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STUDY ON THE CONDITIONS OF FOREIGN FILING, AND CHALLENGES FOR INNOVATORS IN THE CROSS-BORDER COLLABORATIVE ENVIRONMENT

Document prepared by the Secretariat

1. At its thirty-sixth session, held in Geneva from October 14 to 18, 2024, the Standing Committee on the Law of Patents (SCP) decided that a study on the determination of inventorship and conditions of foreign filing, and related challenges for innovators in the cross-border collaborative environment would be prepared by the Secretariat, based on the information provided by Member States in a designated survey, as well as on information from other sources. The study was agreed to be submitted to the thirty-eighth session of the SCP.
2. Pursuant to the above decision, Member States and regional patent offices were invited through Note C. 9304, dated January 30, 2026, to submit information to the International Bureau on the above elements under the applicable law. In total, 47 Member States and 2 regional patent offices provided their applicable laws and practices. The information submitted by Member States and regional patent offices was supplemented, where appropriate, by Secretariat desk research based on publicly available legal, administrative and other relevant materials. During the preparation of the study, it was detected that determination of inventorship was a matter substantively and conceptually distinct from conditions of foreign filing, and that the topic was covered in other SCP documents, such as SCP/35/7, Sections IV and V, and SCP/36/9. Therefore, taking into account the above, the submitted information, and the supplementary research, the Secretariat prepared a study focusing on the determination of conditions of foreign filing, and related challenges for innovators in the cross-border

collaborative environment, and the impact of multi-jurisdictional inventorship is discussed in the context of the above (see, e.g., Section II.I). The study is contained in this document.

[Annex follows]

Study on the Conditions of Foreign Filing, and Challenges for Innovators in the Cross-Border Collaborative Environment

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I. EXECUTIVE SUMMARY

1. This study examines patent law mechanisms that make the filing of a patent application outside a jurisdiction subject to a domestic condition, review, authorization, routing requirement, waiting period or secrecy-linked restriction. It uses the neutral expression "foreign filing conditionalities" to describe those mechanisms across legal systems, without assuming that national laws use the same terminology or structure. The expression is functional rather than formal. It captures rules that place a domestic checkpoint before technical information is disclosed through a foreign, regional or international patent filing, or through patent-specific communication associated with such filing. Foreign filing controls developed not only as restrictions on publication after secrecy had been imposed, but also as mechanisms to prevent sensitive inventions from bypassing domestic review through an initial filing abroad.
2. The study distinguishes foreign filing conditionalities from neighboring legal and practical constraints. Ordinary confidentiality of unpublished patent applications is not, by itself, a foreign filing conditionality, because it does not condition outward patent filing or patent-specific disclosure. Likewise, export-control rules, classified-information rules, research-security obligations, cybersecurity rules, employment duties, government-contract obligations, non-disclosure agreements and other private confidentiality arrangements may affect the same technical information, but they are relevant to this study only where they condition or alter patent filing, patent-office transmission, patent-specific communication, publication, prosecution or related patent acts.
3. The study proceeds from a basic feature of patent law: a patent application is both a request for exclusive rights and a structured disclosure of technical information. Foreign filing conditionalities reflect the point at which that disclosure function may intersect with national security, national defense, public safety, secrecy, classified information, critical technology, economic security or another protected public interest. The study is descriptive and comparative. It does not rank national approaches, identify a preferred model or propose a particular legal outcome.
4. At a comparative level, the reviewed materials show that foreign filing conditionalities are not designed in a single way. They may be understood through five baseline regulatory models, each of which identifies where the domestic checkpoint is placed in relation to the outward patent disclosure:
 - **Domestic-First Review Model:** The invention must first be filed domestically before a foreign, regional or international filing route is used. Foreign filing may then become possible after a waiting period, non-objection, express clearance or other domestic review outcome, with the domestic filing serving as the entry point for review.
 - **Prior Permission Model:** Filing abroad depends on a license, written authority, authorization, confidentiality or security examination, approval or non-objection before the outward filing step is taken. The central question in this model is not only whether permission has been granted, but also what technical material, countries, routes, recipients, purposes or later changes the permission covers.
 - **Designated-Office Routing Model:** Certain foreign-bound, regional, PCT or other international applications must be filed through, or first submitted to, a designated domestic office. The prescribed filing channel is part of the control, because the domestic authority may need to receive, screen, forward, delay, withhold or condition the onward movement of the application.

- **Secrecy Triggered Restriction Model:** There may be no general prior obligation to obtain a foreign filing license for ordinary inventions, but once a domestic patent process, security review, classification, secrecy order, prohibition direction or analogous measure has been triggered, later foreign filing, transmission, publication, prosecution or patent-specific communication may be restricted.
- **No Patent Law Foreign Filing Conditionality:** Patent law imposes no domestic first-filing, permission, waiting-period, designated-office routing or secrecy-clearance requirement before filing abroad. This conclusion is limited to foreign patent filing conditions and should be distinguished from other legal regimes that may regulate the same technical information for reasons unrelated to patent filing as such.

5. These models should be understood as regulatory architectures rather than rigid classifications. A legal system may combine more than one model, or may use one model as the ordinary pathway and another as a special pathway for inventions deemed sensitive. A domestic-first system may also include a waiting period, security review, express clearance or secrecy direction. A prior-permission system may be paired with designated routing for certain international applications. A routing system may include security review before onward transmission. A secrecy-triggered system may leave ordinary filing freedom intact unless and until secrecy or comparable status is imposed. The comparative value of the models lies in showing how different regimes allocate visibility, timing and procedural responsibility between applicants, patent offices and other competent authorities.

6. **Applicability** is a separate threshold inquiry. A foreign filing conditionality does not apply merely because an invention exists or because patent protection may eventually be sought in another jurisdiction. Its application depends on the connecting factors and trigger criteria specified by the relevant law. Those criteria may attach to persons, entities, places, subject matter, filing routes, domestic procedures or secrecy status. In cross-border research, the relevant facts may be distributed across inventors, applicants, owners, employers, affiliates, research institutions, funders, contractors, patent representatives and technical service providers. The applicability inquiry therefore requires attention to the legal and factual structure of the project yielding the invention, not only to the office in which the next filing is planned.

7. **Personal and entity-based connecting factors** may include nationality, citizenship, residence, domicile, headquarters, registered office, principal place of business, establishment, applicant status, inventor status, entitlement to file, ownership, employment relationship, public-service status, or responsibility for filing, causing, authorizing or arranging a filing. The relevant person is not always the named applicant. Depending on the regime, the legally significant connection may lie with the inventor, the applicant, the owner, the person entitled to file, the resident filer, the entity controlling the filing decision, or the person who causes another person to file abroad. For that reason, changes in applicant structure, assignment, group-company filing practice, representative activity or collaborator responsibility may affect the applicability analysis.

8. **Territorial connecting factors** focus on where the invention was made, created, accomplished, developed, generated, completed or materially contributed to. This inquiry may be simple where all inventive activity occurs in one place, but it can be complex where conception, experimentation, data generation, software development, prototype construction, technical problem-solving, claim refinement and patent drafting occur in different jurisdictions. The location of the eventual filing office, the place of incorporation of the applicant or the location of the commercial decision-maker may not by itself answer where the invention was made. Conversely, not every meeting, funding decision, management instruction or drafting step necessarily constitutes the inventive contribution that triggers a territorial-origin rule.

9. **Subject-matter and security criteria** introduce a further layer. Some regimes focus on specified sensitive technical fields, such as nuclear or atomic energy, aerospace, armaments or other technical areas identified by domestic law or security review, while others use broader standards such as national security, national defense, public safety, state secrets, classified information, military value, critical infrastructure or comparable protected interests. In many systems, personal or territorial criteria function as gateways that bring the matter within potential scope, while subject-matter or security assessment functions as a filter that determines whether clearance, restriction, secrecy, prohibition or ordinary filing follows. This staged understanding is important because the fact that a regime may be engaged does not always mean that the further filing for a patent on the invention will ultimately be restricted.

10. **The scope of restricted conduct** may be broader than the phrase "foreign filing" suggests. Direct filing in another national patent office is the clearest case, but regional and international routes, including PCT filing, may also be within scope, may have to pass through a designated domestic office, or may be affected by secrecy review before ordinary forwarding or transmission can occur. Some regimes also address filing made, caused, authorized or arranged through another person, including a parent company, affiliate, assignee, employer, co-applicant, patent representative, foreign agent or service provider. The formal identity of the person lodging the application may therefore not resolve the scope question where the law reaches the person who causes or arranges the outward filing.

11. Patent-specific communication may also be relevant, particularly where secrecy, confidentiality or clearance-scope limitations are engaged. Before filing, technical material may move through invention disclosures, draft specifications, claims, drawings, sequence listings, source-code excerpts, experimental data, translations, filing instructions, shared workspaces, electronic preparation tools or communications with foreign representatives. After filing, technical material may move through amendments, revised claims, replacement drawings, prosecution explanations, national-phase materials, divisional applications, continuations, translations, added data or official forwarding to foreign, regional or international authorities. Not every such communication is restricted in every system. The point is that a patent application discloses technical substance, and some regimes control not only the filing event but also the patent-specific transmission or communication through which that same substance moves across borders.

12. The scope analysis should therefore proceed act by act, rather than by label alone. A filing instruction may be administrative in part and technical in part. A translation may be a procedural formality, but it may also communicate the full technical disclosure to a new recipient. A prosecution response may merely address formal matters, or it may contain technical explanations, data or claim amendments not previously reviewed. A regional or international application may be filed through a permitted channel, yet later transmission or national-phase steps may raise separate questions if secrecy remains in force or if new subject matter is added. The relevant inquiry is whether the particular filing, transmission, publication, prosecution step or patent-specific communication is controlled by the applicable regime.

13. **Procedural design** determines how a potentially restricted situation becomes a permitted filing, transmission, publication or prosecution path. The procedural entry point is the act that starts domestic review; the procedural endpoint is the point at which the applicant may proceed outward, remains blocked, enters secrecy treatment or is diverted into a special route. In some regimes, review begins with a domestic patent application. In others, it begins with a separate request for authorization, written authority, confidentiality examination, security clearance or non-objection. In routing systems, review may begin when a foreign-bound or international application is filed through the domestic office. In secrecy-triggered systems, the relevant procedure may begin when a domestic application is referred into a security, defense,

classification or secrecy process. The act that opens review is therefore not necessarily the act that permits foreign filing or external transmission.

14. Several procedural variables are particularly significant for applicants and offices. The competent authority may be the patent office, but the operative decision may also rest with, or be informed by, a defense, security, ministerial, classified-information or other governmental authority. Time may operate differently across regimes: some use fixed waiting periods, some require express written authorization, some allow filing after expiry of a period if no objection is communicated, and some give no permissive effect to silence. Silence is therefore not necessarily clearance. The materials submitted for review may also define the scope of the resulting permission or non-objection. Later-added subject matter, broader claims, different technical data, new destination countries, new recipients, changed filing routes, new disclosure purposes or different communication channels may raise a further review question where they fall outside what was originally assessed.

15. **Timing** has both procedural and legal significance. Domestic review periods generally operate alongside ordinary priority, PCT, regional and national filing timetables; they do not by themselves suspend or replace those timetables. A domestic-first filing may preserve a priority date, but it may also start the priority period before the applicant is ready to proceed elsewhere. A prior-permission request may avoid a domestic first filing in some systems, but delay in obtaining permission may create pressure as external filing, publication, commercial or collaboration deadlines approach. A designated-office route may preserve an international or regional path only if domestic review and onward transmission can be completed within the relevant route requirements. The timing issue is therefore not simply how long review takes, but what legal effect the expiry of time, inaction, authorization, refusal, secrecy direction or non-forwarding decision has.

16. Secrecy measures require distinct treatment. A secrecy order, prohibition direction, classification decision, confidential-processing status or analogous measure may arise from patent law or from the interaction of patent procedure with defense, national-security, classified-information, public-safety or comparable law. Once imposed, the patent matter may enter a security-based confidentiality environment. Publication may be withheld, public file access restricted, prosecution handled confidentially, grant delayed or withheld, communication limited, official transmission prevented, and foreign filing prohibited or conditioned. In some regimes, the obligation attaches to the invention, technical subject matter or protected information itself, rather than only to the application file. As a result, withdrawal, abandonment, refusal, lapse, conversion or failure of a particular filing route may not necessarily end the confidentiality obligation.

17. The secrecy-triggered model is important because the absence of a general foreign filing requirement does not necessarily mean that filing, transmission or communication remains available once secrecy status has been imposed. At the same time, secrecy-based handling may be more granular than a simple prohibition. Some regimes permit specified disclosures, filings, communications, exploitation steps or procedural acts through authorized channels while secrecy remains in place. Such permission may be limited by recipient, organization, country, purpose, filing route, technical material, secure channel or classification level. Permission to communicate with one representative may not permit disclosure to an affiliate; permission to file in one country may not permit filing elsewhere; and permission to use a secure official channel may not permit ordinary electronic transmission of the same material.

18. **Legal consequences** also differ by function. Non-compliance may give rise to criminal, administrative, civil or statutory exposure, and liability may attach to individuals, applicants, owners, representatives, organizations or persons who cause or arrange the filing or disclosure. Non-compliance may also affect patent rights, including grant, validity, enforceability,

entitlement, territorial effect or compensation. A regional or international filing route may not be forwarded, may be deemed withdrawn, may fail to take effect in the jurisdiction concerned, or may be treated as a domestic application. Where secrecy or security restrictions are lawfully imposed, the consequence may be confidential handling, abeyance, non-publication, non-forwarding, government-use treatment, compensation, expropriation-related relief or loss of ordinary commercial opportunity. Broad retroactive validation of unauthorized foreign filing appears uncommon; where later relief exists, it is generally narrow, conditional and regime-specific.

19. At the **international level**, the study does not identify a general instrument that sets common trigger criteria, common authorization procedures, common timing rules, or a general mutual-recognition or de-confliction mechanism for national foreign filing controls. Instead, the relevant international and regional frameworks are characterized by coexistence with domestic authority over security and related protected interests. Priority systems may affect the timing consequences of delayed outward filing, but they do not displace domestic review. International filing systems facilitate patent cooperation, but they preserve national security prescriptions and certain restrictions on filings by residents or nationals. Some regional or sector-specific mechanisms permit secrecy-preserving filing or maintenance of secrecy in defined contexts, but they do not establish a general rule that compliance with one jurisdiction's requirement satisfies another's.

20. **Cross-border collaboration** intensifies these issues because the facts relevant to applicability, scope, procedure and secrecy may be separated across jurisdictions and actors. A single invention may involve contributors in several countries, an applicant or owner elsewhere, government or defense-related funding, claim-relevant development in more than one location, patent drafting by a distributed team, and filing decisions made by an affiliate or representative. In many cases, overlapping requirements are cumulative but compatible: more than one domestic filing, authorization, waiting-period, secrecy, disclosure or routing step may apply, yet the steps can be completed in parallel or in a legally coherent sequence. In harder cases, the applicable regimes may point toward inconsistent first-filing, clearance, secrecy, disclosure, forwarding or routing requirements. The materials reviewed do not indicate a generally available rule under which one jurisdiction's clearance automatically resolves such overlap for all others.

21. The difference between cumulative overlap and hard conflict is therefore central. Cumulative overlap may create cost, delay and administrative complexity, but it does not necessarily create legal incompatibility. Hard conflict arises where one regime requires a step that another regime restricts, prohibits or prevents, such as first filing in different domestic offices, submitting technical material to a recipient not authorized by another secrecy regime, or transmitting a regional or international application when another authority has blocked transmission. Limited treaty-based, administrative or government-to-government mechanisms may assist in defined contexts, especially where secrecy-preserving filing is expressly provided for. Such mechanisms, however, are not a general substitute for identifying and satisfying the specific regimes that may apply to the invention.

22. A related practical challenge is that the relevant patent materials may begin moving before the filing route has been finally selected. Invention disclosures, draft claims, drawings, technical examples, translations and prosecution strategies may be circulated for review, drafting or portfolio planning before a formal foreign application exists. Where the applicable regime is focused only on the filing act, those preparatory steps may not be the controlling event. Where the regime is secrecy-based, route-specific or tied to the technical material submitted for clearance, however, preparatory circulation may affect compliance, confidentiality and later filing options. This makes it useful to distinguish patent-filing management from patent-related information-flow management. Both may need to be considered before a cross-border filing strategy can be implemented.

23. In practical terms, the materials show why relevant facts often need to be identified early, including who made claim-relevant inventive contributions and where, who controls the right to file, what technical information has already crossed borders, whether any secrecy or security status has been imposed, which filing route is contemplated, and how much time remains before filing, publication, commercial or collaboration deadlines. Records of assumptions, permissions, reviewed materials, approved disclosure channels and responsibility for filing-route decisions may help explain the sequence followed. Such practices do not substitute for compliance with applicable law, and they do not convert compliance in one jurisdiction into compliance in another. They do, however, illustrate why foreign filing conditionalities are most visible where patent drafting, secrecy, cross-border research, priority timing, ownership, digital information flows and disclosure management intersect.

24. Overall, the comparative materials show that foreign filing conditionalities should not be viewed only as formal filing requirements. They are domestic checkpoints on patent-related disclosure. Their operation depends on the regulatory model used, the connecting factors that trigger the regime, the acts and communications within scope, the procedure through which review is conducted, the effect of time or silence, the reach of secrecy measures, the consequences of non-compliance, and the possibility of overlapping requirements in cross-border invention settings. Their practical significance lies at the interface between patent cooperation, territorial patent administration, cross-border innovation and the protection of sensitive technical information.

25. The remainder of the study is organized in three substantive sections. Section II sets out the general principles and cross-cutting issues relating to foreign filing conditionalities, including key concepts, regulatory models, trigger criteria, restricted acts, procedure and timing, secrecy measures, legal consequences, overlapping requirements and practical implications. Section III describes the international legal framework within which national mechanisms operate, including priority, international and regional filing rules, and limited secrecy-preserving mechanisms. Section IV presents the national and regional laws and practices reviewed in the study, including materials from Member States and regional patent offices.

II. GENERAL PRINCIPLES AND CROSS-CUTTING ISSUES RELATING TO CONDITIONS OF FOREIGN FILING

A. KEY CONCEPTS AND BOUNDARIES OF FOREIGN FILING CONDITIONALITIES

26. For the purposes of this study, **“foreign filing conditionalities” is used as a neutral umbrella term for patent law rules that make the filing of a patent application outside the relevant jurisdiction subject to a domestic condition, review, authorization, routing requirement, waiting period, or secrecy-linked restriction.** The expression is functional rather than formal: it is intended to capture comparable outward-filing controls even where national legislation uses different terminology or embeds the control in different parts of patent procedure.¹

27. The term does not imply that every jurisdiction has such a rule. A separate comparative outcome is the absence of any identified foreign filing conditionality in patent law in the materials reviewed. In those systems, ordinary patent formalities, priority rules, publication rules, or general confidentiality obligations should not by themselves be treated as foreign filing conditionalities unless they condition or restrict outward patent filing, patent-specific disclosure, patent-office transmission, or patent prosecution outside the jurisdiction.²

28. For clarity, this study uses several recurrent descriptors in a functional sense. A first-filing or domestic-first requirement refers to a rule under which the invention must first be filed domestically, often followed by a waiting period, non-objection mechanism, or review. A foreign filing license, written authority, or permission refers to authorization to file abroad before an outward filing step is taken. A routing requirement refers to a rule under which a foreign-bound, regional, or international application must be filed through, or first submitted to, a designated national office. A security or confidentiality examination refers to review of the invention for sensitivity before foreign filing, onward transmission, or publication. Secrecy-linked measures include secrecy orders, prohibition directions, confidentiality classifications, or analogous determinations that restrict publication, communication, filing, or transmission once sensitivity has been identified.³

29. These concepts should be distinguished from ordinary confidentiality of unpublished patent applications. Ordinary application confidentiality generally reflects the non-public status of a pending application before the usual publication point. A foreign filing conditionality, by contrast, conditions or restricts an outward patent-related act; and a secrecy measure, when imposed, creates a distinct security-based confidentiality status that may alter ordinary publication, access, communication, prosecution, or transmission rules.⁴

¹ See, for example, Section IV below, entries on Australia, Brazil, China, France, Germany, Italy, Japan, Malaysia, Portugal, the Republic of Korea, Singapore, Spain, Türkiye, the United Kingdom and the United States of America. These entries variously illustrate patent-law or patent-procedure mechanisms that condition outward filing, require domestic first filing or authorization, impose routing requirements, or connect foreign filing to secrecy or security review.

² See, for example, Section IV below, entries on Bhutan, Colombia, Ecuador, Ireland, Madagascar and Switzerland. These entries variously illustrate jurisdictions in which no patent-law foreign filing conditionality was identified in the materials reviewed.

³ See, for example, Section IV below, entries on China, India, Italy, Japan, Malaysia, Portugal, Singapore, the United Kingdom and the United States of America. These entries variously illustrate the use of foreign filing licenses, written authority, domestic-first filing requirements, waiting periods, confidentiality examination, designated-office routing, or secrecy-linked measures; See also WIPO, “International applications and national security considerations,” noting that some PCT Contracting States restrict the filing of international applications with other Offices for national-security reasons where applications are filed by nationals or residents of the relevant State, or where the invention was made in that State; WIPO, *PCT Applicant’s Guide: International Phase*, para. 6.010.

⁴ See, for example, Section IV below, entries on Australia, Brazil, Germany, Singapore, the United Kingdom and the United States of America. These entries variously illustrate the difference between ordinary application handling and

[Footnote continued on next page]

30. Foreign filing conditionalities may also overlap in practice with broader legal frameworks and private arrangements, including export controls, classified-information regimes, research-security requirements, government-contract secrecy obligations, cybersecurity rules, employment duties, non-disclosure agreements, and other private confidentiality arrangements. Such frameworks may affect the same technical information and may sometimes produce similar constraints on disclosure. They are not, however, treated in this study as foreign filing conditionalities unless they condition, restrict, or alter patent-related acts, such as foreign filing, patent-specific disclosure, patent-office transmission, or patent prosecution.⁵

31. A related boundary concerns inward-facing requirements imposed by the jurisdiction in which patent protection is sought. This study does not address such inward-facing requirements as an independent subject. Depending on the legal system, inward-facing requirements may include ordinary applicant formalities, such as local-representative, address-for-service, translation, fee or national-phase requirements; special channels for the receipt or processing of classified, secret, defense-related or security-sensitive patent applications; public law restrictions affecting dealings with particular persons, entities or transactions; and technology- or subject-matter specific requirements that affect filing, publication, examination, grant or maintenance in the receiving jurisdiction. Such requirements may affect whether, how, or by whom a patent application is filed or processed in that jurisdiction, but they are not treated in this study as foreign filing conditionalities merely because they apply to a foreign or external applicant. They are relevant here only to the extent that they form part of, or materially affect, an outward filing condition, patent-office transmission, secrecy-preserving filing route, or patent-specific disclosure of the same technical subject matter.

32. The functional premise underlying the study is that **a patent application is both a request for exclusive rights and a structured disclosure of technical information**. For that reason, foreign filing conditionalities may be concerned not only with the formal act of filing abroad, but also, in some regimes, with patent-specific communications that accompany preparation, filing, prosecution, or transmission of the application. The scope of any such restriction depends on the legal design of the particular regime.⁶

security-based secrecy or confidentiality measures affecting publication, access, communication, prosecution or transmission.

⁵ Michael K. Bosworth, "Pitfalls of Foreign Patent Filing," *Loyola University Chicago Law Journal* 7 (1976): 313; Daniel P. Gross, "The Hidden Costs of Securing Innovation: The Manifold Impacts of Compulsory Invention Secrecy," *Management Science* 69(4) (2023): 2318-2338; Eric B. Chen, "Technology Outpacing the Law: The Invention Secrecy Act of 1951 and the Outsourcing of U.S. Patent Application Drafting," *Texas Intellectual Property Law Journal* 13 (2005): 351-367.

⁶ See, for example, Section IV below, entries on Australia, France, the United Kingdom and the United States of America. These entries variously illustrate that patent-related controls may concern communication, transmission, or handling of technical material as well as the formal act of filing abroad; See also WIPO, "Frequently Asked Questions: Patents," explaining that a patent is an exclusive right and that, to obtain a patent, technical information about the invention must be disclosed in a patent application.

B. HISTORICAL EVOLUTION AND POLICY RATIONALES

33. The historical rationale for foreign filing conditionalities is often traced to a tension within patent law itself. Patent systems are generally structured around the disclosure of technical information in exchange for exclusive rights, yet some jurisdictions have long treated certain inventions as unsuitable for immediate public dissemination or outward transmission. Official materials and academic literature therefore often describe secrecy orders, first-filing rules and foreign filing permissions as mechanisms used to manage the point at which patent disclosure may intersect with national security, national defense, public safety, or another protected interest.⁷

34. Important modern antecedents of these measures are visible in the first half of the twentieth century, although particular national regimes have since evolved through later legislation, treaty practice, and administrative procedures. In the United States, wartime legislation adopted during the First World War was renewed in 1940, supplemented by a foreign-filing control in 1941, and later placed on a standing peacetime footing by the Invention Secrecy Act of 1951. United Kingdom practice also developed prohibition directions and restrictions on certain filings abroad, while historical materials from India indicate that secret patent provisions were incorporated into patent legislation during the colonial period and later reconsidered in post-independence patent reform. These examples illustrate that **foreign filing controls developed not only as restrictions on publication after secrecy had been imposed, but also as mechanisms to prevent sensitive inventions from bypassing domestic review** through an initial filing abroad. Recent commentary makes the same point more directly, describing first filing abroad as a potential way to circumvent a home-country secrecy check and foreign-filing restrictions as a response to that strategy. The post-war period further shows how controls initially associated with wartime secrecy could become standing peacetime mechanisms, including in relation to atomic, nuclear, or other strategic technologies.⁸

35. Over time, the rationale appears to have been translated into administrative routines rather than left solely to emergency powers. In different jurisdictions, this has taken the form of secrecy review, waiting periods, written permits, confidentiality examination, first-domestic-filing requirements, non-disclosure procedures, or mandatory routing through a designated national office. **The common feature is not uniformity of design, but the view, reflected in many national materials, that patent offices or related authorities should have an opportunity to assess sensitive subject matter before the relevant technical disclosure moves outside ordinary domestic control.**⁹

⁷ See, for example, Section IV below, entries on Brazil, Brunei Darussalam, France, Germany, Singapore, the United Kingdom and the United States of America. These entries variously illustrate secrecy orders, prohibition directions, national-defense or national-security review, non-publication, non-forwarding and foreign-filing permission models. See also Gaétan de Rassenfosse, Gabriele Pellegrino and Emilio Raiteri, “Do patents enable disclosure? Evidence from the Invention Secrecy Act,” *International Journal of Industrial Organization*, vol. 92 (2024), 103044; Lisette Pöld, “Preserving Secrecy within the Patent System to Safeguard Western Countries’ Technological Innovation,” *Juridica International*, vol. 33 (2024), 77-88.

⁸ Daniel P. Gross, *The Hidden Costs of Securing Innovation: The Manifold Impacts of Compulsory Invention Secrecy*, NBER Working Paper No. 25545, revised January 2022; Daniel P. Gross, “The Hidden Costs of Securing Innovation: The Manifold Impacts of Compulsory Invention Secrecy,” *Management Science*, vol. 69, no. 4 (2023), 2318-2338; Sabing H. Lee, “Protecting the Private Inventor Under the Peacetime Provisions of the Invention Secrecy Act,” *Berkeley Technology Law Journal*, vol. 12, no. 2 (1997), 345-411; UK Intellectual Property Office, *Manual of Patent Practice*, sections 22 and 23; Intellectual Property India, “History of Indian Patent System”; N. Rajagopala Ayyangar, *Report on the Revision of the Law in India Relating to Patents for Inventions* (1959); See also Duncan Matthews and Hanna Ostapenko, “The War in Ukraine Raises Questions About Patents for Secret Inventions,” *GRUR International*, vol. 72, no. 7 (2023), 665-669.

⁹ See, for example, Section IV below, entries on Brazil, Brunei Darussalam, China, France, Germany, Japan, Singapore, Spain, the United Kingdom and the United States of America. These entries variously illustrate secrecy review, waiting periods, written permission or license requirements, confidentiality examination, first-domestic-filing

[Footnote continued on next page]

36. The development of international patent cooperation did not eliminate this policy space. International and regional filing systems facilitated cross-border patent protection, but national laws continued to preserve security-related controls over certain filings, disclosures, and transmissions. The relevant international and regional frameworks are addressed separately in Section IV.¹⁰

37. Recent academic and policy literature suggests that the vocabulary surrounding these measures has broadened beyond an earlier emphasis on wartime secrecy alone. Contemporary discussion increasingly places patent secrecy, non-disclosure, and foreign filing controls within a wider set of concerns relating to critical technologies, economic security, cybersecurity, critical infrastructure, dual-use research, and the governance of sensitive technical knowledge. This does not mean that every foreign filing conditionality is an industrial-policy instrument, or that national laws pursue the same objective. It does suggest, however, that the policy context in which such mechanisms operate is no longer limited to the classic problem of military inventions or wartime disclosure.¹¹

38. A related strand of policy analysis concerns economic security, technology sovereignty, domestic innovation capacity and the policy space available to pursue industrial objectives. In the PCT context, the international patent framework itself recognizes that filing restrictions may be linked not only to national security but also to the protection of a State's general economic interests in relation to international applications filed by its own residents or nationals. More broadly, literature on technology sovereignty links State agency in relation to strategically important technologies and knowledge, in an increasingly interdependent technological environment, to national competitiveness, resilience and industrial capacity, while literature on intellectual property and industrial policy emphasizes that international IP rules may limit the policy space within which States pursue those objectives. In that sense, depending on the design of the relevant national regime, a domestic filing, routing or authorization requirement may function not only as a secrecy checkpoint, but also as an early point of visibility to the government of inventions considered relevant to strategic technological or economic interests.¹²

39. At the same time, these rationales must be balanced against the patent system's ordinary disclosure function. Patent publication, patent information and patent statistics support knowledge diffusion, technology mapping, follow-on invention, business intelligence, and evidence-based innovation policy. Empirical work on invention secrecy suggests that suppressing or delaying disclosure may reduce follow-on innovation, restrict commercialization, and create wider costs for the innovation system, even where secrecy is effective in keeping

requirements, non-disclosure procedures, and mandatory filing or transmission through a designated national office; See also Pub. L. No. 82-256, 66 Stat. 3, §§ 4, 10, 12 (approved Feb. 1, 1952) (foreign filing license provision; repeal of earlier 1917, 1940, 1941 and 1942 enactments; short title "Invention Secrecy Act of 1951"); 35 U.S.C. §§ 181–188.

¹⁰ Patent Cooperation Treaty, Article 27(8); Patent Law Treaty, Article 4; Explanatory Notes on the Patent Law Treaty, Note on Article 4; Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 73; European Patent Convention, Article 77(2); WIPO, "International applications and national security considerations."

¹¹ See WIPO, "International applications and national security considerations," noting that certain PCT Contracting States restrict the filing of international applications with other Offices for reasons of national security where the application is filed by nationals or residents of the relevant State, or where the invention was made in that State; WIPO, *PCT Applicant's Guide: International Phase*, para. IP 6.010; Lisette Pöld, "Preserving Secrecy within the Patent System to Safeguard Western Countries' Technological Innovation," *Juridica International*, vol. 33 (2024), 77–88; Juliana Pavan Dornelles, "Why Are They Hiding? Patent Secrecy and Patenting Strategies," *Innovation: Organization & Management*, vol. 22, no. 3 (2020), 316–333; Phoebe Li and Atilla Kasap, "Regulating Critical Technologies: National Security and Intellectual Property," *Journal of World Intellectual Property* (2026), 1–27.

¹² Patent Cooperation Treaty, Article 27(8); for technology sovereignty and strategic technological capacity, see Jakob Edler, Knut Blind, Henning Kroll and Torben Schubert, "Technology Sovereignty as an Emerging Frame for Innovation Policy: Defining Rationales, Ends and Means," *Research Policy*, vol. 52, no. 6 (2023), Article 104765; WIPO, *World Intellectual Property Report 2024: Making Innovation Policy Work for Development*, chapter 1, "Economic Development, Economic Complexity and Industrial Policy"; for intellectual property rules and industrial-policy space, see Carlos M. Correa, "Intellectual Property: How Much Room Is Left for Industrial Policy?," UNCTAD Discussion Paper No. 223 (2015).

sensitive information out of public view. The policy rationale for foreign filing conditionalities should therefore be understood as exceptional and context-specific: they are mechanisms for managing outward patent-related disclosure where protected interests are implicated, not a general alternative to the patent system's ordinary publication and dissemination functions.¹³

¹³ See WIPO, "Frequently Asked Questions: Patents," explaining that a patent is an exclusive right and that technical information about the invention must be disclosed in a patent application; WIPO, "Patent Analytics"; Deepak Hegde, Kyle F. Herkenhoff and Chenqi Zhu, "Patent Publication and Innovation," *Journal of Political Economy*, vol. 131, no. 7 (2023), 1845-1903; Gaétan de Rassenfosse, Gabriele Pellegrino and Emilio Raiteri, "Do Patents Enable Disclosure? Evidence from the Invention Secrecy Act," *International Journal of Industrial Organization*, vol. 92 (2024), 103044; Daniel P. Gross, "The Hidden Costs of Securing Innovation: The Manifold Impacts of Compulsory Invention Secrecy," *Management Science*, vol. 69, no. 4 (2023), 2318-2338.

C. COMPARATIVE OVERVIEW OF REGULATORY DESIGN CHOICES

40. Foreign filing conditionalities are described in national laws through a wide range of terms. At a country-agnostic level, however, the comparative landscape can first be understood by asking where the domestic checkpoint is placed in relation to the outward patent disclosure. The relevant checkpoint may be placed at the first domestic filing, before any outward filing step, within a prescribed international or regional filing route, after secrecy or security status has been imposed, or outside patent law altogether. These different placements do not merely reflect differences in terminology. They shape how the domestic authority obtains visibility over the invention, how the applicant sequences filings, and how the patent system manages the movement of technical information across borders.

41. **For that reason, the baseline models described in this subsection should be understood as regulatory architectures rather than as rigid country classifications.** A single legal system may combine more than one model. A domestic-first system may also include a waiting period, a security review, an express clearance mechanism, or a later secrecy direction. A prior permission system may operate through a license, written authority, confidentiality examination, or non-objection procedure. A routing requirement may be paired with domestic security review or with restrictions on onward transmission. Conversely, a system with no general ex ante foreign filing authorization requirement may still restrict later filing or communication once the invention has entered a secrecy or comparable status.

42. The models are also separate from the questions addressed in the following subsections. Subsection D considers the connecting factors and trigger criteria that determine whether a regime applies. Subsection E considers the acts covered by the restriction. Subsection F considers review procedure, clearance scope and timing. Subsection G considers secrecy measures and confidentiality obligations. Subsection H considers legal consequences and limited relief mechanisms. Subsection I considers overlapping requirements and cross-border conflicts, and subsection J considers practical impacts and potential mitigation practices. The present subsection therefore addresses the first-order design question: what kind of domestic checkpoint does the legal system use?

43. The first baseline architecture is the **domestic-first review model**. In this model, the invention must first be filed with the domestic patent office or another prescribed domestic authority before a foreign, regional, European, PCT, or other international filing route may be used. The domestic filing opens the review process. The domestic act may serve several functions at once: it gives the domestic authority initial visibility over the invention, creates an administrative file through which review may occur, and may provide the applicant with a first filing capable of supporting later priority claims. In architecture terms, the distinguishing feature is that the applicant's route outward begins with a domestic patent filing or equivalent domestic submission, rather than with a separate free-standing request to file abroad.

44. Domestic-first systems may be designed in several ways. In one variant, the domestic filing is the principal condition, and foreign filing may proceed once the domestic application has been made and no separate restriction is in force. In another variant, the domestic filing starts a fixed waiting period; the applicant may file abroad only after that period expires. A further variant uses a non-objection mechanism: foreign filing becomes possible if the competent authority does not issue a prohibition, secrecy direction, or other adverse communication within the prescribed period. In a stricter variant, domestic filing merely begins review, and outward filing remains unavailable until express clearance is granted. These variants differ in the legal effect given to time, silence, and administrative action, but they share the same basic architecture: the domestic application is the first formal step in the outward filing sequence.

45. The domestic-first model may have significant timing and sequencing implications. Because the domestic filing occurs before the foreign or international filing, the domestic review

period may consume part of the period available for later filings in other jurisdictions. The model may also require an applicant to make a domestic filing even where the applicant's commercial or portfolio strategy would otherwise have favored a first filing elsewhere. At the same time, the model can provide a structured and relatively visible path for review, because the domestic authority receives the patent materials in a familiar procedural form. The model therefore allocates the initial burden to filing sequence: the applicant must identify that the domestic step is required before using the outward route.¹⁴

46. A second baseline architecture is the **prior permission model**. In this model, the controlling legal event is not necessarily the filing of a domestic patent application before foreign filing, but an authorization, license, written authority, security clearance, confidentiality examination, approval, or non-objection obtained before the outward filing step. The applicant may be required to submit technical materials, a draft application, a description of the invention, intended filing destinations, or other information sufficient for the competent authority to assess whether the proposed foreign filing may proceed. The defining feature is that permission to file abroad is treated as a separate legal condition, whether or not the applicant also files domestically.

47. Prior permission systems also contain important subtypes. Some require express written authorization and give no permissive effect to inaction by the authority. Others allow outward filing after a defined period if no objection is communicated. Some are framed as security or confidentiality examinations of the invention; others are framed more directly as foreign filing licenses or written authority to file abroad. Some permissions may be broad enough to cover the contemplated foreign filing of the reviewed invention generally, while others may be limited to the materials, claims, countries, routes, recipients, purposes, or disclosure channels submitted for review. In this sense, the prior permission model often raises a second-order question that is addressed more fully in subsection F: what exactly has been cleared?

48. Compared with a domestic-first architecture, a prior permission architecture can be more targeted because it need not require the applicant to file a full domestic patent application in every case. It may permit review before a first filing abroad, or before use of a particular international or regional route, without necessarily requiring the domestic office to become the first filing office for the invention. The corresponding design implication is that the request process itself becomes central. The applicant must know when permission is needed, what materials must be submitted, who decides, whether silence has legal effect, and whether the permission covers later modifications or only the filing as reviewed. Thus, the checkpoint is not the domestic filing as such, but the authority's permission or non-objection before the outward act of foreign filing.¹⁵

¹⁴ See, for example, Section IV below, entries on Armenia, Belarus and the Republic of Moldova. The Armenia entry describes a first domestic filing requirement for inventions created in Armenia, followed by a three-month non-prohibition mechanism under which the applicant may proceed if the state authorized body does not notify the applicant that patenting abroad is prohibited. The Belarus entry describes a pathway under which natural or legal persons of Belarus must file a corresponding application in Belarus and inform the Patent Office of the intention to seek protection abroad; if no prohibition is notified within three months, the applicant may subsequently file abroad. The Moldova entry describes a first domestic filing requirement for inventions originating in the Republic of Moldova and a statutory timing rule under which an invention created in Moldova may be patented abroad after expiry of the applicable national-security review period, subject to any removal or restriction under the relevant provisions.

¹⁵ See, for example, Section IV below, entries on France and the United States of America. The France entry describes separate authorization pathways for first foreign filing where a first national filing is not made, including review by the intellectual property office of the Ministry of the Armed Forces before the proposed first foreign filing. The United States entry describes a foreign filing license requirement before a person files, causes to be filed, or authorizes the filing of a patent application, or certain related applications, in a foreign country or with a foreign or international intellectual property authority in respect of an invention made in the United States, unless the applicable statutory or regulatory exception has been satisfied.

49. A third baseline architecture is the **designated-office routing model**. In this model, the legal system does not merely ask whether the applicant may file abroad; it prescribes the channel through which certain foreign-bound, regional, European, PCT, or other international applications must pass. The domestic office, or another designated domestic authority, becomes the required receiving or forwarding point. The route itself is therefore part of the control. The applicant may still be using a regional or international filing system, but domestic law requires that the application first be filed through, or submitted to, the designated domestic office.

50. Routing models are especially important because they show that the filing route may be part of the legal requirement, not only a matter of administrative convenience. In some systems, direct filing with a foreign, regional, or international office may be restricted unless the domestic office is used first. In others, the prescribed domestic route may be necessary to preserve national effect or to permit security review before onward transmission. A routing requirement may also operate differently depending on whether the application is a first filing, whether priority from an earlier domestic filing is claimed, or whether the subject matter has been identified for secrecy or security review. Those trigger and consequence questions are addressed later; at the architectural level, the key point is that the system controls outward filing by controlling the path through which the application moves.

51. The designated-office routing model may be combined with both domestic-first and prior-permission mechanisms. A domestic filing may be required first, and a later any international filing, PCT or regional filing may also have to pass through the domestic office. Alternatively, a system may permit a PCT, European, regional, or other international application as the first outward step, but only if the application is filed at the domestic office acting in a prescribed capacity. Where security concerns arise, the domestic office may delay, withhold, or condition onward transmission. In this type of system, the relevant control may operate not only at the moment of filing, but also at the point of forwarding or transmission to the international or regional authority.

52. A fourth baseline architecture is the **secrecy-triggered restriction model**. This model should be distinguished from a general prior permission requirement. In a secrecy-triggered system, there may be no general ex ante obligation to obtain a foreign filing license merely because foreign protection is contemplated. Instead, restrictions arise after a domestic patent process, security review, classification process, defense review, prohibition direction, secrecy order, or analogous measure has been triggered. Once that status is imposed, later foreign filing, publication, transmission, prosecution, or patent-specific communication may be restricted. The checkpoint therefore arises from the legal status of the invention or application, rather than from a universal requirement to obtain permission before any foreign filing.

53. Secrecy-triggered systems may operate at different points in the patent process. In some systems, secrecy review occurs after a domestic patent application has been filed. In others, a patent application may be referred to a defense, security, ministerial, or classified-information authority for assessment. In still others, the secrecy status may arise through a separate public-law determination that then affects patent handling. The resulting restriction may concern ordinary publication, public access to the file, continued prosecution, transmission to an international or regional office, communication with foreign representatives, or later filing abroad. The architectural feature common to these variants is that the restriction is activated by secrecy or comparable status, not by an across-the-board foreign filing license rule.

