



PROCUREMENT AND ENFORCEMENT
OF INTELLECTUAL PROPERTY

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PATENT, TRADEMARK
COPYRIGHT & RELATED MATTERS

C&T Staff Training
[November 9, 2022] [CH]



FOREIGN FILING

Filing Foreign Patent Applications



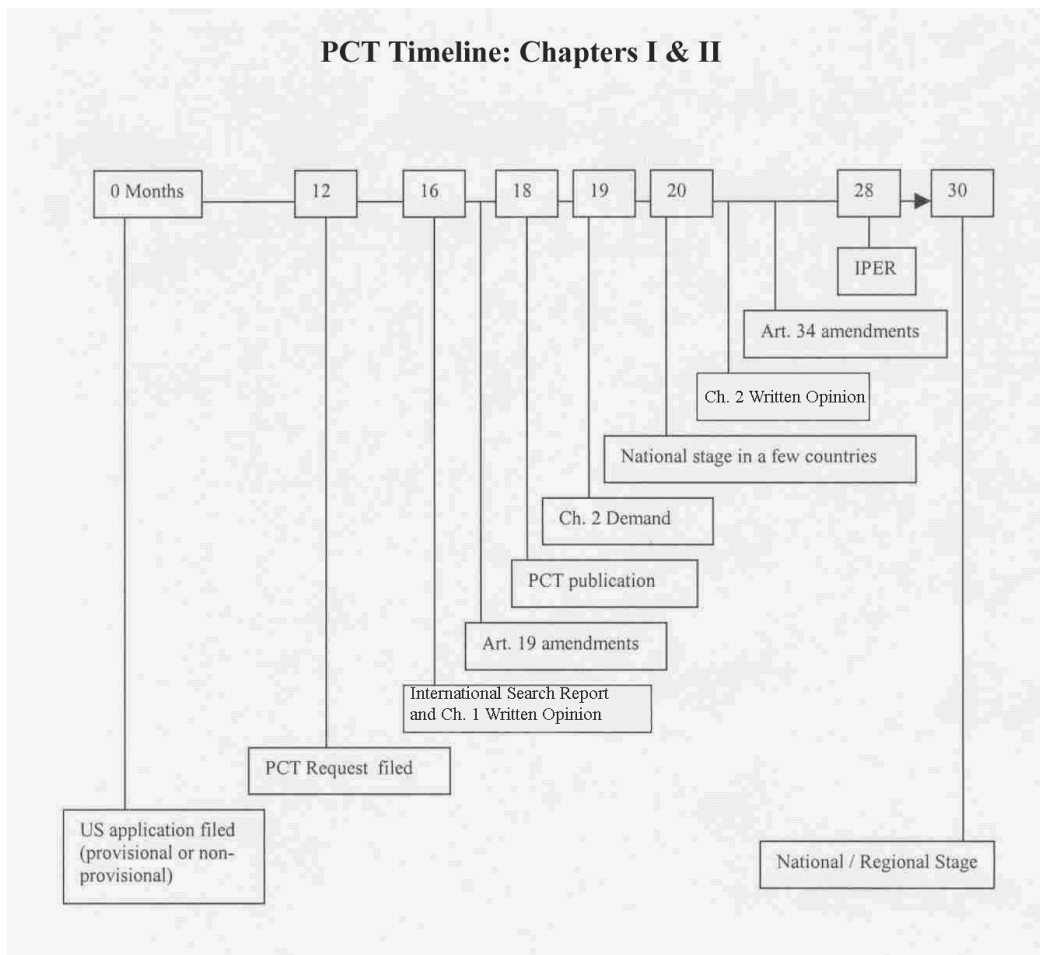
When can I file a foreign patent application?

1. Usually, an application is first filed as a national application in one country. Meaning, you must file a provisional or non-provisional first before filing in another country. This allows you a foreign filing license.
2. What is a foreign filing license?
<https://www.youtube.com/watch?v=-bJgeYnmoNg>
3. To secure foreign rights outside the U.S., the applicant must file directly into the foreign countries of their choosing or file a PCT application on or before the 12-month date from the earliest priority date.
4. It does not matter if the priority application is a provisional or a non-provisional, the foreign application **MUST** be filed on or before the 12-month date.

