

The Basics of the Patent Cooperation Treaty

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April 28, 2026

WIPO PCT Webinar Series





Importance of priority claims and how to best deal with them

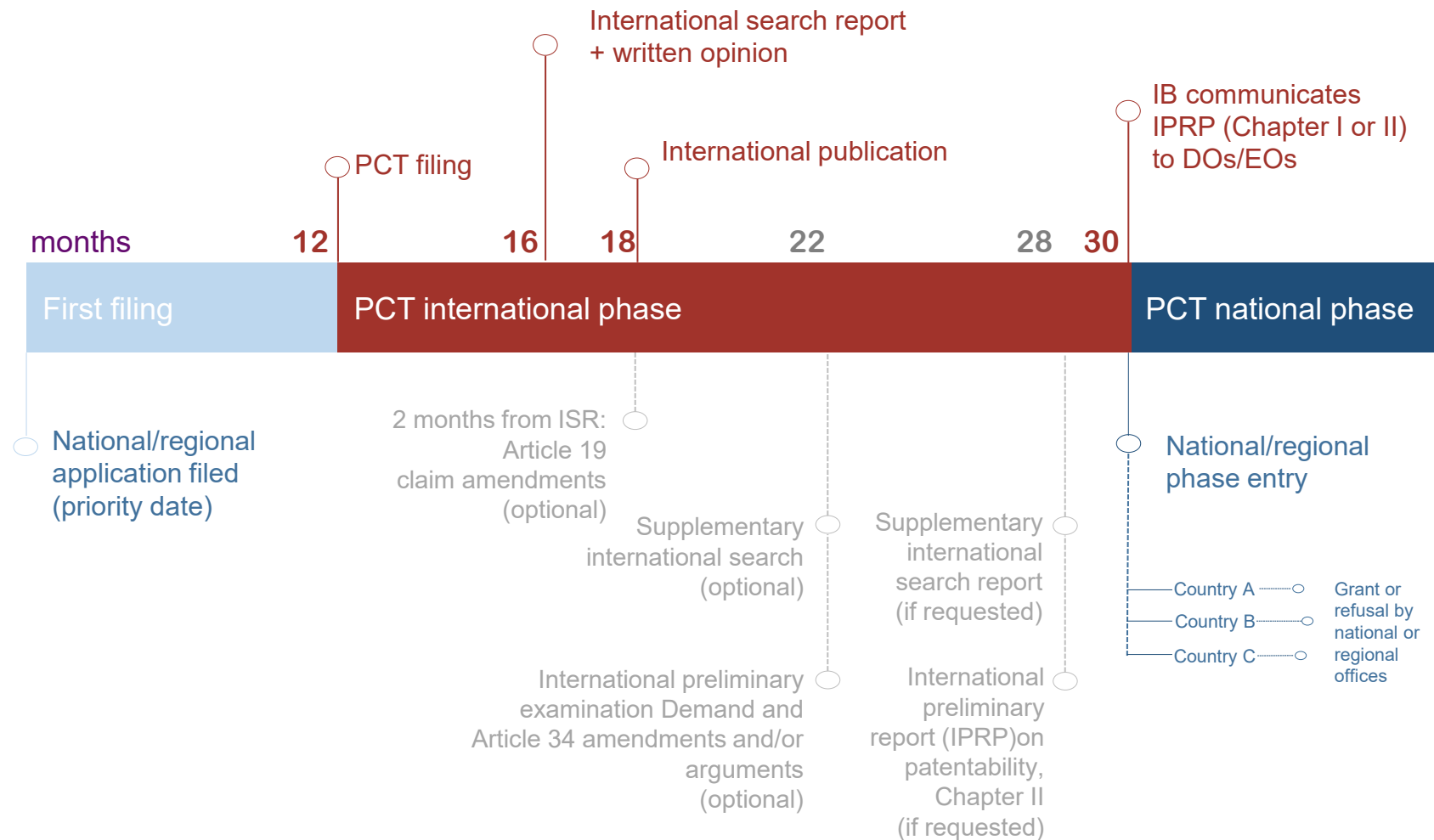
(Episode 5)

What is a priority claim?



- ❑ A link between two (patent) applications which allows the second filed application to be treated, for prior art purposes, as if it had been filed on the same date as the first filed application
- ❑ Two main effects:
 - ❑ The filing date of the first application counts as the date from which prior art is assessed for the second application
 - ❑ Where 2 or more individuals have made the same invention independently of each other, the right to a patent generally belongs to the person whose filing date or claimed priority date is the earliest

PCT TIMELINE



Why does the right to claim priority exist?

- ❑ To help avoid that applicants would have to file multiple applications in multiple jurisdictions/countries at the same time
- ❑ Instead, applicants can start out with one application and then have 12 months to decide if they also wish to file in other countries



Legal basis for making a priority claim

- ❑ Article 4 of the Paris Convention for the Protection of Industrial Property
- ❑ PCT Article 8 referring to Article 4 of the Paris Convention: priority can be claimed of earlier
 - ❑ national, regional, or international applications
 - ❑ filed in a country party to the Paris Convention or a Member of the WTO
- ❑ National law: for internal priority claims (e.g. benefit claiming in the US)

How to make a priority claim in a PCT application?

- ❑ A priority claim in the PCT request form should include the following:
 - ❑ filing date of earlier application,
 - ❑ application number, and
 - ❑ country/regional Office/PCT receiving Office with which the earlier application was filed



How about the priority document?

- ❑ For every priority claim made in a PCT application, a corresponding priority document must be furnished:
 - ❑ through the DAS-system
 - ❑ by requesting receiving Office to prepare and transmit the priority document
 - ❑ by furnishing a paper or electronic copy of the priority document either to the RO or the IB

- ❑ The IB is responsible for communicating the priority document to national offices during the national phase

Can a priority claim be corrected?

- ❑ In the PCT, a priority claim can be added or corrected after the time of filing
- ❑ However, strict time limits apply (Rule 26**bis**.1(a))
 - ❑ “Always 4 sometimes more...”
 - ❑ if the applicable 16-month time limit from the earliest priority date expires after the 4-month time limit
 - ❑ the earliest priority date is either the one indicated in the request form (even if incorrect) or the one that should have been indicated
- ❑ If the RO or IB notice that a priority claim is incorrect, they will issue an invitation to correct (Form PCT/RO/110 or PCT/IB/316)
- ❑ Difficult to correct or add a priority claim in the national phase; only some national laws provide for it



Can a priority claim also be withdrawn?

- ❑ Yes, but be very careful before doing this
- ❑ PCT Rule 90*bis*.3 provides for this possibility
 - ❑ Up until 30 months from the priority date
 - ❑ Any time limits which have not yet expired when the earliest priority claim is withdrawn, would be recalculated



What if I missed to file my PCT application within 12 months from my first filing?



- ❑ Midnight is not midnight everywhere...
- ❑ Office closed dates?
- ❑ Restoration of the priority right (Rule26bis.3):
 - ❑ Requires an explanation why the priority period was missed
 - ❑ Possible payment of fees
 - ❑ Can be requested with the RO or later with the designated Offices
 - ❑ Some designated Offices will not accept the restoration of a priority right at all
 - ❑ Some designated Offices will not accept the restoration of the priority right based on the unintentionality criterium



PCT Resources

Check all resources on the PCT website
<https://www.wipo.int/en/web/pct-system>
(available in **10** languages)

More about:

[PCT Treaty](#)

[PCT Regulations](#)

[PCT Applicant's Guide](#)

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