54. The secrecy-triggered model is therefore useful for comparative purposes because it captures systems that might otherwise be misclassified as having no relevant patent-law restriction. A jurisdiction may impose no general foreign filing permission requirement for ordinary inventions, but still prevent outward filing or transmission once the application or

invention has been made secret, classified, prohibited, or otherwise placed under a security-based confidentiality regime. The functional consequence is that the applicant's ordinary filing freedom may remain intact unless and until the secrecy-linked status is imposed. Once imposed, however, the restriction may be more continuing and more information-focused than an ordinary front-end filing condition.¹⁶

55. A fifth baseline architecture is the **absence of patent-law foreign filing conditionality**. This category means that the patent law reviewed does not impose a domestic first-filing requirement, foreign filing permission, waiting period, designated-office routing requirement, or secrecy-clearance condition before filing abroad. It is a comparative conclusion about patent-law foreign filing conditions. It should not be read more broadly to mean that no legal rule of any kind could affect the same technical information. Export-control rules, classified-information rules, government-contract obligations, research-security requirements, employment duties, cybersecurity obligations, or private confidentiality arrangements may still be relevant in a particular case. They are outside the present category unless they condition or alter patent-related filing, patent-specific disclosure, patent-office transmission, or patent prosecution and grant.¹⁷

56. The "no patent-law conditionality" category should also be distinguished from ordinary patent formalities and ordinary application confidentiality. A rule requiring a local representative, a translation, a fee, a national-phase act, or information about corresponding foreign applications does not become a foreign filing conditionality merely because it applies to a foreign applicant or refers to a foreign filing. Likewise, ordinary non-public handling of unpublished patent applications is not the same as a secrecy-triggered restriction. The comparative question is whether patent law places a domestic condition on the outward filing, routing, transmission, or patent-specific disclosure of the invention before or in connection with foreign patent protection.

57. These five baseline architectures are not mutually exclusive. In practice, the architecture of a regime may be layered. A system may require domestic filing first, allow foreign filing after a waiting period, and then impose secrecy treatment if the invention is found to be sensitive. Another system may require prior permission for a first filing abroad and also prescribe a domestic route for PCT or regional applications. Another may impose no ordinary authorization requirement but restrict filing, publication, or communication once secrecy status has been imposed. Hybrid systems should therefore be analyzed by identifying the primary checkpoint and then identifying any secondary mechanisms that affect timing, route, secrecy, or later communication.

58. **The comparative significance of the models lies in how they allocate visibility, timing, and procedural responsibility.** A domestic-first model gives the domestic authority visibility through the first patent application. A prior permission model gives the authority visibility

¹⁶ See, for example, Section IV below, entries on Australia, Germany and New Zealand. The Australia entry states that no general foreign filing requirement was identified, but that where a secrecy-based Prohibition Order is in force, variation of that order is required before filing in another jurisdiction and publication or communication of the subject matter may be restricted. The Germany entry states that no general foreign filing conditionality applies under patent law, but that special provisions apply to patent applications containing a state secret. The New Zealand entry states that no generally applicable patent-law first-filing requirement or foreign-filing license requirement for ordinary applicants was identified, while identifying a defense-secrecy directions regime for sensitive inventions.

¹⁷ See, for example, Section IV below, entries on Argentina, Bhutan and Malta. The Argentina entry states that no patent-law foreign filing conditionality was identified in the reviewed Argentine patent legislation, while distinguishing ordinary patent filing, priority, confidentiality and publication provisions from domestic first-filing, foreign filing license, waiting-period, routing or patent-law secrecy-order requirements restricting foreign filing. The Bhutan entry states that Bhutan does not impose any foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization. The Malta entry states that no mandatory authorization applies before a patent application may be filed in another country or at a regional patent organization and that Maltese legislation does not contain provisions for patent applicants in relation to foreign filings.

through an authorization request. A routing model gives the authority visibility through the filing channel. A secrecy-triggered model gives the authority control after the invention or application has entered a protected status. A no-conditionality model leaves the outward patent filing act outside such patent-law control. None of these architectures, by itself, answers who is covered, what acts are restricted, whether silence is clearance, what happens to later-added subject matter, or what consequence follows from non-compliance. Those questions depend on the additional design features addressed in the following subsections.

59. The baseline regulatory architectures used for this comparative overview are summarized in Table 1 below.

Table 1 - Baseline Regulatory Models

Model	How to Recognize it
Domestic-First Review Model	The invention must first be filed domestically; foreign filing may proceed only after a waiting period, non-objection, or clearance. The domestic filing opens the review process.
Prior Permission Model	Filing abroad depends on a license, written authority, confidentiality/security examination, approval, or non-objection before the outward filing step.
Designated-Office Routing Model	Certain foreign-bound, regional, European, PCT, or international applications must be filed through, or first submitted to, a designated domestic office. The required channel is part of the control.
Secrecy Triggered Restriction Model	No general ex ante foreign-filing permission applies, but once a domestic patent/security process imposes secrecy, classification, prohibition, or analogous status, later foreign filing, transmission, publication, or patent-specific communication may be restricted.
No Patent Law Foreign Filing Conditionality	Patent law imposes no domestic first-filing, permission, waiting-period, routing, or secrecy-clearance requirement before filing abroad.

D. APPLICABILITY: CONNECTING FACTORS AND TRIGGER CRITERIA

60. Once the baseline regulatory architecture has been identified, the next question is whether the regime applies at all. Foreign filing conditionalities do not apply merely because an invention exists, because patent protection may be sought abroad, or because technical information may eventually move across borders. Their application depends on the connecting factors and trigger criteria specified in the relevant law. These criteria determine whether the invention, applicant, inventor, filer, owner, or proposed act falls within the domestic legal system's concern before any further question arises about filing route, authorization, secrecy, timing, or consequence.

61. Applicability is therefore a threshold inquiry, but it is not always a single-step inquiry. Some regimes use a personal or entity-based connection as the jurisdictional gateway. Others use the territorial origin of the invention. Others apply only where the subject matter is sensitive, defense-related, classified, or otherwise capable of affecting a protected public interest. In many systems, these criteria operate together. A personal or territorial link may bring the matter within initial scope, while a subject-matter or security assessment determines whether the ordinary filing route remains available or whether clearance, prohibition, secrecy, confidential handling, or another restriction follows.

62. **A useful way to understand the design choices is to distinguish between gateways and filters.** Personal and territorial criteria often function as gateways: they identify the persons, entities, inventions, or filing situations over which the legal system asserts an initial regulatory interest. Subject-matter and security criteria often function as filters: they determine whether, within that jurisdictional frame, the invention is sufficiently sensitive to justify review, restriction, or special handling. This distinction is not absolute, because some laws define the trigger directly by reference to sensitive subject matter. Nevertheless, it helps explain why subject-matter sensitivity is often not a free-standing claim over all sensitive inventions wherever made, but part of a broader applicability structure.

63. Personal connecting factors attach legal significance to a person or entity associated with the invention or the proposed filing. Depending on the regime, the relevant connection may be nationality, citizenship, residence, domicile, headquarters, registered office, principal place of business, establishment, applicant status, inventor status, entitlement to file, ownership, employment relationship, or responsibility for causing or arranging the filing. The legally relevant person is not always the named applicant in the intended foreign, regional, PCT, or other international application. A regime may instead focus on the inventor, the resident filer, the person entitled to apply, the entity controlling the filing decision, or the person who causes another person to file abroad.

64. Personal and entity-based triggers can therefore require attention to the legal and practical structure behind the filing. In cross-border projects, the formal applicant may be a parent company, affiliate, assignee, sponsor, research institution, government-linked body, or special-purpose filing entity, while inventive activity may have been carried out by individuals located elsewhere. A filing may also be prepared or arranged by a representative, affiliate, employer, or co-owner. Where the applicable law refers to the person who files, causes filing, authorizes filing, owns the right to file, or is entitled to protection, the applicability analysis may extend beyond the name that appears on the application form.¹⁸

¹⁸ Section IV below, entries on India, Israel, Italy, Hungary, Malaysia, Singapore and the United Kingdom. These entries variously illustrate personal or entity-based connecting factors such as residence, nationality or citizenship, domicile, seat, place of business, applicant or inventor status, entitlement to file, or responsibility for filing, causing or arranging filing.

65. Territorial connecting factors focus on the origin of the inventive activity. The relevant formulation may refer to an invention made, created, developed, accomplished, generated, completed, or materially contributed to within the jurisdiction. Where such a criterion is used, the filing office selected by the applicant does not by itself determine applicability. Nor does the applicant's place of incorporation necessarily determine where the invention was made. The territorial inquiry instead asks whether the facts that give rise to the invention have the required connection to the jurisdiction.

66. Territorial-origin criteria may be straightforward where all inventive work occurs in one place, but they become more difficult in collaborative research. Conception, experimental validation, prototype construction, data generation, software development, claim refinement, and technical problem-solving may occur in different jurisdictions. Not every meeting, funding decision, management activity, test result, or drafting step will necessarily be the legally relevant inventive act. At the same time, the location of claim-relevant technical contribution may be central where the regime turns on where the invention was made or developed. The threshold question is therefore factual as well as legal.¹⁹

67. Subject-matter and security-related criteria introduce a different kind of trigger. Some regimes refer to specified sensitive technical fields (e.g. atomic energy, aerospace, armaments). Others use broader standards such as national security, national defense, public safety, state secrets, classified information, military value, nuclear sensitivity, critical infrastructure, or another protected public interest. Some systems combine the two approaches by identifying technical categories that may warrant screening while leaving the final assessment to a competent authority. These formulations can be narrow and field-specific, or broad and evaluative, depending on the legal design.

68. **Where subject-matter or security sensitivity is in play, it is usually best understood together with a personal, entity-based, territorial, domestic-filing, or domestic-process connection.** A jurisdiction ordinarily does not address a sensitive invention in the abstract merely because the technology is sensitive. Rather, the sensitivity assessment is commonly linked to an invention made in the jurisdiction, a person or entity connected with the jurisdiction, a filing made through the domestic office, a domestic application under review, or an invention that has entered a secrecy, classification, or defense-related process. The subject-matter criterion may then determine whether the matter remains in ordinary patent channels or moves into a restricted review or confidentiality pathway.

69. Applicability may therefore be conceived in different stages. At the first stage, a personal, entity-based, territorial, or filing-related connection may bring the matter within the potential reach of the regime. At the second stage, the competent authority or statutory framework may assess whether the invention falls within a sensitive field or may affect a protected interest. At the third stage, the result of that assessment may determine whether the applicant may proceed without special restriction, must await permission, must use a designated route, must refrain from foreign filing, or must handle the matter under secrecy or confidentiality constraints. In such systems, the fact that a regime is potentially applicable does not always mean that a restriction will ultimately be imposed.²⁰

¹⁹ See, e.g., Section IV below, entries on Brazil, China, Japan, the Republic of Moldova, Spain and the United States of America. These entries variously illustrate territorial-origin formulations, including inventions made, created, accomplished, originating in, or materially connected with inventive activity within the jurisdiction.

²⁰ See, e.g., Section IV below, entries on Brazil, France, Israel, Japan, the Republic of Korea, Spain, the United Kingdom and the United States of America. These entries variously illustrate subject-matter or security-related criteria based on national defense, national security, public safety, classified information, state secrets, military or nuclear sensitivity, specified technical fields, or comparable protected interests, often in combination with a personal, territorial, filing, or domestic-review connection.

70. A related pattern arises where no general ex ante foreign filing permission requirement applies, but restrictions may arise after the invention enters a domestic patent, security, or secrecy process. In such systems, an ordinary invention may not require prior permission merely because foreign patent protection is contemplated. However, once a domestic application is filed, once the invention is referred for security review, or once the invention or application is identified as secret, classified, defense-related, state-secret, or otherwise sensitive, later filing, publication, communication, prosecution, or transmission may become restricted. This pattern is best treated as a status- or process-linked application of the regime, rather than as a separate universal foreign filing license requirement.²¹

71. Some legal systems also use presumptions, proxies, or administrative indicators to manage the threshold inquiry. Residence, domicile, headquarters, registered office, inventor address, applicant address, filing location, employment relationship, or project affiliation may be treated as relevant evidence of the connection between the invention and the jurisdiction. In some cases, such facts may operate as rebuttable presumptions. In others, they may simply guide intake screening or determine whether the matter should be referred for review. These devices can make the regime easier to administer, but they also require care because the proxy fact may not always align perfectly with the place of invention, the person controlling the filing, or the location of the sensitive technical contribution.

72. It is equally important to identify what does not by itself create applicability. Ordinary patent formalities, local-representative requirements, translation requirements, fee requirements, national-phase requirements, priority-claim rules, and requests for information about corresponding foreign applications do not become foreign filing conditionalities merely because they involve foreign applicants or foreign applications. They are relevant to this study only where they condition or alter outward patent filing, patent-specific disclosure, patent-office transmission, or prosecution outside the jurisdiction.

73. Cross-border collaboration may cause several connecting factors to point in different directions. An invention may involve inventors in one jurisdiction, an applicant in another, a parent or sponsor in a third, research activity in several places, and subject matter that may be sensitive under more than one legal system. Subsection D is concerned with identifying those connecting facts and threshold triggers. It does not resolve the later questions of what acts are restricted, how clearance is obtained, what secrecy measures apply, what consequences follow from non-compliance, or how overlapping requirements are reconciled. Those questions are addressed in the following subsections.

74. The principal applicability patterns may be summarized in Table 2 below.

²¹ See, e.g., Section IV below, entries on Australia, Canada, Germany, New Zealand and the Republic of Korea. These entries variously illustrate systems in which no general patent-law foreign filing authorization requirement was identified for ordinary inventions, but patent-related filing, publication, communication, prosecution or transmission may be restricted once a secrecy order, prohibition direction, national-security or public-servant regime, state-secret status, defense-related order, or analogous security process is engaged.

Table 2 - Applicability Triggers and Connecting Factors

Trigger Category	Typical Formulation
Person or Entity Based Connection	Nationality, residence, domicile, headquarters, establishment, place of business, applicant status, inventor status, entitlement to file, or responsibility for causing or arranging the filing.
Territorial Origin of the Invention	The invention was made, created, accomplished, developed, or materially contributed to within the jurisdiction.
Subject-Matter or Security Sensitivity	The invention falls within specified sensitive fields or is assessed as potentially affecting national security, national defense, public safety, or another protected interest.

E. SCOPE OF RESTRICTED ACTS: FILING ROUTES AND PATENT-SPECIFIC COMMUNICATIONS

75. After the applicable connecting factors and trigger criteria are identified, the analysis turns to the acts covered by the restriction. Applicability does not by itself answer the scope question. A regime may apply to a particular invention, applicant, inventor, filer, owner, or domestic review process, but the legal effect of that application depends on what the regime restricts. In some systems, the relevant restriction is directed primarily to the formal act of filing a patent application outside the jurisdiction. In others, the rule may also affect the filing route used, filing made or arranged through another person, official transmission of the application, or patent-specific communication of the technical substance of the invention.

76. The expression “foreign filing” is therefore a useful shorthand, but it should not be treated as resolving the full ‘scope’ related inquiry. The covered conduct may differ along several dimensions: the route used, the person or entity carrying out or causing the act, the material being transmitted, the recipient of that material, and the stage of the patent process at which the act occurs. Not every regime reaches all of these dimensions. Some patent-law rules are narrowly confined to filing abroad. Others become broader where they are linked to secrecy, confidentiality, security review, non-publication, or restrictions on communication. **The scope question is therefore not whether the act has some foreign element in a general sense, but whether the applicable patent law regime controls that particular filing, transmission, or patent-specific disclosure.**

77. Direct filing in another national patent office remains the clearest case. National laws may describe the controlled act as filing in a foreign country, filing outside the jurisdiction, applying abroad, or seeking patent protection elsewhere. Although the formulations differ, they generally refer to the step by which the invention is introduced into an external patent procedure before the required domestic filing, permission, waiting-period expiry, designated-office route, or security review has been completed. This is the central case around which many foreign filing conditionalities are structured.

78. The restricted act may also include filing made, caused, authorized, or arranged through another person. This point is important in cross-border patent practice because the person who performs the formal filing step may not be the person whose connection triggered the regime. A parent company, affiliate, assignee, employer, co-applicant, patent representative, foreign agent, or other service provider may lodge the application or transmit filing instructions. Where the applicable rule reaches caused or arranged filing, the scope of the restriction is not avoided merely because the formal act is carried out by a different person or entity.²²

79. Regional, PCT, and other international routes require separate attention. A filing through such a route may be treated as an outward filing, may be permitted only through a designated domestic office, or may be affected by secrecy or security review before ordinary forwarding or transmission can occur. The label attached to the filing route does not by itself determine whether the act is within scope. The relevant question is whether the domestic regime treats use of that route as a filing outside the jurisdiction, as a filing that must pass through a domestic receiving or forwarding office, or as a filing whose later transmission may be restricted.

²² See, e.g., Section IV below, entries on China, Malaysia, Brunei Darussalam, Singapore and the United States of America. The China entry describes the requirement that any unit or individual seeking to file abroad for an invention or utility model accomplished in China first submit the matter for confidentiality examination. The Malaysia, Brunei Darussalam and Singapore entries describe resident-based provisions covering filing or causing filing outside the jurisdiction without written authority, unless the relevant domestic-first pathway has been satisfied. The United States entry describes a foreign filing license requirement covering filing, causing to be filed, or authorizing the filing of an application in a foreign country or with a foreign or international intellectual property authority for an invention made in the United States.

80. In some systems, the relevant act is not limited to the applicant's initial filing step. It may also include the movement of the application through official channels. A domestic office may receive a PCT, regional, or other foreign-bound application, but the application may not be forwarded while review is pending or while secrecy-related restrictions remain in force. At the scope level, this shows that the controlled act may include patent-office transmission to an international, regional, or foreign authority. The procedural timing of such transmission is addressed in subsection F, and the legal consequences of non-forwarding or route failure are addressed in subsection H.

81. The same point may arise at later procedural stages. A PCT application, regional application, or other international filing route may involve further acts after the initial filing, including transmittal of record copies or search copies, entry into national or regional phases, submission of translations, amendments, drawings, sequence listings, or other technical documents, and communications with receiving, designated, elected, regional, or national offices. These later steps are not automatically restricted merely because they occur in a foreign or international patent process. They become relevant where the applicable regime reaches further transmission, communication, prosecution, or later-added technical material, or where the original clearance, non-objection, or secrecy-related permission was limited in scope.²³

82. Pre-filing patent-specific communications present a more variable category. In some regimes, patent law is concerned only with the formal act of filing abroad. In others, particularly where secrecy or confidentiality measures are engaged, the restriction may also affect cross-border communication of materials that disclose the technical substance of the invention before filing abroad. Such materials may include invention disclosures, draft specifications, claims, drawings, sequence listings, source-code excerpts, experimental data, technical descriptions, or other documents prepared for patent drafting, review, or filing. The comparative point is not that all pre-filing communications are restricted, but that some regimes treat communication of patent-drafting material as legally significant because it may disclose the same technical information that the filing restriction is designed to control.

83. Communications with foreign patent representatives, translators, affiliates, technical reviewers, or service providers should therefore be analyzed by reference to their content and function. A purely administrative communication, such as arranging representation, paying a fee, providing an address for service, sending a power of attorney, or confirming docketing information, will not ordinarily have the same significance as transmitting a draft specification or claim set. However, the same practical step may contain both administrative and technical elements. Engaging a foreign translator, national-phase agent, regional patent representative, or foreign filing service may involve not only instructions and procedural forms, but also the transmission of claims, drawings, specifications, amendments, technical explanations, or other substantive patent materials. Where the applicable regime restricts communication of the technical substance of the invention, those technical elements may be relevant even if they arise in connection with an otherwise ordinary patent formality.

84. This distinction is especially important in contemporary drafting and filing environments. Patent preparation may involve shared digital workspaces, cloud storage, e-mail exchanges, multinational drafting teams, foreign affiliates, outside counsel, patent translation vendors, and electronic filing or preparation tools before any formal foreign application is lodged. These

²³ See, e.g., Section IV below, entries on Belgium, Germany, Singapore and the United States of America. The Belgium entry describes route-specific handling for European patent applications and PCT international applications where the applicant has a Belgian connection and the application may be relevant to defense or State security. The Germany entry describes European and PCT applications containing state secrets that are not forwarded to the European Patent Office or WIPO and are treated as national applications. The Singapore entry describes directions under which an international application may be held in abeyance and not sent to the International Bureau or an international searching authority. The United States entry describes treatment of international applications under secrecy order, including non-transmission to international authorities while the secrecy order remains in effect.

practices do not by themselves determine the legal scope of a restriction. They do, however, illustrate that the technical substance of an invention may cross borders before the formal filing event.²⁴

85. Post-filing communications may also fall within the scope of some regimes. After an initial domestic filing, foreign filing, PCT filing, regional filing, or authorization step, the applicant may later send amendments, translations, prosecution instructions, claim revisions, replacement drawings, sequence listings, technical explanations, experimental data, or added subject matter to a foreign representative, patent office, regional authority, or international authority. In many cases, such communications are ordinary features of patent prosecution. They become relevant to foreign filing conditionalities where the applicable regime restricts further communication, where secrecy or confidentiality measures remain in force, or where the original permission, non-objection, or clearance was limited to particular materials, countries, routes, recipients, purposes, or disclosure channels.

86. The fact that an initial filing or clearance step has occurred does not always mean that every later patent-specific communication is unrestricted. A later amendment may introduce new technical material. A translation may communicate the full technical disclosure to a new recipient. A prosecution instruction may explain the invention in a way that goes beyond the materials previously reviewed. A national-phase filing package may include both administrative forms and substantive technical documents. Whether these later acts are covered depends on the applicable regime and on the scope of any permission, non-objection, secrecy direction, or confidentiality measure. The detailed treatment of clearance scope and timing is addressed in subsection F.²⁵

87. Conversely, some regimes may be narrower. A domestic first filing, authorization, expiry of a waiting period, or absence of objection may satisfy the relevant patent-law checkpoint for ordinary foreign filing, with no continuing patent-law restriction on later prosecution communications unless new subject matter, a new filing route, a secrecy measure, or a separate communication restriction is involved. This possibility is important because a scope analysis should not assume continuing control where the applicable regime is designed only as a front-end filing condition. The inquiry remains contextual: the question is what the particular rule controls after the relevant domestic checkpoint has been satisfied.

88. Publication, public access, prosecution, and official forwarding are related but distinct forms of patent-specific disclosure. Some regimes restrict the applicant's foreign filing act. Others restrict publication of the application, public inspection of the file, communication of the invention to specified persons, prosecution through ordinary channels, or forwarding of an international or regional application to the relevant authority. These measures may arise from

²⁴ See, e.g., Section IV below, entries on the Republic of Korea, Australia, the United Kingdom and the United States of America. The Republic of Korea entry states that, in the national-defense circumstances addressed there, the foreign filing authorization requirement prevents transfer of technical data, experimental results, or invention disclosures conveying the substance of the invention to foreign entities before authorization is obtained. The Australia entry describes Prohibition Orders restricting publication or communication of the subject matter of an invention and variations for specified disclosures. The United Kingdom entry describes directions restricting publication or communication of information to specified persons. The United States entry describes foreign filing license and secrecy-order materials addressing export or transmission of technical data, including in connection with online PCT preparation tools.

²⁵ See, e.g., Section IV below, entries on the United States of America, France and Australia. The United States entry describes license scope and secrecy-order practice in terms of the subject matter or technical material reviewed, including circumstances in which modifications, supplements, countries, purposes or routes may require further attention. The France entry describes foreign-extension and disclosure pathways under defense-security handling, including authorized recipients, countries, official or secure channels and conditions attached to communication. The Australia entry describes variation of a Prohibition Order for specified disclosures, such as legal advice, commercialization advice, funding, or filing a Convention application in another country, with the proposed recipient and reason for disclosure identified.

the same review process, but they are not identical. Filing, publication, communication, prosecution, and transmission each disclose or move technical information in a different way. For that reason, a scope analysis should identify which of those acts the applicable regime actually controls.

89. The scope of restricted acts should also be distinguished from neighboring legal frameworks that may regulate the same technical information for other reasons. Export-control rules, classified-information regimes, research-security measures, cybersecurity obligations, government-contract restrictions, employment duties, non-disclosure agreements, and other private confidentiality arrangements may all affect whether technical material can be shared across borders. Subsection E is concerned with a narrower question: whether the patent-law regime itself conditions or restricts outward patent filing, patent-office transmission, patent-specific disclosure, or patent prosecution. Adjacent regimes may be practically important, but they should not be folded into the patent-law scope analysis unless they alter patent-related filing, disclosure, transmission, or prosecution acts.

90. At the same time, the patent law scope should not be stated too narrowly. A foreign filing conditionality may be directed at the filing act, but the filing act is often accompanied by related patent communications that disclose the same invention. A rule that appears narrow in ordinary cases may become broader where secrecy status is imposed, where a permission is tied to reviewed materials, where communication of the invention is expressly restricted, or where the route depends on official forwarding or transmission. The appropriate formulation is therefore contextual: ordinary foreign patent formalities are not restricted merely because they occur abroad, but a formal step may fall within scope where it implements an outward filing, causes another person to file, transmits the application through official channels, or communicates patent-specific technical substance covered by the regime.²⁶

91. **A careful scope analysis therefore proceeds act by act rather than by label alone.** The relevant questions include whether the conduct is a filing, a caused or arranged filing, a use of a restricted route, an official transmission, a pre-filing technical communication, a post-filing prosecution communication, or a disclosure made while secrecy or confidentiality measures remain in force. The same practical event may include more than one of those elements. For example, a national-phase instruction may be partly administrative, partly a filing act, and partly a technical communication if it includes a translated specification, amended claims, or explanatory technical material. The categories are analytical tools; they do not replace the need to identify the particular act controlled by the applicable regime.

92. For comparative purposes, the scope of restricted patent-related acts can therefore be grouped into three principal categories: outward patent filing, pre-filing communications, and post-filing communications. These categories are not mutually exclusive, and the applicable regime may cover only one of them or may cover several in combination. Table 3 below summarizes those categories.

²⁶ See, e.g., Section IV below, entries on China, Germany, the Republic of Korea and the United States of America. The China entry illustrates a regime in which direct foreign filing requires prior confidentiality examination and, for direct filing abroad, submission of a description of the technical solution. The Germany entry distinguishes the patent-law filing restriction for applications containing state secrets from broader state-secret and technology-transfer rules, illustrating why the patent law scope should not be overstated. The Republic of Korea entry illustrates a national-defense context in which the transfer of technical data, experimental results or invention disclosures may be restricted before authorization. The United States entry illustrates both a foreign filing license requirement and separate rules addressing technical data, secrecy orders, online PCT preparation, and the scope of licenses or permissions.

Table 3 – Scope of Restricted Patent-Related Acts

Category of Act	Scope of Potential Restriction
Outward Patent Filing	Filing a patent application outside the jurisdiction, whether through a national, regional, PCT, or other international route, before the required domestic filing, permission, waiting period, designated-office route, or security review has been completed. This may include filing made, caused, authorized, or arranged through another person or entity.
Pre-filing Communications	Cross-border disclosure or transmission of patent-drafting materials before the relevant filing or clearance step, including invention disclosures, draft specifications, claims, drawings, sequence listings, source-code excerpts, experimental data, or other materials conveying the technical substance of the invention.
Post-filing Communications	Later patent-specific communications or transmissions after an initial filing, including amendments, translations, prosecution instructions, technical explanations, added subject matter, and official forwarding or transmission to international, regional, or foreign authorities, especially where clearance is limited or secrecy/confidentiality measures remain in force.

F. PROCEDURAL PATHWAYS AND TIMING IMPLICATIONS

93. Once the applicable trigger criteria and scope of the restricted acts have been identified, the next question is how the applicant moves from a restricted or potentially restricted position to a permitted filing, transmission, publication, or prosecution path. Procedure is not merely an administrative detail. It determines how domestic review begins, who conducts or controls the review, what materials are assessed, whether time or silence has legal effect, what outcome is available, and how the review period interacts with ordinary foreign, regional, PCT, and national filing timetables.

94. **The central procedural distinction is between the entry point and the endpoint.** The procedural entry point is the act that starts domestic review. The procedural endpoint is the point at which outward filing, onward transmission, publication, external prosecution, or another patent-specific act becomes legally available, remains blocked, or is diverted into a restricted route. In some systems, those two points are close together. In others, they may be separated by a waiting period, referral to another authority, express authorization, non-objection, secrecy review, or route-specific forwarding decision. The act that opens domestic review is therefore not necessarily the act that permits the applicant to proceed outward.

95. Review may be initiated in several ways. In a domestic-first system, review begins when the applicant files a domestic patent application or equivalent domestic submission for the same invention. In a prior-permission system, review may begin with a separate request for a foreign filing license, written authority, confidentiality examination, security clearance, or non-objection. In a designated-office routing system, review may begin when a foreign-bound, regional, PCT, or other international application is filed through the domestic office acting in a prescribed capacity. In a secrecy-triggered system, the relevant review may begin when a domestic application is referred into a security or secrecy process.

96. Review initiation should not be confused with permission. A domestic filing may start a review clock without itself authorizing foreign filing. A request for written authority may be pending without allowing the applicant to file abroad. A PCT, regional, or other international application may be received by a domestic office without being forwarded through ordinary channels. A secrecy review may begin before the applicant knows whether the application will remain in ordinary patent processing or enter confidential handling. For that reason, the procedural entry point should be identified separately from the event that permits the next outward or external step.

97. The competent authority is another important procedural variable. In some systems, the patent office receives the application or request and also determines whether the applicant may proceed. In others, the patent office is principally an intake, screening, or forwarding body, while the substantive decision is taken by a defense authority, security authority, minister, classified-information authority, public-safety body, or other governmental actor. Some systems use a multi-agency structure, in which the patent office receives the materials and administers the file, but the operative clearance, secrecy, or prohibition decision depends on advice or approval from another authority.

98. This allocation of authority affects both timing and certainty. A patent-office-centered process may be integrated with ordinary patent administration, while a referral model may depend on procedures outside the ordinary patent timetable. A ministerial or security-body decision may require different materials, different channels, or a different standard of review from the ordinary filing examination conducted by the patent office. In multi-agency systems, the

applicant may have complied with the patent-office filing step but still be waiting for the decision that determines whether foreign filing, transmission, publication, or communication may occur.²⁷

99. Temporal models vary significantly. Some regimes use a fixed waiting period after domestic filing. Others require express written authorization before any outward filing step may be taken. Others permit filing after the expiry of a statutory period if no prohibition, secrecy direction, or objection has been communicated. Some systems combine express clearance and time-based mechanisms, allowing filing either when authorization is granted or when a prescribed period expires without adverse action. Other systems give no permissive effect to inaction by the authority. The timing model therefore depends on the legal consequence assigned to time, silence, and administrative response.

100. Silence should be treated with particular care. In some regimes, absence of objection within a prescribed period operates as a non-objection, deemed clearance, tacit authorization, or release into ordinary processing. In others, the competent authority's failure to respond does not permit foreign filing. In still others, silence may have effect only within a specific statutory pathway, such as a domestic-first waiting period, but not in relation to a separate request for written authority. **Silence is therefore not necessarily clearance.** It matters only where the applicable regime gives inaction, expiry of time, or absence of objection a defined legal effect.²⁸

101. The materials submitted for review are also central to procedure. A domestic-first model may require the full domestic patent application. A permission model may require a technical description, draft specification, claims, drawings, sequence listing, abstract, request form, or description of the technical solution. A routing model may require the application as intended to be filed through a regional, PCT, or other international route. Some procedures also require information about destination countries, proposed filing routes, intended recipients, organizations involved, disclosure purposes, or communication channels. These requirements are not merely formal; they define what the authority is being asked to review.

102. Clearance scope follows from that point. A permission, written authority, non-objection, confidentiality examination, or secrecy-order variation generally tracks what was submitted and assessed. If the reviewed materials describe one technical solution, one claim set, one filing route, one destination country, or one disclosure purpose, the applicant may need to consider whether later changes remain within the original clearance. Later-added subject matter, broader claims, new embodiments, different technical data, new destination countries, new recipients, changed purposes, or different filing channels may raise a separate review question. **The issue is not only whether clearance was obtained, but what the clearance covered.**

103. This clearance-scope issue is especially important where patent drafting continues after the initial domestic step. Claims may be broadened, narrowed, or reorganized. Additional data may be added. Drawings may be replaced. Sequence listings, examples, or technical explanations may be revised. A PCT, regional, or national-phase filing may include material not present in the initial domestic filing or authorization request. In some regimes, these later changes may be irrelevant once the front-end checkpoint has been satisfied. In others, they

²⁷ See, e.g., Section IV below, entries on China, France, Germany, India, Italy, Singapore and the United States of America. These entries variously illustrate domestic filing or confidentiality examination, separate written-permission or foreign-filing-license requests, designated-office pathways, and review by a patent office or another competent authority.

²⁸ See, e.g., Section IV below, entries on Brazil, Brunei Darussalam, France, India, Italy and Singapore. These entries variously illustrate fixed waiting periods, time-structured release after domestic filing, express written-authority models, ordinary processing after expiry of a statutory review period, and tacit or deemed authorization where the applicable regime gives legal effect to inaction or absence of objection.

may matter because the review was tied to the technical content, route, recipient, or purpose originally submitted.²⁹

104. Procedural outcomes also differ. The outcome may be express authorization, written authority, expiry of a waiting period, absence of objection, deemed clearance, refusal, prohibition, secrecy direction, classification, confidential handling, non-forwarding, conversion, abeyance, or release into ordinary processing. These outcomes should be distinguished from sanctions or remedies. Subsection F is concerned with the procedural path created by the outcome: whether the matter may proceed outward, remains under review, enters confidential handling, is blocked from ordinary transmission, or is diverted into a domestic or special route.

105. Route treatment is a distinct part of the procedural endpoint. A national foreign filing may be permitted once the relevant domestic condition is satisfied, but a PCT, regional, or other international application may still depend on filing through a prescribed office or on onward transmission by that office. Conversely, an application may be accepted by a domestic office but not forwarded to the international, regional, or foreign authority while review is pending or while secrecy measures remain in force. The endpoint may therefore concern not only whether the applicant may file, but whether the application may leave the domestic channel, be transmitted to another authority, be published, or proceed through ordinary external prosecution.

106. In some systems, a route-specific outcome may preserve a domestic path even where the external route is blocked. A foreign-bound or international application may be held, treated as a national application, converted into a domestic application, processed confidentially, or placed in abeyance. In other systems, use of the wrong route may prevent the filing from taking effect in the jurisdiction concerned or may cause the external route to fail. These matters are developed in subsection H as legal consequences. For purposes of subsection F, the important point is procedural: the selected route may determine what review is possible and what happens while review is pending.³⁰

107. Priority-period interaction requires separate but moderate treatment. Domestic review periods generally run alongside ordinary Paris Convention, PCT, regional, and national filing timetables. They do not, merely by existing, suspend or replace those timetables. Where the required domestic step is also the first filing for priority purposes, a waiting period or review window may consume part of the period available for later foreign, regional, PCT, or national filings. Where the system instead depends on prior permission before a first filing abroad, the timing issue is whether the authorization, non-objection, or expiry of the relevant period occurs before the intended outward route must be used.

108. The interaction with priority can therefore affect filing strategy without changing the underlying priority rules. A domestic-first filing may help preserve a priority date, but it may also start the priority period before the applicant is ready to file elsewhere. A separate permission request may allow the applicant to avoid a domestic first filing in some systems, but delay in receiving permission may create pressure as external filing, disclosure, or commercial deadlines approach. A designated-office route may preserve the ability to file through an international or regional system, but only if transmission and national-security review can be reconciled with the

²⁹ See, e.g., Section IV below, entries on Australia, China, France, Germany, Italy, Singapore and the United States of America. These entries variously illustrate procedures in which the materials submitted for review, the proposed filing route, destination countries, recipients, purposes, organizations, security conditions, or other particulars may define the scope of the review or permission.

³⁰ See, e.g., Section IV below, entries on Australia, Brunei Darussalam, Germany and Singapore. These entries variously illustrate route-specific handling of PCT, European, regional or other foreign-bound applications while review, secrecy directions or analogous measures remain in force, including holding in abeyance, non-forwarding, treatment as a national application, or other restricted processing. See also Section III below regarding PCT Rule 22.1(a), PCT receiving Office practice, and European Patent Convention provisions on forwarding, deemed withdrawal and conversion.

applicable route timetable. Section III addresses the treaty framework for priority, PCT procedure, and restoration in greater detail.³¹

109. Timing should therefore be understood as part of the legal architecture, not merely as delay. A short waiting period, a deemed-clearance rule, a requirement for express authorization, or a no-effect-from-silence model can each produce different consequences for applicants and offices. The same number of days may have different significance depending on whether expiry of the period authorizes filing, merely ends an initial screening period, allows ordinary processing to resume, or has no legal effect at all. Procedural design determines whether time functions as permission, as an opportunity for review, or only as an administrative interval.

110. The procedure may also include later review, variation, or release. A secrecy direction, confidentiality measure, prohibition, or restricted handling status may be reviewed, narrowed, revoked, renewed, or varied. A permission may be granted for one route, country, recipient, or purpose, but not for another. A blocked application may later return to ordinary processing if the relevant authority determines that the restriction is no longer required. These later procedural movements should be distinguished from the retroactive cure of an unauthorized filing. They may permit future acts or restore ordinary handling, but they do not necessarily validate a step that was taken before the required condition was satisfied.

111. Taken together, these procedural variables explain why two regimes with similar baseline architecture may operate differently in practice. Two domestic-first systems may differ depending on the waiting period, effect of silence, review authority, and treatment of later-added material. Two prior-permission systems may differ depending on whether permission is express, tacit, route-specific, country-specific, or tied to particular recipients. Two routing systems may differ depending on whether the domestic office merely receives the application, conducts screening, controls transmission, or may divert the matter into a confidential domestic path. Procedure is therefore the part of the regime that converts the baseline architecture into an operational filing pathway.

112. Table 4 below summarizes the principal procedural dimensions: review initiation, competent authority, temporal model and effect of silence, review materials and clearance scope, procedural outcome and route treatment, and priority-period interaction.

³¹ See Section III below, discussion of Paris Convention Articles 4A to 4C; PCT Articles 8, 11 and 27(8), Rules 22.1(a), 26bis.2, 26bis.3, 49ter.1 and 49ter.2; and Patent Law Treaty Article 13. These provisions provide the priority and limited restoration framework for later filings, while preserving national security and foreign-filing controls; they do not themselves suspend ordinary priority periods merely because domestic review or authorization is pending.

Table 4 - Review Procedure Dimensions

Procedural Dimension	Illustrative Forms	Significance
Review Initiation	Domestic-first filing; separate authorization request; confidentiality or security examination; written authority request; filing through a designated national office.	Identifies the step that starts domestic review. That step does not necessarily permit outward filing, transmission, or prosecution through the intended route.
Competent Authority	Patent office decision; referral to a defense or security authority; ministerial approval; multi-agency review.	The operative clearance point may sit inside or outside ordinary patent-office administration.
Temporal model and Effect of Silence	Fixed waiting period; express authorization; non-objection; deemed or tacit clearance; no permissive effect from silence.	Time, inaction, or absence of objection matters only where the applicable regime gives it legal effect. Silence is not necessarily clearance.
Review Materials and Clearance Scope	Domestic application; technical description; draft foreign application; proposed filing route; destination countries; recipients; purposes; organizations; disclosure channels.	Clearance generally tracks what was reviewed. Later-added subject matter, broader claims, different countries, new recipients, changed purposes, or different filing channels may require further review.
Procedural Outcome and Route Treatment	Authorization; expiry of a waiting period; absence of objection; refusal; secrecy direction; non-forwarding; conversion; abeyance; confidential handling.	Determines whether outward filing or transmission may proceed through ordinary channels, or whether the matter enters a restricted, confidential, national, or blocked procedural path.
Priority-period interaction	Domestic review periods running alongside Paris Convention, PCT, regional, or national filing timetables.	Domestic review generally does not suspend or replace ordinary priority periods; review time may consume part of the period available for later foreign, regional, or international filing.

G. SECRECY MEASURES AND CONFIDENTIALITY OBLIGATIONS

113. The procedural pathways described in subsection F may lead to several possible outcomes, one of which is the imposition of a secrecy measure, prohibition direction, classification decision, confidential-processing status, or analogous restriction. Subsection G addresses that status once it arises. The question here is not simply whether foreign filing may proceed. It is how the patent matter is handled when the invention, application, patent, or technical subject matter enters a security-based confidentiality environment.

114. Ordinary confidentiality of unpublished patent applications should be distinguished from the secrecy measures considered in this subsection. Ordinary application confidentiality generally reflects the non-public status of a pending application before the usual publication point. It is part of ordinary patent administration. A security-based secrecy measure is different. It may alter the ordinary rules on publication, public inspection, communication, prosecution, grant, filing route, forwarding, or transmission because a competent authority has identified a protected public interest, such as national security, national defense, public safety, classified information, or a comparable concern.

115. The distinction between a foreign filing conditionality and a secrecy measure should also be kept clear. A foreign filing conditionality is often a front-end checkpoint: it determines whether the applicant may file abroad, use a particular route, or transmit patent materials before domestic review has been completed. **A secrecy measure, by contrast, is a continuing confidentiality status.** It may be imposed as the result of that review, or it may arise under a separate security, defense, classified-information, or public-safety process that affects the patent matter. In some regimes, secrecy is the endpoint of a foreign filing review. In others, secrecy is the main mechanism because ordinary foreign filing is not restricted unless sensitive status is imposed.

116. Secrecy measures may arise from different legal sources. In some systems, the measure is imposed directly under patent legislation. In others, the patent procedure interacts with defense law, classified-information law, public-security law, nuclear or military legislation, export-control law, or another security framework. For purposes of this study, the relevant point is not the label of the legal source, but the effect on patent-related acts. A measure is treated here as relevant where it changes how the patent application, patent file, invention disclosure, filing route, patent-office transmission, publication, prosecution, or patent-specific communication is handled.³²

117. The object of the secrecy obligation may also differ. In some systems, the measure attaches primarily to the application file or to the pending patent application. In others, it attaches more broadly to the invention, the technical information, the subject matter, the patent, or related patent materials. That distinction matters because an obligation tied only to a file may be framed differently from an obligation tied to the technical substance itself. **Where secrecy attaches to the invention or subject matter, the confidentiality obligation may continue even if a particular application is withdrawn, abandoned, refused, lapsed, converted, or redirected into another procedural form.**³³

³² See, e.g., Section IV below, entries on Australia, Germany, Singapore, the United Kingdom and the United States of America. These entries variously illustrate security-based secrecy, prohibition, direction, review or handling mechanisms arising under patent law or through patent-procedure interaction with defense, national-security, public-safety, classified-information or comparable rules.