What are the options for filing a patent application in a foreign country?

1. Direct National Filing
 - a. Send foreign associates instructions directly to file into the desired country and include priority information if applicable.
 - b. Lots of paperwork may be required (Example: the UAE and Saudi Arabia require document legalization which can take months to acquire).
2. The Patent Cooperation Treaty (PCT)
 - The PCT is a United Nations treaty that went into operation in June of 1978. It is administered by the International Bureau (IB) of the World Intellectual Property Organization (WIPO), which is in Geneva, Switzerland.
 - Each country has its own, separate patent system and its own laws, but under the PCT, each participating country agrees to abide by a single, unified international system under which countries can coordinate the early filing and examination stages of patent applications, allowing national patent systems to coexist in harmony with one another.
 - The application may be filed at any major international patent office, called a "Receiving Office." The USPTO is authorized to act as Receiving Office. A license for foreign filing is not required to file a PCT application if the U.S. is the Receiving Office.

- The PCT system does not replace the national patent systems of the member countries, and in fact, there is no such thing as a PCT patent. The PCT system merely allows for a unified system of filing, prior art searching, and preliminary examination.
- The PCT application can be transitioned into a national application, and then into a patent for that country which is called the “national phase”.
- The national phase must be entered no later than 30 months (or 31 months in some countries/regions, such as Europe) from the earliest priority date of the application.
- You do not have to wait for the 30/31-month deadline to file a national phase application.
 - i. There is a rare exception to the 30/31-month entry into the National phase – Some countries require entry into the national phase at 20 months.

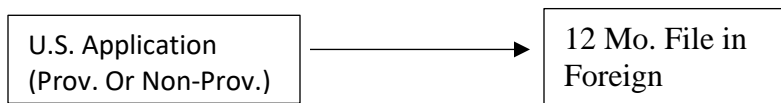


- Entering the national phase in non-US countries is generally a matter of telling the foreign associate to file, and sending the information required just like we would do for a direct filing.

- The foreign counsel will be docketing the necessary due dates, and will be primarily responsible for the prosecution at this stage. Your main job will be simply to make sure that all correspondence is filed and forwarded appropriately, and that any due dates are entered in the internal docket.
- Advantages of Filing a PCT:
 - i. With over 179 Contracting States, it simplifies the process of filing foreign patent applications if a client is interested in filing in many foreign countries.
 - ii. Also, many countries do not have the resources at their disposal to conduct searches or have a major patent office examine applications. By filing in one central office everyone has the same benefits of an expansive search and examination, plus optional interactive examination.
 - iii. There are huge cost and time savings when filing a PCT and the application can be filed in a number of accepted languages.
 - iv. Another benefit to filing under the PCT is that the applicant can have a prior art search and a preliminary examination done, and thereby get an early indication as to what prior art and non-patentability arguments the application will be faced with, all before you have to incur the large costs of separate national patent filings and examination.
- Disadvantages:
 - i. Only for utility patent applications.
 - ii. Slower than direct national applications.
 - iii. Increases overall costs if only filing in one or two countries at national stage.

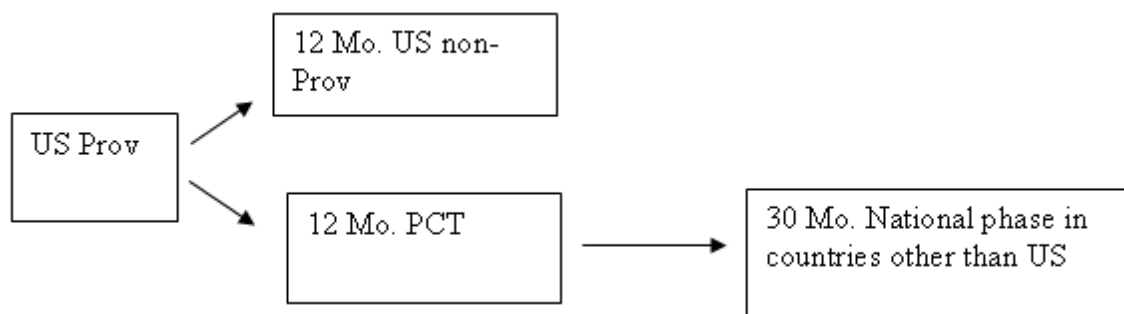
I need an overview. What are the different routes again?

