatically attempt retrieval pursuant to 37 CFR 1.55(l)(1) and (2). Under the PDX program, applicant bears the ultimate responsibility for ensuring that a copy of the foreign application is received by the Office from the participating foreign intellectual property office, or a certified copy of the foreign priority application is filed, within the time period specified in 37 CFR 1.55(g)(1).

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Additional Foreign Priority Data may be generated within this form by selecting the Add button.
Helpful hints (7) - ADS

• “Bypass” application filed under 35 USC 111(a)

Domestic Benefit/National Stage Information:

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) or indicate National Stage entry from a PCT application. Providing benefit claim information in the Application Data Sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78.

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Helpful hints (8) - ADS

- Continuation of a 371 application

**Domestic Benefit/National Stage Information:**

This section allows for the applicant to either claim benefit under 35 U.S.C. 119(e), 120, 121, 365(c), or 386(c) or indicate National Stage entry from a PCT application. Providing benefit claim information in the Application Data Sheet constitutes the specific reference required by 35 U.S.C. 119(e) or 120, and 37 CFR 1.78.

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Additional Domestic Benefit/National Stage Data may be generated within this form by selecting the Add button.
Helpful hints (9) - PTO-1390

• Use the national stage transmittal letter (PTO-1390)
• Do not pay claim fees at the time of filing if a preliminary amendment will be filed that will affect claim fees
  – No refund for claim fees paid
  – Option available on PTO-1390 to exclude claim fees
Helpful hints (10) — PTO-1390

• Can request early entry/processing by checking Box 1, however:
  – Only effective if basic national fee, copy of IA and English translation (if required), AND oath/declaration of inventor(s) are received

1. [ ] This is an express request to begin national examination procedures (35 U.S.C. 371(f)). NOTE: The express request under 35 U.S.C. 371(f) will not be effective unless the requirements under 35 U.S.C. 371(c)(1), (2), and (4) for payment of the basic national fee, copy of the International Application and English translation thereof (if required), and the oath or declaration of the inventor(s) have been received.

• Copy of IA is not required if previously published by WIPO or US was the receiving office.

2. [ ] A copy of the International Application (35 U.S.C. 371(c)(2)) is attached hereto (not required if the International Application was previously communicated by the International Bureau or was filed in the United States Receiving Office (RO/US)).
Helpful hints (11)

- Do not wait for a Notice of Missing Requirements (PCT/DO/EO/905)
  - Supply the additional fees, translations, etc. as soon as possible
    - Filing Receipt and Notification of Acceptance (Form PCT/DO/EO/903) issued more quickly
    - Declaration is not required at filing, if ADS is present
Helpful hints (12)

- File assignments using the Electronic Patent Assignment System (EPAS)
  - Ensures timely recordation
  - New Intellectual Property Assignments webpage will replace EPAS on 01 December 2023

- Check Notification of Acceptance (PCT/DO/EO/903)
  - To ensure that DO/EO received certain documents
    - e.g. preliminary amendment, IPRP (Chapter II) with Annexes, priority document(s), etc.

- If submitting translation of the annexes
  - Ensure the translated annexed sheets can replace page by page the translated application sheets
Helpful hints (13) – Information Disclosure Statement (IDS)

- List the references on an IDS; and
- Provide copies of any non-U.S. patent documents, e.g.
  - Foreign patent documents
  - Non-patent Literature (NPL)

to ensure:
  - Consideration of references cited on the ISR/SISR, and
  - Reference citation on any resulting patent
Thank you!

Any questions?

Layla Lauchman
Deputy Director, International Patent Legal Administration
571-272-2418
Layla.Lauchman@USPTO.gov

PCT Help Desk
571-272-4300
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