³³ See, e.g., Section IV below, entries on France and the United States of America. These entries illustrate secrecy obligations framed by reference to the invention, technical information, subject matter or related patent materials rather than only to the application file; the France entry further illustrates that lapse, abandonment or refusal of an application subject to such measures does not itself lift the secrecy measures.

118. Secrecy measures commonly affect publication and public access. A patent application may be withheld from ordinary publication, publication may be deferred, public inspection may be excluded, bibliographic information may be limited, or the file may be handled outside ordinary public-access channels. In some systems, the application may remain invisible to ordinary search and publication systems while the secrecy measure remains in force. In others, limited notice may be possible without disclosure of the protected technical substance. The common point is that secrecy modifies the ordinary patent law movement from filing to publication and public availability.

119. Secrecy may also affect examination and prosecution. A patent application may continue to be examined confidentially, proceed only up to a certain procedural stage, be suspended, be held in abeyance, be converted into a special domestic procedure, or be handled only by designated officials or through secure channels. In some systems, grant may be withheld while secrecy remains in force. In others, a secret or confidential patent path may exist. These arrangements show that secrecy is not merely a delay in ordinary examination. It may create a separate patent-handling environment.

120. The persons bound by the confidentiality obligation may vary. The obligation may apply to the applicant, inventor, owner, assignee, patent representative, recipient of authorized disclosure, public official, contractor, affiliate, or another person who receives or controls the protected technical material. Some measures are framed as restrictions on the patent office or competent authority, such as non-publication or non-forwarding. Others are framed as restrictions on the applicant or holder, such as prohibitions on disclosure, communication, exploitation, assignment, or foreign filing without authorization. A full secrecy analysis therefore requires attention both to what is restricted and to whom the restriction applies.

121. Communication restrictions are especially important in cross-border settings. A secrecy measure may restrict not only formal patent filing, but also communication of the technical substance of the invention to foreign counsel, foreign representatives, affiliates, research partners, translators, potential licensees, funders, manufacturers, or other recipients. The scope of such restrictions is not uniform. In some systems, patent law itself restricts communication of the invention while secrecy remains in force. In others, the patent-law rule is narrower, while broader restrictions arise under separate secrecy, classified-information, defense, export-control, or contractual frameworks. The relevant question for this subsection is whether the secrecy measure affecting the patent matter also restricts patent-specific communication of the protected technical substance.

122. Secrecy measures may also affect foreign filing and onward transmission. An application that would otherwise move through a PCT, regional, or other international route may be withheld from transmission, not forwarded to the relevant authority, retained in a domestic office, treated as a domestic matter, or prevented from proceeding through ordinary external channels. Similarly, an applicant may be prevented from filing abroad, extending protection, entering a national or regional phase, or communicating prosecution materials while secrecy remains in force. This issue overlaps with subsections E and F, but the focus here is the secrecy status that justifies or requires restricted handling.³⁴

123. A secrecy framework does not always mean absolute immobility. Some systems permit specified disclosures, filings, exploitation steps, assignments, communications, or procedural acts while secrecy remains in place. Such permission may be limited to named persons,

³⁴ See, e.g., Section IV below, entries on Australia, Brunei Darussalam, Germany, Singapore and the United States of America. These entries variously illustrate secrecy-related handling affecting publication, prosecution, abeyance, confidential processing, non-forwarding, treatment as a national application, deemed withdrawal or non-transmission to the International Bureau, an international searching authority, the European Patent Office or another external authority.

approved organizations, particular offices, designated countries, specific purposes, secure channels, cleared recipients, or defined filing routes. It may also require handling under a particular classification level, need-to-know condition, confidentiality undertaking, official channel, or government-to-government procedure. The presence of an authorized channel should therefore be distinguished from a general release from secrecy.

124. **Permission for one act does not necessarily authorize all related acts.** A decision allowing communication with one patent representative may not authorize disclosure to an affiliate. A permission to file in one country may not authorize filing in another. A variation allowing technical discussion for legal advice may not permit commercial presentation, licensing, fund-raising, publication, or manufacturing disclosure. A secure route for filing may not permit ordinary e-mail transmission of the same material. For that reason, the scope of any permission or variation should be analyzed by reference to the authorized recipient, purpose, country, route, material, and channel.³⁵

125. The technical material covered by secrecy may also change over time. Patent claims may be amended. Drawings, examples, sequence listings, data, or technical explanations may be added. A later prosecution submission may disclose information not present in the initial application or in the material first reviewed by the competent authority. Where the secrecy obligation attaches to the technical subject matter, later-added or modified material may require careful treatment. Section F addresses clearance scope in procedural terms; Section G addresses the related confidentiality question of whether later patent materials remain within, expand, or require variation of the secrecy framework.

126. The temporal structure of secrecy measures varies. Some systems include an initial screening period before secrecy status is confirmed. Others provide periodic review, annual review, renewal, revocation, narrowing, variation, or release. Some systems permit the applicant to request review or variation. Others leave release dependent on a later decision by the competent authority. The comparative point is not only whether secrecy may be imposed, but whether the measure can be reviewed, narrowed, renewed, or lifted through a defined process.³⁶

127. Secrecy may also persist after ordinary patent events. Withdrawal of an application may end prosecution, but it may not end a secrecy obligation if the obligation attaches to the invention or technical subject matter. Abandonment, refusal, lapse, deemed withdrawal, conversion into a national application, or failure of an international or regional route may likewise leave confidentiality obligations unresolved. This is one of the reasons secrecy measures should be treated separately from ordinary filing-route consequences. The patent application may cease to move forward, while the protected technical information remains subject to restriction.

128. Conversely, release from secrecy may not automatically cure all earlier procedural or legal problems. A later revocation, narrowing, variation, or lifting of a secrecy measure may permit future publication, filing, communication, prosecution, or transmission. It does not necessarily validate an earlier unauthorized foreign filing or disclosure made while the restriction was in force. That question belongs primarily to subsection H, which addresses legal consequences and limited relief mechanisms. For subsection G, the relevant point is that secrecy status can change over time, but the legal effect of that change depends on the applicable regime.

³⁵ See, e.g., Section IV below, entries on Australia, France and the United States of America. These entries variously illustrate permissions, variations or modifications limited by recipient, purpose, country, filing route, secure channel, disclosure reason, security condition or scope of technical material.

³⁶ See, e.g., Section IV below, entries on Australia, Brunei Darussalam, India, Singapore and the United Kingdom. These entries variously illustrate review, reconsideration, variation, revocation, renewal, extension of time or lifting of secrecy-related directions or prohibition measures.

129. Secrecy measures may also have economic or proprietary consequences, but those consequences should be distinguished from the confidentiality status itself. A system may provide compensation, indemnity, government-use treatment, expropriation-related relief, or loss of compensation where secrecy or breach affects the applicant's position. Those issues are addressed in subsection H. Subsection G is concerned with the operational confidentiality environment: publication, access, prosecution, communication, filing, transmission, authorized channels, and release.

130. Some legal systems and treaty arrangements contemplate filing or maintenance of patent rights under a continuing secrecy framework rather than through ordinary public patent channels. In such cases, secrecy does not necessarily eliminate the possibility of patent protection, but it may require special filing channels, official transmission, secure handling, limited access, or recognition by another authority that secrecy has been imposed. The international and regional treatment of such mechanisms is addressed in Section III. For present purposes, the point is that secrecy-preserving filing is different from ordinary foreign filing and should not be assumed to be available unless the applicable framework provides for it.³⁷

131. The treatment of secrecy also shows why foreign filing conditionalities cannot be analyzed only at the moment of first filing. A front-end domestic filing, permission request, waiting period, or routing requirement may determine whether review begins. A secrecy measure determines what happens if the invention is found to require restricted handling. Once secrecy is imposed, the patent matter may leave the ordinary environment of publication, file access, prosecution, communication, and transmission. The applicant may then be dealing not simply with a delayed filing route, but with a continuing confidentiality regime.

132. Table 5 below summarizes the principal features of secrecy measures and confidentiality obligations relevant to patent filing, publication, access, prosecution, communication, onward transmission, authorized channels, and release.

³⁷ See Section III below, discussion of the Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defence and for Which Applications for Patents Have Been Made, Articles I-II; the Treaty Establishing the European Atomic Energy Community, Article 26; and the European Patent Convention, Articles 75(2), 77 and 135 and Rule 37. These mechanisms provide limited secrecy-preserving filing or route-handling frameworks in defined contexts, but do not establish a general rule that ordinary foreign filing remains available while secrecy is in force.

Table 5 - Illustrative Features of Secrecy Measures and Confidentiality Obligations

Secrecy Dimension	Patent Related Effect
Security Based Status and Legal Source	A secrecy order, prohibition direction, classification decision, security designation, or analogous measure may arise under patent law or through the interaction of patent procedure with defense, classified-information, public-security, export-control, or comparable security law.
Protected Subject Matter and Persistence	The obligation may attach to the application file, patent, invention, technical information, or subject matter, and may continue even if a particular application is withdrawn, abandoned, refused, lapsed, or converted.
Publication and Public Access	Publication may be withheld, deferred, replaced by limited notice, or excluded from ordinary file inspection while secrecy remains in force.
Confidential Examination or Prosecution	Examination or prosecution may continue confidentially, be suspended, be held in abeyance, be converted into a special domestic procedure, or proceed only through designated officials or secure channels.
Communication, Filing and Onward Transmission	Communication of the technical substance, foreign filing, and PCT, regional, or other international forwarding or transmission may be prohibited, delayed, or conditioned.
Limited Permissions or Authorized Channels	Permitted disclosures or filings may be limited to named persons, approved organizations, specific offices, purposes, countries, routes, or secure channels.
Review, Variation and Release	The measure may be reviewed, renewed, varied, narrowed, revoked, or lifted, including for specified disclosures or filings.

H. LEGAL CONSEQUENCES AND LIMITED RELIEF MECHANISMS

133. The legal consequences associated with foreign filing conditionalities, secrecy directions, and related security-based restrictions vary across legal systems. They should not be treated as a single category. Some consequences attach to breach of a filing, routing, permission, communication, or secrecy requirement. Others follow from the lawful imposition of a secrecy order, refusal of authorization, non-forwarding decision, confidential-processing status, or other security-based measure. Subsection H addresses those legal effects and the limited forms of release, restoration, or regularization that may be available under some regimes.

134. A first distinction is between breach consequences and lawful-restriction consequences. A breach consequence arises where a person files abroad, causes filing, communicates protected material, violates a secrecy direction, or acts outside the conditions of permission before the applicable requirement has been satisfied. A lawful-restriction consequence arises where the competent authority has imposed a restriction and the application or invention is then delayed, withheld, processed confidentially, diverted into a different route, or made subject to economic or proprietary consequences. The two categories may interact, but they should not be conflated. A lawful prohibition on foreign filing is different from a penalty for disregarding that prohibition.

135. The consequences may also differ by function. Some are punitive or liability-based. Some affect patent rights. Some affect the filing route or the territorial effect of a regional, PCT, or foreign application. Some affect the procedural handling of the matter by placing it in a confidential or restricted channel. Some are economic, such as compensation, indemnity, government-use treatment, or expropriation-related relief. Some are restorative or corrective, but only within narrow limits. A careful analysis therefore asks not only whether there is a consequence, but what legal function that consequence performs.

136. Criminal, administrative, civil, liability is one recurring category. Depending on the regime, liability may attach to unauthorized foreign filing, filing before expiry of a required waiting period, filing without written authority, causing or arranging another person to file, using a prohibited route, communicating the technical substance of the invention to an unauthorized recipient, breaching a secrecy or confidentiality direction, or violating a condition attached to permission. The relevant actor may be an individual inventor, applicant, owner, assignee, representative, organization, affiliate, or person responsible for causing the filing or disclosure. The form of liability may vary from administrative sanction to fine, imprisonment, civil liability, or any other penalty.

137. Liability consequences should be described cautiously because the conditions for liability may differ depending on whether the liability is criminal, civil, statutory or administrative. Some regimes may require knowledge, willfulness, recklessness, fault, or responsibility for the act. Others may be framed in more administrative or objective terms. Some focus on the person who actually filed abroad, while others extend to a person who caused, authorized, directed, or arranged the filing. Some attach to the breach of a secrecy direction rather than to foreign filing as such. These distinctions matter because the existence of a foreign filing conditionality does not by itself identify who is liable, what mental state is required, or whether organizational responsibility is treated separately from individual responsibility.³⁸

138. A second category concerns patent-right consequences. In some systems, non-compliance may affect the availability, validity, grant, enforceability, ownership, entitlement, or

³⁸ See, e.g., Section IV below, entries on Brunei Darussalam, India, Singapore, the United Kingdom and the United States of America. These entries variously illustrate liability exposure for unauthorized foreign filing, filing or causing filing without required authority, breach of secrecy or communication directions, or violation of conditions attached to permission.

territorial effect of patent protection. The consequence may be described as a bar to grant, invalidity, revocation, deemed abandonment, deemed relinquishment, forfeiture, loss of entitlement, loss of related claims, or vulnerability of the patent in later proceedings. These consequences are distinct from criminal or administrative penalties. They operate through the patent system itself by altering whether the applicant may obtain, maintain, or rely on patent protection.

139. Patent-right consequences should also be stated territorially and contextually. A breach of a domestic foreign filing condition may affect patent protection in the jurisdiction that imposed the condition, or the domestic effect of a regional, PCT, or other international filing route. It does not necessarily mean that every foreign filing is void for all purposes in every jurisdiction. Some regimes focus on domestic grant or validity. Others focus on whether a regional or international application can take effect locally. Others combine patent-right consequences with liability or secrecy-related consequences. **The question is therefore which right, in which jurisdiction, and through which legal mechanism, is affected.**³⁹

140. A related but distinct category concerns filing-route or territorial-effect consequences. A regional, PCT, or foreign-bound application may not be forwarded, may fail to enter the intended route, may be deemed withdrawn, may not take effect in the jurisdiction concerned, may lose national effect, or may be treated as a domestic application rather than as an international or regional filing. These consequences are not always framed as punishment. They may reflect the operation of the prescribed route itself: if the required domestic office, security clearance, or forwarding condition is not satisfied, the external route may not function in the ordinary way.

141. Filing-route consequences can be significant even where the underlying patent matter is not extinguished. An application may continue domestically while the regional or international route fails. It may be retained by the domestic office, converted into a national application, placed in abeyance, or processed under a confidential or defense-related pathway. Conversely, a failure to use the prescribed domestic route may prevent the later regional or international application from producing effect in the jurisdiction that required that route. Subsection F addressed these issues as procedural endpoints; subsection H addresses them as legal effects.

142. A further category consists of confidential or diverted processing. Where secrecy, classification, prohibition, or comparable status is lawfully imposed, the consequence may be that ordinary patent handling is replaced by restricted handling. The application may be withheld from publication, excluded from public inspection, examined confidentially, held in abeyance, blocked from ordinary transmission, processed by designated officials, or shifted to a special domestic track. This consequence should not be treated as a sanction merely because it burdens the applicant. In many systems, it is the intended legal effect of a security-based determination.

143. A refusal of authorization or imposition of a prohibition may likewise produce lawful restriction rather than breach liability. If the competent authority refuses permission to file abroad, the applicant may be required to proceed domestically, wait for later release, seek a variation, use an authorized channel, refrain from communication, or accept that the intended external route is unavailable. If the applicant complies with that refusal, the consequences may be delay, confidential handling, loss of filing opportunity, or economic impact, rather than

³⁹ See, e.g., Section IV below, entries on China, India, Spain and the United States of America. These entries variously illustrate patent-right or territorial-effect consequences such as bar to grant, invalidation, deemed abandonment, revocation, forfeiture of related claims, or loss of effect in the jurisdiction that imposed the relevant filing, secrecy, routing or authorization condition.

punishment. Liability generally becomes relevant only if the applicant acts contrary to the refusal, prohibition, secrecy direction, or condition.⁴⁰

144. Economic consequences and compensation form a separate category. Some regimes provide compensation, indemnity, solatium, government-use relief, expropriation-related relief, or other economic treatment where secrecy, confidential handling, government acquisition, refusal of ordinary exploitation, or security-based restriction affects the applicant or owner. Such mechanisms may recognize that the applicant has complied with a lawful restriction but has suffered economic loss, delay, or loss of ordinary commercial opportunity. They may also reflect government use or acquisition of the invention, rather than breach by the applicant.

145. Compensation should not be confused with cure. A compensation mechanism may address the economic effect of secrecy, government use, expropriation, or denial of ordinary exploitation. It does not necessarily validate an unauthorized foreign filing, remove a patent-right consequence, restore a lost route, or release the applicant from liability for breach. Conversely, breach of a filing or secrecy obligation may in some systems limit, forfeit, or reduce compensation that might otherwise have been available. Compensation may therefore operate either as relief for lawful restriction or as an area affected by non-compliance.⁴¹

146. Limited release, cure, or restoration mechanisms require especially careful treatment. Some mechanisms prevent breach in advance, such as time-structured release, deemed clearance, expiry of a waiting period, absence of objection, express authorization, or variation of a secrecy direction before the outward act occurs. Others permit future action after a restriction is narrowed, revoked, lifted, or reviewed. Others preserve a domestic path when an international or regional route cannot proceed. These mechanisms may reduce practical harm, but they are not necessarily retroactive cures for an act already taken without required permission.

147. **A useful distinction is between prospective relief and true retroactive regularization.** Prospective relief allows a future filing, communication, publication, transmission, or prosecution step once the relevant authority grants permission or the restriction is lifted. It may also permit ordinary processing to resume. True retroactive regularization, by contrast, would validate or excuse a past unauthorized foreign filing or communication after the fact. Broad retroactive validation mechanisms appear uncommon in this field. Where a regime provides retroactive relief, it is usually narrow, conditional, and tied to specific requirements such as error, absence of secrecy status, diligence, or the limited scope of the unauthorized act.⁴²

148. Priority restoration and other treaty or procedural restoration mechanisms should also be distinguished from domestic-law cure. In some circumstances, an applicant who misses a priority-related deadline because review or authorization took longer than expected may seek restoration under the applicable international, regional, or national procedural framework. Such mechanisms may help preserve or restore a priority claim in defined circumstances. They do not, merely by operating, satisfy a domestic foreign filing condition, erase a breach of a secrecy

⁴⁰ See, e.g., Section IV below, entries on Australia, Brunei Darussalam, Germany, Singapore and Spain. These entries variously illustrate filing-route or territorial-effect consequences and confidential or diverted processing, including non-forwarding, deemed withdrawal, treatment as a national application, abeyance, confidential processing, retention in a domestic or secrecy pathway, or restricted handling while review, directions or secrecy-related measures remain in force.

⁴¹ See, e.g., Section IV below, entries on Brazil, India, the Republic of Korea, Spain, the United Kingdom and the United States of America. These entries variously illustrate compensation, solatium, government-use relief, hardship-related relief, economic relief for lawful secrecy or national-defense restrictions, or circumstances in which breach may limit or affect compensation or related claims.

⁴² See, e.g., Section IV below, entries on Australia, Brunei Darussalam, Brazil, France, India and the United States of America. These entries variously illustrate time-structured release or ordinary processing after a review period, variation or revocation of secrecy-related directions, extension of time or restoration after restrictions are lifted, domestic treatment of blocked international filings, or narrow retroactive relief limited to specified circumstances.

direction, or create permission to file abroad where domestic law required prior authorization. Section III addresses those treaty and procedural mechanisms in greater detail.

149. Legal uncertainty may persist even where no immediate sanction is imposed. A question about compliance may later affect validity, grant, entitlement, ownership, compensation, enforceability, territorial effect, filing-route status, or the treatment of related applications in the same patent family. The uncertainty may arise because the relevant facts were unclear, because the place of invention or controlling person was disputed, because the scope of clearance was uncertain, or because later-added subject matter was not clearly covered. In such cases, the consequence of non-compliance may be delayed rather than immediate.

150. The interaction among consequence categories can also matter. The same event may produce more than one legal effect. An unauthorized foreign filing might expose a person to liability, affect domestic patent rights, and create uncertainty about related applications. A secrecy direction might prevent publication, block onward transmission, and give rise to compensation. A failure to use a designated office might cause loss of national effect while leaving a domestic application pending. These combinations should be analyzed by function rather than collapsed into a single conclusion that the filing is simply “invalid” or “permitted.”

151. Subsection H therefore stops short of two later questions. It does not address how overlapping requirements of multiple jurisdictions should be reconciled; that issue is addressed in subsection I. It also does not address practical intake, deadline management, drafting controls, collaborator responsibilities, or mitigation practices; those issues are addressed in subsection J. The function of this subsection is to identify the kinds of legal consequences and limited relief mechanisms that may follow once a foreign filing conditionality, secrecy measure, routing rule, or related security-based restriction has legal effect.

152. Table 6 below summarizes the principal categories of legal consequences and limited relief mechanisms: criminal, administrative, or civil exposure; patent-right consequences; filing-route or territorial-effect consequences; confidential or diverted processing; economic consequences and compensation; and limited release, cure, or restoration.

Table 6 - Legal Consequences and Limited Relief Mechanisms

Consequence or Relief Category	Illustrative Manifestation	Legal significance
Criminal, Administrative, or Civil Exposure	Fines, imprisonment, administrative sanctions, civil liability, or other penalties for unauthorized foreign filing, breach of secrecy directions, or violation of authorization conditions.	Liability may attach to individuals, applicants, representatives, or organizations.
Patent-Right Consequences	Bar to grant, invalidity, revocation, deemed abandonment, deemed relinquishment of entitlement, forfeiture, or loss of related patent claims.	Patent protection may be unavailable, reduced, lost, or vulnerable in the jurisdiction that imposed the condition.
Filing-route or Territorial-Effect Consequences	A regional or international filing may not take effect, be forwarded, or enter the jurisdiction; it may be deemed withdrawn or treated as national.	The filing route may fail or yield narrower domestic protection.
Confidential or Diverted Processing	Application may be held, processed confidentially, shifted to a special domestic track, withheld from publication, or restricted from file access.	The case may continue outside ordinary prosecution, publication, or transmittal channels.
Economic Consequences and Compensation	Compensation, indemnity, solatium, government-use relief, expropriation-related relief, or compensation for denial of ordinary exploitation; breach may limit or forfeit such relief.	Consequences may be economic as well as procedural or punitive, but compensation does not itself cure an unauthorized filing.
Limited Release, Cure, or Restoration	Time-structured release, deemed clearance, variation or revocation of directions, restoration after restrictions lift, domestic treatment of blocked filings, or narrow retroactive relief.	Later relief is narrow and regime-specific; it should not be treated as a general ex post cure.

I. OVERLAPPING REQUIREMENTS AND CROSS-BORDER CONFLICTS

153. The preceding subsections have considered the architecture, triggers, scope, procedure, secrecy measures, consequences, and limited relief mechanisms associated with foreign filing conditionalities within individual legal systems. A separate issue arises where more than one jurisdiction's regime may appear to attach to the same invention. This issue is particularly important in cross-border collaborative environments, where inventive activity, inventors, applicants, ownership structures, funding relationships, patent drafting, and filing decisions may be distributed across different jurisdictions.

154. Overlap may arise because national regimes use different connecting factors. One system may focus on the nationality, residence, domicile, headquarters, place of business, or establishment of an inventor, applicant, owner, or person causing the filing. Another may focus on where the invention was made, created, developed, or materially contributed to. Another may be triggered by the subject matter or security sensitivity of the invention, by the imposition of a secrecy or classification measure, or by the route through which a PCT, regional, or other international application is filed. Because these connecting factors are not uniform, a single jointly created invention may have legally relevant connections with more than one jurisdiction.

155. Not every multi-jurisdictional connection creates an actual overlap of foreign filing requirements. Some connections may be incidental, legally irrelevant under the applicable trigger criteria, or relevant only to ordinary patent formalities rather than to outward filing, secrecy, transmission, or patent-specific disclosure. For example, a jurisdiction may be connected with a research project, service provider, funder, intended market, affiliate, or commercial sponsor without that connection necessarily bringing the invention within that jurisdiction's foreign filing regime. The first step in the conflict analysis is therefore to separate apparent or incidental overlap from actual legal overlap. Publicly available guidance on how such overlapping requirements should be reconciled remains limited, and the issue appears to be discussed more often as a practical compliance problem than as a settled body of adjudicated law.⁴³

156. The difficulty has been recognized in policy, industry, and professional commentary. The IP5 Patent Harmonization Expert Panel identified the need for guidance on simultaneous compliance with first-filing and foreign filing license requirements in multinational inventorship situations. AIPPI has taken a broader policy position, recommending that countries should not impose first-filing requirements, foreign filing license requirements, or prior secrecy review requirements. In the alternative, where such requirements are retained, AIPPI has recommended limitations and safeguards, including prompt and reasonable costs for obtaining such licenses, tacit consent where no response is given within a prescribed period, exemptions from first filing requirement when applicants comprise of non-resident non-citizen co-inventors, and recognition of clearance obtained in another jurisdiction. These materials are useful not because they state a harmonized rule of existing law, but because they show that the overlap problem has been recognized as a recurring structural issue in multinational invention settings.⁴⁴

⁴³ WIPO, *Study on Patent Inventorship and Ownership Issues Arising from Collaborative Research and Cross-Border Collaboration*, SCP/36/9, paras. 62-66, 69-70, 85 (Sept. 18, 2024); JETRO, *Foreign Filing Requirements for Patents in Europe* (2022), Introduction; ALLEA, *The Ownership and Protection of Multinational Inventions – in particular, Inventions Resulting from Publicly Funded Research* (Feb. 2018), pp. 1-3; Anne-Mari Lummevuo, *COMPLEX OF LAWS – Interfacing different employment and patent regimes in global inventions, a piece of cake?* (University of Turku, 2019), pp. 239, 390-391.

⁴⁴ Patent Harmonization Expert Panel, *Roadmap and facilitation for handling first-filing requirements in multinational inventorship situations*, Industry IP5 Meeting with IP5 Heads of Offices (June 13, 2018); AIPPI, *Resolution Q244, Inventorship of Multinational Inventions* (adopted Oct. 14, 2015), para. 5(a)-(d); AIPPI, *Summary Report Q244* (2015), pp. 6, 17-18.

157. **Analytically, the key distinction is between cumulative but compatible requirements and hard conflict.** In the first category, more than one foreign filing, clearance, waiting-period, secrecy, disclosure, forwarding, or routing requirement may apply, but the required steps can be completed in parallel or in a legally coherent sequence. In the second category, the implicated regimes point toward inconsistent steps, so that compliance with one may breach, frustrate, or prevent compliance with another. This distinction is important because not every case of multiple applicable rules is a legal deadlock.

158. Cumulative but compatible overlap may occur where several jurisdictions require review, permission, domestic filing, waiting-period expiry, non-objection, or use of a designated route, but those steps can be completed without violating any of the applicable regimes. The applicant may be able to file domestically in one jurisdiction, request permission in another, wait for each required period to expire, or use an authorized route that allows each competent authority to complete its review before any outward filing or disclosure occurs. Such cases may be administratively complex, and they may create timing pressure, but the legal requirements do not necessarily contradict each other.

159. Hard conflict is the more difficult case. It may arise where two implicated regimes each require the invention to be filed first in their own domestic office, where one regime requires disclosure of technical material to an authority or recipient that another regime treats as unauthorized, or where a PCT, regional, or other international route requires forwarding or transmission that another regime prevents. The common feature is not mere inconvenience, duplication, cost, or delay. It is legal incompatibility, or at least serious legal uncertainty, because the act required by one regime may be restricted, prohibited, or legally unavailable under another.

160. **The materials reviewed for the present study do not disclose a generally available legal rule by which compliance with one jurisdiction's foreign filing requirement automatically satisfies the requirement of another.** Where the issue is addressed directly in the Member State materials, the submissions point instead to continued application of the domestic rule, the absence of conflict exceptions, or reliance on limited statutory, treaty-based, administrative, or judicial mechanisms. Limited de-confliction mechanisms may exist in defined contexts, including secrecy-preserving filing arrangements or regional mechanisms applicable to particular categories of inventions or particular groups of States. Those mechanisms may reduce or avoid conflict in the circumstances they cover, but they should not be treated as a general rule of mutual recognition or automatic harmonization among national foreign filing regimes.⁴⁵

161. Conflict analysis is therefore fact-specific. It depends on the persons and entities involved, the location of inventive contributions, the ownership and entitlement structure, the sensitivity of the subject matter, the filing route contemplated, the materials that must be submitted for

⁴⁵ See comments received from Germany in response to C.9304, stating that where two or more countries' foreign filing requirements appear to apply, the German Patent and Trademark Office applies the provisions of German law; comments received from the Republic of Korea in response to C.9304, stating that where two or more countries' foreign filing requirements appear to apply, there are no exception provisions in cases of conflict with foreign laws or systems, and compliance with MOIP regulations is mandatory; and comments received from Spain in response to C.9304, stating that Spanish patent law does not provide a general statutory conflict-resolution rule, that no relevant court decisions have been identified, and that overlapping requirements would likely have to be managed by reference to applicable international instruments and, if necessary, judicial resolution, while those instruments do not establish a general conflict rule. Compare the limited treaty and regional mechanisms discussed in Section IV below, including the Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defence and for Which Applications for Patents Have Been Made, Arts. I-II; the Treaty Establishing the European Atomic Energy Community, Art. 26; the Patent Cooperation Treaty, Art. 27(8); the Patent Law Treaty, Art. 4; and the European Patent Convention, Art. 75(2). These provisions preserve or structure particular national-security, secrecy, or regional filing mechanisms, but do not establish a general rule of mutual recognition or automatic satisfaction of national foreign filing requirements.

review, the recipients to whom those materials would be disclosed, whether secrecy status has already been imposed, and whether any permission can be obtained without unauthorized communication. The same two jurisdictions may present no relevant overlap in one invention family, cumulative compatible requirements in another, and a hard conflict in a third.

162. This subsection identifies the legal overlap pattern. The next subsection addresses the separate practical question of how cross-border research teams, applicants, and filing managers may identify relevant connecting factors early enough to preserve sequencing options, document assumptions, and reduce late-recognition risk. For purposes of the present study, the distinction between cumulative but compatible requirements and hard conflict is summarized in Table 7 below.

Table 7 - Overlap and Conflict Patterns in Cross-Border Invention Contexts

Pattern	Descriptive scenario	Legal significance
Cumulative but Compatible Requirements	More than one foreign-filing, clearance, waiting-period, secrecy, disclosure, forwarding, or routing requirement may apply, but the required steps can be completed in parallel or in a compatible sequence.	Each implicated regime must still be addressed, but the overlap does not by itself create an inconsistency or a legal deadlock.
Hard Conflict	The implicated regimes point toward inconsistent first-filing, clearance, waiting-period, secrecy, disclosure, forwarding, or routing steps.	Compliance with one regime may breach, frustrate, or prevent compliance with another unless a specific permission, exception, treaty-based mechanism, or administrative coordination mechanism applies.

J. PRACTICAL IMPACTS AND POTENTIAL MITIGATION PRACTICES

163. Cross-border research and innovation are now a regular feature of contemporary technological development. Scientific collaboration, researcher mobility, multinational R&D teams, distributed employees, remote and hybrid work arrangements, public-private partnerships, contract research, global value chains, digital workspaces, and international patent-filing strategies may all place different elements of the same invention project in different jurisdictions. Companies, universities, and research institutions may employ or engage contributors who work remotely from jurisdictions different from the applicant, project lead, laboratory, sponsor, or patent-filing team. At the same time, research security, national security, economic security, and technology-sovereignty concerns are placing greater attention on the movement of sensitive technical knowledge. This combination makes foreign filing conditionalities practically important not only at the moment of filing, but also during project formation, invention capture, patent drafting, disclosure planning, and filing-route selection.⁴⁶

164. **In cross-border collaborative environments, the practical difficulty is often not the existence of a foreign filing restriction as such, but the point at which the issue becomes visible.** The facts that may trigger a domestic filing, authorization, routing, waiting-period, secrecy, or security-review requirement may be dispersed across the research process: the nationality, residence, domicile, place of business, or institutional status of inventors or applicants; the place where claim-relevant inventive contributions were made; the entity directing, funding, or owning the work; the sensitivity of the technical subject matter; the location of patent drafting or translation activity; and the intended filing route. By the time the patent team is ready to file, the legally relevant facts may already have occurred.

165. Potential mitigation practices therefore tend to focus on earlier identification of connecting facts rather than on reaching a definitive legal answer at the outset. A project-opening or invention-intake process may help identify who may contribute to the invention, where those contributions may occur, which entity is expected to own or control filing, whether the subject matter may fall within a sensitive technical field, whether external publication or commercial disclosure is planned, whether patent materials are expected to be shared across borders, and which national, regional, PCT, or other international filing route is tentatively contemplated. The purpose of such intake is not to resolve every jurisdiction-specific question in advance, but to identify the questions that may require legal review before sequencing options are lost.

166. Connecting-factor review may be particularly important where ordinary patent administration would not otherwise capture the necessary facts. A standard invention disclosure may identify inventors and proposed applicants, but may not clearly record residence, domicile, nationality, place of employment, location of inventive activity, role of affiliates or sponsors, source of government or defense-related funding, previous technical disclosures, or the country in which a first patent application is expected to be filed. For foreign filing analysis, those facts may matter because different regimes attach significance to different persons, places, entities, subject matter, secrecy status, or filing routes.

167. A related practical issue is the distinction between general project participation and claim-relevant inventive contribution. Cross-border projects may involve ideas, testing, data generation, project management, funding, manufacturing input, regulatory support, software integration, and technical review in different places. Not every form of participation will necessarily determine inventorship or the place of invention. However, where a foreign filing

⁴⁶ OECD, *OECD Science, Technology and Innovation Outlook 2025: Driving Change in a Shifting Landscape* (OECD Publishing, 2025), chapter 2, “Reconfiguring scientific co-operation in a changing geopolitical environment”; UNESCO, *UNESCO Science Report: The Race Against Time for Smarter Development* (2021), Figure 1.4 and accompanying discussion of trends in international scientific collaboration; WIPO, *World Intellectual Property Report 2026: Technology on the Move* (2026), chapter 2, “Global trends of technological knowledge diffusion.”

regime turns on where the invention was made or who made it, records created close in time to the work may become important. Examples may include invention disclosure forms, claim-feature mapping, laboratory notebooks, design-history records, version histories, meeting records, technical memoranda, assignment documents, and records showing how particular technical features were conceived or integrated.

168. Patent-material circulation may also need to be considered before any formal foreign filing occurs. Draft specifications, claims, drawings, sequence listings, source-code excerpts, experimental or training data, invention disclosures, translations, prosecution instructions, and technical explanations may be circulated through cloud storage, shared workspaces, e-mail, foreign affiliates, outside counsel, patent translators, filing vendors, or electronic preparation tools. In practice, this review may extend not only to human recipients, but also to the technology stack through which patent materials are prepared or stored, including cloud repositories, patent-drafting platforms, translation portals, docketing systems, secure file-transfer tools, and electronic filing preparation systems. These acts are not uniformly restricted under patent law. In some systems, the relevant restriction is aimed primarily at the filing act itself. In others, secrecy-linked measures, clearance-scope limitations, or communication restrictions may affect transmission of the technical substance of the invention. The practical point is that the foreign filing question and the patent-material circulation question may need to be separated and considered at different stages.

169. Timing and sequencing may require similar attention. The same issue may recur later in the patent family where amendments, translations, national-phase materials, divisionals, continuations, added data, or prosecution explanations introduce or transmit technical material that was not part of the earlier filing or clearance review. A required domestic first filing, permission request, waiting period, secrecy review, or designated-office route operates within the same calendar as priority periods, PCT and regional filing deadlines, planned scientific publications, product announcements, investor discussions, standards submissions, clinical or regulatory milestones, licensing discussions, and collaboration deliverables. Bringing internal patent deadlines forward may preserve the ability to complete any required domestic step before the intended external filing or disclosure. Conversely, late recognition of a foreign filing issue may compress the time available for authorization, review, claim finalization, translation, national or regional route selection, and priority preservation.

170. International filing tools do not displace national security or foreign filing rules. The PCT facilitates international filing, but it expressly preserves national security prescriptions and certain restrictions on filings by residents or nationals. Where an international application is filed with the International Bureau as receiving Office, WIPO materials indicate that compliance with national security provisions is the applicant's responsibility and is not checked by the International Bureau. WIPO guidance also warns that, where necessary permission has not yet been obtained, applicants should not use ePCT to prepare the international application because draft details are held on servers operated by the International Bureau rather than by the relevant national Office. For cross-border projects, electronic filing preparation may therefore itself form part of the practical disclosure analysis.⁴⁷

171. Collaboration and project documentation may assist with responsibility allocation and factual recordkeeping. Such documents cannot displace mandatory filing, authorization, secrecy, routing, or disclosure rules. They may, however, identify which party is responsible for invention intake, collection of connecting-factor information, inventorship and entitlement review, patent-counsel instructions, technical-material circulation, publication holds, permission requests, filing-route decisions, and escalation of potential overlap or conflict issues. They may

⁴⁷ Patent Cooperation Treaty, Article 27(8); PCT Rule 22.1(a); WIPO, *PCT Applicant's Guide: International Phase*, para. 6.010; WIPO, *PCT Applicant's Guide*, Annex C (IB), "International Bureau of the World Intellectual Property Organization"; WIPO, "International applications and national security considerations."

also record assumptions about the intended filing sequence and the factual basis on which those assumptions were made. A practical record may identify the invention version reviewed, the claim set or technical materials considered, the jurisdictions and filing routes evaluated, the recipients and disclosure channels approved, the dates of any permissions or non-objections, and the assumptions underlying the chosen sequence. This can be useful where the project involves affiliates, universities, public research institutions, contractors, government-linked entities, or collaborators in more than one jurisdiction.

172. In some cases, the issue may be more fundamental than sequencing. A proposed collaboration may involve inventors, research locations, applicants, ownership structures, funding arrangements, subject matter, technical integration steps, or filing routes that are likely to trigger incompatible foreign filing, secrecy, or disclosure obligations. **If those obligations cannot be satisfied in parallel or in a legally coherent sequence, the collaboration may not be capable of producing a patent family in all intended jurisdictions without legal risk.** That possibility is best considered before the collaboration begins, before claim-relevant inventive contributions are made, and before technical materials are integrated across borders. At that stage, the parties may still be able to reconsider project structure, allocation of workstreams, filing leadership, timing of technical integration, information-flow design, or the jurisdictions in which patent protection is realistically available.⁴⁸

173. This is not a matter of recharacterizing inventorship, ownership, or place of invention after the fact. Once genuine inventive contributions have been made, inventorship and entitlement must reflect the relevant facts under the applicable law. The practical point is instead that the location, timing, and integration of genuine inventive contributions may have legal consequences that should be considered before the work is undertaken. If potential hard conflict is identified only after the invention has already been made and patent materials have already crossed borders, the remaining options may be much narrower and may depend on specific permissions, exceptions, treaty mechanisms, administrative coordination, or legal advice under the regimes concerned.

174. The practical effects may extend beyond patent prosecution. Security screening, secrecy-based handling, delayed authorization, or uncertainty about filing route may affect scientific publication, standards participation, commercial diligence, licensing discussions, fundraising, public announcements, acquisition review, government-contract obligations, and the point at which a patent asset can be described to potential partners or investors. In some circumstances, an organization may need to consider whether a different early protection strategy is available, such as staged disclosure, a narrower initial filing, temporary confidentiality for material not yet ready to enter the patent system, or delayed external communication. Any such approach remains subject to ordinary patent disclosure requirements, inventorship and entitlement rules, applicable secrecy or authorization requirements, and the need to preserve future filing options.⁴⁹

⁴⁸ WIPO, *Study on Patent Inventorship and Ownership Issues Arising from Collaborative Research and Cross-Border Collaboration*, SCP/36/9, paras. 62-66, 69-70, 85 (Sept. 18, 2024); Industry IP5 Meeting with IP5 Heads of Offices, Patent Harmonization Expert Panel, *Roadmap and facilitation for handling first-filing requirements in multinational inventorship situations* (June 13, 2018); AIPPI, Resolution Q244, *Inventorship of Multinational Inventions* (adopted Oct. 14, 2015), para. 5(a)-(d); AIPPI, Summary Report Q244 (2015), pp. 6, 17-18; Anne-Mari Lummevuo, *COMPLEX OF LAWS – Interfacing different employment and patent regimes in global inventions, a piece of cake?* (University of Turku, 2019), pp. 239, 390-391.

⁴⁹ Daniel P. Gross, “The Hidden Costs of Securing Innovation: The Manifold Impacts of Compulsory Invention Secrecy,” *Management Science*, vol. 69, no. 4 (2023), 2318-2338; Gaétan de Rassenfosse, Gabriele Pellegrino and Emilio Raiteri, “Do Patents Enable Disclosure? Evidence from the Invention Secrecy Act,” *International Journal of Industrial Organization*, vol. 92 (2024), 103044; Deepak Hegde, Kyle F. Herkenhoff and Chenqi Zhu, “Patent Publication and Innovation,” *Journal of Political Economy*, vol. 131, no. 7 (2023), 1845-1903; WIPO, *WIPO Guide to Trade Secrets and Innovation* (2024), Parts VI and VII.

175. **Potential mitigation practices should therefore be understood as issue-spotting, sequencing, documentation, and escalation tools.** They do not substitute for jurisdiction-specific legal judgment, and they do not convert compliance in one jurisdiction into compliance in another. They can, however, help identify the factual questions that determine whether such judgment is needed: who made the claim-relevant inventive contribution, where it was made, who controls the right to file, what technical information has already crossed borders, whether any secrecy or security status has been imposed, which filing route is contemplated, and how much time remains before a filing, publication, commercial, or collaboration deadline. The potential mitigation practices discussed above may be grouped by stage of cross-border innovation and filing, as summarized in Table 8 below.