1. Direct National Filing

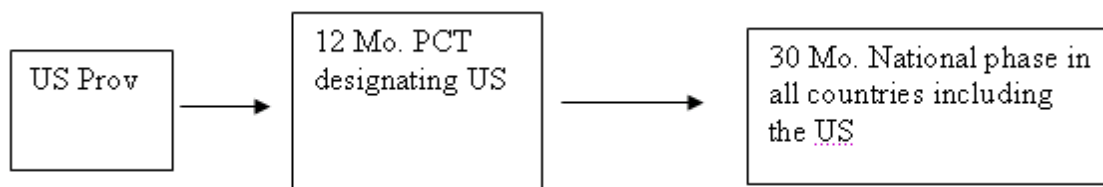


2. PCT Routes:

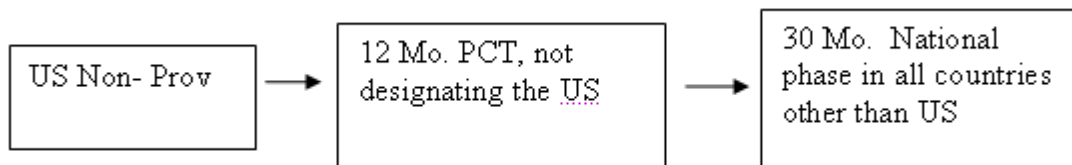
- a. This strategy is often used to get the US case into prosecution quickly.



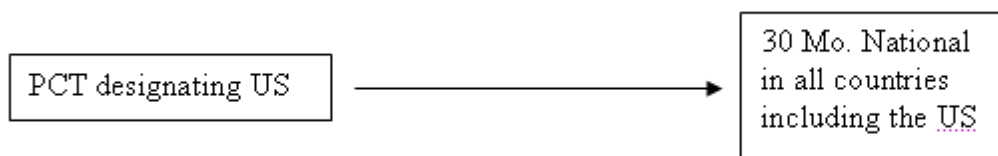
- b. This strategy takes advantage of the US provisional's 12-month grace period that allows the applicant to further determine marketability of the invention before filing "for real."



- c. The applicant has filed a US non-provisional application. The application begins prosecution in the US and continues as normal. Then 12 months later, the applicant files a PCT application (not designating the US). This option is simple and efficient and is useful if the applicant wishes to prosecute the US case separately, and does not need the one-year provisional grace period.



- d. The applicant immediately files a PCT application designating the US. The US national application is filed (with any other desired national applications) at the 30-month national phase deadline. This is the simplest of all routes.



Filing Foreign Trademark Applications

When can I file a foreign application?

1. Usually, an application is first filed as a national application in one country. If the applicant wishes to secure foreign rights outside that country, it must then file a Madrid Protocol or a direct national filing on or before the 6-month date from priority.
2. If the 6-month deadline is met, the original U.S. application and international trademark will have the same filing date (priority date). This makes sure that the applicant gets the earliest possible filing date abroad.
3. You do not need a foreign license to file foreign trademark applications.

What are the options for filing a patent application in a foreign country?

1. Direct National Filing
 - a. Send foreign associates instructions to file into the desired country and include priority information if applicable as we cannot provide legal advice or act as the attorney in a foreign country. Local counsel in each country needs to be retained by us and handled on their end.
 - b. Lots of paperwork may be required (Example: the UAE and Saudi Arabia require document legalization which can take months to acquire).
2. Madrid Protocol
 - a. The Madrid Protocol is an international treaty that allows a trademark owner in one signatory country to seek registration in any of the other countries that have joined the Madrid Protocol by filing a single application.
 - b. The Madrid Union currently has 112 members, covering 128 countries.
 - c. You can file for international trademark protection if you are a national of, or have a domicile or business in, any Madrid System member.
 - d. Unlike the PCT application, a Madrid protocol application will turn into a registration designating countries of the applicant's choosing unless refused. You do not have to file "national phase applications".
 - e. An international application lasts for 10 years from the date of registration and may be renewed for additional 10-year periods by paying a renewal fee to the International Bureau.
 - f. Advantages:
 - i. The Madrid protocol allows an applicant to file one application with a single fee and allows you to extend protection to various member countries. However, the IB only "examines" the mark for formalities and every application still has to be examined by every national trademark office in which protection is sought, and that will require local trademark counsel in each of those countries.
 - ii. Because The Madrid protocol requires that any refusal to register the mark must be raised within 18 months, the applicant may get a quicker examination than would occur for individual national applications.
 - iii. Another advantage is that renewals can be made with one simple filing every ten years. A further advantage of the Madrid protocol is the ability

