What we will cover….

- What priority claims can be made and how
- Legal basis and background
- Correction and addition of priority claims
- Furnishing of priority documents
Poll questions
Claiming priority
(PCT Article 8, Rule 4.10)

- The international application may contain a declaration claiming the priority of one or more earlier applications

  - filed in or, by way of a regional or international application, for any country party to the Paris Convention and/or

  - filed in any Member of the World Trade Organization (WTO) that is not party to the Paris Convention
Contents of priority claims (Rule 4.10)

- Filing date
- Application number
- Country or regional/receiving Office
The right of priority (1) (Article 4 of the Paris Convention)
The right of priority (2) (Article 4 of the Paris Convention)

- For prior art purposes, the effective date of the later applications = filing date of the first application

- The right of priority can be based only on the first filed application on the subject matter (see Paris Convention Art.4C(4) for exception)

- The later applications must concern the same subject matter

- Withdrawal, abandonment or rejection of the first application does not destroy its capacity to serve as a basis for priority

- Multiple and partial priorities possible
Priority date for computing time limits (PCT Article 2(xi))

■ One priority claim → the filing date of the priority application

■ Several priority claims → the filing date of the earliest priority application

■ No priority claim → the international filing date
Loss of priority claim

- Withdrawal by applicant

- Declaration by RO or IB that priority claim is considered not to have been made (“considered void”)

- Decision by DO/EO:
  - for procedural reasons (e.g. no priority document)
  - for substantive reasons (e.g. not the same subject matter, no right to claim priority)
Correction/addition of priority claims affecting the priority date (Rule 26bis) (1)

Cases concerned:

- adding a priority claim with an earlier filing date than any priority claim present in the application
- correction of the filing date of the earliest priority claim
Correction/addition of priority claims affecting the priority date (Rule 26bis) (2)

- Applicable time limit:
  - 4 months from the international filing date; or
  - later if the earlier of the following two time limits expires after the 4-month time limit:
    - 16 months from the priority date before the correction or addition
    - 16 months from the priority date after the correction or addition
  - any correction received before the RO or IB has declared the priority claim void and not later than one month after the expiration of the above time limit, will be considered as timely received (Rule 26bis.2(b))

NOTE: This does not apply to late additions of priority claims
Correction/addition of priority claims affecting the priority date (Rule 26bis) (3)

**Priority claim 1**
- Filing date: 13/05/20
- PCT filing: 11/01/20
- Time limit: 11/05/21
  - (4 mo from IFD)
- First filing: 11/05/21
- National phase: 11/05/22

**Priority claim 2**
- Filing date: 11/01/20
- PCT filing: 11/02/21
- Time limit: 11/06/21
  - (4 mo from IFD)
- First filing: 11/06/21
- National phase: 11/06/22

**Correction of a priority claim**
- Time limit: 11/06/21
  - (4 mo from IFD)
- First filing: 11/06/21
- National phase: 11/06/22

**Addition of a priority claim**
- Time limit: 11/05/21
  - (16 mo from PD after addition)
- First filing: 11/05/21
- National phase: 11/05/22

- * +1 mo for correction
Correction/addition of priority claims not affecting the priority date (Rule 26bis) (1)

Cases concerned:

- corrections which do not affect the filing date of the priority claim
- adding a priority claim with a later filing date than the earliest priority claim present in the application (e.g., second priority claim)
- corrections of the filing date of a priority claim which is not the earliest one
Correction/addition of priority claims not affecting the priority date (Rule 26bis) (2)

Applicable time limit:

- 4 months from the international filing date; or
- 16 months from the priority date, whichever time limit expires later

Any correction received before the RO or IB has declared the priority claim to be void and not later than one month after the expiration of the above time limit, will be considered as timely received (Rule 26bis.2(b))

NOTE: This does not apply to late additions of priority claims

- Rule 91: 26 months from the priority date
Correction/addition of priority claims not affecting the priority date (Rule 26bis)(3)
The PCT Time Limit Calculator assists applicants in computing essential PCT Time Limits.