Table 8 - Potential Mitigation Practices by Stage of Cross-Border Innovation and Filing

Stage	Practical Focus	Potential Mitigation Practice
Project Intake and Invention Capture	Contributors, entities, research locations, applicant or ownership facts, subject-matter sensitivity, planned disclosures, and anticipated filing route.	Use an invention-intake form or project-opening checklist to capture claim-relevant contributors, places of inventive activity, applicant and ownership facts, potentially sensitive subject matter, and any planned external disclosure before drafting begins.
Connecting-Factor Review	Person or entity-based, territorial, and subject-matter/security links to potentially relevant jurisdictions.	Map connecting factors to jurisdictions and identify any domestic-first filing, authorization, waiting period, designated-office route, or security review before selecting the filing path.
Patent Material Circulation Controls	Movement of invention disclosures, draft specifications, claims, drawings, data, translations, prosecution instructions, ePCT materials, or other patent-related technical material.	Use temporary holds, access controls, approved channels, and counsel instructions while route, clearance, and disclosure questions are reviewed.
Filing Sequence and Deadline Management	Alignment of domestic steps with priority periods, PCT or regional filings, publication, commercial, fund-raising, licensing, and collaboration milestones.	Bring internal deadlines forward; sequence first filings, permissions, waiting periods, later filings, and public disclosures; record the assumptions behind the chosen route.
Governance, Documentation and Escalation	Responsibility for review, counsel instructions, permissions, collaborator coordination, conflicts, sensitive subject matter, and recordkeeping.	Assign owners and escalation paths; document assumptions, permissions, communications, and conflict-resolution steps; address responsibility in collaboration or project documentation.

III. THE INTERNATIONAL LEGAL FRAMEWORK

176. At the international level, no single multilateral instrument harmonizes national systems governing foreign filing licenses, first domestic filing requirements, security review, or secrecy orders. Nor do the principal global patent treaties prescribe common trigger criteria such as inventor or applicant residence, place of invention, or subject-matter sensitivity. Instead, the relevant international framework is composed of instruments that preserve priority for later foreign filings, structure the use of international and regional filing routes, protect confidentiality at particular stages of patent procedure, or expressly preserve the freedom of Contracting Parties to adopt measures considered necessary for national security or related essential interests. A more limited group of regional or plurilateral instruments goes further and directly addresses secrecy of defense or nuclear related inventions.

THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

177. The Paris Convention for the Protection of Industrial Property establishes an international framework relevant to national and regional foreign filing requirements principally through its provisions on the right of priority. For the purposes of this study, the most relevant provisions are Articles 4A to 4C. These provisions do not regulate whether a country may impose a foreign filing authorization, a first domestic filing requirement, or another national filing restriction. Rather, they determine the priority consequences once a first filing has been made and subsequent filings are contemplated in other countries of the Union.

178. Article 4A(1) establishes the basic right of priority, under which a person who has duly filed a patent in one country of the Union may, within the prescribed period, file in other countries of the Union and claim the benefit of that earlier filing. Articles 4A(2) and 4A(3) clarify that a filing capable of giving rise to priority includes any filing equivalent to a regular national filing, and that a regular national filing is one that is adequate to establish a filing date, whatever the subsequent fate of the application. Accordingly, an initial domestic filing made in order to comply with a national security review or first-filing requirement may serve as the basis for a later priority claim, provided that it is adequate under the law of the country concerned to establish a filing date.

179. Article 4B sets out the legal effect of the priority right. A subsequent filing made in another country of the Union before the expiry of the priority period is not invalidated by acts occurring in the interval, including another filing, publication or exploitation of the invention, and such acts cannot give rise to third-party rights or rights of personal possession, subject to rights acquired before the first filing. This provision is particularly relevant in the present context because it illustrates the practical significance of preserving the priority claim: if the priority period is missed, the applicant may become exposed to intervening disclosures or filings that would otherwise be neutralized.

180. Article 4C(1) sets the priority period at 12 months for patents, and Article 4C(2) provides that the day of filing of the first application is not included in that period. Article 4C(3) provides only a limited extension where the last day falls on an official holiday or on a day when the Office in which protection is sought is not open for the filing of applications. Article 4C(4) further provides, in narrowly defined circumstances, that a later application in the same country may be treated as the first application for the purpose of calculating the priority period. Apart from those limited cases, however, **the Convention contains no specific mechanism suspending or extending the priority period for applicants awaiting foreign filing permission or the completion of a domestic security review.** Accordingly, if the later foreign or international filing is not made within the applicable period, the consequence under the Convention is the loss of the priority claim.

THE PATENT COOPERATION TREATY

181. While the Patent Cooperation Treaty (PCT) provides a common international filing route, it does not establish a harmonized foreign filing license system. Instead, it expressly preserves the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security and, for the protection of its general economic interests, to limit the right of its own residents or nationals to file international applications.

Jurisdiction and Choice of Receiving Office

182. Article 10 provides that the international application shall be filed with the “prescribed receiving Office.” The available receiving Offices are then identified by Rules 19.1 and 19.2, rather than by Article 10 itself. Under Rule 19.1(a), the applicant may file with the national Office of or acting for the Contracting State of which the applicant is a resident, with the national Office of or acting for the Contracting State of which the applicant is a national, or, irrespective of the Contracting State of which the applicant is a resident or national, with the International Bureau. Rule 19.1(b) further permits a Contracting State to agree that the National Office of another State or an intergovernmental organization shall act instead of its own national Office as receiving Office. Where there are two or more applicants, Rule 18.3 and Rule 19.2 ensure that the right to file and the choice of competent receiving Office exist if at least one applicant satisfies the relevant entitlement requirements. These provisions are relevant in cross-border collaborative projects because the identity and nationality or residence of the applicant group may affect the competent receiving Office.

183. The choice of receiving Office is significant because it affects the point at which an international filing date may be accorded and the way in which national security review is handled. Where the receiving Office finds that the requirements of Article 11(1) were fulfilled at the time of receipt of application, Rule 20.2 requires it to accord the date of receipt as the international filing date. Rule 22.1(a) then provides that, where a national security check must be performed, the record copy is transmitted only “as soon as the necessary clearance has been obtained,” while still requiring that it reach the International Bureau by the expiration of the 13th month from the priority date. Filing with the International Bureau under Rule 19.1(a)(iii) remains possible, but it does not displace domestic foreign filing controls: WIPO guidance states that compliance with national security prescriptions, where the international application is filed with the International Bureau as receiving Office, is the applicant’s responsibility. Rule 19.4 provides a further mechanism for transmittal to the International Bureau where an application has been filed with a non-competent national Office, but Rule 19.4(b) expressly prevents such transmittal where national security prescriptions do not permit it.

Treaty Basis for Filing Restrictions

184. Article 27 supplies the principal treaty basis for the coexistence of the PCT system and national foreign filing controls. Article 27(1) establishes the general rule that no national law may impose form or content requirements for the international application that are different from or additional to those laid down in the Treaty and Regulations. Article 27(8), however, expressly states:

“Nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security or to limit, for the protection of the general economic interests of that State, the right of its own residents or nationals to file international applications.”

185. These provisions confirm that the PCT does not create a harmonized foreign filing license regime and does not deprive States of the ability to maintain domestic security review, first-filing, or secrecy-based controls over outbound patent filings.

Procedural Consequences of Security Review Delays

186. The procedural effect of Article 27(8) is carried into the Regulations and Administrative Instructions. Under Rule 22.1(a), where the determination under Article 11(1) is positive, the receiving Office must transmit the record copy to the International Bureau promptly unless prescriptions concerning national security prevent the international application from being treated as such; if a national security check must be performed, the record copy is to be transmitted once clearance has been obtained and, in any event, in time to reach the International Bureau by the expiration of the 13th month from the priority date. Section 330 of the Administrative Instructions then governs the notification procedure where national security prescriptions prevent or delay transmittal of the record copy: the receiving Office must notify the applicant and the International Bureau accordingly before the expiration of 13 months from the priority date, although that notification may be postponed where clearance is believed to be imminent, but not beyond the expiration of 17 months from the priority date.

187. The broader consequences of a failed or prolonged security review are explained more fully in the Receiving Office Guidelines. Those Guidelines state that, where national law requires it, the receiving Office reviews the international application for national security matters; that clearance should normally be given early enough for the record copy to reach the International Bureau before the expiration of the 13th month from the priority date; and that, if clearance is refused or not obtained by the end of the 13th month and is not expected to be obtained, the receiving Office notifies the applicant and the International Bureau that the record copy and the search copy will not be transmitted and that the international application “will not be treated as such.” Where, however, clearance is expected to be obtained soon, the receiving Office may postpone its decision not to treat the international application as such, but it must make that decision and send the required communication before the expiration of 17 months from the priority date if no clearance has been received by that time. The Guidelines also point to Rules 15.4(iii) and 16.2(iii), under which the international filing fee and the search fee, respectively, are refunded where, due to prescriptions concerning national security, the international application is not treated as such.

188. Where transmittal is delayed rather than definitively blocked, Rule 22.1(c) contains an additional safeguard. If, by the expiration of 14 months from the priority date, the International Bureau is still not in possession of the record copy, it must notify the applicant and the receiving Office accordingly; after that point, the applicant may request the receiving Office to certify a copy of the international application as filed and may transmit that certified copy to the International Bureau. However, certification may be refused where prescriptions concerning national security prevent the international application from being treated as such.

PATENT LAW TREATY

189. The Patent Law Treaty (PLT) does not establish a harmonized foreign filing authorization system or a first domestic filing requirement. Its relevance to the present study lies principally in Article 4 and Article 13. More generally, the PLT is a formalities treaty: it harmonizes certain procedural requirements relating to national and regional patent applications and patents, but it does not regulate whether a Contracting Party may restrict the foreign filing of inventions on national security or similar grounds.

190. Article 4 is the most directly relevant PLT provision for the purposes of this study. It provides that:

“Nothing in this Treaty and the Regulations shall limit the freedom of a Contracting Party to take any action it deems necessary for the preservation of essential security interests.”

191. The Explanatory Notes further clarify that, in the case of an intergovernmental organization, those essential security interests refer to the security interests of its Member States. Accordingly, the PLT does not curtail the ability of Contracting Parties to maintain domestic secrecy review, foreign filing authorization requirements, first-filing obligations, or other security-based controls affecting cross-border patent filing.⁵⁰

192. Article 13 is also relevant because it provides limited remedies where priority-related defects arise. Article 13(1) requires Contracting Parties, subject to the Regulations, to permit the correction or addition of a priority claim. Article 13(2) further requires restoration of the right of priority where the subsequent application is filed after expiry of the priority period but within the period prescribed in the Regulations, provided that the Office is satisfied that the delay occurred in spite of due care or, at the option of the Contracting Party, was unintentional. Rule 14(4) provides that this remedial period must expire no earlier than two months from the date on which the priority period expired. Article 13(3) establishes a further remedy where the right of priority would otherwise be lost because a copy of the earlier application was not furnished in time by the Office with which that earlier application was filed. These provisions may be relevant where delays connected with domestic security review or foreign filing authorization affect the timing of a later foreign filing. However, the Member State and regional office submissions, supplemented by the Secretariat’s desk research, did not identify any discernible position of a PLT Contracting Party addressing whether, or in what circumstances, delay attributable to compliance with a domestic security-review or foreign filing authorization requirement satisfies the “due care” criterion or, where applicable, the “unintentional” criterion under Article 13(2). Accordingly, Article 13 should be understood as preserving possible Office-specific remedial avenues, rather than as determining that adverse legal consequences caused by such delay must, or must not, be provided relief. These provisions are limited remedial mechanisms and are not substitutes for timely compliance with national foreign filing restrictions or the Paris Convention priority period.⁵¹

STRASBOURG AGREEMENT CONCERNING THE INTERNATIONAL PATENT CLASSIFICATION

193. The Strasbourg Agreement Concerning the International Patent Classification establishes the International Patent Classification (IPC), a common technical classification system for patents and utility models. The IPC classifies patent documents according to the areas of technology to which they pertain, using a hierarchical system of language-independent symbols. Its structure, including sections and further subdivisions, provides an internationally recognized taxonomy for describing the technical subject matter disclosed in patent applications.

194. Foreign filing, non-disclosure and security-review frameworks that are based on subject matter require a method for identifying the technical fields to which special review or handling may apply. National systems may approach this question in different ways. Some may rely principally on case-specific assessment by a competent authority, some may identify specified technical fields, and some may combine predefined fields with case-specific review. Where such a mechanism refers to specified technical fields, IPC categories may provide one available

⁵⁰ Explanatory Notes on the Patent Law Treaty and the Regulations Under the Patent Law Treaty, Note 4.01

⁵¹ Patent Law Treaty art. 13(1)–(3), June 1, 2000, WIPO Pub. No. 258(E), at 21–22; Regulations Under the Patent Law Treaty r. 14(1)–(7), WIPO Pub. No. 258(E), at 51–52; WIPO, Explanatory Notes on the Patent Law Treaty and the Regulations Under the Patent Law Treaty, Notes 13.01, 13.05, 13.09–13.12, R14.03–R14.05, in WIPO Pub. No. 258(E), at 107–09, 128–29.

technical reference. They may be used to identify, define or flag applications for intake screening, classification, preliminary review or referral to a competent authority.⁵²

195. The use of technical classifications may also be relevant where the applicable law is framed by reference to broader subject matter concepts, such as inventions relating to national defense, national security, public safety, military value, or other sensitive technical fields. Such formulations may require case-specific judgment, especially for dual-use technologies or other fields whose sensitivity depends on the intended use, user, or implementation context. In many technical areas, there may be no clear dividing line between purely military and purely civilian uses; rather, the same technical field may support a range of uses across that spectrum.

196. In such systems, IPC-based categories, particularly where published or otherwise made available, may provide one way to express the relevant technical fields with greater specificity, support more consistent intake or routing practices, and give applicants and patent offices a more concrete reference point for identifying applications that may fall within the review process. In such cases, the IPC could serve as the technical reference within the Member State's own legal or administrative framework.

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

197. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is relevant to the present study in a limited way. Its principal relevance lies in Article 2, which incorporates key provisions of the Paris Convention into the WTO framework: Article 62, which preserves Members' ability to require compliance with reasonable procedure and formalities related to acquisition or maintenance of intellectual property rights, and, to a limited extent, Article 73, which preserves Members' ability to protect essential security interests.

198. Article 2(1) provides that, in respect of Parts II, III and IV of the Agreement, Members shall comply with Articles 1 through 12 and Article 19 of the Paris Convention (1967). Article 2(2) further provides that nothing in Parts I to IV of TRIPS shall derogate from existing obligations that Members may have to each other under the Paris Convention. To that extent, the Paris Convention framework discussed above forms part of the broader TRIPS background relevant to foreign filing issues, including the priority-based consequences of delayed foreign or international filing.

199. While Article 62(1) preserves the ability of WTO Members to require compliance with reasonable procedure and formalities related to acquisition or maintenance of intellectual property rights, Article 62(2) mandates that where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection. Additionally, in exercising the policy space in Article 62(1), Article 62(4) requires that the WTO Members shall comply with the general principles set out in paragraphs 2 and 3 of Article 41. Article 41(2) requires that such procedures shall be fair and equitable and that they shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. Article 41(3) requires that

⁵² For examples in the materials reviewed, Japan's foreign-application restriction applies to certain non-public inventions made in Japan that fall within specified technology fields provided by Cabinet Order in accordance with an international patent classification or a classification divided from it. In the United Arab Emirates, the Executive Regulations provide that patent applications related to security and military industries filed by an applicant residing in the State are identified mainly by reference to the Strasbourg Agreement Concerning the International Patent Classification or other classifications considered appropriate. These examples should be distinguished from systems that refer to "classification" in the sense of classified information, secrecy classification, or confidentiality status, rather than IPC-based technical classification.

decisions on the merits of a case shall preferably be in writing and reasoned and that they shall be made available at least to the parties to the proceeding without undue delay. Such decisions shall be based on merits and shall be based only on evidence in respect of which parties were offered the opportunity to be heard. Thus, while WTO Members have the policy space to put in place a regime of foreign filing as part of administrative procedures, they must be in compliance with the other requirements of Article 62 in implementing any foreign filing or related control regime.

200. Article 73 of the TRIPS Agreement is applicable only to a limited extent for the purposes of this study. It sets out the Agreement's security exception. Article 73(a) permits WTO Members to refrain from furnishing information where such disclosure would be, according to the Member's assessment, contrary to its essential security interests. Given the provision's broad language, it can be argued that this encompasses the transmittal or publication of patent applications. However, the TRIPS Agreement does not impose positive obligations in relation to such procedural acts, therefore the exception can only be interpreted in the context of the general procedural requirements under Article 62 explained above.

201. Article 73(b)(i) preserves the policy space of WTO Members, *inter alia*, in taking any action which it considers necessary for the protection of its essential security interests relating to fissionable materials or materials from which they are derived. Therefore, in relation to fissionable materials, if there are patent-right consequences as discussed above in some systems that affect the availability, validity, grant, enforceability, ownership, entitlement, or territorial effect of patent protection, those may fall within the purview of Article 73(b)(i). As the TRIPS Agreement does not have a catch-all provision that exempts other patent-right consequences emerging from foreign-filing or related requirements, those requirements may be subject to other provisions in the Agreement.

202. In the present context, Article 73 is relevant because it provides a TRIPS security exception that may be invoked, within the terms of that provision, in relation to patent-related measures affecting the filing abroad or disclosure of sensitive inventions where essential security interests⁵³ are implicated, where it can be linked to a positive obligation in the Agreement. In any event, Article 73 does not in itself establish common rules on the triggers, procedures, time limits, or consequences of national foreign filing restrictions. Its relevance to this study therefore lies in identifying a possible security-exception framework for security-sensitive situations, rather than in harmonizing foreign filing controls.

AGREEMENT FOR THE MUTUAL SAFEGUARDING OF SECRECY OF INVENTIONS RELATING TO DEFENCE AND FOR WHICH APPLICATIONS FOR PATENTS HAVE BEEN MADE ("NATO SECRECY OF INVENTIONS AGREEMENT")

203. For the purposes of this study, the relevance of this Agreement lies in a specific foreign-filing problem in the defense field. Where secrecy is imposed on a defense-related invention in one country party to the Agreement, filing for the same invention in another country will ordinarily be prohibited. The Agreement creates a limited mechanism under which filing may nevertheless take place in another country party to the Agreement, provided that secrecy is maintained there as well.

204. Articles I and II contain the core of that mechanism. Under Article I, the governments parties to the Agreement must safeguard the secrecy of inventions received under agreed

⁵³ Panel Report, *Saudi Arabia – Measures concerning the Protection of Intellectual Property Rights*, WT/DS567/R, paras. 7.241–7.252, 7.280–7.282, 7.291–7.294; WTO Analytical Index, TRIPS Agreement – Article 73, section 1.2.1.2.2. The Panel described "essential security interests" as relating to the "quintessential functions of the state," including the protection of the State and its population from external threats and the maintenance of internal law and public order.

procedures where secrecy has been imposed in the interests of national defense by the government that first received the patent application for the invention (the “originating Government”). Under Article II, the mechanism may be used either at the request of the originating Government or at the request of the applicant, provided that the applicant shows that secrecy has been imposed by the originating Government and that authorization has been granted to file a secret patent application in the country in question. Article I also makes clear that the originating Government retains the right to prohibit filing in one or more other countries party to the Agreement.

205. The implementing procedures indicate the principal conditions for use of this mechanism. In substance, they require that both the country of origin and the receiving country have legal authority to impose secrecy and prohibit disclosure of inventions affecting national security, that adequate security arrangements exist in the receiving country, and that the country of origin have measures both to prohibit unauthorized foreign filing and to authorize filing abroad where appropriate. They further require a request from the relevant defense authority, or from the applicant accompanied by the necessary permit, together with a certificate confirming that secrecy has been imposed and specifying the security classification, and transmission of the application through officially recognized secure channels.

206. For present purposes, the Agreement may therefore be understood as a limited treaty-based exception to the ordinary prohibition on foreign filing of secret defense inventions.

TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY (EURATOM TREATY)

207. The Euratom Treaty is relevant to the present study in a narrow but direct way. Its principal relevance lies in Article 26, which contains the core rule on filing corresponding applications in other Member States and on filing outside them where information has been security-classified. That provision operates within the broader security framework established by Articles 24 and 25. Article 25, in particular, applies where a Member State notifies or communicates the existence or contents of certain patent or utility model applications and draws attention to the need to apply a security grading for defense reasons.

208. Article 26 provides as follows:

1. Where information covered by patents, patent applications, provisionally protected patent rights, utility models, or applications for utility models has been classified in accordance with Articles 24 and 25, the States which have applied for such classification may not refuse to allow corresponding applications to be filed in the other Member States. Each Member State shall take the necessary measures to maintain the security of such rights and applications in accordance with the procedure laid down in its own laws and regulations.

2. No applications relating to information classified in accordance with Article 24 may be filed outside the Member States except with the unanimous consent of the latter. Should Member States fail to make known their attitude, their consent shall be deemed to have been obtained on the expiry of six months from the date on which the information was communicated to the Member States by the Commission.

209. For the purposes of this study, Article 26 draws a clear distinction between filing within the regional system and filing outside it. Article 26(1) makes clear that, where the relevant information has been classified (in other words, it was placed under secrecy), the States that have applied such classification may not refuse corresponding filings in the other Member States, provided that security (in terms of grading and handling) is maintained there under national law. Article 26(2), however, imposes a stricter rule for filing outside the Member States:

in that situation, filing is not permitted unless all Member States consent, with deemed consent after six months if no position is made known. In this respect, the Euratom Treaty may be understood as establishing a limited regional mechanism under which secrecy classification does not necessarily prevent foreign filing within the Member States, but may operate as a control on filing outside them.

IV. NATIONAL AND REGIONAL LAWS AND PRACTICES: FOREIGN FILING REQUIREMENTS AND PROCEDURES

MEMBER STATES

Albania

210. In Albania, no generally applicable patent-law foreign filing license or first domestic filing requirement was identified. Law No. 53/2025 instead contains targeted national-security and defence controls: inventions involving processes or products subject to licensing under Albania's law on weapons, ammunition, military equipment and military technologies require Defence Industry Agency approval before registration; publication or handling of classified information may be restricted for national-defence, state-secrecy or classified-information reasons; and European patent applications for inventions of national-security or defence interest by applicants domiciled or resident in Albania must be filed with the GDIP.⁵⁴

Argentina

211. In Argentina, no patent-law foreign filing conditionality was identified in the reviewed Argentine patent legislation. Article 3 of Law No. 24.481 provides that industrial property titles may be obtained by national or foreign natural or legal persons having a real or constituted domicile in Argentina. Article 12 requires an application before the National Patent Administration of INPI in order to obtain an Argentine patent, while Article 13 expressly contemplates an Argentine patent application being filed after an application in another country and recognizes the priority date of the first foreign application if the Argentine application is filed within one year. Articles 25 and 26 provide for ordinary confidentiality of pending applications until publication and publication at 18 months, respectively. These provisions were not identified as imposing a first domestic filing requirement, foreign filing license, waiting period, mandatory routing requirement, or patent-law secrecy order restricting foreign filing.⁵⁵

Armenia

212. In Armenia, a first domestic filing and national-security review pathway applies to inventions created in the Republic of Armenia. Armenia's submission identifies the applicable mechanism as a "first filing" or first domestic filing requirement, cites Article 58 of the Law of the Republic of Armenia on Patents, and identifies the place of invention as the relevant trigger. Under Article 58, before filing an application for an invention created in Armenia in a foreign country, including under international treaties of the Republic of Armenia, the applicant must file the application for the same invention with the state authorized body.⁵⁶

213. Article 58 also addresses international-treaty routes. Where, under an international treaty of the Republic of Armenia, the process of granting a patent is carried out by an international authority in whole or in part, the application for an invention created in Armenia must be filed with that international authority only through the state authorized body, provided that the application conforms to national-security requirements. The state authorized body also acts as receiving Office for PCT international applications and Eurasian applications for citizens and organizations of the Republic of Armenia, as well as natural persons permanently residing in Armenia.⁵⁷

⁵⁴ Law No. 53/2025 of July 3, 2025, on Patents, Utility Models and Supplementary Protection Certificates, Arts. 16(7)–(8), 19(5), 23(2), 57(6)–(8), 131(4)–(5), 143.

⁵⁵ See comments received from Argentina in response to C.9304.

⁵⁶ See comments received from Armenia in response to C.9304; Law of the Republic of Armenia on Patents, Law No. HO-108-N of March 3, 2021, Arts. 9(1), 58; WIPO, *PCT Applicant's Guide*, Annex B — Armenia, "Does national legislation restrict the filing of international applications with foreign Offices?"

⁵⁷ *Ibid.*

214. The Armenian framework contains a three-month non-prohibition mechanism. If, within three months after the filing date of the Armenian application, the state authorized body does not notify the applicant that patenting abroad is prohibited on the grounds referred to in Article 9(1), the applicant may act at his or her discretion. Article 9(1) concerns inventions containing information constituting state and official secrets, including the determination of their confidentiality level, their use, and the publication of information about them. Violation of the domestic filing requirement entails liability as prescribed by Armenian legislation. Current WIPO PCT materials likewise identify Article 58 of the Law on Patents as the relevant Armenian rule restricting the filing of international applications with foreign Offices.⁵⁸

Australia

215. Australia does not impose a general foreign filing requirement before a patent application may be filed in another country or at a regional patent organization. However, where a secrecy-based prohibition order is in force, a variation of that order is required before filing in another jurisdiction. Sections 173, 147 and 184 of the *Patents Act 1990* are identified as relevant in this respect, and further guidance is provided in the IP Australia *Patents Manual of Practice and Procedure*, page 5.6.14 and subpages 5.6.14.1 to 5.6.14.3, as well as in the document *Prohibition Orders under the Patents Act*. Australian law does not provide for deemed or automatic approval if the Office does not act within a specified period.⁵⁹

216. A Prohibition Order prohibits or restricts the publication or communication of the subject matter of an invention. It may arise under section 173 of the *Patents Act*, where it appears to the Commissioner to be necessary or expedient in the interests of the defense of the Commonwealth, or under section 147, where the specification contains information falling within the definition of “associated technology” in the *Nuclear Non-Proliferation (Safeguards) Act*. The guidance explains that such orders are not common and are often imposed on subject matter with predominantly military application, with most orders each year concerning applications filed by defense industry applicants. Once an order has been made, the applicant must not publish or communicate information about the invention contrary to the order. The restriction extends beyond the specification itself to abstracts, précis, summaries and even the title, and contravention may attract a penalty of up to two years’ imprisonment.⁶⁰

217. After a Prohibition Order has been imposed, the Commissioner seeks advice from a relevant agency, such as the Department of Defense or the Nuclear Safeguards Office, on whether the order should remain in force or be revoked. If the order is revoked, the application returns to normal processing. If it remains in force, the application may continue, but under special conditions. In the case of an order under section 173, the applicant may either withdraw the application or continue with it, but the ordinary procedural acts required for a normal application, including requesting examination and paying continuation fees, must still be completed on time in order to avoid lapse. Examination may proceed only up to acceptance and no further. While the order remains in force, the application is not published, is not advertised as open to public inspection, and is not advertised as accepted. Correspondence may also need to be delivered by safe hand courier. If the order is later removed after the application has been accepted, the application is then advertised as accepted and thereafter proceeds in the same manner as any other accepted patent application. Where the order arises under section 147, the Director of Safeguards may issue a certificate directing that the application lapse. If no such direction is given, the application may be dealt with in the same way as an application subject to an order under section 173.⁶¹

⁵⁸ *Ibid.*

⁵⁹ See comments received from Australia in response to C.9304.

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

218. A Prohibition Order may be varied where there are good reasons to permit a specified disclosure. The examples given include disclosure for the purpose of obtaining legal advice, obtaining commercialization advice, or funding, or allowing a Convention application to be filed in another country. Variations are not granted automatically. The Commissioner must be satisfied that disclosure to the specified person or organization is appropriate, taking into account matters such as whether that person has a demonstrated need to know, the suitability of the person, and the appropriateness of the disclosure having regard to the technology concerned. The request must therefore identify the proposed recipient and the reasons for disclosure and must be made sufficiently in advance to allow relevant advice to be obtained. The guidance also notes that general legal advice about the operation of sections 173 and 147 does not require a variation, but a variation is required if the applicant wishes to discuss the technical disclosure in the patent application. It further states that disclosure to Defense innovation programs may be approved where assessment under such a program is required before a variation for commercialization advice or funding is considered. Variations are usually made only in respect of named individuals with relevant authorizations, such as security clearances, and a confidentiality undertaking is not equivalent to a variation. The guidance states expressly that obtaining a variation to permit filing in another country is not straightforward.⁶²

219. As to the broader effects of such orders, the guidance explains that the imposition of a Prohibition Order does not imply that the invention works, is capable of working, or is of interest to the relevant agency for acquisition, development, or commercialization. For many inventions subject to a Prohibition Order, the only possible users may be in the defense industries. An applicant who considers that the order should not have been imposed, or who is dissatisfied with the refusal or scope of a requested variation, may ask the Commissioner to revoke the order, seek review before the Administrative Review Tribunal, or seek review before the Federal Court. The guidance notes, however, that review under the *Administrative Decisions (Judicial Review) Act* is confined to whether there has been an error of law or process and does not examine whether the decision to impose the order was substantively correct. Where an application has lapsed because of a direction by the Director of Safeguards, the applicant may ask the Director to revoke that direction, following which the Commissioner may restore the application.⁶³

220. The position of PCT applications filed in Australia is also addressed where the subject matter falls into an area in which a Prohibition Order might apply. In such a case, the record copy is not sent to the International Bureau while the Commissioner awaits formal advice from the relevant agency. If no Prohibition Order is made, the PCT application proceeds like any other PCT application. If a Prohibition Order is made, the application is deemed withdrawn and cannot continue under the PCT, although section 176 allows the applicant, within three months from the day on which the PCT application was deemed withdrawn, to request that it be treated as an Australian application. If the Director of Safeguards issues a certificate under section 147 directing that the PCT application not be treated as an international application, the application automatically ceases to be treated as an international application. The guidance further indicates that most Prohibition Orders are issued under section 173, which refers broadly to the defense of the Commonwealth, while orders under section 147 are tied to “associated technology”, namely non-public information primarily applicable to certain nuclear-related equipment, plant, weapons, or explosive devices. Depending on the nature of the invention, the Defense and Strategic Goods List, the *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995* and the *Chemical Weapons (Prohibition) Act 1994* may also be relevant.⁶⁴

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

Azerbaijan

221. In Azerbaijan, under Article 41 of the Law on Patents (Law No. 312-IQ of July 25, 1997, as amended), an invention, utility model or industrial design may be patented in a foreign State after an application for it has been filed with the body designated by the relevant executive authority. Within three months of the date on which the application is received, that body adopts a decision on the possibility of filing the application in a foreign State and notifies the applicant; disputes concerning such decisions are considered administratively and by the courts. The substance of this pathway dates from amendments adopted in 2009, which replaced the previous rule under which inventions, utility models and industrial designs created in Azerbaijan could be patented in a foreign State within 12 months of the domestic filing date. Further amendments, concerning inter alia filing, registration and examination procedures, were adopted by Law No. 351-VIIQD of February 10, 2026, and a presidential decree on the application of that Law has updated the standing designation of the competent institutions under the Law; Article 41 is stated here as it appears in the consolidated texts reviewed, which do not yet incorporate the 2026 amendments.⁶⁵

222. Separately, where the disclosure of information contained in an application could damage the national security of the Republic of Azerbaijan, the application is considered under a procedure determined by the relevant executive authority (Article 25), and the publication of information concerning an application may be postponed where the subject matter affects national security interests (Article 30).⁶⁶

Bahrain

223. In Bahrain, the Law on Patents and Utility Models provides that, where the competent Directorate at the Ministry of Commerce finds that the invention relates to an important issue concerning defense or public security affairs, it must give immediate confidential notice to the Ministry of Defense or the Ministry of the Interior, as the case may be, concerning the patent application and its enclosures. The Minister of Defense or the Minister of the Interior may object to acceptance of the patent application within 90 days from the date on which the documents were sent, in consideration of buying the invention, reaching an agreement concerning exploitation of the invention, or requesting application of the compulsory licensing provisions of the Law.⁶⁷

Bangladesh

224. In Bangladesh, no generally applicable patent-law foreign filing license or first domestic filing requirement was identified in the reviewed materials. The Bangladesh Patent Act, 2023 instead contains a national-security-linked confidentiality and waiting-period mechanism. Patent applicants may consult the Bangladesh Patent Act, 2023, in particular Sections 15 and 18. Under Section 18, any patent application related to national security must be kept confidential. Where the Director General considers an application to be related to national security, the application is referred to the competent authority concerned with national security for verification. The competent authority must notify the Director General within 90 days from receipt of the application whether the claimed invention relates to national security; if no notification is made within that period, the application is published. The applicant may not file a patent application abroad until the Director General has notified the applicant concerning the

⁶⁵ Law of the Republic of Azerbaijan on Patents, No. 312-IQ of July 25, 1997, as amended, Art. 41; Law No. 893-IIIQD of October 20, 2009 (introducing the current wording of the first paragraph of Article 41); Law No. 351-VIIQD of February 10, 2026, on Amendments to the Law of the Republic of Azerbaijan on Patents, and the Presidential Decree of March 31, 2026 on the application of that Law.

⁶⁶ Law of the Republic of Azerbaijan on Patents, Arts. 25 and 30; WIPO, PCT Applicant's Guide, Annex B (AZ); WIPO, "International Applications and National Security Considerations".

⁶⁷ Law No. 1 of 2004 on Patents and Utility Models (Bahrain), as amended by Law No. 14 of 2006, Arts. 16 and 20; Decision No. 101 of 2018 on the Issuance of the Implementing Regulation of Law No. 1 of 2004 on Patents and Utility Models, Art. 16.

national-security matter or, as applicable, until the 90-day period has expired. An invention related to national security may not be used, licensed or transferred without approval of the competent authority.⁶⁸

225. Separately, Section 15 imposes a corresponding-foreign-application information requirement. Where a corresponding patent application has been filed outside Bangladesh by the applicant, or by another person through whom the inventor claims the patent or who has obtained the relevant right from the inventor, the applicant must submit specified information and documents concerning that foreign application with the Bangladesh application or within 90 days, subject to a possible 60-day extension for translation. The applicant must continue to submit information every six months until the Bangladesh application is granted or rejected, and failure to comply, except for reasons beyond the applicant's control, results in the application being deemed rejected. This rule is a foreign-application information obligation rather than a condition on filing abroad.⁶⁹

Belarus

226. In Belarus, a first domestic filing and notification pathway applies before certain applicants may seek patents abroad for inventions, utility models, or industrial designs. Patent applicants may consult the Law of the Republic of Belarus No. 160-Z of December 16, 2002, "On Patents for Inventions, Utility Models, and Industrial Designs," and the Regulation of the Council of Ministers of the Republic of Belarus No. 900 of July 2, 2003, "On Approval of the Regulation on Secret Inventions and Utility Models," to inform themselves of the foreign filing requirement and the procedure to follow.⁷⁰

227. Under Article 32, natural and legal persons of the Republic of Belarus may seek patents abroad, but before filing abroad the applicant must file a corresponding application in Belarus and inform the Patent Office of the intention to seek protection abroad. If no prohibition by the Patent Office is notified within three months following receipt of that notice of intention, the applicant may subsequently file abroad. Filing abroad before expiry of that period may occur only after verification for confidential information the disclosure of which may prejudice the security of the Republic of Belarus. Inventions, utility models, and industrial designs containing such confidential information are kept secret under the prescribed procedure and may not be patented abroad. Applications for protection under international treaties to which Belarus is party are filed with the Patent Office unless the treaty provides otherwise.⁷¹

228. Accordingly, the Belarus pathway is broader than a security-only trigger, but security/confidentiality review determines whether an earlier foreign filing, or any foreign filing, remains barred. The connecting factor is better described by reference to the applicant's Belarusian personal or business link, reflected in current PCT materials as natural or legal persons having a residence or principal place of business in Belarus, rather than simply as nationality or national-defense subject matter.⁷²

⁶⁸ Bangladesh Patent Act, 2023, Act No. LIII of 2023, ss. 18; WIPO Lex, Bangladesh Patent Act, 2023, noting assent and publication on November 13, 2023 and entry into force on February 27, 2025 pursuant to SRO No. 56-Act/2025, dated February 12, 2025; JPO, *Bangladesh Patent Act, 2023*, English translation, s. 18.

⁶⁹ Bangladesh Patent Act, 2023, Act No. LIII of 2023, ss. 15, 18; JPO, *Bangladesh Patent Act, 2023*, English translation, ss. 15, 18.

⁷⁰ See comments received from Belarus in response to C.9304; Law of the Republic of Belarus No. 160-Z of December 16, 2002, "On Patents for Inventions, Utility Models, and Industrial Designs," art. 32; WIPO PCT Applicant's Guide, Annex B (BY), "Does national legislation restrict the filing of international applications with foreign Offices?"

⁷¹ *Ibid.*

⁷² *Ibid.*

Belgium

229. Belgium does not appear to impose a general foreign filing license requirement for all inventions. However, Belgian law contains a defense/security-related secrecy framework, and route-specific filing rules for European patent applications and PCT international applications. A European patent application or PCT international application must be submitted to the Belgian Intellectual Property Office where the applicant has Belgian nationality, or has a domicile, residence, registered office, seat or principal place of business in Belgium, and the application may be relevant to the defense of Belgian territory or State security. The applicant is responsible for determining whether that defense or security exception applies. In addition, under the Law of January 10, 1955, disclosure of inventions or trade secrets contrary to the interests of the defense of Belgian territory or State security is prohibited; where a patent application is under defense review, foreign patent applications are prohibited absent express authorization.⁷³

Belize

230. In Belize, no patent-law foreign filing conditionality was identified in the reviewed materials.⁷⁴

Bhutan

231. Bhutan does not impose any foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization.⁷⁵

Botswana

232. In Botswana, no patent-law foreign filing conditionality was identified in the reviewed materials.⁷⁶

Brazil

233. Brazil requires security clearance before a patent application can be filed in another country or at a regional patent organization for certain defense related innovations. Brazil's submission states that inventions whose subject matter may be of interest to national defense are subject to monitoring by the Secretariat of Strategic Affairs of the Presidency of the Republic of Brazil for purposes of national security review. Patent applicants may consult Article 75 of Law No. 9,279 of May 14, 1996 (Brazilian IP Law) and Decree No. 2,553 of 1998, which

⁷³ See Belgian Code of Economic Law, Arts. XI.82(2) and XI.91(2); Law of Jan. 10, 1955 concerning the disclosure and use of inventions and trade secrets affecting the defense of the territory or State security, Arts. 1, 4–5, 7; Belgian Intellectual Property Office, *Notice to the attention of patent attorneys and users of the Belgian patent system — Implementation of the provisions of the Law of 29 June 2016 laying down various economic provisions in relation with the filing of European patent applications and international applications*, Feb. 23, 2018; FPS Economy, *Guide pour l'utilisateur du système belge des brevets et des certificats complémentaires de protection*, sections 2.2.2.5 and 2.4.3; FPS Economy, "European patents," section "Where and how to file a European Patent Application?"; FPS Economy, "International patent requests," section "In practice..."; WIPO, PCT Applicant's Guide, Annex B — Belgium; EPO, National Law relating to the EPC, "II. Filing of European patent applications — Belgium."

⁷⁴ Patents Act, Chapter 253, Revised Edition 2020, ss. 2, 17, 21, 23, 35 and 55; Patents Regulations, 2002, as amended by the Patents (Amendment) Regulations, 2022. Section 2 defines a "foreign application" as an application for a patent filed outside Belize, and section 23 permits the Registrar to request information and documents concerning corresponding foreign patent applications. Section 35 concerns exploitation of a patented invention by the Government or an authorized person in the public interest, including national security. These provisions were not identified as imposing a first domestic filing requirement, foreign filing license, waiting period, mandatory domestic routing requirement, security-clearance requirement, or patent-law secrecy order restricting foreign filing. See also WIPO, PCT Applicant's Guide, Annex B/C, Belize.

⁷⁵ See comments received from Bhutan in response to C.9304.

⁷⁶ Industrial Property Act, 2010 (Act No. 8 of 2010) (Botswana), as amended; Industrial Property Regulations, 2012 (S.I. No. 70 of 2012).

regulates Articles 75 and 88 to 93 of that Law, in order to inform themselves of the applicable requirements and procedure.⁷⁷

234. The security-clearance mechanism is triggered by the impact on the country's national security or national defense, the place of invention, and the technical field or subject matter of the invention. Patent applications originating in Brazil whose subject matter is of interest to national defense are processed confidentially and are not subject to the publications provided for in the Brazilian IP Law. The National Institute of Industrial Property (INPI) immediately forwards the application to the competent body of the Executive Power, which has 60 days to decide on the confidential nature of the application. If that body does not respond within the 60-day period, the application is processed normally. Brazil's submission treats this as a deemed or automatic approval after 60 days of inaction; more precisely, Article 75 provides that, if the competent body does not respond within the 60-day period, the application is processed normally.⁷⁸

235. Where the rights of a patent applicant or patent holder are restricted on grounds of national defense pursuant to Article 75, §3 of the Brazilian IP Law, the applicant or patent holder is entitled to compensation, upon demonstration of the economic benefits that would have been derived from the exploitation or assignment of the patent.⁷⁹

Brunei Darussalam

236. Section 33 of the Patents Act (Chapter 262) imposes a limited first domestic filing requirement on persons resident in Brunei Darussalam. Under that provision, no such person shall, without written authority granted by the Registrar, file or cause to be filed outside Brunei Darussalam an application for a patent for an invention unless an application for a patent for the same invention has been filed in the Registry not less than two months before the application outside Brunei Darussalam, and no directions have been given under section 32 in relation to the application in Brunei Darussalam or all such directions have been revoked. Section 33 does not apply to an application for a patent for an invention for which an application has first been filed in a country outside Brunei Darussalam by a person resident outside Brunei Darussalam. The Patents Act (Chapter 262) and the Patent Rules are identified as the applicable instruments.⁸⁰

237. A request for written authority under section 33 is made to the Registrar of Patents at the Brunei Intellectual Property Office, which operates as the Intellectual Property Division within the Attorney General's Chambers of the Prime Minister's Office. Such a request may be submitted in writing and should include sufficient details of the invention to enable consideration. No deemed license or automatic approval mechanism is provided.⁸¹

238. Although the term "Secrecy Order" is not used in the Patents Act, section 32 provides for directions prohibiting or restricting publication or disclosure of an invention on national security grounds. Where it appears to the Registrar that an application contains information of a description notified by the Attorney General as information the publication of which might be prejudicial to the defense of Brunei Darussalam, the Registrar shall give directions prohibiting or

⁷⁷ See comments received from Brazil in response to C.9304; Law No. 9,279 of May 14, 1996, art. 75; Decree No. 2,553 of Apr. 16, 1998, arts. 1-2. For current administrative context, see INPI, Relatório de Avaliação: Diretoria de Patentes, Programas de Computador e Topografias de Circuitos Integrados (Sept. 23, 2025), at 27-29 (reproducing Decree No. 2,553, noting that the decree remains in force although the Secretariat of Strategic Affairs has since undergone institutional changes, and stating that a definitive regulated procedure for national-defense patent applications remains in development).