to make important changes to the record of the application with a single filing, such as a change in ownership.

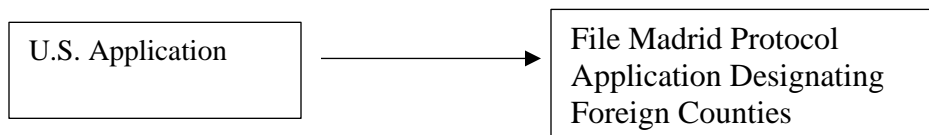
- g. Disadvantages:
 - i. Madrid protocol mark cannot be assigned to a member outside the Madrid Protocol.
 - ii. Does not provide periodic reminders for important deadlines like foreign counsel would do (Example: Declaration of Use Deadlines)

I need an overview. What are the different routes again?

1. Direct National Filing



2. Madrid Protocol



What are some Key Considerations Before Foreign Filing (Patents and Trademarks)?

- What is the company's overarching market strategy?
- What is the available budget?
- What time pressure exists?
- What are the must-haves?



5. Madrid Agreement Concerning the International Registration of Marks

Madrid Agreement (Marks) (1891), revised at Brussels (1900), at Washington (1911),
at The Hague (1925), at London (1934), Nice (1957) and at Stockholm (1967), and amended in 1979

and

6. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

Madrid Protocol (1989), amended in 2006 and in 2007

(Madrid Union)¹

Status on June 9, 2022

State/IGO	Date on which State became party to the Madrid Agreement ²	Date on which State/IGO became party to the Madrid Protocol (1989)
Afghanistan.....	—	June 26, 2018
African Intellectual Property Organization (OAPI).....	—	March 5, 2015 ^{5,6}
Albania.....	October 4, 1995	July 30, 2003
Algeria.....	July 5, 1972	October 31, 2015 ⁵
Antigua and Barbuda.....	—	March 17, 2000 ^{5,6}
Armenia.....	December 25, 1991	October 19, 2000 ^{6,10}
Australia.....	—	July 11, 2001 ^{5,6}
Austria.....	January 1, 1909	April 13, 1999
Azerbaijan.....	December 25, 1995	April 15, 2007
Bahrain.....	—	December 15, 2005 ¹⁰
Belarus.....	December 25, 1991	January 18, 2002 ^{6,10}
Belgium.....	July 15, 1892 ³	April 1, 1998 ^{3,6}
Bhutan.....	August 4, 2000	August 4, 2000
Bosnia and Herzegovina.....	March 1, 1992	January 27, 2009
Botswana.....	—	December 5, 2006
Brazil.....	—	October 2, 2019 ^{5,6,8}
Brunei Darussalam.....	—	January 6, 2017 ^{5,6}
Bulgaria.....	August 1, 1985	October 2, 2001 ⁶
Cabo Verde.....	—	July 6, 2022
Cambodia.....	—	June 5, 2015 ^{5,6}
Canada.....	—	June 17, 2019 ^{5,6}
Chile.....	—	July 4, 2022 ^{5,6}
China.....	October 4, 1989 ⁴	December 1, 1995 ^{4,5}
Colombia.....	—	August 29, 2012 ^{5,6}
Croatia.....	October 8, 1991	January 23, 2004
Cuba.....	December 6, 1989	December 26, 1995
Cyprus.....	November 4, 2003	November 4, 2003 ⁵
Czech Republic.....	January 1, 1993	September 25, 1996
Democratic People's Republic of Korea.....	June 10, 1980	October 3, 1996
Denmark.....	—	February 13, 1996 ^{5,6,7}
Egypt.....	July 1, 1952	September 3, 2009
Estonia.....	—	November 18, 1998 ^{5,6,8}
Eswatini.....	December 14, 1998	December 14, 1998
European Union.....	—	October 1, 2004 ^{6,10}
Finland.....	—	April 1, 1996 ^{5,6}
France.....	July 15, 1892 ⁹	November 7, 1997 ⁹
Gambia.....	—	December 18, 2015 ^{5,6}
Georgia.....	—	August 20, 1998 ^{6,10}
Germany.....	December 1, 1922	March 20, 1996
Ghana.....	—	September 16, 2008 ^{5,6}
Greece.....	—	August 10, 2000 ^{5,6}
Hungary.....	January 1, 1909	October 3, 1997
Iceland.....	—	April 15, 1997 ^{6,10}
India.....	—	July 8, 2013 ^{5,6,8}
Indonesia.....	—	January 2, 2018 ^{6,10}
Iran (Islamic Republic of).....	December 25, 2003	December 25, 2003 ⁵
Ireland.....	—	October 19, 2001 ^{5,6}
Israel.....	—	September 1, 2010 ^{5,6}
Italy.....	October 15, 1894	April 17, 2000 ^{5,6}
Jamaica.....	—	March 27, 2022 ^{5,6}
Japan.....	—	March 14, 2000 ^{6,10}
Kazakhstan.....	December 25, 1991	December 8, 2010