To calculate the time limit for correcting or adding a priority claim, please enter the earliest priority date, the priority date as proposed to be changed, and the international filing date.

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Earliest Priority Date

Priority Date as Changed

International Filing Date

Time Limit for Correction or Addition of Priority Claim (Rule 26bis)  
15 September 2021

[Summary [Print]]
Invitation to correct by RO or IB (1)

Forms:
- receiving Office: Form PCT/RO/110
- International Bureau: Form PCT/IB/316

Invitation (Rule 26bis.2(a)) is issued if:
- priority claim does not comply with requirements of Rule 4.10 (something is incorrect or missing)
- indication in the priority claim is inconsistent with the corresponding indication appearing in the priority document
- International filing date falls outside the priority period
Invitation to correct by RO or IB (2)

- Also alerts the applicant of the possibility to request restoration of the priority right (Rule 26bis.3) if the international filing date is within two months from the expiration of the priority period.

- If the applicant does not correct the priority claim in response to the invitation, the priority claim concerned will be considered void, for the purposes of the procedure under the PCT (Rule 26bis.2(b)).
Invitation to correct by RO or IB (3)

However, a priority claim will not be considered void only because (Rule 26bis.2(c)):

- the indication of the number of the earlier application is missing; or

- an indication in the priority claim is not the same as the corresponding indication appearing on the priority document; or

- the international filing date is outside of the priority period but within two months from the expiration of the priority period.
Publication related to priority claims (1)

- Information concerning a priority claim considered void or only not considered void because of Rule 26bis.2(c):
  - the International Bureau publishes such information, free of charge, together with any information furnished by the applicant concerning the priority claim (Rule 26bis.2(d))
Publication related to priority claims (2)

- Correction and addition of priority claims received after the time limit:
  - Applicant may request the International Bureau (Rule 26bis.2(e)) to publish information concerning the priority claim concerned:
    - within 30 months from priority date; and
    - subject to the payment of a fee
Effect in the national phase

- Designated Offices can revive a priority claim considered void by the receiving Office

- Warning to third parties: different priority dates may apply in different designated States (Rules 26bis.2(d) and 48.2(a)(ix))
Furnishing of priority documents (Rule 17.1)

The applicant must provide a priority document for each corresponding priority claim (a certified copy of the earlier application)

- furnish directly to the receiving Office or the International Bureau (Rule 17.1(a)); or

- request the receiving Office to prepare and transmit to the IB (Rule 17.1(b)), if the earlier application was filed with that Office; or

- request the IB to obtain the priority document from a digital library (Rule 17.1(b-bis)) (only for Offices participating in the Digital Access Service (DAS))
### Requesting DAS p-doc retrieval

#### PRIORITY CLAIMS

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**Option(s) for providing the priority document to the IB**
- Receiving Office to prepare and transmit to the International Bureau
- To be provided by the applicant
- An electronic copy of the priority document (certified by the issuing Office) will be submitted with this data package at the time of filing
- International Bureau to obtain from a digital library [DAS]

**DAS access code**
1234

- The receiving Office is requested to restore the right of priority for this earlier application.
Time limit for the furnishing of priority documents (Rule 17.1)

- Direct submission by the applicant to the RO:
  - within 16 months from the priority date
- Direct submission by the applicant to the IB:
  - before international publication
- Request to the RO to prepare and transmit the priority document to the IB:
  - within 16 months from the priority date
- Submission via DAS to IB:
  - The priority document must be made available to the IB via DAS and the request to the IB to retrieve the priority document must be made before international publication
Poll answers
Questions?
PCT Resources

- General questions about the PCT
  - Contact the PCT Information Service:
    Telephone: +41 22 338 83 38
    E-mail: pct.infoline@wipo.int

- Questions about the ePCT
  - Contact PCT eServices Help Desk:
    Telephone: +41 22 338 95 23
    E-mail: pct.eservices@wipo.int

- Subscribe to WIPO Newsletters
  https://www.wipo.int/newsletters
Thank you!

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