⁷⁸ See comments received from Brazil in response to C.9304; Law No. 9,279 of May 14, 1996, art. 75, §§ 1-2; Decree No. 2,553 of Apr. 16, 1998, art. 2.

⁷⁹ See comments received from Brazil in response to C.9304.

⁸⁰ See comments received from Brunei Darussalam in response to C.9304.

⁸¹ *Ibid.*

restricting publication of that information or its communication to specified persons. Where publication might be prejudicial to the safety of the public, the Registrar may give directions of the same nature for a period not exceeding three months from the end of the period prescribed for section 27. While such directions are in force, an application made under the Act is held in abeyance after the formal requirements have been met and does not proceed under section 29 until the directions are revoked. If the application is an international application for a patent, a copy is not sent to the International Bureau or any international searching authority appointed under the Patent Cooperation Treaty.⁸²

239. Where the Registrar gives directions under section 32, notice of the application and of the directions must be given to the Attorney General, who considers whether publication of the application, or the publication or communication of the information in question, would be prejudicial to the defense of Brunei Darussalam or the safety of the public. If it is considered prejudicial, the question is reconsidered during the period of nine months from the date of filing and at least once in every subsequent period of 12 months. If it appears that publication or communication would not, or would no longer, be prejudicial, notice is given to the Registrar, who must revoke the directions and may extend the time for doing anything required or authorized under the Act in connection with the application, whether or not that time has previously expired. Filing abroad in contravention of section 33 is an offence punishable on conviction by a fine not exceeding \$5,000, imprisonment for a term not exceeding two years, or both. Failure to comply with directions under section 32 attracts the same penalty.⁸³

Bulgaria

240. Bulgaria applies a first filing, or first domestic filing, requirement before a patent application may be filed in another country or at a regional patent organization. Patent applicants may consult the *Act on Patents and Registration of Utility Models*, the *Ordinance of Secret Patents*, and the *Protection of Classified Information Act* in order to inform themselves of the applicable foreign filing requirements and procedure.⁸⁴

241. The foreign filing conditionality is triggered by the impact on the country's national security or national defense and by the nationality or residency of the applicant. More specifically, Bulgarian nationals with permanent address in the Republic of Bulgaria, and legal persons with their seat in the Republic of Bulgaria, may claim patent protection abroad for their own inventions only after performance of the classified-information check under Article 45a of the Act on Patents and Registration of Utility Models. Secret inventions shall not be patented abroad, and filing abroad in violation of Article 25 is subject to administrative sanction. Although Bulgaria's submission states that Bulgarian law does not allow for a deemed license or automatic approval if the Office does not act or respond within a specific time period, the statute contains a related deeming rule for the secrecy-review process: if, after the applicable three-month period for determining the level of security classification, the Patent Office has not received an opinion on the classification level, the application is considered not to be an application for a secret patent.⁸⁵

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ See comments received from Bulgaria in response to C.9304.

⁸⁵ See comments received from Bulgaria in response to C.9304; Act on Patents and Registration of Utility Models, arts. 24, 25, 45a, 108 (Patent Office of the Republic of Bulgaria English translation, amended and supplemented through SG No. 92/27 Oct. 2020); WIPO, PCT Applicant's Guide, Annex B(BG), "Competent receiving Office(s) for international applications filed by nationals or residents of this State" (stating that a Bulgarian resident may file directly with the EPO or International Bureau three months after filing a Bulgarian application for the same invention where the application has been classified by Bulgarian defense authorities as not confidential).

Burundi

242. Burundi identified Act No. 1/13 of July 28, 2009, on Industrial Property as the relevant legislative framework. Under that Act, a patent application filed with the Industrial Property Director must include a request, description, one or more claims, drawings where applicable, and an abstract. Where an applicant in Burundi relies on an earlier foreign application for the same invention, the applicant must provide information concerning that foreign filing, including the filing date and number, relevant search or examination communications, and copies of any foreign grant, rejection, or revocation decisions. Holders of industrial property rights whose usual residence or main establishment is outside Burundi must be represented in Burundi by a local legal adviser or another qualified local representative.⁸⁶

Cambodia

243. Cambodia does not maintain a first domestic filing, foreign filing license, security-clearance, waiting-period, or secrecy-order regime. In Cambodia, patent applicants may consult the *Law on Patents, Utility Models, and Industrial Designs* (2003) and its 2017 amendment, as well as the *Prakas (Declaration) on the Procedure for the Grant of Patents and Utility Model Certificates*, in connection with foreign filing requirements and the procedure to follow. No significant or established case law specifically addressing foreign filing conditionality or security clearances for patent applications has been identified.⁸⁷

Canada

244. Canada does not impose a generally applicable foreign filing license, security-clearance requirement, waiting period or first domestic filing requirement before a patent application may be filed in another country or before a regional or international patent authority. It is therefore more accurate to describe Canadian law as having no general foreign filing requirement, while recognizing that narrower statutory controls may affect foreign patent filing once a national-security or public-servant-invention regime is engaged.⁸⁸

245. Section 20 of the Patent Act is not a general foreign filing license provision. It applies to a narrower class of inventions relating to instruments or munitions of war where the invention is assigned, agreed to be assigned, or treated as assigned to the Minister of National Defence. Once that secrecy regime is engaged, an applicant may not file abroad through ordinary patent-filing channels unless the communication is authorized by or on behalf of the Minister. The restriction follows from the assignment, secrecy, and communication provisions of section 20, rather than from a standalone Canadian first-filing rule: filing abroad would require the technical disclosure to be transmitted or made available outside the section 20 channel, and section 20 makes unauthorized communication of that information an offence under the Foreign Interference and Security of Information Act. The Canadian application and related documents are also kept sealed and are not published or open to public inspection while section 20 treatment applies.⁸⁹

246. Separately, the Public Servants Inventions Act imposes an express pre-filing condition on public servants. Although it is not a generally applicable patent-law foreign filing requirement, certain public servant inventions, and the rights in them in Canada or elsewhere, vest in the Crown. A public servant who makes an invention must inform the appropriate minister and must not file outside Canada a patent application in respect of the invention without that minister's

⁸⁶ See comments received from Burundi in response to C.9304.

⁸⁷ See comments received from Cambodia in response to C.9304.

⁸⁸ See comments received from Canada in response to C.9304.

⁸⁹ Patent Act, R.S.C. 1985, c. P-4, s. 20(5)-(6), (7)-(9), (13) and (17); Foreign Interference and Security of Information Act, R.S.C. 1985, c. O-5, ss. 2(3) and 4(1)-(2).

written consent. This rule therefore operates as a defined, person-specific foreign filing restriction, not as a general Canadian foreign filing regime.⁹⁰

Chile

247. Chile does not impose any foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization.⁹¹

China

248. In China, a foreign filing license is required before a patent application may be filed in a foreign country for an invention or utility model accomplished in China. Any unit or individual that intends to apply for such a patent in a foreign country shall submit the matter to the China National Intellectual Property Administration (CNIPA) for confidentiality examination. Patent applicants may consult the *Patent Law of the People's Republic of China*, the *Implementing Regulations of the Patent Law of the People's Republic of China*, and the *Guidelines for Patent Examination*.⁹²

249. The foreign filing conditionality is triggered by the place of invention. The request must therefore be submitted before the foreign filing takes place. A Request for Confidentiality Examination for Filing Patent Applications Abroad shall be submitted and, where a patent application is to be filed directly in a foreign country, a description of the technical solution shall also be submitted. Chinese law does not allow for deemed or automatic approval if CNIPA does not act or respond within a specific time period, and it does not provide a mechanism for obtaining a retroactive foreign filing license.⁹³

250. According to Article 19.4 of the Patent Law, for an invention or utility model, if a patent application has been filed in a foreign country in violation of the first paragraph of that Article, it shall not be granted a patent right in China. If an application relates to national security or other major interests of the State and confidentiality needs to be maintained, it shall be converted into a national defense patent application or a confidential patent application. Chinese law also provides for secrecy-based restrictions. According to Article 4 of the Patent Law, where an invention-creation for which a patent is applied for relates to national security or other major interests of the State and confidentiality needs to be maintained, the patent application shall be handled in accordance with the relevant prescriptions of the State. No mechanism is provided to compensate for the loss of opportunity of obtaining a patent if a foreign filing license is denied.⁹⁴

251. CNIPA's official case note on Invalidation Decision No. 55586 reports that a Chinese utility model was invalidated in full because the patentee had first filed a U.S. provisional application without prior secrecy review and, after the requester made an initial showing to a high degree of probability that the invention's substantive content had been completed in China, the patentee failed to adduce sufficient rebuttal evidence that it had been completed abroad. Later, in Administrative Judgment (2022) 最高法知行终255号, dated 14 March 2024, the Supreme People's Court held that the governing inquiry is whether the technical solution's substantive content was completed in China; defined that substantive content as the improvement over the prior art that solves the relevant technical problem and achieves the technical effect; and explained that the issue must be assessed holistically by examining the solution's formation process, the inventors' locations when that substantive content was formed, and the technical-

⁹⁰ Public Servants Inventions Act, R.S.C. 1985, c. P-32, ss. 3 and 4(1)(a)-(b).

⁹¹ Law No. 19.039 of Industrial Property (Chile), as amended up to August 6, 2022; Decree No. 82 of October 29, 2021 approving the Regulations of Law No. 19.039 on Industrial Property.

⁹² See comments received from China in response to C.9304.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

development patterns of the field. On the evidence before it, the Court held that the substantive content had not been completed in China and therefore upheld the patent.⁹⁵

Colombia

252. Colombia does not impose any foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization.⁹⁶

Croatia

253. Croatia does not appear to impose a general foreign filing license for all inventions. However, where an invention is indicated or identified as possibly of interest to Croatia's defence affairs, it is treated as confidential pending defence review, and domestic legal and natural persons may seek protection abroad for a confidential invention only with Ministry of Defence approval. A European patent application relating to an invention of possible defence interest is not transmitted to the EPO and is handled under the defence-invention rules.⁹⁷

Czech Republic

254. In the Czech Republic, the Czech submission describes foreign filing conditionality as a security-clearance/classified-information regime, rather than as a general first-filing requirement. The procedure is implicated where the security interests of the Czech Republic are at issue - that is, where the subject matter of an invention, utility model, or topography of a semiconductor product contains, or is believed by the applicant to contain, classified information. The relevant criterion identified in the submission is the impact on the country's national security or national defense. The submission identifies Section 71 of Act No. 527/1990 Coll., on Inventions and Rationalization Proposals, as amended, together with Act No. 412/2005 Coll., on the Protection of Classified Information and on Security Eligibility, as the relevant legal framework. In addition, Section 24(4) of the Patent Act provides that, if a European patent application or international application contains classified information under special legal regulations, the applicant must file the application with the Industrial Property Office and attach the National Security Authority's approval for filing such application. Under Section 71 of the Patent Act, except for publication thereof, the Act also applies to procedures on inventions kept secret under the special regulations or under an international agreement by which the Czech Republic is bound. For proceedings concerning inventions that are designated as classified by the National Security Authority pursuant to Section 70 of Act No. 412/2005 Coll., or concerning inventions classified under an international treaty binding on the Czech Republic, the rules of the Patent Act apply, with the exception of the procedures related to publication of the patent application.⁹⁸

255. Every applicant who files an application for an invention, utility model, or topography of a semiconductor product with the Industrial Property Office (IPO-CZ) is required to indicate on the

⁹⁵ CNIPA, "Top Ten Reexamination and Invalidation Cases" — "一种可伸缩的传动总成装置及升降立柱" (official case note on Invalidation Decision No. 55586), explaining that once the invalidation requester made an initial showing, to a high degree of probability, that the substantive content of the invention had been completed in China, the patentee had to adduce sufficient rebuttal evidence of completion abroad; SPC IP Tribunal, Administrative Judgment (2022) 最高法知行终255号 (14 Mar. 2024), holding that the relevant inquiry is whether the "substantive content" of the technical solution was completed in China and that this is assessed by reference to the invention's formation process, the inventors' locations and the R&D patterns of the field.

⁹⁶ See comments received from Colombia in response to C.9304.

⁹⁷ Act on the Production, Overhaul and Trade of Armaments and Military Equipment, OG Nos. 33/02, 173/03, 146/08 and 17/19, Arts. 33, 37 (Croatian Ministry of Defence unofficial English translation); Croatian Patent Act, OG No. 16/20, Art. 121(3); EPO, *National Law relating to the EPC – Croatia*, section II.2.

⁹⁸ See comments received from Czech Republic in response to C.9304; Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as amended up to Act No. 261/2021 Coll., §§ 24(4), 71; Act No. 412/2005 Coll., on the Protection of Classified Information and on Security Capacity, as amended, § 70; European Patent Office, National Law Relating to the EPC, II. Filing of European patent applications - Czech Republic, items 1-2 (noting that European patent applications containing matters that must be kept secret under special regulations must be filed with national authorities).

application a proposed level of classification if he or she believes that the subject matter of the application contains classified information. IPO-CZ submits the application to the National Security Authority, which, after receiving the opinion of the relevant central administrative authority where applicable, must notify IPO-CZ within 60 days from receipt whether it confirms or amends the proposed classification level, or rejects the proposed level and returns the application if the subject matter does not contain classified information. The submission states that, until the Authority issues its decision, the application is handled as though it contains classified information. IPO-CZ marks the notified classification level on the application and promptly notifies the applicant, who must then mark the subject matter of the application with that classification level in the prescribed manner. If the applicant is a natural person not engaged in business activities, IPO-CZ has the status of originator of the classified information for purposes of Section 70(4) of Act No. 412/2005 Coll.; it does not assume the role of inventor under the Patent Act. The Czech submission states that Czech law does not allow for deemed or automatic approval if the authority does not act or respond within a specific time period; more precisely, although Section 70 contains a 60-day notification period, it does not provide a deemed foreign-filing license or automatic approval based on non-action. Separately, the Classified Information Act contains general rules for release of classified information in international relations, including authorization/consent requirements and a rule that there is no legal entitlement to issuance of the relevant permit or consent.⁹⁹

256. Applications determined by the Authority to contain classified information are administered by the IPO-CZ Security Director. After the classification level has been determined and the permitted bibliographic data have been recorded in the public register, the proceedings on the application are conducted by a person in the Patent Department who has access to classified information, and they take place under a special classified regime. Applications containing classified information are not published. Pursuant to Section 5(3) of the Patent Act, for purposes of the state-of-the-art rule, a legal presumption applies that such “secret” applications are deemed to have been published 18 months from the priority date. The submission notes that an example of an international treaty under Section 71 of the Patent Act is the NATO Agreement on the mutual safeguarding of secrecy of inventions relating to defense and for which applications for patents have been made, signed on 21 September 1960, which has been in force for the Czech Republic since 10 November 2000. No significant case law on foreign filing conditionality requirements has been identified. The submission also cites Council Regulation (EU) 2024/1745 of 24 June 2024 amending Regulation (EU) No. 833/2014 concerning restrictive measures in view of Russia’s actions destabilizing the situation in Ukraine, and refers specifically to Article 5s; this appears to be a related EU sanctions/IP restriction rather than part of the Czech classified-invention foreign-filing clearance mechanism.¹⁰⁰

Denmark

257. In Denmark, the relevant patent-law restriction is limited to inventions relating to war materiel or processes for the manufacture of war materiel, rather than operating as a general foreign filing license or first-filing requirement for all inventions. Section 70 of the Danish Patents Act provides that, for inventions relating to war materiel or processes for the manufacture of war materiel, secret patents may be granted in accordance with the special provisions laid down for

⁹⁹ See comments received from Czech Republic in response to C.9304; Act No. 412/2005 Coll., on the Protection of Classified Information and on Security Capacity, as amended, §§ 2(f), 21-22, 70(1)-(4), 73, 76(3)-(5); Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as amended, §§ 8(1)-(2), 25(1). Section 70(4) gives IPO-CZ the status of originator for classified-information purposes, while the Patent Act separately treats the inventor as the person who created the invention and requires the application to identify the inventor.

¹⁰⁰ See comments received from Czech Republic in response to C.9304; Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as amended, §§ 5(3), 71; Act No. 412/2005 Coll., on the Protection of Classified Information and on Security Capacity, as amended, §§ 70-76; Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defence and for Which Applications for Patents Have Been Made, Sept. 21, 1960; Council Regulation (EU) 2024/1745 of June 24, 2024, art. 5s.

that purpose. Under the Consolidate Secret Patents Act, where required for the sake of the defence of the country, the competent minister may, at the request of the Minister of Defence, decide that a patent for such an invention shall be granted as a secret patent, provided that the patent application has been filed by a person or enterprise residing in Denmark or by a Danish institution.¹⁰¹

258. For international and European filing routes, section 2a of the Consolidate Secret Patents Act provides that an invention relating to war materiel, or to processes for the manufacture of war materiel, and owned by a person or enterprise residing in Denmark or by a Danish institution, may not be protected on the basis of an international or European application designating Denmark, or later changed to designate Denmark, unless the application is filed through the Danish Patent and Trademark Office. If it is decided that the patent may be granted in Denmark only as a secret patent, the application may not be proceeded with as an international or European application without authorization from the Minister of Defence. If such authorization is not given, the applicant may convert the application into an application for a patent in Denmark only.¹⁰²

259. The Danish framework also restricts disclosure and foreign protection while the secret-patent question is pending. Under section 3, an invention covered by the Act and forming the subject of a patent application filed by a person or enterprise residing in Denmark or by a Danish institution may not, without authorization from the Minister of Defence, be published, disclosed to others, or made the subject of an application for a patent, utility model or other protection in a foreign State. Rights attached to such an application may likewise not be transferred without the consent of the Minister of Defence. Those restrictions cease after three months from filing unless it has been decided that any patent shall be granted as a secret patent, or the applicant has been notified that the matter has not been finally decided and that the restrictions will apply for a further three months.¹⁰³

260. Sections 2, 2a and 3 do not apply where, before the Danish patent filing, the invention has already been published or made the subject of an application for an ordinary patent abroad, or where an earlier Danish patent application has, after expiry of the section 3 time limits, proceeded as an ordinary patent application.¹⁰⁴

261. Where a patent is to be granted as a secret patent, the application is examined and processed under the Patents Act, except that the ordinary provisions on publication and public availability do not apply. If a secret patent is granted, the advertisement and register entry indicate that it is a secret patent but omit the subject matter of the patent and the names of the proprietor and agent; the patent specification is not printed or published, and the application and patent files are not open to inspection. Inventions that are the subject of secret patents may not be sought protected by patents abroad or disclosed to third parties without the consent of the Minister of Defence, and rights attached to such patents may not be transferred without that consent.¹⁰⁵

262. The Act also provides release and consequence rules. If the decision to treat the matter as secret is rescinded before grant, the application proceeds under the ordinary provisions of

¹⁰¹ Consolidate Patents Act, Consolidate Act No. 90 of January 29, 2019, section 70; Consolidate Secret Patents Act, Consolidate Act No. 107 of January 24, 2012, sections 1–8 and 11; Order No. 21 of January 30, 1960, on the Definition of War Material under the Act on Secret Patents; Danish Patent and Trademark Office, Guidelines for Patents, “Hemmelige patenter”; WIPO, PCT Applicant’s Guide, Annex B — Denmark, “Does national legislation restrict the filing of international applications with foreign Offices?”; WIPO, “International applications and national security considerations,” Known filing restrictions — Denmark.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

the Patents Act. If the decision is rescinded after grant, the secret patent is converted into an ordinary patent and the ordinary register and publication steps are completed. When a secret patent ceases to have effect, the patent specification is to be published without undue delay unless the Minister of Defence decides that the invention shall continue to be kept secret. Violation of sections 2a, 3 or 7, or disclosure after a continued-secrecy decision, is punishable by fines or imprisonment for up to one year, unless a more severe penalty is provided by other legislation.¹⁰⁶

Ecuador

263. Ecuador does not impose any foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization.¹⁰⁷

Estonia

264. In Estonia, foreign filing is subject to another mandatory authorization: a permit of the Ministry of Defense shall be obtained for filing in a foreign State a patent application containing an invention relating to national defense that is classified in Estonia. Patent applicants may consult section 59 of the *Patents Act*, concerning the procedure for patenting inventions, in order to inform themselves of the applicable requirement and the procedure to follow. The relevant criterion is the impact on the country's national security or national defense; more specifically, the requirement applies if a patent application contains an invention related to national defense and is classified in Estonia.¹⁰⁸

265. Estonian law does not allow for deemed or automatic approval if the Office does not act or respond within a specific time period. Estonian patent law also provides for a secrecy order or similar national security restriction. The impact of that restriction on foreign filing is that a permit of the Ministry of Defense shall be obtained for filing in a foreign State a patent application containing an invention relating to national defense that is classified in Estonia.¹⁰⁹

Finland

266. In Finland, patent applicants may consult the *Act on inventions of importance to the defense of the country* (15.12.1967/551). Finnish legal framework does not include a foreign filing license as such. However, Finnish patent law provides for a secrecy order or other similar national security restriction that prohibits or restricts filing in other jurisdictions.¹¹⁰

267. Under section 2 of that Act, if it is obvious that an invention is principally of importance to the defense of the country, an inventor residing in Finland, or his successor in title, may not apply for or authorize another person to apply for a patent for the invention abroad before an application has been filed for a patent for the invention in Finland and before six months have passed from the date the patent application was filed there. If it is obvious that an invention is principally of importance to the defense of the country, an inventor residing in Finland, or his successor in title, shall file a European patent application within the meaning of the European Patent Convention or an international patent application under chapter 3 of the Finnish Patents Act with the Finnish Patent Authority. The Government can expropriate the invention for public purpose. If the Government has not, within six months of the filing of the application, made a decision to expropriate the invention for public purpose, the processing of the application shall be continued in the normal order. For European patent applications and international patent applications, the time limit shall nevertheless be three months from the date of filing the application with the Patent Authority or, where priority has been claimed, thirteen months from

¹⁰⁶ *Ibid.*

¹⁰⁷ See comments received from Ecuador in response to C.9304.

¹⁰⁸ See comments received from Estonia in response to C.9304.

¹⁰⁹ *Ibid.*

¹¹⁰ See comments received from Finland in response to C.9304.

the date of priority claimed, in the case of a European patent application, and three months from the date of filing of the international application or, where priority has been claimed, twelve months and ten days from the date of priority claimed, in the case of an international patent application. A reasonable compensation shall be payable from State funds to the holder of an invention expropriated for public purpose. A draft proposal for a new Act is expected to be published during the first half of 2026.¹¹¹

France

268. France reports that the applicable framework requires defense clearance and a “first filing” or first domestic filing requirement before a patent application can be filed in another country or at a regional patent organization. In practical terms, the framework combines defense review with a domestic-first filing pathway, rather than a simple general foreign filing license. Patent applicants may consult the Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense, the INPI guidelines for patents and utility certificates, Articles L. 612-8 et seq. and R. 612-26 et seq. of the Intellectual Property Code (CPI), the Penal Code, Article L. 2332-6 of the Defense Code, the General Interministerial Instruction on the protection of national defense secrecy No. 1300/SGDN/PSE/SSD of 9 August 2021, Interministerial Instruction No. 9062/DN/CAB of 13 February 1973, the NATO Agreement of 21 September 1960, the Franco-Swedish Agreement of 15 March 1984 and the Letter of Intent (Loi) arrangement concerning classified or protected information.¹¹²

269. Where the first filing is made with the French office, the application is systematically examined by national defense with a view to obtaining authorization to disclose; once obtained, that authorization implicitly entails authorization to file abroad. Under Article L. 612-9 CPI, inventions that are the subject of patent applications may not be freely disclosed or exploited as long as authorization has not been granted, and during that period the applications may not be made public or copied, except with authorization. The authorization may be granted at any time and is acquired as of right at the end of a period of five months from the day of filing of the patent application. Delegates of the Minister of Defense are authorized to review patent applications confidentially at INPI while that authorization has not yet been acquired.¹¹³

270. If a first national filing is not desired, the French materials distinguish between presumed non-sensitive inventions, inventions susceptible of being of interest to national defense, and sensitive or presumed sensitive inventions. Presumed non-sensitive inventions may be the subject of first filings abroad. Before proceeding with the first foreign filing, however, a French applicant sends a request to the intellectual property office of the Ministry of the Armed Forces (BPI) so that the BPI may examine the content of the invention and issue an authorization for a first foreign filing. The applicant or representative communicates to the BPI information similar to that which would be communicated to any patent office, namely the applicant's name and address, the inventors' names with nationality and country of residence, and a detailed description of the invention or draft patent application. The applicant or representative also identifies the country in which the first filing will be made by a national procedure, excluding PCT or EP applications.¹¹⁴

271. For inventions susceptible of being of interest to national defense, a first foreign filing is subject either to prior agreement or to BPI verification that the Loi conditions are satisfied, including where the applicant is French or resides in France and the invention was made at

¹¹¹ *Ibid.*

¹¹² See comments received from France in response to C.9304; Ministry of the Armed Forces, Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense (June 2024).

¹¹³ Code de la propriété intellectuelle (France), Arts. L. 612-8, L. 612-9 and R. 612-26; see comments received from France in response to C.9304.

¹¹⁴ See comments received from France in response to C.9304; Ministry of the Armed Forces, Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense (June 2024), section 5.1.

least partly in, or financed at least partly by, an Lol country. For sensitive or presumed sensitive inventions, first foreign filing is prohibited absent prior agreement or such BPI verification. When such a filing is authorized, the BPI may, where appropriate, set the modalities for communication of the invention and filing in the designated country. If the first filing is made at INPI for an invention susceptible of being of interest to national defense, the descriptive elements of the application must be filed on paper. For sensitive or presumed sensitive inventions, the guide states that no filing or communication is made online, by fax, or in the INPI “night box,” and that the filing is accompanied by a signaling form and handled through secure channels with appropriate need-to-know and clearance controls.¹¹⁵

272. A separate rule applies to EP and PCT first filings. An applicant whose domicile or registered office is in France may not proceed abroad with the first filing of a European patent application or an international PCT application; the guide states that this rule, imposed by the CPI, admits no derogation. Consistently with that guidance, the CPI provides that a European patent application must be filed with INPI when the applicant has its domicile or seat in France and does not claim priority from an earlier filing in France, and that international applications formulated by persons having their domicile or seat in France must be filed with INPI when priority from an earlier French filing is not claimed. Other modes of first filing abroad may be authorized, subject to the rules applicable to the sensitivity of the invention.¹¹⁶

273. The relevant connecting factors are described in the French materials in personal, territorial and subject-matter terms. The French submission identifies nationality or residence of the inventor, place of invention and technical field or subject matter. The detailed French materials apply the operative filing pathways by reference to whether the applicant is French, resident in France, or domiciled or established in France, whether the invention may be of interest to national defense, whether it is sensitive or presumed sensitive, and whether the Lol conditions are satisfied. The guide further states that a first filing in France cannot be required solely because the invention incorporates contributions of a French inventor abroad or of a foreign inventor domiciled in France, although the exercise by an inventor of research activities for a foreign undertaking that are capable of prejudicing the fundamental interests of the nation may expose that inventor to Penal Code sanctions.¹¹⁷

274. French patent law also provides for secrecy-based restrictions. Where an interdiction of disclosure and free exploitation is imposed or extended, the application is subject to an absolute prohibition on disclosure of the invention, an inability to exploit the invention, and an inability to license or assign the patent application unless expressly authorized by the BPI. Extension abroad is also unavailable unless the decision extending the interdictions provides for extension in expressly designated countries. Where an interdiction of disclosure is to be imposed, the French response states that the DGA takes into account the specific circumstances in which the invention was generated and applies the Lol, the NATO Agreement of 21 September 1960 or the bilateral agreement with Sweden of 15 March 1984 where those instruments apply. A “Spécial France” marking would nevertheless preclude transmission of technical documents within the group to which the company belongs and, more generally, any communication to a foreign national. A request for special authorization to carry out specified acts of exploitation may be addressed to the Minister of the Armed Forces, and the BPI may authorize exploitation in forms agreed with the holder that ensure communication only to duly cleared persons with a need to know and in an environment capable of preserving confidentiality. Decisions extending

¹¹⁵ See comments received from France in response to C.9304; Ministry of the Armed Forces, Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense (June 2024), sections 5.2 and 5.3.

¹¹⁶ Code de la propriété intellectuelle (France), Arts. L. 614-2 and L. 614-18; Ministry of the Armed Forces, Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense (June 2024), section 5.4.1.

¹¹⁷ See comments received from France in response to C.9304; Ministry of the Armed Forces, Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense (June 2024), sections 5.4.2 to 5.4.4.

interdictions are taken annually, and lapse, abandonment, or refusal of an application subject to such measures does not itself lift the secrecy measures.¹¹⁸

275. The guide also addresses foreign extensions of patent applications that have been prohibited from disclosure. Where a French application has first been prohibited from disclosure and an extension is authorized in a LoI or NATO country, communication to the authorized foreign recipient is made through the BPI and the French diplomatic channel, and documents are to be handled under the relevant security requirements. Conversely, where a foreign application has been prohibited from disclosure in the country of first filing, it may be extended to France under the applicable agreements, with protection at least equivalent to that granted by the country of origin. The BPI requires, in particular, a certificate from the authorities of origin indicating the level of protection and their agreement with filing in France, together with an undertaking by the holder not to claim compensation solely by reason of the interdiction of disclosure of the application in France.¹¹⁹

276. The French response identifies several possible legal consequences if an applicant files abroad without the required authorization or in breach of secrecy-related restrictions, including provisions of the Penal Code, the Defense Code, and the CPI, namely Articles 411-6 to 411-8 and 413-10 to 413-12 of the Penal Code, Article L. 2339-3 of the Defense Code, and Articles L. 615-13, L. 615-15 and L. 615-16 of the CPI. The French response does not identify a retroactive foreign filing authorization mechanism. If authorization to file abroad is refused, the domestic application is either later released by the national defense authorities or classified secret. As to compensation, Article L. 612-10 CPI provides for compensation where the interdictions concerning a national application are extended, to the extent of the damage suffered and, absent amicable agreement, fixed by the tribunal judiciaire in camera; the French response states that the CPI is silent as to compensation in the case of refusal of authorization to file abroad.¹²⁰

277. In France, litigation relating to the exercise of the Ministry of the Armed Forces' intellectual-property prerogatives is exceptional. Decisions are rendered in camera and are intended to be communicated only to the parties and their representatives, so the available case law capable of clarifying the texts is very limited.¹²¹

Gambia (the)

278. In The Gambia, the Industrial Property Act does not appear to impose a first-filing, foreign-filing licence, waiting-period or secrecy-review requirement before an applicant files a patent application outside The Gambia or through a regional route. The Act provides for national applications to be filed with the Registrar General, permits priority to be claimed from earlier national, regional, or international applications filed in or for a Convention State, and, where a Gambian application has been filed, allows the Registrar General to request information and documents concerning corresponding foreign applications for the same or essentially the same invention. The Regulations prescribe a three-month period for responding to such a request. ARIPO patents designating The Gambia are separately given effect in The Gambia unless the Registrar General communicates a no-effect decision to ARIPO under the ARIPO Protocol. Although the Act refers to national security, it does so in the context of public-interest

¹¹⁸ Code de la propriété intellectuelle (France), Arts. L. 612-9, L. 612-10, R. 612-27 and R. 612-28; see comments received from France in response to C.9304; Ministry of the Armed Forces, Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense (June 2024), sections 7 to 9.

¹¹⁹ Ministry of the Armed Forces, Guide des usages des acteurs de la propriété intellectuelle en matière de sécurité de défense (June 2024), sections 6 and 10; see comments received from France in response to C.9304.

¹²⁰ See comments received from France in response to C.9304; Code de la propriété intellectuelle (France), Art. L. 612-10.

¹²¹ See comments received from France in response to C.9304.

exploitation of a patented invention by the Government or a designated third person, not in the form of a secrecy order or foreign-filing restriction.¹²²

Georgia

279. Under the Patent Law of Georgia, where an invention has been classified by a competent authority for the purposes of state defense, Sakpatenti publishes the patent application and the patent only after declassification, on the basis of a decision of that competent authority. An invention may be classified for no more than two years, which may be extended several times within the term of the patent, and appropriate compensation is payable to the inventor in an amount and according to a rule determined by a normative act enacted by the relevant competent authority.¹²³

Germany

280. In Germany, no general foreign filing conditionality applies under patent law. However, special provisions apply to patent applications containing a state secret. Such an application may be filed outside the territorial scope of the German Patent Act only with the written authorization of the competent highest federal authority, which in these cases is the Federal Ministry of Defense. The authorization may be given subject to conditions. The applicable procedures are outlined in the German Patent Act and the *IntPatÜbkG*. German law does not allow for a deemed license or automatic approval if the Office does not act or respond within a specific time period.¹²⁴

281. The central criterion triggering this requirement is that the application contains a “state secret.” Section 93 of the German Criminal Code defines state secrets as facts, objects or knowledge that are accessible only to a limited number of people and must be kept secret from a foreign power in order to prevent the risk of serious detriment to the external security of the Federal Republic of Germany; facts that violate the free democratic basic order or international arms control agreements when kept secret from the treaty partners of the Federal Republic of Germany are not state secrets. The written authorization must be obtained before the patent application is filed outside the territorial scope of the German Patent Act. To obtain authorization under Section 52 of the German Patent Act, the applicant must file a written request to the Federal Ministry of Defense together with the application documents, and that request must indicate the country or countries in which the applicant intends to file the patent application. Section 52 of the German Patent Act does not contain a mechanism for obtaining a retroactive approval. Where two or more countries’ foreign filing requirements appear to apply, the German Patent and Trademark Office applies the provisions of German law outlined above.¹²⁵

282. The legal consequences of filing abroad without the required authorization are set out in Section 52(2) of the German Patent Act. Any person who, contrary to Section 52(1), files a patent application, or contravenes a condition imposed under that provision, incurs a penalty of a term of imprisonment of no more than five years or a fine. If an applicant files a patent application containing a state secret directly with the European Patent Office, this constitutes a criminal offence under Article II § 14 *IntPatÜbkG* with the same legal consequences. German patent law also provides for a secrecy-based restriction of this kind in Section 52 of the German Patent Act.¹²⁶

¹²² Industrial Property Act (Cap. 95:03), ss. 6(1), 8(1)-(4), 9(1)-(2), 12(5)-(6); Industrial Property Regulations 2010, reg. 15; See comments received from The Gambia in response to C.9304

¹²³ Patent Law of Georgia, Art. 7.

¹²⁴ See comments received from Germany in response to C.9304.

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

283. Special provisions also apply to European applications and PCT applications filed with the DPMA that contain state secrets. If the DPMA finds that such an application contains a state secret, it does not forward the application to the European Patent Office or to WIPO. If authorization is denied, the consequence is that the patent application may not be filed outside the territorial scope of the German Patent Act. As regards domestic patent applications containing state secrets, Section 50(1) of the German Patent Act provides that the examining section orders *ex officio* that no publication at all be made; before such an order is issued, the competent highest federal authority is to be consulted, and it may itself apply for the issue of such an order. As regards European applications and PCT applications containing a state secret, the German Patent and Trademark Office orders *ex officio* that the respective application is not forwarded to the European Patent Office or WIPO and that no publication at all be made. The respective European patent application or PCT application is then deemed a national patent application for which an order according to Section 50(1) of the German Patent Act has been issued.¹²⁷

284. The wording of Section 52 refers only to the filing of patent applications. However, the transfer of information constituting a state secret may be prohibited under the general legal provisions for the protection of state secrets, in particular Section 93 ff of the German Criminal Code. The same position is reflected with respect to the export of the underlying technical information or know-how: Section 52 itself refers only to the filing of patent applications, although the transfer of information constituting a state secret may be prohibited under the general provisions for the protection of state secrets. In addition, there is a variety of general provisions regarding technology transfer abroad that are outside the competence of the German Patent and Trademark Office, and an overview is referred to in the information sheet *Immaterieller Technologietransfer (ITT)* issued by the German Federal Office for Economic Affairs and Export Control.¹²⁸

Ghana

285. In Ghana, no patent-law foreign filing conditionality was identified in the reviewed materials.¹²⁹

Greece

286. In Greece, the reviewed sources identify a national-defense secrecy regime and route-specific OBI filing requirements for first European and PCT filings by Greek-citizen applicants where no priority is claimed from an earlier application filed in Greece, rather than a general foreign-filing license requirement for all inventions. Law No. 1733/1987 preserves Law No. 4325/1963 on inventions concerning national defense and provides that references in that law to the Ministry of Commerce are to be understood as references to the Industrial Property Organisation (OBI). Under Law No. 4325/1963, inventions and discoveries developed in Greece, or developed in a foreign country by Greek nationals, that concern Greece's national defense, the national defense of an ally, or the national defense of a group of allied countries of which Greece is a member may not be transmitted to any domestic or foreign legal or natural

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

¹²⁹ Ghana Patents Act, 2003 (Act 657), as amended by the Patents (Amendment) Act, 2020 (Act 1060), § 8 and §§ 19–28; Patent Regulations, 1996 (L.I. 1616), reg. 51; WIPO PCT Applicant's Guide, Annex B/C — Ghana, valid Jan. 1, 2026; WIPO, International Applications and National Security Considerations. Section 8 concerns information on corresponding foreign applications and patents, and §§ 19–28 and regulation 51 concern PCT/ARIPO procedure; no first domestic filing requirement, foreign filing licence, waiting period, security clearance, or patent-law secrecy order restricting foreign filing was identified.

person, or disclosed in any way in any country. Related technical information is subject to the same prohibition, subject to the reciprocal-agreement exception in Article 1(2).¹³⁰

287. Law No. 4325/1963 establishes a time-structured secrecy review. Patent statements deposited under Article 2 are screened by a committee of specialized officers of the Ministry of National Defense. The initial review must be carried out within five days from submission; in exceptionally difficult circumstances, that period may be prolonged up to a maximum of 25 days. If the applicable period expires without completion of the review, the ordinary patent procedure applies. Where the committee determines that the patent statement falls within Article 1, the statement is classified as temporarily confidential and the file is sent for final decision by the Minister of National Defense. The Minister must decide within three months whether the matter is definitely confidential. If that three-month period expires without action, the temporary confidentiality classification is cancelled by operation of law and the file proceeds under the ordinary procedure.¹³¹

288. Where a patent statement is classified as temporarily or definitely confidential, the inventor and any third party may not disclose or publish the patent statement or its contents. A confidential patent statement may be filed in a foreign country only where the reciprocal-agreement condition in Article 1(2) is met and written approval is obtained from the Minister of National Defense. Law No. 4325/1963 also contains criminal consequences for unauthorized transfer or disclosure, compensation provisions where the State uses a confidential patent statement, compensation provisions where a definitely confidential patent statement remains unused for more than one year, limits on additional compensation, and a mechanism for lifting confidentiality when the matter no longer has defense interest. The compensation rule for a definitely confidential patent statement that remains unused for more than one year does not apply to confidential inventions obtained abroad.¹³²

289. For European patent applications, Greek law contains a designated-office filing rule for Greek-citizen applicants where no priority is claimed from an earlier Greek application. Under Law No. 1733/1987 and Presidential Decree No. 77/1988, a European patent application must be filed with OBI where the applicant is a Greek citizen and no priority is claimed from an earlier Greek application. OBI registers such European applications in accordance with national legislation and the rules concerning secrecy for national patents, and forwards them to the European Patent Office only after the deadlines under Law No. 4325/1963. Current EPO national-law materials describe the rule as applying to first filings of European patent applications originating from Greek nationals residing in Greece or abroad.¹³³

290. Under Presidential Decree No. 16/1991, an international application under the PCT must likewise be filed with OBI where the applicant is a Greek citizen and no priority from an earlier Greek application is claimed. In that case, the decree provides that the international application must also be filed in Greek. Current WIPO PCT materials operationally describe this as a requirement that an international application filed by a Greek national be accompanied by a Greek translation for national-security purposes where no priority of an earlier national application is claimed. OBI registers the international application under national secrecy rules

¹³⁰ Law No. 1733/1987 on Technology Transfer, Inventions and Technological Innovation, Arts. 23(1), 25(2); Law No. 4325/1963 on Inventions Concerning National Defence, Arts. 1–12; Presidential Decree No. 77/1988 Implementing Regulations of the Convention on the Grant of European Patents as Ratified by Law No. 1607/1986, Arts. 3, 7 and 8, as amended by Presidential Decree No. 46/2012; Presidential Decree No. 16/1991 Implementing Regulations of the Patent Cooperation Treaty as Ratified by Law No. 1883/1990, Arts. 3, 4, 9 and 10; EPO, *National Law relating to the EPC*, “II. Filing of European patent applications — Greece”; WIPO, *PCT Applicant’s Guide*, Annex B — Greece and Annex C — Greece; WIPO, “International Applications and National Security Considerations,” Known Filing Restrictions — Greece.

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

and transmits the record copy to the International Bureau of WIPO and the search copy to the European Patent Office only after the Law No. 4325/1963 deadlines have expired and the application has been deemed not to be of national-defense interest.¹³⁴

Guyana

291. In Guyana, no generally applicable patent-law foreign filing license, first domestic filing requirement, waiting period, or mandatory outward-filing routing requirement was identified. The Patents and Designs Act contains a limited defence-related secret-patent mechanism for improvements in instruments or munitions of war assigned to the Minister responsible for defence; where secrecy is certified, the application materials are kept sealed or otherwise handled confidentially under the Patents Regulations. These provisions were not identified as imposing a general condition on filing patent applications abroad.¹³⁵

Hungary

292. In Hungary, the reviewed sources identify a national-defense and national-security classification regime, together with route-specific filing rules for European and PCT applications, rather than a general foreign-filing license requirement for all inventions. Article 53(5) of Act XXXIII of 1995 provides that, if national defence or national security so require, the President of the Hungarian Intellectual Property Office may classify a patent application in a procedure under specific legislation and on the proposal of the competent minister. Where a patent application has been classified, the Act restricts ordinary public information concerning the application.¹³⁶

293. For European patent applications, Article 84/C(2) provides that a European patent application must be filed with the Hungarian Intellectual Property Office if the applicant is a Hungarian citizen or has residence or seat in Hungary, unless the European application claims priority from a patent application filed with the Hungarian Intellectual Property Office at least two months earlier and not classified by the President of that Office. Current WIPO PCT materials state that Hungary's filing restrictions apply to international applications that may be of interest for national defense or security, unless priority of an earlier application filed with the Hungarian Intellectual Property Office is claimed, and identify the restricted class as applications by natural or legal persons having a residence or principal place of business in Hungary.¹³⁷

India

294. In India, the applicable framework combines a resident-based foreign filing permission requirement with a first-filing-and-waiting pathway and secrecy directions for inventions relevant to defence purposes. Section 39 of the Patents Act, 1970 provides that no person resident in India may, except under the authority of a written permit sought in the prescribed manner and granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent unless an application for the same invention has been made in India at least six weeks earlier and either no secrecy direction under section 35 is in force or all such directions have been revoked. The provision does not apply where the invention was first filed outside India by a person resident outside India.¹³⁸

¹³⁴ *Ibid.*

¹³⁵ WIPO Lex, *Patents and Designs Act*, Cap. 90:03 (Guyana), L.R.O. 1/2012, s. 34; Patents Regulations (Guyana), regs. 101–103.