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Madrid Protocol (1989), amended in 2006 and in 2007

(Madrid Union)

(continuation)

State/IGO	Date on which State became party to the Madrid Agreement ²	Date on which State/IGO became party to the Madrid Protocol (1989)
Kenya.....	June 26, 1998	June 26, 1998 ^{5,6}
Kyrgyzstan.....	December 25, 1991	June 17, 2004 ⁶
Lao People's Democratic Republic.....	—	March 7, 2016 ^{6,10}
Latvia.....	January 1, 1995	January 5, 2000
Lesotho.....	February 12, 1999	February 12, 1999
Liberia.....	December 25, 1995	December 11, 2009
Liechtenstein.....	July 14, 1933	March 17, 1998
Lithuania.....	—	November 15, 1997 ⁵
Luxembourg.....	September 1, 1924 ³	April 1, 1998 ^{3,6}
Madagascar.....	—	April 28, 2008 ¹⁰
Malawi.....	—	December 25, 2018 ⁵
Malaysia.....	—	December 27, 2019 ^{5,6}
Mexico.....	—	February 19, 2013 ^{6,10}
Monaco.....	April 29, 1956	September 27, 1996
Mongolia.....	April 21, 1985	June 16, 2001
Montenegro.....	June 3, 2006	June 3, 2006
Morocco.....	July 30, 1917	October 8, 1999 ⁶
Mozambique.....	October 7, 1998	October 7, 1998
Namibia.....	June 30, 2004	June 30, 2004
Netherlands.....	March 1, 1893 ^{3,11}	April 1, 1998 ^{3,6,11}
New Zealand.....	—	December 10, 2012 ^{5,6,12}
North Macedonia.....	September 8, 1991	August 30, 2002
Norway.....	—	March 29, 1996 ^{5,6}
Oman.....	—	October 16, 2007 ¹⁰
Pakistan.....	—	May 24, 2021 ^{5,6}
Philippines.....	—	July 25, 2012 ^{5,6,8}
Poland.....	March 18, 1991	March 4, 1997 ¹⁰
Portugal.....	October 31, 1893	March 20, 1997
Republic of Korea.....	—	April 10, 2003 ^{5,6}
Republic of Moldova.....	December 25, 1991	December 1, 1997 ⁶
Romania.....	October 6, 1920	July 28, 1998
Russian Federation.....	July 1, 1976 ¹³	June 10, 1997
Rwanda.....	—	August 17, 2013
Samoa.....	—	March 4, 2019 ^{5,6}
San Marino.....	September 25, 1960	September 12, 2007 ^{6,10}
Sao Tome and Principe.....	—	December 8, 2008
Serbia ¹⁴	April 27, 1992	February 17, 1998
Sierra Leone.....	June 17, 1997	December 28, 1999
Singapore.....	—	October 31, 2000 ^{5,6}
Slovakia.....	January 1, 1993	September 13, 1997 ¹⁰
Slovenia.....	June 25, 1991	March 12, 1998
Spain.....	July 15, 1892	December 1, 1995
Sudan.....	May 16, 1984	February 16, 2010
Sweden.....	—	December 1, 1995 ^{5,6}
Switzerland.....	July 15, 1892	May 1, 1997 ^{6,10}
Syrian Arab Republic.....	—	August 5, 2004 ⁵
Tajikistan.....	December 25, 1991	June 30, 2011 ^{6,10}
Thailand.....	—	November 7, 2017 ^{5,6}
Trinidad and Tobago.....	—	January 12, 2021 ^{5,6}
Tunisia.....	—	October 16, 2013 ^{5,6}
Türkiye.....	—	January 1, 1999 ^{5,6}