¹³⁶ Act XXXIII of 1995 on the Protection of Inventions by Patents (Hungary), consolidated text as of January 1, 2026, Arts. 53(5), 53(8), 84/C(2); EPO, *National Law relating to the EPC*, "II. Filing of European patent applications — Hungary"; WIPO, *PCT Applicant's Guide*, Annex B — Hungary, "Does national legislation restrict the filing of international applications with foreign Offices?"; WIPO, "International Applications and National Security Considerations," Known Filing Restrictions — Hungary.

¹³⁷ *Ibid.*

¹³⁸ The Patents Act, 1970 (India), sections 35 and 39.

295. A request for permission is made to the Controller of Patents through the appropriate Indian Patent Office in Form 25 under Rule 71 of the Patents Rules, 2003. Rule 71 requires the Controller to dispose of the request within 21 days from the date of filing; however, where the invention relates to defence or atomic energy, the 21-day period is counted from the date of receipt of the Central Government's consent, and section 39 prohibits grant of the permit without that prior consent. For applicants who first file in India, no separate permit is required after the six-week period if no section 35 direction is in force or if all such directions have been revoked, but the rules do not state that inaction on a Form 25 request is itself to be treated as permission.¹³⁹

296. The operative trigger is residence rather than nationality as such, and the statutory text is not framed by reference to the place where the invention was made. In practice, a person resident in India who wishes to first file abroad, or to file a PCT international application directly without an Indian priority filing at least six weeks earlier, must obtain permission before doing so. The Indian Patent Office Manual states that where a PCT international application is filed before six weeks from the date of the Indian priority, or is filed directly at RO/IB or RO/IN without a priority claim, foreign filing permission under section 39 must be obtained; if such permission is not obtained, the application will not be considered as an international application by RO/IN.¹⁴⁰

297. India also provides for secrecy directions under section 35 where the invention is of a class notified by the Central Government as relevant for defence purposes or otherwise appears to the Controller to be so relevant. Such directions may prohibit or restrict publication or communication of information concerning the invention. They are reviewed by the Central Government every six months, or on a reasonable request by the applicant, and while they remain in force the application may proceed only up to the stage of grant; publication and grant are withheld. Where secrecy directions are revoked, the Controller may extend applicable time limits, and where secrecy causes hardship the Central Government may make a payment by way of solatium.¹⁴¹

298. The consequences of non-compliance are significant. Under section 40, breach of section 35 secrecy directions or filing abroad in contravention of section 39 causes the Indian application to be deemed abandoned and any patent granted to be liable to revocation under section 64. Section 64(1)(n) separately identifies contravention of secrecy directions or of section 39 as a ground for revocation, and section 118 provides for imprisonment for a term that may extend to two years, a fine, or both.¹⁴²

299. In India, the Delhi High Court in *Puneet Kaushik* held that a PCT application lodged at the Indian Patent Office nonetheless has the legal consequences of an application filed "outside India," because the Indian office acts only as a receiving office for formal purposes and the application thereafter proceeds through the international PCT system; prior permission under Section 39 was therefore required, and the international filing date could only be accorded from the date on which that permission was granted. More recently, the Madras High Court in *Selfdot Technologies* held that, although a U.S. continuation-in-part described as the equivalent of a patent of addition under Indian law may in principle attract separate Section 39 scrutiny, the close statutory relationship between the parent invention and the patent of addition, coupled with the fact that the parent application had first been filed in India, meant that the omission was

¹³⁹ The Patents Act, 1970 (India), section 39(2); The Patents Rules, 2003 (India), rule 71 and Form 25.

¹⁴⁰ Office of the Controller General of Patents, Designs and Trade Marks, Manual of Patent Office Practice and Procedure, Version 3.0 (26 November 2019), paras. 07.02.01-07.02.02.

¹⁴¹ The Patents Act, 1970 (India), sections 35-38.

¹⁴² The Patents Act, 1970 (India), sections 40, 64(1)(n) and 118; *Selfdot Technologies (OPC) Pvt. Ltd. v. Controller General of Patents, Designs & Trade Marks*, 2023:MHC:5258, (T)CMA(PT)/61/2023, High Court of Madras, 28 November 2023.

at most a technical breach and did not justify the drastic consequence of deemed abandonment under Section 40.¹⁴³

Indonesia

300. In Indonesia, no generally applicable patent-law foreign filing license, first domestic filing requirement, waiting period, or mandatory outward-filing routing requirement was identified in the reviewed materials. The Patent Law contains domestic confidentiality and defense/security handling provisions: application documents are confidential before announcement; the Minister may, after consultation with relevant defense and security institutions, decide that an invention concerning the defense and security of the State will not be announced; and granted patents concerning defense and security are excepted from ordinary publication. The Law also contains Government-use provisions for patents relating to defense and security. These provisions were not identified as conditioning the filing of patent applications abroad.¹⁴⁴

Ireland

301. Ireland does not impose a patent-law foreign filing requirement or conditionality. No first-filing-in-Ireland or prior foreign-filing permission requirement was identified in current official sources. In Ireland, patent applicants may consult the *Patents Act 1992* (as amended), the *Patents Rules 1992* (as amended), the *Patents for Inventions* booklet, and the FAQ in relation to foreign filing requirements and the procedure to follow. Irish law does not allow for a deemed license or automatic approval if the Office does not act or respond within a specific time period. The patent law does not provide for the imposition of a “Secrecy Order” or other similar national security restriction that prohibits or restricts an applicant from filing for patent protection in other jurisdictions.¹⁴⁵

Israel

302. Israel does not operate a general foreign filing license regime for all inventions. The Patents Law, 5727-1967 contains targeted foreign filing restrictions for inventions with defence, military or nuclear-energy sensitivity. Under section 98, an Israel national, a permanent resident of Israel or any other person who owes allegiance to the State may not submit, or directly or indirectly cause to be submitted, a patent application abroad for an invention whose subject is weaponry or ammunition, is otherwise of military value, or is an invention with which section 95 deals, unless prior written permission of the Minister of Defense has been obtained or the invention has first been filed in Israel and the relevant six-month condition has been satisfied.¹⁴⁶

303. The domestic-first route under section 98 is therefore not a universal first-filing rule, but a security-linked pathway. After filing in Israel, foreign filing may proceed if, within six months after the Israeli application was submitted, the Minister of Defense has not made an order under section 94, or if such an order was made but is no longer in effect. Section 94 permits the Minister of Defense, where necessary in the interests of national security, including the

¹⁴³ *Puneet Kaushik & Anr. v. Union of India & Ors.*, LPA 884/2013 & CM 4330/2014, High Court of Delhi, 19 December 2014; *Selfdot Technologies (OPC) Pvt. Ltd. v. Controller General of Patents, Designs & Trade Marks*, (T)CMA(P)T No. 61 of 2023, 2023:MHC:5258 (also reported as 2023 SCC OnLine Mad 7520), High Court of Madras, 28 November 2023.

¹⁴⁴ Law No. 13 of 2016 on Patents (Indonesia), arts. 33, 45, 50, 52, 58(5), 109–112, WIPO Lex English text; Law No. 65 of 2024 on the Third Amendment to Law No. 13 of 2016 on Patents, WIPO Lex Indonesian text. WIPO Lex notes that the 2016 English text has been amended and that no consolidated version is yet available; the 2024 amendment is available in Indonesian and amends, inter alia, Government-use provisions, but was not identified as adding a foreign filing license, first-filing requirement, waiting period, routing requirement, or foreign-filing secrecy-clearance mechanism. See also ASEAN Common Guidelines on Patent Examination, §2.8, identifying Indonesia among ASEAN Member States without foreign filing licence requirements.

¹⁴⁵ See comments received from Ireland in response to C.9304.

¹⁴⁶ Patents Law, 5727-1967 (Israel), sections 95 and 98, as consolidated in 2014 by WIPO Lex; WIPO, PCT Applicant's Guide, Annex B1 (Israel), 'Does national legislation restrict the filing of international applications with foreign Offices?'.

protection of defence secrets, to order the Registrar to refrain from or postpone acts on an application, and to prohibit or restrict publication or release of information concerning the application. Under section 95, certain applications may be transmitted for defence review, and the Minister of Defense is to decide no later than four months after transmission; while that review is pending, the Registrar does not act on the application except to acknowledge its submission.¹⁴⁷

304. A parallel regime applies to inventions concerning nuclear energy. Under section 99, the Minister designated by the Government may order restrictions if an invention for which a patent application has been submitted is important for the development of the use of nuclear energy in Israel, or if publication of the invention is liable to cause damage to nuclear research in Israel. Section 100 provides for transmission of relevant applications for that assessment, and section 103 restricts foreign filing by the same categories of persons unless prior written permission of the Minister has been obtained or the invention has first been filed in Israel and, within six months, no order under section 99 has been made or any such order is no longer in effect.¹⁴⁸

305. A further special rule applies to certain State-related inventions. A State employee, soldier, police officer or other covered person who must give notice of an invention under section 137 may not submit abroad an application for a patent or other protection for the invention unless prior permission has been obtained from the Service Commissioner or another authorized public servant, or unless no decision has been made within six months after notice that the relevant rights have passed, in whole or in part, to the State enterprise or institution. In addition, until a patent application has been submitted for a service invention, the employee, employer, and any person to whom the matter was confided must not disclose particulars of the invention.¹⁴⁹

306. The consequences of non-compliance are criminal and may also be operational. Section 193 provides that a person who publishes or passes information in violation of a direction issued under section 94 or 99, or who violates sections 98, 103, 137 or 138, is liable to imprisonment for two years or to a statutory fine; Israeli courts also have competence to try offences under sections 98, 103 and 138 committed abroad. Where an order is made under sections 94 or 99, or permission is not granted under sections 98 or 103, section 107 provides for compensation by the Treasury to the owner of the invention, at a rate agreed by the parties or, absent agreement, set by the compensation and royalties committee established under section 109.¹⁵⁰

Italy

307. In Italy, Article 198 of the Industrial Property Code establishes a defense-related foreign-filing control, rather than a general foreign-filing license for all inventions. A person residing in Italy may not, without authorization from the ministry responsible for industrial-property matters, file an application for an invention, utility model, or topography of a semiconductor product exclusively with a foreign State office, the European Patent Office, or the International Bureau of WIPO as receiving Office if the subject matter could be useful for the defense of the country. Nor may such a person file the application with those offices before 60 days have elapsed from the filing date in Italy or from the date on which authorization was requested. That ministry acts on authorization requests subject to the Ministry of Defense's authorization; if 60 days pass without a refusal, authorization is deemed granted. Article 198(1-bis) extends the same rules to cases where the inventor works for an Italian branch of a multinational company whose parent company has its registered office abroad, or where the inventor assigned the invention before filing. The operative connecting factors should therefore be stated as residence in Italy, the

¹⁴⁷ Patents Law, 5727-1967 (Israel), sections 94, 95 and 98.

¹⁴⁸ Patents Law, 5727-1967 (Israel), sections 99, 100, 103 and 112.

¹⁴⁹ Patents Law, 5727-1967 (Israel), sections 137, 138 and 141.

¹⁵⁰ Patents Law, 5727-1967 (Israel), sections 107, 109 and 193.

Article 198(1-bis) extensions, and potential usefulness for national defense, rather than nationality alone.¹⁵¹

308. Article 198 expressly covers direct foreign national filings, European patent applications filed at the European Patent Office, and international applications filed with the International Bureau of WIPO as receiving Office. For PCT purposes, current WIPO materials state that Italian law restricts filings with foreign Offices for applications by residents unless the international application claims priority from a national Italian application filed more than 60 days earlier and that earlier application has not been made subject to the official-secrets regulation. Where an international application in English, French or German is filed by a resident of Italy and no such earlier Italian priority is available, or the application is filed before expiry of 60 days from the earlier Italian filing, the application must be accompanied by an Italian summary defining the characteristics of the invention and a copy of any drawings for Article 198 review. A request for authorization should include the description, claims and any drawings. No general retroactive foreign-filing authorization mechanism was identified.¹⁵²

309. Article 198 is also the basis for Italy's patent-law secrecy mechanism for inventions, utility models, and semiconductor-product topographies useful for national defense. The Italian Patent and Trademark Office makes received patent, utility model, and semiconductor-topography applications available to the patent and intellectual-property service of the Ministry of Defense. If that service considers that an application concerns subject matter useful for the defense of the country, authorized officers or officials may review the description, claims and drawings at the Office. Within 60 days from the filing date, the Ministry of Defense may request deferment of grant and of any related publication, and the Office must inform the applicant and warn the applicant to observe secrecy. If, within eight months from filing, the competent ministry has not communicated an intention to proceed with expropriation, the application continues under the ordinary procedure; within that period, the Ministry of Defense may also request a further deferment of grant and publication for up to three years from filing, or up to one year for utility models. In that case, the inventor or successor in title is entitled to indemnity determined under the expropriation provisions. Where the Ministry of Defense allows grant for an invention involving the military defense of the country, the procedure may continue in secret form, with no publication and no public inspection.¹⁵³

310. The consequences of non-compliance are statutory. Breach of Article 198(1) is punishable by a fine or arrest unless the act constitutes a more serious offence; if the violation occurs after authorization has been denied, imprisonment of not less than one year applies. Article 198 is directed principally to filing and defense-related patent secrecy, and should not be described as a general export-control rule for all pre-filing technical exchanges. However, once Article 198 secrecy or deferment is imposed, the invention must be kept secret for the duration of the deferment and during any expropriation procedure, and the secrecy obligation ceases only if the Ministry of Defense allows it; breach of secrecy is punished under Article 262 of the Criminal Code.¹⁵⁴

Japan

311. In Japan, the foreign filing rule is not a general first-filing requirement for all patent applications. Rather, a targeted prohibition on foreign applications applies to certain non-public inventions made in Japan that may be subject to a security review. Patent applicants may

¹⁵¹ See comments received from Italy in response to C.9304; Industrial Property Code, Legislative Decree No. 30/2005, art. 198(1), (1-bis), as amended by Law No. 102/2023, art. 8; WIPO PCT Applicant's Guide, Annex B (IT), "Does national legislation restrict the filing of international applications with foreign Offices?"

¹⁵² Industrial Property Code, art. 198(1); WIPO PCT Applicant's Guide, Annex B (IT), "Does national legislation restrict the filing of international applications with foreign Offices?" and Annex C (IT).

¹⁵³ Industrial Property Code, art. 198(3)-(8), (11)-(13), (16).

¹⁵⁴ Industrial Property Code, art. 198(2), (11)-(14); Criminal Code, art. 262.

consult Articles 66, 70, 78 and 79 of the *Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures* and the Japan Patent Office guidance on the system for non-disclosure of patent applications.¹⁵⁵

312. The foreign filing conditionality is triggered by the place of invention and the technical field or subject matter of the invention. It applies to an invention made in Japan and to an invention belonging to a specified technology field (e.g. atomic/nuclear, weaponry, arms, ammunition, blasting, surveillance, cryptology etc.) provided by Cabinet Order in accordance with an international patent classification or a classification divided in accordance with it that could include an invention that would be highly likely to create a situation that undermines the security of the State and its citizens through actions taken from the outside if made known to the public. In cases where the invention belongs to a specific technology field provided by Cabinet Order as a technology field that is found to have a significant impact on the development of industry if a security designation is made, the measure is limited to inventions that fall under the requirements provided by Cabinet Order. More precisely, if no notice that the relevant documents have been sent to the Cabinet Office is issued within the applicable three-month period, the invention is treated as not subject to security review and the foreign-application prohibition is lifted; this should not be described as a general deemed license or automatic approval.¹⁵⁶

313. Japanese law also provides for a secrecy-based restriction, although not under the Patent Act. Rather, the *Act on the Promotion of Ensuring National Security Through Integrated Implementation of Economic Measures* provides for a “Security Designation” under Article 70(1). If a security designation is made, patent procedures such as publication, grant and refusal are suspended; withdrawal, working and disclosure of the security-designated invention are restricted; and the relevant information must be properly managed. A foreign application in violation of Article 78(1) may lead to dismissal of the Japanese application and criminal penalties under Article 94(1).¹⁵⁷

Kazakhstan

314. In Kazakhstan, a first domestic filing and state-secret screening requirement applies under Article 37 of the Patent Law of the Republic of Kazakhstan, No. 427-I of July 16, 1999, as amended. Under Article 37, in the wording of Law No. 233-VIII of November 24, 2025, an application for industrial property objects created in the Republic of Kazakhstan is submitted in foreign countries three months after the date of submission of the corresponding application to the expert organization, if the applicant has not been notified within that period that the application contains information constituting state secrets; an application may be submitted abroad earlier than that period following a check, carried out at the request of the applicant, for the presence of information constituting state secrets in the application, in accordance with a procedure established by the authorized body. Where, in the course of examination, an application is found to contain information constituting a state secret, the application is declared secret in accordance with the legislation of the Republic of Kazakhstan on state secrets, and no legal protection is granted under the Law for industrial property subject matter that has been declared secret by the State. The Law attaches express consequences to noncompliance: a title of protection may be contested and annulled where its grant was effected contrary to the provisions of Article 37, and violation of the process of patenting industrial property subject

¹⁵⁵ See comments received from Japan in response to C.9304; *Act on the Promotion of Ensuring National Security through Integrated Implementation of Economic Measures*, Act No. 43 of 2022 (Japan).

¹⁵⁶ *Ibid.*

¹⁵⁷ *Ibid.*

matter in foreign countries entails liability in accordance with the laws of the Republic of Kazakhstan.¹⁵⁸

Kenya

315. In Kenya, a resident-based foreign filing restriction applies under section 28 of the Industrial Property Act. No person resident in Kenya may, without written authority granted by the Managing Director, file or cause to be filed outside Kenya an application for a patent for an invention unless an application for a patent for the same invention has been filed with the Kenya Industrial Property Institute at least six weeks before the foreign filing, and either no directions have been given under section 27 in relation to the Kenyan application or any such directions have been revoked. The restriction does not apply where the patent application for the invention has first been filed outside Kenya by a person resident outside Kenya. A request for written authority under section 28(1) is made in Form IP 1.¹⁵⁹

316. Section 27 provides the linked defense and public-safety mechanism. Where a patent application is filed with the Institute under the Act or under an international convention to which Kenya is a party, and the application contains information whose publication may be prejudicial to the defense of Kenya or the safety of the public, the Managing Director may give directions prohibiting or restricting publication of that information or its communication to specified persons. While such directions are in force, a Kenyan application may proceed to the stage where it is in order for grant, but it is not published, related information is not communicated, and no patent is granted. If the application is for an ARIPO patent, it is not sent to the ARIPO Office; if it is an international application for a patent, a copy is not sent to the International Bureau or to any international searching authority appointed under the Patent Cooperation Treaty.¹⁶⁰

317. Where section 27 directions are given, the Managing Director must notify the Cabinet Secretary responsible for defense or the concerned Cabinet Secretary. The relevant Cabinet Secretary must consider whether publication or communication would be prejudicial to the defense of Kenya or the safety of the public and, where the concern remains, reconsider the question during the nine-month period from the filing date and at least once in every subsequent twelve-month period. If the relevant Cabinet Secretary determines that publication or communication would not, or would no longer, be prejudicial, the Managing Director revokes the directions and may extend applicable time limits. Section 27 also provides for government-use treatment, possible compensation for hardship caused by the continued directions, appeal to the Tribunal as to the amount of compensation, and non-payment of renewal fees for periods during which directions remain in force.¹⁶¹

¹⁵⁸ Patent Law of the Republic of Kazakhstan, No. 427-I of July 16, 1999, as amended, Articles 5(6), 22(14), 29(1)(3), 34 and 37; Article 37 in the wording of Law No. 233-VIII of November 24, 2025. An English translation reflecting that amendment is available on the Adilet legal information system of the Republic of Kazakhstan at: https://adilet.zan.kz/eng/docs/Z990000427_

¹⁵⁹ Industrial Property Act (Cap. 509) (Kenya), section 28(1)–(2); Industrial Property Regulations, Legal Notice No. 50 of 2002 (Kenya), regulation 10. Section 28(1) restricts patent applications filed outside Kenya by persons resident in Kenya unless written authority has been granted by the Managing Director or the six-week domestic filing pathway has been satisfied and no section 27 directions remain in force; section 28(2) provides the exception for an invention first filed outside Kenya by a person resident outside Kenya; regulation 10 provides that a request for written authority under section 28(1) is made in Form IP 1.

¹⁶⁰ Industrial Property Act (Cap. 509) (Kenya), section 27(1)–(3). Section 27 permits directions restricting publication or communication of information where publication may be prejudicial to the defense of Kenya or the safety of the public, and provides that, while directions are in force, a Kenyan application is not published and no patent is granted; an ARIPO application is not sent to the ARIPO Office; and an international application for a patent is not sent to the International Bureau or to an international searching authority.

¹⁶¹ Industrial Property Act (Cap. 509) (Kenya), section 27(4)–(8). These provisions address notification to the Cabinet Secretary responsible for defense or the concerned Cabinet Secretary, reconsideration during the nine-month period

[Footnote continued on next page]

318. The statute provides criminal consequences for breach. A person who fails to comply with a direction under section 27 is liable, on conviction, to imprisonment for a term not exceeding two years, a fine not exceeding twenty thousand shillings, or both. A person who files or causes to be filed an application for the grant of a patent in contravention of section 28 is liable, on conviction, to imprisonment for a term not exceeding two years, a fine not exceeding two hundred thousand shillings, or both.¹⁶²

Latvia

319. In Latvia, a secrecy-triggered special-handling mechanism applies to inventions affecting the interests of the State defence under Section 11 of the Patent Law of February 15, 2007, as amended. If an invention affects the interests of the State defence, the Ministry of Defence may allocate the status of a secret invention to it. If an invention is recognised as secret, the Patent Office takes a decision on the granting of a patent in accordance with the procedure specified in the Law, but the provisions regarding the making of the patent application and the granted patent public do not apply, and the patent application and the patent are made public following the revocation of the secret status and the payment of the fee for making the patent public. The scope of the ownership right of the owner of the patent to the secret invention is determined by an agreement with the Ministry of Defence, and where the owner of the patent and the Ministry of Defence are unable to agree on the amount of compensation for the use of the invention, the amount is determined by a court in accordance with the procedure specified in the Civil Procedure Law. The conditions of Section 11 are applied to European patent applications in relation to inventions affecting the interests of the State defence. No general first domestic filing requirement or foreign filing authorization mechanism was identified in the reviewed provisions; the conditionality operates through the secret-invention status, the deferral of publication, and the application of those conditions to European patent applications.¹⁶³

Lithuania

320. In Lithuania, the patent law does not appear to establish an express general foreign filing license requirement or a deemed-license or automatic-approval mechanism if the State Patent Bureau does not act or respond within a specified period. The patent law does, however, contain provisions for inventions that have been made secret under applicable legal acts. After an invention has been made secret, the inventor is to be compensated under an agreement with the relevant entity of state secrets; after the invention has been declassified, the data relating to the invention are published in the Official Bulletin of the State Patent Bureau. Access to made-secret inventions is governed by applicable legal acts. Special routing rules also apply to European patent applications: the State Patent Bureau does not forward to the European Patent Office applications related to State or official secrets, and a European patent application containing information constituting State and official secrets must be filed only with the State Patent Bureau.¹⁶⁴

from filing and at least annually thereafter, revocation of directions, extension of applicable time limits, government-use treatment, compensation for hardship, appeal to the Tribunal as to compensation, and non-payment of renewal fees while directions remain in force.

¹⁶² Industrial Property Act (Cap. 509) (Kenya), sections 27(9) and 28(3). Section 27(9) provides penalties for failure to comply with directions under section 27; section 28(3) provides penalties for filing or causing to be filed an application for the grant of a patent in contravention of section 28.

¹⁶³ Patent Law of February 15, 2007, of the Republic of Latvia, as amended, Sections 11 and 69(2); Section 11 in the wording of the amending laws of October 14, 2010 and November 19, 2015. An official English translation of the consolidated text, including amendments through May 9, 2024, prepared by the State Language Centre of the Republic of Latvia, is available at: <https://www.vvc.gov.lv/lv/latvijas-republikas-tiesibu-akti-anglu-valoda/patentu-likums-ar-grozijumiem-lidz-09052024>

¹⁶⁴ See comments received from Lithuania in response to C.9304; WIPO Lex, Patent Law No. I-372 of January 18, 1994 (Lithuania), as amended up to Law No. XIII-2734 of December 19, 2019, in force on January 1, 2022, unofficial translation, Arts. 26(5), 26(6), 27(3), 77(2) and 77(4), WIPO Lex No. LT119.

Luxembourg

321. In Luxembourg, the Law of July 8, 1967 concerning the disclosure and exploitation of inventions and manufacturing secrets of interest to the defense of the territory or the security of the State establishes a secrecy-triggered and route-specific regime rather than a general foreign filing authorization requirement. Disclosure of an invention or manufacturing secret is prohibited where it is contrary to the interests of the defense of the territory or the security of Luxembourg or of a State with which Luxembourg is united by a regional agreement for common defense, and the ministers responsible for the national economy and energy, industrial property and the armed forces may jointly declare such disclosure prohibited for a period that they determine. Contraventions of the Law's disclosure prohibitions attract criminal penalties, and persons affected by administrative decisions under the Law are entitled to compensation for the prejudice suffered. The regime is given effect on outward filing routes: international applications falling within the scope of the 1967 Law are not transmitted to the International Bureau or to the International Searching Authority, and a European patent application for an invention of interest to the defense of the territory must be filed with the Luxembourg intellectual property office. In addition, where, in the interest of defense, a foreign State or an international organization has prohibited the disclosure of an invention that is the subject of a patent application, the minister responsible for industrial property ensures, on the request of that State, that organization or the depositor duly authorized to file the secret invention in Luxembourg, that the secrecy of the invention is safeguarded for as long as the prohibition lasts, provided that Luxembourg is bound to the State or organization concerned by a bilateral or multilateral convention providing for the secrecy of inventions.¹⁶⁵

Madagascar

322. Madagascar does not impose any foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization.¹⁶⁶

Malawi

323. In Malawi, no generally applicable patent-law first-filing requirement or foreign-filing license requirement was identified in the reviewed Patents Act, Chapter 49:02. The statutory mechanism relevant to this study is instead a defense-related secrecy provision under section 24 of that Act.¹⁶⁷

324. Under section 24, where an application for a patent has been made for an invention and it appears to the Registrar that the invention is one of a class notified by the competent authority as relevant for defense purposes, the Registrar may give directions prohibiting or restricting publication of information concerning the invention, or communication of such information to specified persons or classes of persons. While such directions are in force, the application may proceed up to acceptance of the complete specification, but the acceptance is not advertised, the specification is not published, and no patent is granted in pursuance of the application.¹⁶⁸

¹⁶⁵ Loi du 8 juillet 1967 concernant la divulgation et la mise en œuvre des inventions et des secrets de fabrique intéressant la défense du territoire ou la sûreté de l'État, Arts. 1, 2, 9, 12 and 13; Law of May 27, 1977 approving the Patent Cooperation Treaty, Art. 4; WIPO, PCT Applicant's Guide, Annex B (Luxembourg); EPO, National Law relating to the EPC, Chapter II (Luxembourg).

¹⁶⁶ See comments received from Madagascar in response to C.9304.

¹⁶⁷ Patents Act, Chapter 49:02 (Malawi), section 24; WIPO Lex, *Patents Act (Chapter 49:02), Malawi*; Companies, Registrations and Intellectual Property Centre, "Resources," listing "Patents" and "Patents Act 1958." The official CRIPC website states that, effective April 1, 2026, CRIPC assumed the mandate and functions of the former Registrar General's Department; the resource materials continue to identify the Patents Act as the relevant patent legislation.

¹⁶⁸ Patents Act, Chapter 49:02 (Malawi), section 24(1)–(2). Section 24(2) permits the Registrar, where the invention appears to fall within a class notified by the competent authority as relevant for defense purposes, to prohibit or restrict publication of information concerning the invention or communication of such information to specified persons

[Footnote continued on next page]

325. Where section 24 directions are given, the Registrar must notify the competent authority. The competent authority must consider whether publication of the invention would be prejudicial to the defense of Malawi and, unless notice has already been given that publication would not or would no longer be prejudicial, must reconsider that question before the expiry of nine months from the date of lodging of the application and at least once in every subsequent year. If the competent authority gives notice that publication would not or would no longer be prejudicial, the Registrar revokes the directions and may extend applicable time limits. Section 24 also provides for Government-use treatment, possible compensation where the applicant has suffered loss or damage by reason of the invention having been kept secret, non-payment of renewal fees for periods during which the directions were in force, and an offence for failure to comply with such directions.¹⁶⁹

Malaysia

326. In Malaysia, the applicable legal framework requires written authority before a resident files, or causes to be filed, a patent application outside Malaysia, unless the Malaysia-first pathway in section 23A has been satisfied. For an application for written authority, patent applicants may consult section 23A of the Patents Act 1983, regulation 7A of the Patents Regulations 1986, and the Directive of Patents Act 1983 and Patents Regulations 1986. The application for written authority is made on Patents Form No. 1B and is accompanied by a description of the invention to be filed outside Malaysia.¹⁷⁰ The factors that trigger the foreign filing conditionality is nationality or residency of the applicant, the proposed filing venue and the timeline of the local filing.

327. Section 23A provides that no person who is a resident may, without written authority granted by the Registrar, file or cause to be filed outside Malaysia an application for a patent for an invention unless an application for the same invention has been filed in the Patent Registration Office not less than two months before the application outside Malaysia and either no directions have been issued under section 30A or all such directions have been revoked. MyIPO guidance further states that section 23A and regulation 7A apply to both an applicant and an inventor who is a resident as defined under the Act. Malaysian law does not provide a general deemed-license or automatic-approval mechanism if the Registrar does not act or respond within a specified period.¹⁷¹ Directives issued by the Registrar serves as the binding operational protocol for requesting written authority (Foreign Filing) to enforce administrative guidelines, fees, and procedures.

328. Malaysian patent law also contains secrecy-related safeguards through section 30A directions prohibiting or restricting publication of information that might be prejudicial to the nation. The foreign-filing pathway in section 23A is linked to those directions because the Malaysia-first exception is available only if no section 30A directions are in force or all such directions have been revoked. Contravention of section 23A is an offence.¹⁷² Section 62A outlines the penalties for filing abroad without a written authority. Malaysian patent law does not

or classes of persons; while directions are in force, the application may proceed up to acceptance, but acceptance is not advertised, the specification is not published, and no patent is granted.

¹⁶⁹ Patents Act, Chapter 49:02 (Malawi), sections 24(3)–(7) and 89. Section 24(3)–(7) addresses notice to the competent authority, consideration and periodic reconsideration of whether publication would be prejudicial to the defense of Malawi, inspection of the application and related documents, revocation of directions, extension of time limits, Government-use treatment, possible compensation for loss or damage caused by secrecy, non-payment of renewal fees while directions were in force, and the offence for failure to comply with directions. Section 89 contains the general penalty provision for offences under the Act.

¹⁷⁰ See comments received from Malaysia in response to C.9304; Patents Act 1983 (Act 291), ss. 23A, 30A, 62A, 78F; Patents Regulations 1986, reg. 7A; Directive of Patents Act 1983 and Patents Regulations 1986, para. 5; WIPO PCT Applicant's Guide, Annex B (MY), "Does national legislation restrict the filing of international applications with foreign Offices?"

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

allow for a "deemed license" or any form of automatic approval if the Intellectual Property Corporation of Malaysia (MyIPO) fails to act or respond within a specific time period.

Malta

329.

In Malta, no generally applicable foreign filing licence requirement or first domestic filing requirement exists under the Patents and Designs Act for national patent applications. However, Malta's European Patent Convention Regulations, 2007 (S.L. 417.05), made under the Patents and Designs Act, contain a specific national security requirement applicable to certain European patent applications. Pursuant to Regulation 5(3), applicants having their residence or principal place of business in Malta must file with the Maltese Office any European patent application concerning an invention that may affect the national security of Malta, except where priority is claimed from a first filing made in Malta. Apart from this limited requirement applicable to European patent applications, no general authorisation or first-filing requirement for foreign patent filings was identified under Maltese patent legislation.¹⁷³

Mauritius

330. In Mauritius, no patent-law foreign filing conditionality was identified in the reviewed materials.¹⁷⁴

Mexico

331. In Mexico, no patent-law foreign filing conditionality was identified in the reviewed legislation and practitioner materials.¹⁷⁵

Moldova (Republic of)

332. In the Republic of Moldova, a first domestic filing requirement applies before an invention originating in the Republic of Moldova may be patented abroad, including through a foreign, regional, or international route. Patent applicants may consult the Law on the Protection of Inventions No. 50-XVI and the Regulation on the Procedure of Filing and Examination of the Patent Application and Grant of Patent, No. 528/2009. Article 31(2) provides that inventions originating in the Republic of Moldova may only be patented abroad after the filing of a patent application with AGEPI.¹⁷⁶

333. The primary connecting factor is therefore the Moldovan origin or creation of the invention; national security is a separate screening overlay, not the sole trigger for the first filing requirement. Article 45 concerns patent applications the disclosure of which can prejudice national security. Under Article 45(1), inventions containing information which, if disclosed, can prejudice the national security of the Republic of Moldova shall be removed from AGEPI, based on a decision of the commission respectively empowered by the Government, within 30 days from the filing date, with the respective notice to the applicant. Under Article 45(2), an invention created in the Republic of Moldova may only be patented abroad upon expiry of that term. Moldovan law does not appear to provide a conventional foreign filing license or deemed

¹⁷³ See comments received from Malta in response to C.9304; Malta, European Patent Convention Regulations, 2007, S.L. 417.05, made under the Patents and Designs Act (Cap. 417), Regulation 5(3); European Patent Office, National Law relating to the EPC – Malta, Section II ("Filing of European patent applications").

¹⁷⁴ Industrial Property Act 2019 (Act No. 15 of 2019) (Mauritius), as amended; Industrial Property Regulations 2022 (Government Notice No. 36 of 2022).

¹⁷⁵ Ley Federal de Protección a la Propiedad Industrial (Mexico), as amended through DOF Apr. 3, 2026; Reglamento de la Ley Federal de Protección a la Propiedad Industrial (Mexico), DOF Apr. 28, 2026; Knobbe Martens, "Considerations for International Inventions – Foreign Filing Licenses"; Aurora Patents, "Foreign Filing License Requirements by Country" (Nov. 29, 2022); Louis Ventre, "Foreign Filing License & Non-U.S. Filers."

¹⁷⁶ See comments received from Moldova (Republic of) in response to C.9304; Law on the Protection of Inventions No. 50-XVI, art. 31(2).

license mechanism; however, Article 45(2) operates as a statutory timing rule permitting foreign patenting after expiry of the 30-day term, subject to any Article 45 removal and the applicable national-security requirements.¹⁷⁷

334. The PCT route is addressed in points 462 to 481 of Chapter VI of the Regulation on the Procedure of Filing and Examination of the Patent Application and Grant of Patent. In particular, point 463 provides that the requirements in Article 31(2) and Article 45(2) are fulfilled at the date of registration of the international application, and point 464 provides that AGEPI acts as receiving Office for the registration of international applications for the purpose of patenting inventions in other States. If an international application is filed before expiry of 30 days from the filing date of the national application, point 471 provides that examination of the international application starts only after that 30-day period expires. Point 477 further provides that the original copy of the registered application and the search copy are transmitted to the International Bureau of WIPO and the International Searching Authority only if the application meets Moldovan national-security requirements.¹⁷⁸

Montenegro

335. In Montenegro, the Law on Patents contains specific provisions on secret inventions, namely inventions of significance for the defence and security of Montenegro, applications for which are filed with the state administrative authority responsible for national defence rather than with the authority responsible for industrial property. Under these provisions, a secret invention is not published, and protection for a secret invention may be sought abroad only with the approval of the authority responsible for national defence. Current WIPO PCT materials identify, by reference to Articles 124 and 125 of the Law on Patents, that an international application by an applicant having Montenegrin nationality, or residence or a seat in Montenegro, and concerning an invention of significance for defence and security, is subject to compulsory filing with the Ministry of Defence and is not to be filed with the European Patent Office or the International Bureau.¹⁷⁹

Morocco

336. In Morocco, the applicable legal framework does not provide for a general authorization requirement for foreign filing or an obligation of first national filing. Patent applicants may consult Law No. 17-97 relating to industrial property, as amended by Law No. 23-13, and Implementing Decree No. 2-14-316. The relevant framework is instead a national-defense control: under Article 42, certain inventions may be subject to a definitive or provisional prohibition on disclosure and exploitation for reasons of national defense. The specific trigger is the impact on national defense. If no prohibition decision is taken within five months, the normal procedure follows its course and no restriction applies. Moroccan law is therefore best characterized as providing a national-defense secrecy or prohibition restriction relevant to foreign filing, rather than a general foreign filing license or domestic-first filing requirement.¹⁸⁰

¹⁷⁷ See comments received from Moldova (Republic of) in response to C.9304; Law on the Protection of Inventions No. 50-XVI, art. 45(1)-(2).

¹⁷⁸ See comments received from Moldova (Republic of) in response to C.9304; Regulation on the Procedure of Filing and Examination of the Patent Application and Grant of Patent, approved by Government Decision No. 528 of September 1, 2009, pts. 462-464, 471, 477.

¹⁷⁹ Law on Patents of Montenegro ("Official Gazette of Montenegro" Nos. 42/15, 2/17, 146/21, 3/23 and 84/24, and as further amended by the amendments adopted on March 19, 2025), Arts. 124 and 125 and the related secret-invention provisions; see also the corresponding provisions of the predecessor Law on Patents ("Official Gazette of Montenegro" Nos. 66/2008, 40/2010 and 40/2011), Arts. 87 to 91 (official English translation); WIPO, "International Applications and National Security Considerations"; EPO, National Law relating to the EPC, Chapter II (Montenegro).

¹⁸⁰ See comments received from Morocco in response to C.9304, identifying Law No. 17-97 relating to industrial property, as amended by Law No. 23-13, and Implementing Decree No. 2-14-316; stating that Moroccan legislation does not provide for a general authorization to file abroad or an obligation of first national filing; identifying the trigger

[Footnote continued on next page]

Myanmar

337. Myanmar has a limited, security-linked foreign filing restriction. Where a formally filed Myanmar patent application is considered prejudicial to national security or the safety of the people, the application may be kept secret; for that application, a person residing in Myanmar may not file abroad without the Registrar's permission while no clearance remark has been given, or where the relevant remark has been cancelled. The rule is therefore limited to sensitive applications and should not be described as a general foreign filing licence requirement for all inventions.¹⁸¹

Namibia

338. In Namibia, no patent-law foreign filing conditionality was identified in the reviewed materials. Namibia's submission states that none of the listed foreign filing conditionalities are expressly required under the Industrial Property Act, 2012 (Act No. 1 of 2012), and that Namibian patent law does not provide for a secrecy order or similar national-security restriction prohibiting or restricting filing for patent protection in other jurisdictions. The reviewed Industrial Property Act recognizes priority from earlier national, regional or international applications, requires applicants to provide information and documents concerning corresponding foreign applications, and implements the PCT and Harare Protocol/ARIPO filing routes. Those provisions regulate ordinary patent procedure, corresponding foreign-application information, national-phase entry, receiving-office or delegated receiving-office functions, and ARIPO effect in Namibia; they were not identified as imposing a first domestic filing requirement, foreign filing license, waiting period, security-clearance requirement, mandatory domestic routing requirement for outward foreign filings, or patent-law secrecy order restricting foreign filing.¹⁸²

Netherlands (Kingdom of the)

339. In the Kingdom of the Netherlands, a secrecy-based routing requirement applies to European patent applications under Article 46 of the Patents Act 1995 (Rijksoctrooiwet 1995). A European patent application whose contents, as the applicant knows or ought reasonably to suspect, must remain secret in the interest of the defence of the Kingdom or its allies must be filed with the Netherlands Patent Office (Octrooi Centrum Nederland) rather than with the European Patent Office; the Office transmits the description and drawings to the Minister of Defence, and unless the Minister communicates that the contents must remain secret, the application is forwarded to the European Patent Office within the applicable time limit under the European Patent Convention. Where an application is consequently not forwarded and is deemed withdrawn under that Convention, the Act contains provisions governing converted European patent applications.¹⁸³

340. For national patent applications, Articles 40 and 41 provide a secrecy-screening mechanism: where the Office considers that secrecy of the contents of an application may be in the interest of the defence of the Kingdom or its allies, it notifies the applicant as soon as possible and no later than three months after filing, transmits the relevant materials to the

as impact on national defense; and explaining that, under Article 42, certain inventions may be subject to definitive or provisional prohibition on disclosure and exploitation for reasons of national defense, that a decision may be taken within five months, and that absence of a decision means absence of restriction.

¹⁸¹ ASEAN Common Guidelines on Patent Examination, § 2.8, pp. 31–32, identifying Brunei Darussalam, Malaysia, Myanmar, Singapore and Viet Nam as ASEAN Member States with some degree of foreign filing licence requirement, and stating that Myanmar's requirement is residency-based and applies only to applications involving national security and the safety of the people. See also Myanmar Patent Law, Pyidaungsu Hluttaw Law No. 7/2019, §§ 42(a), 42(c), 42(e), 78(a) (official English text hosted by the Myanmar Intellectual Property Department; Burmese text available from Myanmar government sources); WIPO Lex, The Patent Law, Myanmar, listing the 2019 Patent Law as the latest WIPO Lex version and providing Burmese and English texts.

¹⁸² See comments received from Namibia in response to C.9304.

¹⁸³ Patents Act 1995 (Rijksoctrooiwet 1995) (Kingdom of the Netherlands), Articles 46 to 48; EPO, National law relating to the EPC, Table I (Netherlands); WIPO, PCT Applicant's Guide, Annex B (NL)].

Minister of Defence, and entry of the application in the patent register is suspended; within eight months of filing, the Minister communicates whether the contents are to be kept secret, an affirmative communication suspending entry in the register for three years, renewable for further three-year periods, while a negative communication or the absence of a communication terminates the suspension. Article 42 provides for compensation by the State for damage sustained through the application of these provisions, with judicial determination of the amount failing agreement. The Act does not provide a general foreign filing license mechanism, and no patent-Act penalty specific to breach of Article 46 itself was identified.¹⁸⁴

New Zealand

341. In New Zealand, no generally applicable patent-law first-filing requirement or foreign-filing license requirement for ordinary applicants was identified under the current Patents Act 2013. The current patent-law mechanism relevant to sensitive inventions is instead a defense-secrecy directions regime under sections 132 to 139 of that Act. A separate defense-personnel inventions framework under the Defence Regulations 1990 may impose person-specific restrictions on members of the Armed Forces, but that framework is not a general foreign-filing license regime for all applicants.¹⁸⁵

342. Under section 132 of the Patents Act 2013, where a patent application has been made for an invention and the invention is, in the opinion of the Commissioner, either one of a class notified by the Minister of Defence as relevant for defense purposes or likely to be valuable for defense purposes, the Commissioner may give directions prohibiting or restricting publication of information concerning the invention, or prohibiting or restricting communication of that information to specified persons or classes of persons. While such directions are in force, the patent application may proceed up to acceptance of the complete specification, but the patent application and complete specification must not become open to public inspection and a patent must not be granted in relation to the application.¹⁸⁶

343. Where directions are given under section 132, the Commissioner must notify the Minister of Defence. The Minister must consider whether publication of the invention would be prejudicial to the defense of New Zealand and, unless notice has already been given that publication would not or would no longer be prejudicial, must reconsider that question before the expiry of nine months from the filing date and at least once in every subsequent year. If the Minister gives notice that publication would not or would no longer be prejudicial, the Commissioner must revoke the directions and may extend applicable time limits. The Act also provides for government-use and hardship-related compensation consequences where a complete specification is accepted while directions remain in force, and no maintenance or renewal fees are payable for periods during which section 132 directions are in force.¹⁸⁷

¹⁸⁴ Ibid., Articles 40, 41 and 42.

¹⁸⁵ Patents Act 2013 (New Zealand), sections 132 to 139; Defence Regulations 1990 (New Zealand), Part 2, regulations 21 to 29 and Schedule 2. The current Patents Act provisions identify a defense-secrecy directions regime rather than a generally applicable foreign-filing license or first-filing requirement. The Defence Regulations framework is person-specific and applies to inventions made by members of the Armed Forces.

¹⁸⁶ Patents Act 2013 (New Zealand), section 132. See also IPONZ, *Guide for Releasing Official Information held under the Patents Act 2013, Patents Regulations 2014 and Official Information Act 1982*, explaining that section 132 may restrict release of information relating to patent applications relevant to defense purposes and that, while directions are in force, the patent application and complete specification must not become open to public inspection.

¹⁸⁷ Patents Act 2013 (New Zealand), sections 133 to 137. These provisions require notice to the Minister of Defence, periodic consideration of whether publication would be prejudicial to the defense of New Zealand, revocation of directions where the Minister gives notice that publication would not or would no longer be prejudicial, possible extension of time limits, government-use and hardship-related compensation consequences, and non-payment of maintenance or renewal fees while directions remain in force.

344. Failure to comply with a section 132 direction is an offence where the person knew or ought to have known that the direction had been given. The offence is punishable by imprisonment for a term not exceeding two years, a fine not exceeding 20,000 New Zealand dollars, or both. Where a body corporate is convicted of such an offence, directors and persons concerned in management may also be liable if the statutory conditions are met.¹⁸⁸

345. A separate, narrower framework applies to inventions made by members of the Armed Forces. Part 2 of the Defence Regulations 1990 applies to regular members and to territorial or reserve members who are for the time being liable for continuous service. Under that framework, a member of the Armed Forces may not apply for or obtain a patent for an invention except in accordance with the Regulations and applicable orders; inventions made by members are deemed to belong to and be held in trust for the Crown until the Chief of Defence Force has made a decision; and, pending that decision, the inventor must not disclose the subject matter of the invention to unauthorized persons or permit information relating to the invention to be published. The Regulations also require inventions to be referred in the first instance to the Chief of Defence Force or a person directed by the Chief of Defence Force. The prescribed agreement with respect to inventions includes an undertaking that the inventor will not apply for a patent in any country other than New Zealand without the authority of the Chief of Defence Force.¹⁸⁹

346. The current position should be distinguished from the former foreign-filing permit practice under the Patents Act 1953. IPONZ's archived 1953 Act guidance stated that a New Zealand resident wishing to file a patent application abroad without first filing a corresponding New Zealand patent application had to obtain a foreign filing permit from the Commissioner under section 25(5), subject to exceptions where a New Zealand application for the same invention had been filed at least six weeks earlier or where the foreign application claimed convention priority from an application for the same invention filed abroad by a non-resident. That IPONZ guidance is expressly identified as relating to applications with a complete specification filed before September 13, 2014. It should therefore not be treated as a generally applicable current foreign-filing license requirement under the Patents Act 2013, although the 1953 Act may remain relevant in transitional cases governed by the savings and transitional provisions of the 2013 Act.¹⁹⁰

Nigeria

347. In Nigeria, no patent-law foreign filing conditionality was identified in the official materials reviewed. The Patents and Designs Act was not identified as imposing a first domestic filing requirement, foreign filing license, waiting period, patent-office national-security review,

¹⁸⁸ Patents Act 2013 (New Zealand), sections 138 and 139. Section 138 creates an offence for failure to comply with a section 132 direction where the person knew or ought to have known that the direction had been given, punishable by imprisonment for a term not exceeding two years, a fine not exceeding 20,000 New Zealand dollars, or both; section 139 addresses liability of directors and managers where a body corporate commits the offence.

¹⁸⁹ Defence Regulations 1990 (New Zealand), Part 2, regulations 21 to 29 and Schedule 2. Part 2 applies to regular members and certain territorial or reserve members liable for continuous service; regulation 22 restricts patent applications by members and treats inventions as held in trust for the Crown pending decision by the Chief of Defence Force; regulations 23 to 29 address referral, patent protection, agreements, powers of the Chief of Defence Force, royalties and rewards, and appeals; and Schedule 2 includes an undertaking not to apply for a patent in any country other than New Zealand without the authority of the Chief of Defence Force.

¹⁹⁰ IPONZ, "Foreign filing permits – Patents Act 1953," archived 1953 Act practice guideline, stating that the guidance relates to applications with a complete specification filed before September 13, 2014, and describing the former section 25(5) foreign-filing permit practice for New Zealand residents; Patents Act 2013 (New Zealand), sections 247 and 253 to 259, repealing the Patents Act 1953 subject to preserved provisions and savings/transitional treatment for certain 1953 Act applications and Treaty applications.

designated-office routing requirement, or patent-law secrecy order restricting the filing of a patent application outside Nigeria.¹⁹¹

North Macedonia

^{348.} In North Macedonia, a confidential-invention routing and foreign filing authorization mechanism applies under Articles 71 to 73 of the Law on Industrial Property of 2009, as amended. Applications for the grant of a patent relating to defence are deemed confidential and are filed with the Minister for Defence; where the Minister for Defence finds in the course of examination that the invention is not confidential, the application is forwarded to the State Office of Industrial Property, where the Office finds an invention to be confidential, it forwards the application to the Minister for Defence, and once the invention ceases to be confidential the Office enters the patent in the register, issues the patent certificate and publishes the data. The Ministry of Defence has the exclusive right to use a confidential invention, the right holder being entitled to a one-time compensation regardless of whether and to what extent the invention is used for the needs of defence, the amount being determined amicably or, failing agreement, by a court. A patent related to a confidential invention is not published, and local natural and legal persons may request protection of a confidential invention abroad only on the basis of an approval in writing by the Minister for Defence. Articles 71 and 72 apply accordingly to patent applications for inventions of interest to the state security, with the Minister for Interior competent to decide on such applications, and the Government prescribes which inventions are considered confidential and the method of patent granting.¹⁹²

Norway

349. Norway's foreign-filing restrictions are limited to defense-related inventions rather than operating as a general foreign filing license or first-filing system. Section 71 of the Patents Act provides that inventions of importance to the defense of the realm are governed by a separate Act. Under section 1 of the Act on Inventions of Importance to the Defense of the Realm, that regime applies where the invention was made in Norway, where a patent application has been filed for it in Norway, or where a person resident in Norway wholly or partly owns the invention or has exploitation rights in it. Under sections 2 and 3, an invention concerning war materiel or otherwise of direct importance to the defense of the realm may not be disclosed to others and, if patent protection is sought, the invention must be submitted to the competent defense authorities or filed as a patent application with the Norwegian Industrial Property Office. In Norway, the law does not provide for deemed or automatic approval if the Office does not act within a specified time period.¹⁹³

350. Norwegian law also provides for secret patent treatment. Under section 7 of the 1953 Act, the Ministry of Defence may order that a patent application falling within the Act be kept secret and that the patent, if granted, be granted as a secret patent. Such patents are entered in a separate non-public register rather than the ordinary patent register, the publication provisions in sections 19 to 25 of the Patents Act do not apply, and annual fees are not payable while the application or patent remains secret. Section 6 of the same Act also allows the Ministry of Defence to require assignment of the invention or exploitation rights and to prohibit specified dealings with the invention in Norway or abroad.¹⁹⁴

¹⁹¹ See Intellectual Property Office Nigeria, "Trademarks, Patents & Designs Acts and Regulations"; Patents and Designs Act, ss. 1 to 5, 11 and 27, and First Schedule; WIPO Lex, Patents and Designs Act (Chapter 344), noting amendment by the Business Facilitation (Miscellaneous Provisions) Act, 2022; WIPO PCT Applicant's Guide, Annex B (NG) and Annex C (NG); WIPO, "International applications and national security considerations."

¹⁹² Law on Industrial Property, Official Gazette of the Republic of Macedonia No. 21/2009, as amended, Articles 71, 72 and 73.

¹⁹³ See comments received from Norway in response to C.9304.

¹⁹⁴ *Ibid.*

351. Section 7 of the Act provides that the Ministry of Defence may, subject to reciprocity, enter into an agreement with a foreign state that patent applications for inventions which are of importance to the defence of the state in question and which are filed in Norway by a person resident in the foreign state shall, at the request in each case from the competent authority in that state, be kept secret, and that the patent in such cases shall be granted as a secret patent.¹⁹⁵

Pakistan

352. In Pakistan, a resident-based foreign filing permission requirement applies under section 26 of the Patents Ordinance, 2000. No person resident in Pakistan may, without written authority granted by the Controller, file or cause to be filed outside Pakistan an application for the grant of a patent for an invention unless an application for a patent for the same invention has been filed in the Patent Office at least six weeks before the application outside Pakistan, and either no directions have been given under section 25 in relation to the Pakistan application or all such directions have been revoked. The restriction does not apply to an invention in respect of which a patent application has first been filed outside Pakistan by a person resident outside Pakistan.¹⁹⁶

353. Section 25 provides the linked secrecy mechanism. Where a patent application is filed in the Patent Office and the invention appears to the Controller to fall within a class notified by the Federal Government as one whose publication might be prejudicial to the defense of Pakistan, or where the Controller otherwise thinks so, the Controller may give directions prohibiting or restricting publication of the invention or its communication to specified persons or classes of persons. The Controller may also give directions where the specification contains information whose publication might be prejudicial to public safety. While directions under section 25 are in force, the application may proceed to the stage where it is in order for acceptance, but the specification is not published.¹⁹⁷

354. Where directions are given, the Controller notifies the Federal Government, which considers whether publication or communication would be prejudicial to the defense of Pakistan or the safety of the public. The Federal Government must reconsider the question during the period of nine months from the date of filing and at least once in every subsequent period of twelve months unless the directions have already been revoked. If the Federal Government concludes that publication or communication would not, or would no longer, be prejudicial, the Controller revokes the directions and may extend applicable time limits. Section 25 also provides for compensation in certain circumstances where the Federal Government uses the invention or where the applicant has suffered hardship by reason of the continuance of the directions, and provides that no renewal fees are payable in respect of a period during which directions were in force.¹⁹⁸

355. The principal consequence of breach is criminal. Under section 71, a person who fails to comply with directions given under section 25, or who makes or causes to be made a patent application in contravention of section 26, is punishable by imprisonment for a term which may extend to two years, a fine not exceeding twenty thousand rupees, or both. No separate deemed-license or retroactive-license mechanism was identified in the statutory materials reviewed; the section 26 pathway is framed instead around prior written authority from the

¹⁹⁵ *Ibid.*

¹⁹⁶ See Patents Ordinance, 2000 (Ordinance No. LXI of 2000) (Pakistan), sections 25, 26 and 71. Section 25 concerns information prejudicial to the defense of Pakistan or the safety of the public; section 26 provides that residents may not apply outside Pakistan without written authority from the Controller unless the six-week domestic filing pathway and no-direction/revocation conditions are satisfied; and section 71 provides penalties for contravention of section 25 directions or section 26.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

Controller or the six-week domestic filing route where no section 25 directions remain in force.¹⁹⁹

Panama

356. In Panama, no patent-law foreign filing conditionality was identified in the reviewed materials. Panama does not require an applicant to file first in Panama before filing a patent application abroad, nor does it require authorization from a Panamanian authority before filing in a foreign jurisdiction or through the PCT system. Panama should therefore be treated as a jurisdiction with no national first-filing requirement, foreign filing license system, tacit approval period, or patent-law secrecy restriction applicable to foreign patent filings.²⁰⁰

Papua New Guinea

357. In Papua New Guinea, no patent-law foreign filing conditionality was identified in the reviewed materials.²⁰¹

Paraguay

358. In Paraguay does not impose any patent-law foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization.²⁰²

Philippines

359. In the Philippines, no generally applicable patent-law foreign-filing license or first domestic filing requirement was identified in the reviewed Intellectual Property Code. Section 39 requires an applicant, at the Director's request, to provide information and documents concerning corresponding foreign patent applications, but that provision is a foreign-application information requirement rather than a condition on filing abroad. Section 44.3 separately permits the Director General, subject to the approval of the Secretary of Trade and Industry, to prohibit or restrict publication of a patent application where publication would be prejudicial to the national security and interests of the Republic of the Philippines.²⁰³

Poland

360. In Poland, Article 40 of the Industrial Property Law addresses filings for foreign protection by persons having a seat or place of residence in the Republic of Poland. It provides that such a person may file an invention for the purpose of obtaining protection abroad, through the Patent Office of the Republic of Poland, under the procedure provided by an applicable international agreement, European Union law, or the Industrial Property Law, after filing that invention with the Patent Office. This provision is therefore best described as a domestic-filing and Patent

¹⁹⁹ *Ibid.*

²⁰⁰ See comments received from Panama in response to C.9304; Law No. 35 of May 10, 1996 on Industrial Property, as amended by Law No. 61 of October 5, 2012, arts. 36, 52-A to 52-G and 53; Executive Decree No. 85 of July 4, 2017, regulating Law No. 35 of 1996, as amended by Law No. 61 of 2012, arts. 63 to 82.

²⁰¹ Patents and Industrial Designs Act 2000 (Papua New Guinea); Patents and Industrial Designs Regulation 2002.

²⁰² See comments received from Paraguay in response to C.9304.

²⁰³ Intellectual Property Code of the Philippines, Republic Act No. 8293, sections 39 and 44.3. Section 39 concerns information that may be requested by the Director regarding corresponding foreign patent applications; section 44.3 permits the Director General, subject to approval of the Secretary of Trade and Industry, to prohibit or restrict publication of a patent application where publication would be prejudicial to national security and the interests of the Republic of the Philippines. WIPO Lex identifies the Intellectual Property Code of the Philippines as an English main IP law text, in its 2015 edition, amended up to Republic Act No. 10372; IPOPHL lists R.A. 8293, as amended by R.A.s 9150, 9502 and 10372, among the Philippine patent laws.

Office route provision, rather than as a separate foreign-filing license or authorization procedure.²⁰⁴

Portugal

361. In Portugal, the applicable framework provides that, in cases where the applicant is domiciled or headquartered in Portugal, a European patent application or an international application must be filed at INPI, unless the application claims priority from a prior application submitted in Portugal. Patent applicants may consult Articles 78 and 92 of the Industrial Property Code.²⁰⁵

362. The relevant connecting factor is the applicant's domicile, residence, headquarters, corporate seat or principal place of business in Portugal, rather than the nationality or residence of the inventor. Article 78(2) of the Industrial Property Code provides that, where the applicant for a European patent has its domicile or corporate seat in Portugal, the application must be filed with INPI; otherwise, it may not take effect in Portugal, unless it claims priority from a prior application filed in Portugal. Article 92 similarly addresses international applications by natural or legal persons domiciled or headquartered in Portugal and provides that, where no priority is claimed from a prior Portuguese application, the international application must be filed with INPI; otherwise, it does not take effect in Portugal.²⁰⁶

Qatar

363. In Qatar, no generally applicable patent-law foreign filing license, first domestic filing requirement, waiting period, mandatory domestic routing requirement, patent-application defence-review procedure, or patent-law secrecy-order/confidential-application regime was identified in the English-language materials reviewed.²⁰⁷

Republic of Korea

364. As a general rule, the Republic of Korea does not impose foreign filing conditionality, such as a foreign filing license, security clearance, or first domestic filing requirement, prior to filing a patent application in a foreign country or region. However, exceptions apply where national defense considerations are involved. In that context, Article 41(1) of the Korean Patent Act provides that the government may prohibit filing a patent application with a foreign patent office, or may order an inventor, applicant, or agent to keep confidential an invention for which a patent application has been filed, if necessary for national defense, although a patent application may be filed in a foreign country with prior permission from the government. Article 41(2) further provides that the government may refuse to grant a patent if an invention for which a patent application has been filed is necessary for national defense and may expropriate the entitlement to a patent for national defense during a war, an incident, or any similar emergency. Patent applicants may consult the Korean Patent Act, the Enforcement Decree of the Patent Act, the

²⁰⁴ Industrial Property Law of June 30, 2000 (Poland), Article 40. Article 40 provides that a person having a seat or domicile in the territory of the Republic of Poland who wishes to seek patent protection in another country may file a patent application through the intermediary of the Patent Office, under the procedure provided for in an international agreement, European Union law referred to in Article 4, or the Industrial Property Law, after filing the patent application with the Patent Office. See also Patent Office of the Republic of Poland, "Procedure for granting European patents," quoting Article 40 and explaining its application in the European patent filing context.

²⁰⁵ See comments received from Portugal in response to C.9304; Industrial Property Code, arts. 78(2), 92; EPO, National Law relating to the EPC, Portugal, "Filing of European patent applications"; WIPO PCT Applicant's Guide, Annex B (PT), "Does national legislation restrict the filing of international applications with foreign Offices?"

²⁰⁶ *Ibid.*

²⁰⁷ Patent Law (Decree-Law No. 30 of 2006), art. 2; Ministerial Decision No. 153 of 2018; WIPO PCT Applicant's Guide, Qatar, Annex B. Article 2 contains a national-security patentability exclusion, and the PCT Guide states "Refer to the Office"; no patent-law foreign-filing license, first-filing rule, defence-review procedure, or secrecy order was identified.

Enforcement Rule of the Patent Act, and the Regulations on Expropriation and Exploitation of Patent Rights.²⁰⁸

365. Where national defense considerations are involved, authorization from the Minister of the Ministry of Intellectual Property (MOIP) is required prior to filing a patent application abroad. The impact on the country's national security or national defense is the triggering criterion, and the substantive determination as to whether an invention is necessary for national defense is made by the Defense Acquisition Program Administration (DAPA). The request must be filed before filing abroad and is made on Form No. 21 (Application for Authorization to File Abroad) under Article 35 of the Enforcement Rule of the Patent Act. Korean law does not allow for deemed or automatic approval if the Office does not act or respond within a specific time period, and it does not provide a mechanism for obtaining a retroactive foreign filing license. Where two or more countries' foreign filing requirements appear to apply, there are no exception provisions in cases of conflict with foreign laws or systems, and compliance with MOIP regulations is mandatory.²⁰⁹

366. If a person violates an order prohibiting filing a patent application in a foreign country or an order requiring the patent application to be kept confidential under Article 41(1), Articles 41(5) and 41(6) deem the person to have relinquished the entitlement to a patent on the relevant invention and the entitlement to claim compensation for losses arising from the foreign-filing prohibition or confidential treatment. In addition, under Article 229-3, violation of an order prohibiting filing a patent application in a foreign country or keeping a patent application confidential under Article 41(1) is punishable by imprisonment with labor for not more than five years or by a fine not exceeding 50 million won.²¹⁰

367. If filing abroad is prohibited or the application is classified as confidential, the government provides reasonable compensation for the losses incurred, and it also provides reasonable compensation if it refuses to grant a patent or expropriates the entitlement to a patent. The amount of compensation is determined based on the applicant's loss, and the applicant may request compensation from the Commissioner of the Defense Acquisition Program Administration by submitting a written request together with documentary evidence proving the losses.²¹¹

368. In the national-defense circumstances addressed in the Korean response, the response states that the foreign filing authorization requirement prevents transfer of technical data, experimental results, or invention disclosures that convey the substance of the invention to foreign entities before authorization is obtained. Where the government orders that an invention be kept confidential pursuant to Article 41(1) of the Korean Patent Act, disclosure of the relevant data or cross-border transfer of know-how is restricted.²¹²

369. The Republic of Korea also provides for a secrecy order or similar national security restriction. Where it is deemed necessary for national defense, the government may order the inventor, applicant, or agent to keep the invention of the patent application secret, and a patent application may be filed in a foreign country only with the authorization of the Minister of the Ministry of Intellectual Property. More specifically, Article 15 of the Enforcement Decree of the Patent Act provides that, if an invention for which a patent application is filed by a person having

²⁰⁸ See comments received from the Republic of Korea in response to C.9304; See also Patent Act (Republic of Korea), Art. 41(1)-(2).

²⁰⁹ See comments received from the Republic of Korea in response to C.9304; See also Enforcement Decree of the Patent Act (Republic of Korea), Arts. 15(1)-(2); Enforcement Rule of the Patent Act, Art. 35 and Form No. 21.

²¹⁰ See also Patent Act (Republic of Korea), Arts. 41(5)-(6) and 229-3.

²¹¹ See comments received from the Republic of Korea in response to C.9304. See also Patent Act (Republic of Korea), Art. 41(3)-(4); Enforcement Decree of the Patent Act, Art. 14.

²¹² See comments received from the Republic of Korea in response to C.9304. See also Patent Act (Republic of Korea), Art. 41(1); Enforcement Decree of the Patent Act, Arts. 12(2), 12(4), and 15(1).

the domicile or business office in the Republic of Korea is demanded by the Minister of the Ministry of Intellectual Property to be maintained as confidential under Article 12(2), or is ordered to be classified and treated as confidential under paragraph (4) of the same Article, such person may file a patent application in any foreign country only when permitted by the Minister of the Ministry of Intellectual Property.²¹³

Romania

370. In Romania, the reviewed sources identify a domestic-first rule for certain inventions created in Romania, together with secrecy-linked restrictions for inventions containing state-secret information and route-specific rules for PCT and European filings of national-security significance. Under Article 39 of the Romanian Patent Law, patenting abroad of inventions created by Romanian natural persons on the territory of Romania may take place only after a patent application has been filed with the State Office for Inventions and Trademarks (OSIM). In the case of inventions containing state-secret information, patenting abroad may take place only after that information has been declassified pursuant to Article 38(3). Article 38(2) provides that information in the field of national defense or national security contained in an invention created on the territory of Romania and forming the subject of a patent application may be classified as a state secret by the competent institutions.²¹⁴

371. The implementing regulations further address national-defense and national-security applications and PCT handling. Patent applications belonging to the field of national defense and security that have been created within the territory of Romania are to be filed in accordance with the special law and Article 7 of the regulations. Article 7 provides rules for patent applications containing classified information, including the assignment of state-secret character to information contained in documents concerning inventions in the field of national defense or national security by the competent institutions. Where OSIM acts as receiving Office for an international application and the application contains, or later comes to contain, information classified as a state secret by institutions empowered for national defense or national security, OSIM does not deal with the application as an international application and does not transmit it to the International Bureau or to the international searching authority.²¹⁵

372. Current WIPO PCT materials identify Romania's filing restriction as applying to international applications concerning subject matter of significance for national security, and state that a national or resident of Romania must file such an international application directly with OSIM. Current EPO national-law materials similarly state that European patent applications for inventions made in Romania and having subject matter of significance for national security must be filed with OSIM. Accordingly, the Romanian framework should not be described as a general foreign-filing license requirement for every invention involving Romania. The general domestic-first rule is tied to inventions created by Romanian natural persons on Romanian territory, while the PCT and European routing rules identified in WIPO and EPO materials are tied to subject matter of significance for national security.²¹⁶

Russian Federation

373. In the Russian Federation, Article 1395 of the Civil Code establishes a Russian-office first filing and state-secret screening pathway for inventions and utility models created in the

²¹³ See comments received from the Republic of Korea in response to C.9304. See also Enforcement Decree of the Patent Act (Republic of Korea), Arts. 12(2), 12(4), 15(1), and 15(2).

²¹⁴ Patent Law No. 64/1991 on Patents (Romania), Arts. 38(2)–(3), 39; OSIM, "Filing an application – Inventions," section 8, "Patenting Abroad"; Regulations on the Implementation of Patent Law No. 64/1991, approved by Government Decision No. 547/2008 of May 21, 2008, Arts. 4(3), 7 and 29(1), (17); WIPO, *PCT Applicant's Guide*, Annex B — Romania, "Does national legislation restrict the filing of international applications with foreign Offices?"; EPO, *National Law relating to the EPC*, "II. Filing of European patent applications — Romania"; WIPO, "International Applications and National Security Considerations," Known Filing Restrictions — Romania.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

Russian Federation. An application for the grant of a patent for an invention or utility model created in the Russian Federation may be filed in a foreign State or with an international organization upon expiry of six months from the filing of the corresponding application with the federal executive authority for intellectual property, unless within that period the applicant is notified that the application contains information constituting a state secret. An earlier foreign or international filing may be made after an applicant-requested check for the presence of information constituting a state secret has been conducted. Article 1395 further provides, in relevant part, that patenting under the PCT or the Eurasian Patent Convention of an invention or utility model created in the Russian Federation is admissible without a prior Russian national application where the PCT application is filed with the federal executive authority for intellectual property as receiving Office and designates the Russian Federation, or where the Eurasian application is filed through that authority.²¹⁷

Samoa

374. In Samoa, no patent-law foreign filing conditionality was identified in the reviewed materials.²¹⁸

Saudi Arabia

375. In Saudi Arabia, no generally applicable patent-law foreign filing license, first domestic filing requirement, waiting period, or mandatory domestic routing requirement for ordinary inventions was identified in the English-language materials reviewed. The Law on Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs provides that, where the subject matter of protection relates to national security, it is governed by the Implementing Regulations.²¹⁹

376. Article 53 of the Implementing Regulations establishes a national-security assignment and confidential-application regime. A government employee, whether military or civilian, who discovers patentable subject matter relating to national security in the course of performing their duties must assign it, together with all resulting benefits, to the relevant government agency upon that agency's approval. Any other person who discovers patentable subject matter relating to national security must likewise assign it, together with all resulting benefits, to the relevant government agency upon approval, with fair compensation. Persons assigning such rights, and all persons aware of the assignment, must keep the patentable subject matter and assignment confidential and may disclose them only to authorized persons. Where the relevant government agency obtains the necessary assignment, it may apply to the Saudi Authority for Intellectual Property for a protection document and request that the application be kept confidential; the Authority processes the application under ordinary procedures but does not publish information about it. The application, specification, drawings, amendments, protection document and copies are kept in a sealed and stamped file available only to the relevant government agency or by its order, and the contents may not be published or accessed by others. Where the Authority determines that a protection application relates to national security, has not been assigned to the relevant government agency, and should not be published for national-security purposes, it may order that the application be treated as if it had been assigned to that agency. Accordingly, on the English-language materials reviewed, Saudi Arabia is best characterized as having a

²¹⁷ Rospatent, *Civil Code of the Russian Federation*, Part Four, Art. 1395(1)–(2); WIPO, *PCT Applicant's Guide*, Annex B (RU), "Does national legislation restrict the filing of international applications with foreign Offices?"; WIPO, "International applications and national security considerations," Known filing restrictions, Russian Federation.

²¹⁸ Intellectual Property Act 2011 (Act No. 9 of 2011, as amended up to Act No. 7 of 2020) (Samoa).

²¹⁹ Law on Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, art. 6(E). WIPO Lex identifies the law as issued by Royal Decree No. M/27 of July 17, 2004 and amended up to Royal Decree No. M/45 dated September 25, 2023, and notes that the English translation is unofficial and provided for user convenience. The SAIP-hosted bilingual compilation also carries an "Unofficial Translation" notice.

special national-security assignment and confidential-application regime, rather than a generally applicable foreign filing license, first-filing, waiting-period, or routing regime.²²⁰

Serbia

377. Under the Patent Law of Serbia, an application filed by a domestic person of the Republic of Serbia that is found to be important for the defense or security of the Republic of Serbia is treated as a secret application and is filed with the authority competent for national defense. If the Intellectual Property Office, in examining a patent or petty patent application, estimates that the application is important for the defense or security of the Republic of Serbia, it forwards the application to the authority competent for national defense, while retaining the filing date accorded to the application. A secret invention is not published, and protection for a secret invention abroad may be sought only with approval of the authority competent for national defense. Where a European patent application is filed with the Intellectual Property Office and the Office estimates that the invention is important for the defense or security of the Republic of Serbia, the Office does not transmit the European patent application to the European Patent Office, but proceeds in accordance with the provisions on inventions of importance for defense and security.²²¹

Sierra Leone

378. In Sierra Leone, no patent-law foreign filing conditionality was identified in the reviewed materials.²²²

Singapore

379. In Singapore, a written-authority requirement apply before a patent application may be filed abroad in certain circumstances. The applicable framework is set out in sections 33 and 34 of the Singapore Patents Act 1994, and the competent authority is the Intellectual Property Office of Singapore. Written authority must be granted by the Registrar before a person resident in Singapore files, or causes to be filed, outside Singapore an application for a patent for an invention, unless an application for a patent for the same invention has been filed in the Registry at least two months before the application outside Singapore and no directions have been given under section 33 in relation to the application in Singapore, or all such directions have been revoked. The relevant connecting factor is residence in Singapore, including residence of an applicant or inventor, rather than nationality alone.²²³

380. Singapore's two-month route is better described as a statutory exception rather than a conventional deemed license following non-response to a license request. Official guidance states that a person resident in Singapore who files or causes to be filed an overseas patent application, such as an applicant or inventor, must obtain written authorization from IPOS before first filing overseas; "residing in Singapore" includes foreigners with a valid pass lawfully issued to them under the Immigration Act 1959 to enter and remain in Singapore for any purpose. A request for authority is made by submitting a request form and a brief description of the invention, and the Office may request the patent specification if necessary.²²⁴

²²⁰ Implementing Regulations of the Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, art. 53(1)–(6), (12). This is Article 53 of the Implementing Regulations, under Chapter 9, "National Security-Related Applications," not Article 53 of the patent law itself.

²²¹ Patent Law (Serbia), Official Gazette RS Nos. 99/2011, 113/2017 – other laws, 95/2018, 66/2019 and 123/2021, Arts. 51, 52, 54 and 146.

²²² The Patents and Industrial Design Act, 2012 (Act No. 10 of 2012) (Sierra Leone).

²²³ See comments received from Singapore in response to C.9304; Patents Act 1994 (Singapore), ss. 33-34; Intellectual Property Office of Singapore, "National Security Clearance"; IPOS, "Must I apply for a patent in Singapore before seeking patent protection overseas?"

²²⁴ *Ibid.*

381. If an applicant files or causes to be filed a patent application abroad without obtaining the required written authority, that person is guilty of an offence and is liable on conviction to a fine not exceeding \$5,000, imprisonment for a term not exceeding two years, or both. There is no mechanism for obtaining a retroactive foreign filing license.

382. Singapore law also provides for secrecy-based restrictions. Where an application for a patent is filed in Singapore and it appears to the Registrar that the application contains information which might be prejudicial to the defense of Singapore, the Registrar must give directions prohibiting or restricting publication of that information or its communication to any specified person or description of persons. Where an application contains information the publication of which might be prejudicial to the safety of the public, the Registrar may give similar directions for a period of 21 months from the priority date or filing date, whichever is earlier.²²⁵ If such directions are in force, the application will be held in abeyance and, for an international application, a copy will not be sent to the International Bureau or any international searching authority. Section 33 also provides for compensation in the circumstances set out in that provision.²²⁶

Slovakia

383. In Slovakia, the applicable framework provides for a mandatory authorization before certain patent applications may be filed directly abroad. A domestic applicant who knows, or, depending on the circumstances, should know, that the application contains information classified pursuant to Act No. 215/2004 Coll. of Laws of the Slovak Republic on the protection of classified information and on alterations of and additions to certain laws, as amended, may file an application directly abroad only on the basis of permission from the National Security Office, issued upon the applicant's request. This applies to an application that is not a European patent application or an international application. The impact on the country's national security or national defense is the criterion triggering this foreign filing conditionality.²²⁷

Slovenia

384. In Slovenia, no express general foreign filing license requirement, deemed-license period, or automatic-approval period has been identified. Slovenian patent law does, however, contain a confidentiality mechanism for inventions important for defence or security. Article 17 of the Industrial Property Act provides that such inventions are considered confidential and are registered with the ministry responsible for defence; that the conditions for exploitation, including compensation, are agreed directly between the inventor and that ministry; and that an application for such an invention may be filed with the Slovenian Intellectual Property Office only if the ministry does not wish to exploit it or consents to the filing of the patent application. Article 25(2) further provides that Article 17 applies to European patent applications for inventions that may affect national security in Slovenia. Accordingly, Slovenia is better described as having a defence/security confidential-invention regime rather than a general foreign filing license regime with a deemed-approval mechanism.²²⁸

South Africa

385. In South Africa, no generally applicable patent-law first-filing requirement or foreign-filing license requirement for ordinary patent applications was identified in the official patent-law and patent-office materials reviewed. South African law does, however, contain a specific foreign-filing consent requirement for certain nuclear-related inventions under the Nuclear Energy Act, 1999. Under section 43 of that Act, except with the written consent of the Minister, a South

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ See comments received from Slovakia in response to C.9304.

²²⁸ Industrial Property Act (Official Gazette of the Republic of Slovenia, No. 45/01 of June 7, 2001, amended up to July 27, 2023) (Slovenia), Arts. 3, 17, 25(2) and 32; WIPO Lex No. SI096.

African citizen, a person resident in South Africa, or a juristic person registered in South Africa may not apply in any other country for a patent for an invention relating to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter. The Minister's consent may be given subject to conditions and must be given or refused within three months from the date on which the application for consent was lodged.²²⁹

386. The Nuclear Energy Act also imposes domestic notification and secrecy-related handling for such inventions. Where a patent application is lodged in South Africa for an invention relating to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter, the applicant must immediately notify the Minister in writing, furnish a copy of the specification, and provide any other information required by the Minister. The Minister must treat the information as highly confidential. The Registrar of Patents must allow ministerially authorized inspection, postpone acceptance for an initial three-month period that may be extended for a further three months, and, where directed, withhold acceptance or sealing and keep the specification secret. Where the statutory grounds are met, the Minister may direct refusal of grant, require a disclaimer, or withdraw the secrecy-related direction; a patent granted contrary to section 41 has no legal force or effect.²³⁰

387. Separately, the Patents Act, 1978 contains State-acquisition and secrecy provisions that may affect patent handling once invoked, but they are not framed as a general foreign-filing license system. Section 79 concerns assignment to the State of inventions relating to armaments and permits the Minister of Defence, after assignment, to direct that the invention and the manner in which it is performed be kept secret. Section 80 permits the Minister, where of the opinion that national interests require secrecy, to order the Registrar to keep an invention secret and to notify the applicant; compensation may be payable where loss or damage is suffered by reason of the secrecy. Section 42 of the Nuclear Energy Act further preserves and adapts the application of sections 36, 79 and 80 of the Patents Act for certain nuclear-related inventions.²³¹

Spain

388. In Spain, the patent-law framework combines a prior authorization mechanism for certain first filings abroad, domestic secrecy review for inventions that may be of interest to national defense, and mandatory routing rules for certain European and PCT applications. The request for authorization is filed with the Spanish Patent and Trademark Office. Patent applicants may consult Act 24/2015 of July 24 on Patents (Spanish Patent Act), in particular Articles 34, 111, 114, 115, 152, 163 and 164, and Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015, in particular Articles 22, 47, 49, 50 and

²²⁹ Nuclear Energy Act, 1999 (Act No. 46 of 1999) (South Africa), section 43. Section 43 provides that, except with the written consent of the Minister, a South African citizen, a person resident in the Republic, or a juristic person registered in the Republic may not apply in any other country for a patent for an invention relating to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter; the Minister's consent may be conditional and must be given or refused within three months from the date on which the application for consent was lodged.

²³⁰ Nuclear Energy Act, 1999, section 41; CIPC, "Patent Registration." Section 41 requires immediate written notification to the Minister, a copy of the specification, and any other information required by the Minister where a South African patent application concerns the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter. It also provides for confidential treatment, inspection by authorized persons, postponement of acceptance, withholding of acceptance or sealing, secrecy of the specification, refusal of grant or disclaimer treatment in specified circumstances, withdrawal of secrecy-related directions, and no legal force or effect for a patent granted contrary to section 41.

²³¹ Patents Act, 1978 (Act No. 57 of 1978) (South Africa), sections 79 and 80; Nuclear Energy Act, 1999, section 42. Section 79 concerns assignment to the State of inventions relating to armaments and secrecy directions following such assignment; section 80 permits the Minister to order that an invention be kept secret where national interests require secrecy and provides for compensation where loss or damage is suffered by reason of such secrecy. Section 42 of the Nuclear Energy Act provides for the application, in appropriate circumstances, of sections 36, 79 and 80 of the Patents Act to inventions contemplated in section 41 of the Nuclear Energy Act.

93. In statutory terms, the relevant Spanish regime is best described principally as a Spain-made-invention and national-defense screening regime, supported by applicant-based presumptions and routing rules, rather than as a universal foreign filing restriction applicable to every Spanish national, resident or inventor in all circumstances.²³²

389. The domestic screening mechanism is linked to the secrecy regime for applications with possible national defense implications. Under Article 34 of the Spanish Patent Act, the Spanish Patent and Trademark Office makes available to the Ministry of Defense all patent applications that may be of interest to national defense. Under Article 111, the content of all patent applications is kept secret until one month has elapsed from the filing date. Before that period expires, the Office extends the period to four months where it deems that the invention may have implications for national defense, notifies the applicant of the extension, and immediately makes a copy of the filed patent application available to the Ministry of Defense. Where national defense interests so require, the Ministry of Defense requests that the Office order confidential processing and notify the applicant accordingly.²³³

390. Article 115 governs first filings abroad for inventions made in Spain. Where priority is not claimed from a prior filing in Spain, a patent may not be applied for in any foreign country before expiry of the Article 111.1 time limits, unless the filing has been made with the express authorization of the Spanish Patent and Trademark Office. Such authorization may not be granted for inventions relating to national defense unless the Ministry of Defense expressly authorizes it. Where the applicant has a domicile, registered office, or habitual residence in Spain, it is presumed, unless proven otherwise, that the invention was made in Spanish territory.²³⁴

391. The implementing procedure is set out in Article 50 of the Patent Regulations. For a first patent application abroad for an invention made in Spain, the interested party must file the request for authorization with the Spanish Patent and Trademark Office. To assess whether the invention has national defense implications, the interested party must provide, under conditions of secrecy, a copy of the patent application exactly as intended to be filed abroad, together with the description, claims and drawings and, where applicable, a Spanish translation of that documentation. In practice, the SOLIEXT request form is used. The accompanying documents must include a Spanish translation of all documentation, unless the application is to be filed in English abroad, in which case a translation of the title and abstract is sufficient.²³⁵

392. The Spanish Patent and Trademark Office authorizes the filing within a maximum period of one month where it considers that the invention does not have national defense implications and that filing abroad would not contravene the international defense agreements signed by Spain. Authorization is deemed granted if the Office has not issued a decision when that one-month period expires. If, however, the Office considers that the invention could have national defense implications, it denies authorization within the same one-month period and notifies the interested party. In that case, authorization to file abroad will only be granted if the interested party provides express authorization from the Ministry of Defense.²³⁶

²³² Act 24/2015 of July 24 on Patents (Spain), Arts. 34, 111, 114, 115, 152, 163 and 164; Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Arts. 22, 47, 49, 50 and 93; see comments received from Spain in response to C.9304.

²³³ Act 24/2015 of July 24 on Patents (Spain), Arts. 34 and 111; Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Art. 47; see comments received from Spain in response to C.9304.

²³⁴ Act 24/2015 of July 24 on Patents (Spain), Art. 115; see comments received from Spain in response to C.9304.

²³⁵ Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Art. 50; OEPM, SOLIEXT form; see comments received from Spain in response to C.9304.

²³⁶ Act 24/2015 of July 24 on Patents (Spain), Art. 115; Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Art. 50; see comments received from Spain in response to C.9304.

393. A further rule addresses foreign extensions from a prior Spanish filing. Under Article 49 of the Patent Regulations, the applicant may not file applications for protection abroad claiming priority from a patent application filed with the Spanish Patent and Trademark Office before one month has elapsed from the Spanish filing date, unless the Office expressly authorizes the filing. The Office may not grant that authorization for applications that have been made available to the Ministry of Defense under Article 111.1 of the Patent Act or that are subject to the secrecy regime, unless the Ministry of Defense expressly authorizes it. This point is important because authorization may be required not only for a first application abroad, but also when a prior Spanish filing is used as the basis for extending protection abroad during the initial secrecy period.²³⁷

394. Article 22 of the Patent Regulations further provides that, when an application is accepted for processing, the Spanish Patent and Trademark Office examines whether the subject matter could have national defense implications and, where appropriate, makes the patent application available to the Ministry of Defense. If the Ministry of Defense issues a reasoned report concluding that the invention has national defense implications, the application is processed confidentially in accordance with Articles 47 et seq. of the Patent Regulations. While the patent application or patent is subject to the secrecy regime, the applicant or owner must refrain from any action that could allow unauthorized persons to become aware of the invention; the Ministry of Defense, at the request of the owner, may authorize acts aimed at total or partial exploitation of the subject matter of the application or patent and specify the conditions to which those acts are subject.²³⁸

395. European and international filing routes are also addressed expressly. In the case of inventions made in Spain where priority is not claimed from a prior filing in Spain, Article 152 provides that a European patent application must be filed with the Spanish Patent and Trademark Office, or with the competent Autonomous Community authority authorized to receive national patent applications, and that Articles 34 and Title XI of the Act apply. Failure to comply with that obligation means that the European patent will not produce effects in Spain. European patent applications that do not meet those conditions may be filed directly with the European Patent Office. Under Article 93 of the Patent Regulations, a European patent application filed in Spain that does not claim priority from a prior Spanish filing and is not in Spanish must be accompanied at least by a Spanish translation of the title and abstract, and additional Spanish materials may be required where the Office considers that the invention may be of interest to national defense.²³⁹

396. For PCT filings, Article 163 provides that the Spanish Patent and Trademark Office acts as receiving Office for international applications of Spanish nationals and persons having their registered office or domicile in Spain. In the case of inventions made in Spain where priority is not claimed from a prior filing in Spain, the international application must be filed with the Spanish Patent and Trademark Office, and failure to comply deprives the international application of effects in Spain. Article 164 further provides that, for international applications filed with the Spanish Patent and Trademark Office, if the authorization of the Ministry of

²³⁷ Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Art. 49; Act 24/2015 of July 24 on Patents (Spain), Art. 111; see comments received from Spain in response to C.9304.

²³⁸ Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Arts. 22 and 47 et seq.; Act 24/2015 of July 24 on Patents (Spain), Art. 111; see comments received from Spain in response to C.9304.

²³⁹ Act 24/2015 of July 24 on Patents (Spain), Art. 152; Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Art. 93; see comments received from Spain in response to C.9304.

Defense is not granted and Spain is a designated State, the international application is considered, from its filing date, as a national application.²⁴⁰

397. The threshold inquiry should therefore begin with the place-of-invention and priority criteria, while taking account of the broader criteria identified by Spain in its response. The operative statutory provisions place particular weight on inventions made in Spain and on the rebuttable presumption that an invention was made in Spain where the applicant has its domicile, registered office, or habitual residence in Spain. Spain's response also identifies inventor nationality or residence, applicant nationality or residence, national-defense impact, and technical field or subject matter as relevant criteria. In the statutory provisions reviewed, inventor nationality or residence is not expressed as a standalone trigger in the same way as the applicant-based presumption; rather, it functions as a practical risk factor, especially because Spain reports that authorization is commonly requested when a Spanish applicant or inventor, or a resident of Spain, is involved and there is doubt. The technical field or subject matter of the invention is relevant principally to the assessment of national-defense implications and to the confidential-processing or secrecy regime, rather than as an independent technology-field list that automatically bars foreign filing.²⁴¹

398. The patent-law restriction should also be described by reference to filing, routing and secrecy rather than as a general patent-law export-control rule for all technical information. Spain's response answered the data-transfer questions by reference to the secrecy regime, while also noting that, in reality, Spain has no express practice or rule that generally prohibits or prevents the transfer of data or technology. The Patent Act expressly provides that, while a patent application or patent is subject to the secrecy regime, the applicant or owner must refrain from any action that could allow unauthorized persons to become aware of the invention. The Ministry of Defense may authorize acts aimed at total or partial exploitation of the subject matter of the application or patent and specify the conditions to which those acts are subject. On the available materials and the statutory text reviewed, the information-transfer issue is therefore best understood in connection with the confidentiality effects of the secrecy regime, especially Article 111.4, rather than as a separate express patent-office practice governing technology transfer generally.²⁴²

399. As to non-compliance and regularization, Spain does not provide a retroactive foreign filing license mechanism. For European and PCT routes, the Patent Act describes route-specific consequences in Spain: failure to comply with the required route for a European patent application means that the European patent does not produce effects in Spain, and failure to comply with the required route for an international application deprives the international application of effects in Spain. Spain's response summarizes those route-specific consequences as the nullity in Spain of the European patent or of the patent resulting from PCT national phase entry. The available materials do not identify a distinct retroactive cure mechanism or a separate statutory nullity consequence for a direct first filing in another national office outside those route-specific consequences. There are no reported instances of denial of foreign filing licenses in Spain.²⁴³

400. If authorization to file abroad as a first application is denied, the applicant must proceed through the Spanish Patent and Trademark Office. Pursuant to Article 111 et seq., the patent application will be processed under a secrecy regime where the national-defense assessment so requires. For European applications filed with the Spanish Patent and Trademark Office,

²⁴⁰ Act 24/2015 of July 24 on Patents (Spain), Arts. 163 and 164; see comments received from Spain in response to C.9304.

²⁴¹ See comments received from Spain in response to C.9304; Act 24/2015 of July 24 on Patents (Spain), Arts. 115, 152 and 163.

²⁴² See comments received from Spain in response to C.9304; Act 24/2015 of July 24 on Patents (Spain), Art. 111(4).

²⁴³ See comments received from Spain in response to C.9304; Act 24/2015 of July 24 on Patents (Spain), Arts. 115, 152 and 163.

Article 93 of the Patent Regulations provides that, where the Ministry of Defense considers the invention to be of interest to national defense, the Office decrees secret processing and informs the European Patent Office that the European application will not be transmitted. Spain's response further explains that, where a European patent application or an international PCT application has been filed with the Spanish Patent and Trademark Office and authorization is denied, the application is retained and processed as a national application under the secrecy regime. For international applications filed with the Spanish Patent and Trademark Office, Article 164 provides that, if the authorization of the Ministry of Defense is not granted and Spain is a designated State, the international application is considered, from its filing date, as a national application. Unless the one-month secrecy period is expressly extended or the proceedings have been expressly declared confidential, the applicant may extend protection abroad once the one-month period has elapsed.²⁴⁴

401. Spanish law also provides compensation-related consequences for secret patents. Under Article 114 of the Patent Act, secret patents are not subject to payment of annual fees. The patent owner may claim compensation from the State for the period during which the invention was kept secret, and the compensation may be claimed for each elapsed year. The amount is to be agreed by the parties; if no agreement is reached, it is determined by a court, taking into account the significance of the invention and the profit the owner could have derived from its unfettered exploitation. If the invention covered by the secret patent was disclosed through the owner's fault or negligence, the owner loses the right to compensation, without prejudice to any criminal liability that may arise.²⁴⁵

402. Where the foreign filing requirements of more than one country appear to apply to the same invention, Spanish patent law does not provide a general statutory conflict-resolution rule. No relevant court decisions have been identified in Spain. In practice, overlapping requirements would likely have to be managed by reference to the applicable international instruments and, if necessary, judicial resolution, although those instruments do not establish a general conflict rule. The instruments relevant to Spain include the NATO Agreement for the Mutual Safeguarding of Secrecy of Inventions Relating to Defense and for Which Applications for Patents Have Been Made, done at Paris on September 21, 1960; the Framework Agreement concerning Measures to Facilitate the Restructuring and Operation of the European Defense Industry, done at Farnborough on July 27, 2000; and the Agreement between Sweden and Spain for the Mutual Safeguarding of Secrecy of Inventions of Importance to Defense and for Which Applications for Patents Have Been Made, signed in Stockholm on June 14, 2019. As a practical precaution, where a Spanish applicant or inventor, or a resident of Spain, is involved and there is doubt, authorization for a first foreign filing is commonly requested.²⁴⁶

²⁴⁴ See comments received from Spain in response to C.9304; Act 24/2015 of July 24 on Patents (Spain), Arts. 111 and 164; Royal Decree 316/2017 of March 31 approving the Regulations for the Implementation of Act No. 24/2015 (Spain), Art. 93.

²⁴⁵ Act 24/2015 of July 24 on Patents (Spain), Art. 114; see comments received from Spain in response to C.9304.

²⁴⁶ See comments received from Spain in response to C.9304; Instrumento de Adhesion de Espana al Acuerdo de la OTAN para la salvaguardia mutua del secreto de invenciones relativas a la defensa respecto de las cuales se hayan presentado solicitudes de patente, BOE No. 217, September 10, 1987; Instrumento de Ratificacion del Acuerdo Marco entre la Republica Federal de Alemania, el Reino de Espana, la Republica Francesa, la Republica Italiana, el Reino de Suecia y el Reino Unido de Gran Bretana e Irlanda del Norte, relativo a las medidas encaminadas a facilitar la reestructuracion y funcionamiento de la industria europea de defensa, hecho en Farnborough el 27 de julio de 2000, BOE No. 190, August 9, 2001; Agreement between Sweden and Spain for the mutual safeguarding of secrecy of defense inventions for which patent applications have been made, BOE No. 225, August 21, 2020, as corrected by BOE No. 233, August 31, 2020.

Sri Lanka

403. In Sri Lanka, no patent-law foreign filing conditionality was identified in the reviewed materials.²⁴⁷

Sweden

404. In Sweden, the applicable legal framework imposes restrictions for defense inventions under the Defence Inventions Act (1971:1078), rather than a general foreign filing license requirement for all inventions. A Swedish defense invention is an invention that specifically relates to war materiel and has been made in Sweden, belongs to a natural person resident in Sweden, or belongs to a Swedish legal person. The rule is therefore not triggered by nationality alone. Before such an invention has been reviewed under the Act to determine whether it must be kept secret, it may not be published or otherwise disclosed without authorization. Where a patent application for a Swedish defense invention is filed with the Swedish Intellectual Property Office, the Office must transmit the application to the Swedish Defence Materiel Administration for review. A person who wishes to disclose a Swedish defense invention for which no patent application has been filed, or who wishes to file an international or European patent application for such an invention with a receiving authority other than the Swedish Intellectual Property Office, must likewise apply to the Swedish Defence Materiel Administration for review.²⁴⁸

405. If the Swedish Defence Materiel Administration considers that secrecy is of essential importance for defense, the matter is forwarded to the Review Board for Defence Inventions. Where the Review Board decides that the invention must be kept secret, the invention may not be published or otherwise disclosed without authorization. An application for a patent or other protection in another State for a Swedish defense invention that must be kept secret may be made only with the approval of the Government, and only on the condition that the invention will also be kept secret in that other State. If a secrecy decision has been made in respect of an international or European patent application, the application may not be forwarded for continued processing. Breach of the foreign-filing restriction is punishable by a fine or imprisonment for up to one year unless the act is punishable under the Swedish Criminal Code.²⁴⁹

Switzerland

406. In Switzerland, no mandatory authorization is required before a patent application may be filed in another country or at a regional patent organization. Swiss patent law does not provide for the imposition of a "Secrecy Order" or other similar national security restriction that prohibits or restricts an applicant from filing for patent protection in other jurisdictions.²⁵⁰

Syrian Arab Republic

407. In the Syrian Arab Republic, the reviewed patent-law materials do not identify a general first domestic filing requirement, foreign filing license, waiting period, or standalone foreign-filing authorization procedure before a patent application may be filed abroad. The Patent Law nevertheless contains domestic public-interest and security-related safeguards relevant to patent processing. Article 3 excludes from patentability inventions whose exploitation would infringe public security, breach public order, or general ethics, or harm the health of humans, animals, or plants. In addition, Article 13 provides that, where certain patent matters have military, security, health or environmental value, copies of the patent documents are to be sent to the relevant ministries, including ministries concerned with defense, military production, public

²⁴⁷ Intellectual Property Act, No. 36 of 2003 (Sri Lanka), as amended; Intellectual Property Regulations No. 01 of 2006.

²⁴⁸ See comments received from Sweden in response to C.9304; Defence Inventions Act (1971:1078), ss. 1, 2, 5-7, 10, 12, 21; WIPO PCT Applicant's Guide, Annex B (SE), "Does national legislation restrict the filing of international applications with foreign Offices?"

²⁴⁹ *Ibid.*

²⁵⁰ See comments received from Switzerland in response to C.9304.

security, public health or the environment, and the relevant approvals are to be obtained before preparation of the certificate. Article 20 further provides that international applications under the Patent Cooperation Treaty are registered with the Directorate of Intellectual Property Protection and treated as national applications. Accordingly, the Syrian framework identifies domestic patentability, grant-stage and PCT national-treatment mechanisms connected with public security and other protected interests, but no separate ex ante patent-law foreign-filing conditionality was identified in the reviewed materials.²⁵¹

Tonga

408. In Tonga, no patent-law foreign filing conditionality was identified in the reviewed materials.²⁵²

Trinidad and Tobago

409. Trinidad and Tobago does not impose any patent-law foreign filing conditionality before a patent application may be filed in another country or at a regional patent organization.²⁵³

Türkiye

410. In Türkiye, the relevant patent-law restriction is better described as a national-security/confidential-patent pathway rather than as a general first-filing requirement for all patent applications. Patent applicants may consult Article 124 of the Industrial Property Code, which governs secret patent applications. Where the Turkish Patent and Trademark Office considers that the invention in a patent application has significance for national security, the Office sends a copy of the application to the Ministry of National Defense for opinion and informs the applicant.²⁵⁴

411. If the Ministry of National Defense decides that the application should be processed confidentially, it notifies the Office within three months. If no confidentiality decision or other notification is submitted within that period, the Office proceeds with the application. Where confidentiality is imposed, the Office records the application as a secret patent application, the applicant may not disclose the invention to unauthorized persons, and the applicant may request permission from the Ministry of National Defense for partial or total use of the invention. Compensation may be available for the period during which the application remains classified, subject to the statutory conditions.²⁵⁵

412. Article 124(9) contains the foreign-filing restriction. Where an invention made in Türkiye is significant for national security, no patent application may be filed in another country for that invention. If an application filed with the Office for an invention made in Türkiye is subject to the confidentiality provisions, no foreign patent application may be filed without permission from the Ministry of National Defense. Article 124(10) provides that, where the inventor's residence is in Türkiye, the invention is presumed to have been made in Türkiye unless proven otherwise. For PCT purposes, current WIPO materials state that a resident of Türkiye must file an international application concerning subject matter significant for national security directly with TÜRKPATENT.²⁵⁶

²⁵¹ See comments received from the Syrian Arab Republic in response to C.9304; Law No. 18 of 2012 on Grant, Registration, and Publication of Patents, and the Rights Arising from the Registration, arts. 3, 13, 20.

²⁵² *Industrial Property Act 1994* (Act No. 19 of 1994, 2020 Revised Edition) (Tonga), ss. 7–12, 16A.

²⁵³ See comments received from Trinidad and Tobago in response to C.9304.

²⁵⁴ See comments received from Türkiye in response to C.9304; Industrial Property Code, Law No. 6769, art. 124(1)-(10); WIPO PCT Applicant's Guide, Annex B (TR), "Does national legislation restrict the filing of international applications with foreign Offices?"

²⁵⁵ *Ibid.*

²⁵⁶ *Ibid.*

Uganda

413. In Uganda, the Industrial Property Act establishes a resident-based foreign-filing control under which a person resident in Uganda must either obtain written authority from the registrar or use a six-week domestic filing pathway. A person resident in Uganda may not, without written authority granted by the registrar, file or cause to be filed outside Uganda an application for a patent unless an application for a patent for the same invention has been filed with the registrar not less than six weeks before the filing outside Uganda, and no directions have been given under section 14 in relation to the Ugandan application or any such directions have been revoked. This restriction does not apply to an application for a patent for an invention in respect of which an application for a patent has first been filed in a country outside Uganda by a person resident outside Uganda.²⁵⁷

414. Section 14 contains a linked secrecy and public-safety mechanism. Where an application filed under the Act or under an international convention to which Uganda is party contains information whose publication might be prejudicial to the security of Uganda, or where publication might be prejudicial to the interest of the public, the registrar may give directions prohibiting or restricting publication of that information or its communication to specified persons. The subsequent ministerial review is framed by reference to the defence of Uganda or the safety of the public. While such directions are in force, a Ugandan application may be processed up to the stage where it is in order for grant, but it is not published, the information is not communicated, and no patent is granted. An application for an ARIPO patent is not sent to the ARIPO Office, and an international application is not sent to the International Bureau or to an international searching authority.²⁵⁸

415. For purposes of section 15, a reference to an application for a patent includes an application for other protection for an invention; and a reference to either kind of application includes an application under the Act, under the law of any country other than Uganda, or under any international treaty or convention to which Uganda is party. Requests for authority to file outside Uganda are made to the registrar in Form 5, and the registrar's authority is issued in Form 6. Filing abroad in contravention of section 15, or failure to comply with section 14 directions, is an offence punishable by a fine not exceeding forty-eight currency points, imprisonment for a term not exceeding two years, or both.²⁵⁹

Ukraine

416. In Ukraine, a first domestic filing and state-secret screening requirement applies under Article 37 of the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models" (No. 3687-XII of December 15, 1993, as amended). Any person may patent an invention (utility model) in foreign countries only if an application for the same invention (utility model) has first been submitted to the National Intellectual Property Authority (NIPO) and no notification declaring the claimed invention (utility model) a state secret has been received within three months from the submission date; at the applicant's request and against payment of a fee, an earlier notification concerning the possibility of foreign patenting may be issued. Where patenting proceeds under the Patent Cooperation Treaty, the international application is submitted either to the International Bureau of the World Intellectual Property Organization,

²⁵⁷ Industrial Property Act, 2014 (Act No. 3 of 2014) (Uganda), sections 14 and 15; Industrial Property Regulations, 2017 (S.I. No. 12 of 2017), regulations 11–13; WIPO, *PCT Applicant's Guide*, Annex B — Uganda, "Does national legislation restrict the filing of international applications with foreign Offices?"; WIPO, "International applications and national security considerations," Known filing restrictions — Uganda.

²⁵⁸ *Ibid.*

²⁵⁹ *Ibid.*

subject to the same condition, or to the NIPO. Violation of the requirement of Part 2 of Article 37 concerning international applications is a ground on which the rights to an invention (utility model) may be invalidated by a court.²⁶⁰

United Arab Emirates

417. In the United Arab Emirates, there is no mandatory authorization procedure for making a foreign filing except in relation to defense technology. Patent applicants may consult Cabinet Resolution No. 6 of 2022 regarding the execution of Federal Law No. 11 of 2021, which contains the relevant provisions on the foreign filing requirements and the procedure to follow.²⁶¹

418. In relation to defense technology, the applicant must receive approval from the Ministry of Defense in order to make a foreign filing.²⁶²

419. This should be understood as a narrow security-and-military-industries exception rather than a general first-filing or foreign-filing-license system. Under the Executive Regulations, the Ministry identifies patent applications related to security and military industries filed by an applicant residing in the State, mainly by reference to the Strasbourg Agreement Concerning the International Patent Classification or other classifications it considers appropriate, and sends a copy of the application and its attachments to the concerned department of the Ministry of Defense.²⁶³

420. The review pathway is time-structured, but it is not framed as a general deemed license by the patent office. The Ministry of Defense reviews the materials within the period specified by the Ministry, which must be at least 90 days; if the Ministry does not receive the review result within that period, this is treated as unwillingness by the Ministry of Defense to maintain confidentiality of the invention or to prevent foreign filing. Where the Ministry of Defense acts under the regime, it may prevent foreign filing of an invention related to security and military industries, keep the invention confidential for the period it deems necessary, and the invention owner may claim fair compensation for losses arising from compliance with those measures.²⁶⁴

United Kingdom

421. The United Kingdom does not impose a general first-filing requirement for every invention. Section 23 of the Patents Act 1977 applies to a person resident in the United Kingdom who proposes to file, or cause to be filed, outside the United Kingdom an application for a patent for an invention only where the application contains information relating to military technology or other information whose publication might be prejudicial to national security, or information whose publication might be prejudicial to the safety of the public. Where that threshold is met, the United Kingdom resident must either obtain written authority from the Comptroller before filing abroad, or first file an application for the same invention at the United Kingdom Intellectual Property Office and wait at least six weeks, provided that no directions under section 22 have been given or all such directions have been revoked. The restriction does not apply where the

²⁶⁰ Law of Ukraine "On the Protection of Rights to Inventions and Utility Models," No. 3687-XII of December 15, 1993, as amended, Articles 37 and 33(1)(c). An official English translation is available on the website of the Verkhovna Rada of Ukraine.

²⁶¹ See comments received from the United Arab Emirates in response to C.9304.

²⁶² *Ibid.*

²⁶³ Federal Law No. 11 of 2021 on the Regulation and Protection of Industrial Property Rights (United Arab Emirates), Article 7(2); Cabinet Resolution No. 6 of 2022 Concerning the Executive Regulations of Federal Law No. 11 of 2021, Articles 13(1)-(3) and 14(1)-(2).

²⁶⁴ Cabinet Resolution No. 6 of 2022 Concerning the Executive Regulations of Federal Law No. 11 of 2021, Article 15(1)-(3).

first patent application for the invention was filed outside the United Kingdom by a person resident outside the United Kingdom. The trigger is residence, not citizenship or nationality.²⁶⁵

422. Applications under foreign law, the European Patent Convention and the Patent Cooperation Treaty may fall within the statutory expression “application for a patent” or other protection for an invention. Accordingly, where section 23 applies, a United Kingdom resident wishing to file directly at the European Patent Office or at the International Bureau must satisfy the six-week domestic route or obtain written authority from the Comptroller. UKIPO guidance indicates that a resident wishing to file under the EPC or PCT without first filing a United Kingdom application may satisfy the requirement by filing at UKIPO in its capacity as receiving Office, whereas direct filing at another receiving Office requires prior written approval if section 23(1A) applies. Requests for written permission are made directly to the UKIPO Security Section.²⁶⁶

423. The foreign-filing restriction is linked to, but distinct from, the secrecy mechanism in section 22. Every application filed at UKIPO, including United Kingdom national applications and applications filed at UKIPO under the EPC or PCT, is screened for national security and public safety concerns. If the Comptroller considers that an application contains notified national-security information, or information whose publication might be prejudicial to public safety, the Comptroller may issue directions prohibiting or restricting publication of the information or its communication to specified persons. Such directions are notified to the Secretary of State and are subject to further consideration and periodic review. UKIPO guidance states that directions may only be lifted after inspection by the Ministry of Defence, for which the applicant is asked to submit the relevant assent form.²⁶⁷

424. While section 22 directions remain in force, a United Kingdom national application may proceed as far as being in order for grant, but it is not published, the restricted information is not communicated, and no patent is granted. A European patent application filed at UKIPO is not sent to the European Patent Office, and an international application filed at UKIPO is not sent to the International Bureau or to an international searching authority. UKIPO guidance further explains that an EP application may be deemed withdrawn if not received by the EPO within the relevant time and that an international application subject to directions will not be forwarded to WIPO and may have to proceed, if at all, through an early United Kingdom national-phase route. The restriction therefore affects not only foreign filing, but also publication, communication, and onward transmission through regional or international channels.²⁶⁸

425. The principal consequences of non-compliance are criminal and procedural. A person who knowingly or recklessly files, or causes to be filed, an application in breach of section 23 may be liable on summary conviction to a fine or, on conviction on indictment, to imprisonment for up to two years, a fine, or both. Failure to comply with directions under section 22 is also a criminal offence. The patent-law materials reviewed do not identify a general retroactive licensing mechanism for an unauthorized foreign filing; the United Kingdom framework is instead structured around prospective written authority, the domestic six-week pathway, and revocation or variation of section 22 directions before further publication, communication or foreign filing occurs. Where directions prevent grant and cause hardship, section 22 also

²⁶⁵ Patents Act 1977 (United Kingdom), section 23(1)-(2); United Kingdom Intellectual Property Office, Manual of Patent Practice, section 23.01-23.02; WIPO, PCT Applicant's Guide, Annex B (GB), “Does national legislation restrict the filing of international applications with foreign Offices?”.

²⁶⁶ Patents Act 1977, section 23(4); United Kingdom Intellectual Property Office, Manual of Patent Practice, section 23.02 and 23.08; WIPO, PCT Applicant's Guide, Annex B (GB), “National legislation restricts the filing of international applications with foreign Offices”.

²⁶⁷ Patents Act 1977, section 22(1)-(6); United Kingdom Intellectual Property Office, Manual of Patent Practice, section 22.01-22.15; United Kingdom Intellectual Property Office, “National security checks on patent applications”.

²⁶⁸ Patents Act 1977, section 22(3); United Kingdom Intellectual Property Office, Manual of Patent Practice, section 22.09-22.11; United Kingdom Intellectual Property Office, “National security checks on patent applications”.

provides limited relief mechanisms, including possible Crown-use treatment and compensation in the circumstances set out in that section.²⁶⁹

United States of America

426. In the United States of America, a foreign filing license is required before a person files, causes to be filed, or authorizes the filing of a patent application, or an application for the registration of a utility model, industrial design, or model, in a foreign country or with a foreign or international intellectual property authority in respect of an invention made in the United States, unless the applicable statutory or regulatory exception has been satisfied. The principal exception is that no license is required where a corresponding United States application has been on file for at least six months and is not subject to a secrecy order. The U.S. regulations also distinguish those filings from international applications filed with the USPTO acting as receiving Office, and international design applications filed with the USPTO as an office of indirect filing. The United States framework is therefore best understood as a foreign-filing license and security-review regime, rather than as a simple first-domestic-filing rule. Patent applicants may consult 35 U.S.C. §§ 181 to 188, 37 C.F.R. Part 5, and the USPTO Manual of Patent Examining Procedure (MPEP), in particular Sections 120 and 140.²⁷⁰

427. The operative trigger is territorial: the patent-law foreign filing license requirement turns on whether the invention was made in the United States, not, as such, on the nationality or residence of the inventor or applicant. If the invention was not made in the United States, the license requirement under 37 C.F.R. § 5.11 does not apply, although other U.S. export-control rules may still be relevant. Filing a U.S. patent application on an invention made in the United States is treated as including a petition for a foreign filing license for the subject matter of the application, and the filing receipt or other official notice indicates whether a license has been granted. Where no corresponding U.S. application has been filed, or where the applicant seeks authority for material not covered by the U.S. filing, a separate petition may be filed. The scope of any license is measured by the material reviewed by the USPTO, and the license authorizes export of technical data only for purposes related to preparation, filing, possible filing and prosecution of the corresponding foreign application; it does not authorize export of unreviewed or additional subject matter, or export of subject matter abroad for preparation of an application to be filed in the United States.²⁷¹

428. The United States also provides a secrecy-order regime where publication or disclosure of an invention would be detrimental to national security. In such cases, the relevant defense or designated agency may cause the Commissioner for Patents to order that the invention be kept secret and that publication of the application or grant of the patent be withheld. A secrecy order is limited to one year at a time, but may be renewed where the national interest continues to require secrecy. The order applies to the subject matter of the invention, not merely to the particular application, and it restricts publication or disclosure of the invention except as permitted. While a secrecy order remains in force, foreign filing is not permitted unless consent is granted through a permit or modification of the order. National applications may continue in restricted prosecution, but an application otherwise in condition for allowance is suspended until the secrecy order is removed; international applications and international design applications under secrecy order are not transmitted to the international authorities or to the applicant through the ordinary channel.²⁷²

²⁶⁹ Patents Act 1977, sections 22(7), 22(9) and 23(3)-(3A); United Kingdom Intellectual Property Office, Manual of Patent Practice, section 22.23-22.26 and 23.06-23.08.

²⁷⁰ 35 U.S.C. §§ 181-188; 37 C.F.R. Part 5; USPTO, Manual of Patent Examining Procedure (MPEP), §§ 120, 140.

²⁷¹ 37 C.F.R. §§ 5.11-5.15; USPTO, MPEP § 140; USPTO, Consolidated Official Gazette Notice, "Scope of Foreign Filing Licenses" (Dec. 30, 2025).

²⁷² 35 U.S.C. §§ 181-183; 37 C.F.R. §§ 5.1-5.5; USPTO, MPEP § 120.

429. The consequences of non-compliance may be significant. Where an application subject to a secrecy order is published, disclosed, or filed abroad without the required consent, the invention may be held abandoned and related claims against the United States may be forfeited. Separately, unauthorized foreign filing in violation of 35 U.S.C. § 184 may bar the grant of a U.S. patent and may render an issued U.S. patent invalid, subject to the statutory exception where the failure to procure the license occurred through error and the patent does not disclose subject matter within the scope of 35 U.S.C. § 181. Willful violation may also give rise to criminal penalties, including a fine of not more than 10,000 dollars or imprisonment for not more than two years, or both. Unlike many jurisdictions, the United States provides a narrow retroactive foreign filing license mechanism, but the petition must address the specific unlicensed foreign filings and must show, among other things, that the filing occurred through error, that the subject matter was not and is not under secrecy order, and that the license was diligently sought after discovery of the unauthorized filing. U.S. law also provides a compensation mechanism for damage caused by a secrecy order and/or Government use of the invention in the circumstances set out in 35 U.S.C. § 183.²⁷³

Vanuatu

430. In Vanuatu, no generally applicable patent-law first domestic filing requirement, foreign filing license requirement, waiting period, or mandatory domestic routing requirement was identified in the reviewed materials. The Patents Act No. 2 of 2003 contains a limited defence/public-safety publication restriction: the Registrar must ordinarily publish a patent application, or prescribed details of the application, in the Gazette as soon as practicable after filing, but may prohibit or restrict publication of information in an application filed with the Registrar that might be prejudicial to the defence of Vanuatu or the safety of the public. The Act defines “published” as made available to the public, whether in Vanuatu or outside Vanuatu, by any means, including publication in the Gazette. These provisions were not identified as imposing a general first domestic filing requirement, prior foreign filing license, waiting period, mandatory domestic routing requirement, or express restriction on filing patent applications abroad. Section 15 is therefore best characterized as a defence/public-safety publication restriction arising after a Vanuatu filing, rather than as a general foreign filing restriction.²⁷⁴

Viet Nam

431. In Viet Nam, Article 89a of the Law on Intellectual Property, as amended by Law No. 131/2025/QH15 with effect from April 1, 2026, together with Article 14 of Decree No. 65/2023/ND-CP, as amended by Decree No. 100/2026/ND-CP, establishes a State-secret-linked prior-permission pathway for certain foreign patent filings, replacing the previous requirement that covered inventions first be filed in Viet Nam for security-control purposes. The restriction applies where, cumulatively, the invention is included in the list of State secrets in technical fields affecting national defense and security, was created in Viet Nam, and the right to register belongs to an individual who is a Vietnamese citizen permanently residing in Viet Nam or to an organization established under Vietnamese law. In such cases, a patent application may be filed abroad only after permission has been granted by the Ministry of National Defence or the Ministry of Public Security.²⁷⁵

²⁷³ 35 U.S.C. §§ 181-186; 37 C.F.R. § 5.25; USPTO, “Petition for retroactive foreign filing license”; Note, “Sections 184 and 185 of the Invention Secrecy Act—An Ambiguous and Unnecessary Obstruction to Foreign Patenting,” *Michigan Law Review*, vol. 64, no. 3 (1966), 496-503.

²⁷⁴ Patents Act No. 2 of 2003 (Vanuatu), ss. 1 (“published”), 14, 15.

²⁷⁵ Law on Intellectual Property of Viet Nam, No. 50/2005/QH11 of November 29, 2005, as amended and supplemented, most recently by Law No. 131/2025/QH15 of December 10, 2025 (in force from April 1, 2026), Art. 89a, as amended by Art. 1(24) of the latter Law; Decree No. 65/2023/ND-CP of August 23, 2023, as amended and supplemented by Decree No. 15/2026/ND-CP of January 14, 2026, Decree No. 33/2026/ND-CP of January 21, 2026 and Decree No. 100/2026/ND-CP of March 31, 2026 (in force from April 1, 2026), Art. 14(1).

432. Under Article 14 of Decree No. 65/2023/ND-CP, as amended, the Ministry of National Defence and the Ministry of Public Security designate the authorities competent to receive and process requests for permission. The request comprises a declaration on the prescribed form, the description of the invention intended for filing abroad, the document determining that the invention constitutes a State secret under the law on the protection of State secrets, a power of attorney where the request is filed through a representative, and other supporting documents, if any. The competent authority examines the request within 30 days of receipt, subject to a procedure for requesting amendment, supplementation or clarification where the request is deficient or incomplete, and, on the basis of an assessment of national defense and security risks, issues a decision permitting or refusing the foreign filing, stating reasons in the case of refusal; permission may be made subject to conditions for the protection of State secrets, including limitations on the scope of the filing. Decree No. 65/2023/ND-CP, as amended, also contains provisions on secret inventions, including the registration of secret inventions abroad, with detailed regulations on secret-invention applications prescribed by the Minister of Science and Technology. Industrial property applications filed before April 1, 2026 generally continue to be processed under the law in force at the time of filing, subject to the transitional provisions of Law No. 131/2025/QH15.²⁷⁶

Zambia

433. In Zambia, a resident-based foreign filing restriction applies under section 43 of the Patents Act, 2016. A person resident in Zambia may not, without the written authority of the Registrar, file or cause to be filed an application for the grant of a patent outside Zambia unless an application for a patent for the same invention has been filed with the Agency not less than six months before the filing outside Zambia, and there are no directions prohibiting publication or communication issued by the Registrar under section 94, or such directions have been revoked. The restriction does not apply to an application first filed in a country outside Zambia by a person not resident in Zambia. A person who contravenes section 43 commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units, imprisonment for a term not exceeding two years, or both.²⁷⁷

434. Section 94 provides the linked defense and public-safety mechanism. The Minister responsible for defense or the Minister responsible for internal security may direct the Registrar to prohibit publication or communication to an unauthorized person of an application for the grant of a patent and information contained in it where, in the Minister's opinion, publication or communication may be prejudicial to the defense of the country or the safety of the public. Where an application is filed with the Registrar and appears to contain such information, the Registrar may give directions prohibiting publication or communication of the information to an unauthorized person for a period not exceeding three months from the date on which the application was to be published. Contravention of section 94 is an offence punishable by a fine not exceeding two hundred thousand penalty units, imprisonment for a term not exceeding two years, or both.²⁷⁸

²⁷⁶ Decree No. 65/2023/ND-CP, as amended, Arts. 14(2)–(3) and 48 to 52; Circular No. 10/2026/TT-BKHCN of March 31, 2026; Law No. 131/2025/QH15, transitional provisions.

²⁷⁷ Patents Act, 2016 (Act No. 40 of 2016) (Zambia), section 43. Section 43 restricts filing outside Zambia by a person resident in Zambia unless written authority has been granted by the Registrar, or unless the six-month domestic filing pathway has been satisfied and no section 94 directions remain in force; section 43(2) provides the exception for an application first filed outside Zambia by a person not resident in Zambia; and section 43(3) provides the offence and penalty for contravention.

²⁷⁸ Patents Act, 2016 (Act No. 40 of 2016) (Zambia), section 94. Section 94 permits the Minister responsible for defense or internal security to direct the Registrar to prohibit publication or communication to unauthorized persons of a patent application and information contained in it where publication or communication may be prejudicial to the defense of the country or the safety of the public; it also permits temporary directions by the Registrar where the application appears to contain such information and provides the offence and penalty for contravention.

435. Section 95 states the effects of section 94 directions on a patent application. Where the application is made or considered to have been made under the Act, it may be processed, but the application must not be published, information relating to the application must not be communicated to an unauthorized person, and a patent must not be granted as applied for. Where the application is for an ARIPO patent, it must not be sent to the ARIPO Office; where it is an international application, a copy must not be sent to the International Bureau or to any International Searching Authority appointed under the Patent Cooperation Treaty.²⁷⁹

436. Where the Registrar issues directions under section 94, the Registrar must notify the Minister responsible for defense or internal security. The Minister must consider whether publication or communication of the application and the information contained in it would be prejudicial to the defense of the country or the safety of the public. If the Minister determines that prejudice would result, the Minister notifies the Registrar to maintain the directions in force until a notification to revoke them is given. If the directions are maintained, the Minister must review them within nine months from the date of lodging of the patent application or once in every subsequent twelve-month period. Section 95 also provides for revocation where the information is no longer prejudicial, possible extension of time limits, and possible compensation where the applicant has suffered hardship by reason of the continuation in force of the directions.²⁸⁰

Zimbabwe

437. In Zimbabwe, a secrecy-triggered restriction applies under section 20 of the Patents Act, Chapter 26:03. Where an invention covered by a patent application appears to the Registrar to fall within a class notified as relevant for defence purposes by the competent authority, namely the Minister responsible for defence or another Minister designated by the President, the Registrar may give directions prohibiting or restricting the publication of information with respect to the invention or its communication to any person or class of persons specified in the directions; while the directions are in force, the application may proceed up to the acceptance of the complete specification, but the acceptance is not advertised, the specification is not published, and no patent is granted. The competent authority reviews the need for secrecy before the expiration of nine months from the lodging of the application and at least once in every subsequent year, the directions being revoked once publication would not, or would no longer, be prejudicial to the defence of Zimbabwe, and reasonable compensation is payable for loss or damage suffered by reason of the invention having been kept secret. Failure to comply with a direction is an offence punishable by a fine not exceeding level seven or imprisonment for a period not exceeding two years, or both. No first domestic filing requirement or foreign filing authorization mechanism was identified in the reviewed provisions; the conditionality operates through the section 20 secrecy directions.²⁸¹

²⁷⁹ Patents Act, 2016 (Act No. 40 of 2016) (Zambia), section 95(1). Section 95(1) provides that, while section 94 directions apply, a national application may be processed but must not be published, information relating to it must not be communicated to unauthorized persons, and a patent must not be granted as applied for; an ARIPO application must not be sent to the ARIPO Office; and an international application must not be sent to the International Bureau or to any International Searching Authority appointed under the PCT.

²⁸⁰ Patents Act, 2016 (Act No. 40 of 2016) (Zambia), section 95(2)–(8). These provisions address notice to the Minister responsible for defense or internal security, ministerial consideration of prejudice to defense or public safety, maintenance of directions, periodic review within nine months from lodging and once in every subsequent twelve-month period, revocation of directions, extension of time limits, and possible compensation for hardship caused by continuation of the directions.

²⁸¹ Patents Act, Chapter 26:03, of Zimbabwe, section 20.

REGIONAL PATENT OFFICES

Eurasian Patent Office

438. For Eurasian applications, the EAPO submission identifies security clearance and a “first filing” or first domestic filing requirement by reference to the Eurasian Patent Convention framework and the applicable national legislation of EAPC Contracting States. The EAPC framework itself is best understood as preserving and channeling national filing and foreign-filing requirements, rather than establishing a separate EAPO-level foreign filing license or national security clearance procedure. Patent applicants may consult Article 15(1) of the Eurasian Patent Convention, concerning the Eurasian application and grant of the Eurasian patent, and Rules 34 and 35 of the Patent Regulations under the EAPC, concerning processing and transmittal of the Eurasian application by a national Office and requirements under national law.²⁸²

439. For applicants from EAPC Contracting States, a Eurasian application is filed through the national patent office where this is provided for under the legislation of the Contracting State concerned. An application filed through a national Office has the same effect as if it had been filed with the EAPO on the same date, provided that it is transmitted to the EAPO within 14 months of its receipt by the national Office. The submission identifies national security or national defense and the nationality or residency of the applicant as relevant criteria, but the operative filing or clearance requirements are determined by the applicable national legislation rather than by an independent EAPO substantive security review. For applicants from non-Contracting States, the relevant foreign filing conditions are those provided by their national law. Divisional applications are filed directly with the EAPO.²⁸³

EUROPEAN PATENT CONVENTION

440. The European Patent Convention (EPC) establishes a regional procedure for the grant of European patents. For the purposes of this study, its relevance lies in the way it structures the European patent filing route while preserving the operation of national rules concerning prior authorization, first filing with a national authority, and secrecy-based restrictions. A European patent application may be filed directly with the European Patent Office or, where the law of a Contracting State so permits, with the central industrial property office or other competent authority of that State. An application filed with such a national authority has the same effect as if it had been filed on the same date with the European Patent Office.

441. Article 75(2) is the central provision for present purposes. It provides that the EPC filing provisions do not preclude national legislative or regulatory provisions governing inventions which, because of the nature of their subject matter, may not be communicated abroad without prior authorization from the competent national authorities. It also preserves national rules that require applications to be filed initially with a national authority, or that make direct filing with another authority subject to prior authorization. In this respect, the EPC expressly accommodates national foreign filing, first-filing and prior-authorization requirements in the context of European patent applications.

442. The EPC also addresses the forwarding of European patent applications filed with national authorities. Under Article 77, a central industrial property office of a Contracting State must forward to the European Patent Office any European patent application filed with it or with another competent authority in that State, in accordance with the Implementing Regulations. However, a European patent application whose subject matter has been made secret is not forwarded to the European Patent Office. Rule 37 further provides that forwarding is to occur in the shortest time compatible with national law relating to the secrecy of inventions in the

²⁸² See comments received from the Eurasian Patent Office in response to C.9304.

²⁸³ *Ibid.*

interests of the State, and sets specific forwarding periods depending on whether the application is evidently not liable to secrecy or requires further examination as to possible secrecy. If a European patent application is not forwarded in due time, it is deemed to be withdrawn, subject to the possibility of conversion into national patent procedures in the circumstances provided by Article 135.

The EPC therefore frames the European patent route as a regional filing system that coexists with national foreign filing, first-filing, prior-authorization and secrecy rules. It does not create a common substantive standard for determining which inventions are sensitive, nor does it establish a general rule of mutual recognition among national foreign filing regimes. Its practical significance is that European patent applications may be subject to national filing or secrecy requirements at the point of filing with, or transmission by, a national office; and, where secrecy prevents forwarding, the ordinary European route may be delayed, blocked, deemed withdrawn, or redirected into national procedures.

Gulf Cooperation Council (GCC) Patent Office

443. Under the GCC Patent Office framework, the GCC Patent Law and its Implementing Regulations do not provide for foreign filing requirements or procedures. However, pursuant to Article 2 of the GCC Patent Law and the Implementing Regulations, matters relating to national security may fall under the jurisdiction of the competent authority in each GCC Member State.²⁸⁴

[End of Annex and of document]

²⁸⁴ See comments received from the GCC patent office in response to C.9304.