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(Madrid Union)

(continuation)

State/IGO	Date on which State became party to the Madrid Agreement ²	Date on which State/IGO became party to the Madrid Protocol (1989)
Turkmenistan.....	—	September 28, 1999 ^{6,10}
Ukraine.....	December 25, 1991	December 29, 2000 ^{5,6}
United Arab Emirates.....	—	December 28, 2021 ^{5,6}
United Kingdom.....	—	December 1, 1995 ^{5,6,15,16}
United States of America.....	—	November 2, 2003 ^{5,6}
Uzbekistan.....	—	December 27, 2006 ^{6,10}
Viet Nam.....	March 8, 1949	July 11, 2006 ⁶
Zambia.....	—	November 15, 2001 ⁶
Zimbabwe.....	—	March 11, 2015 ^{5,6}
(Total: 112)	(55)	(112)

¹ The Madrid Union is composed of the States party to the Madrid Agreement and the Contracting Parties to the Madrid Protocol.

² All the States party to the Madrid Agreement have declared, under Article 3bis of the Nice or Stockholm Act, that the protection arising from international registration shall not extend to them unless the proprietor of the mark so requests.

³ The territories of Belgium, Luxembourg and the Kingdom of the Netherlands in Europe are to be deemed a single country, for the application of the Madrid Agreement as from January 1, 1971, and for the application of the Protocol as from April 1, 1998.

⁴ Not applicable to either Hong Kong, China or Macao, China.

⁵ In accordance with Article 5(2)(b) and (c) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months and that, where a refusal of protection results from an opposition to the granting of protection, such refusal may be notified after the expiry of the 18-month time limit.

⁶ In accordance with Article 8(7)(a) of the Protocol, this Contracting Party has declared that, in connection with each request for territorial extension to it of the protection of an international registration and the renewal of any such international registration, it wants to receive an individual fee, instead of a share in the revenue produced by the supplementary and complementary fees.

⁷ Applicable to Greenland as of January 11, 2011 and the Faroe Islands as of April 13, 2016.

⁸ In accordance with Article 14(5) of the Protocol, this Contracting Party has declared that the protection resulting from any international registration effected under this Protocol before the date of entry into force of this Protocol with respect to it cannot be extended to it.

⁹ Including all Overseas Departments and Territories.

¹⁰ In accordance with Article 5(2)(b) of the Protocol, this Contracting Party has declared that the time limit to notify a refusal of protection shall be 18 months.

¹¹ The instrument of ratification of the Stockholm Act and the instrument of acceptance of the Protocol were deposited for the Kingdom in Europe. The Netherlands extended the application of the Madrid Protocol to the Netherlands Antilles with effect from April 28, 2003. The Netherlands Antilles ceased to exist on October 10, 2010. As from that date, the Protocol continues to apply to Curaçao and Sint Maarten. The Protocol also continues to apply to the islands of Bonaire, Sint Eustatius and Saba which, with effect from October 10, 2010, have become part of the territory of the Kingdom of the Netherlands in Europe.

¹² With a declaration that this accession shall not extend to Tokelau unless and until a declaration to this effect is lodged by the Government of New Zealand with the depositary on the basis of appropriate consultation with that territory.

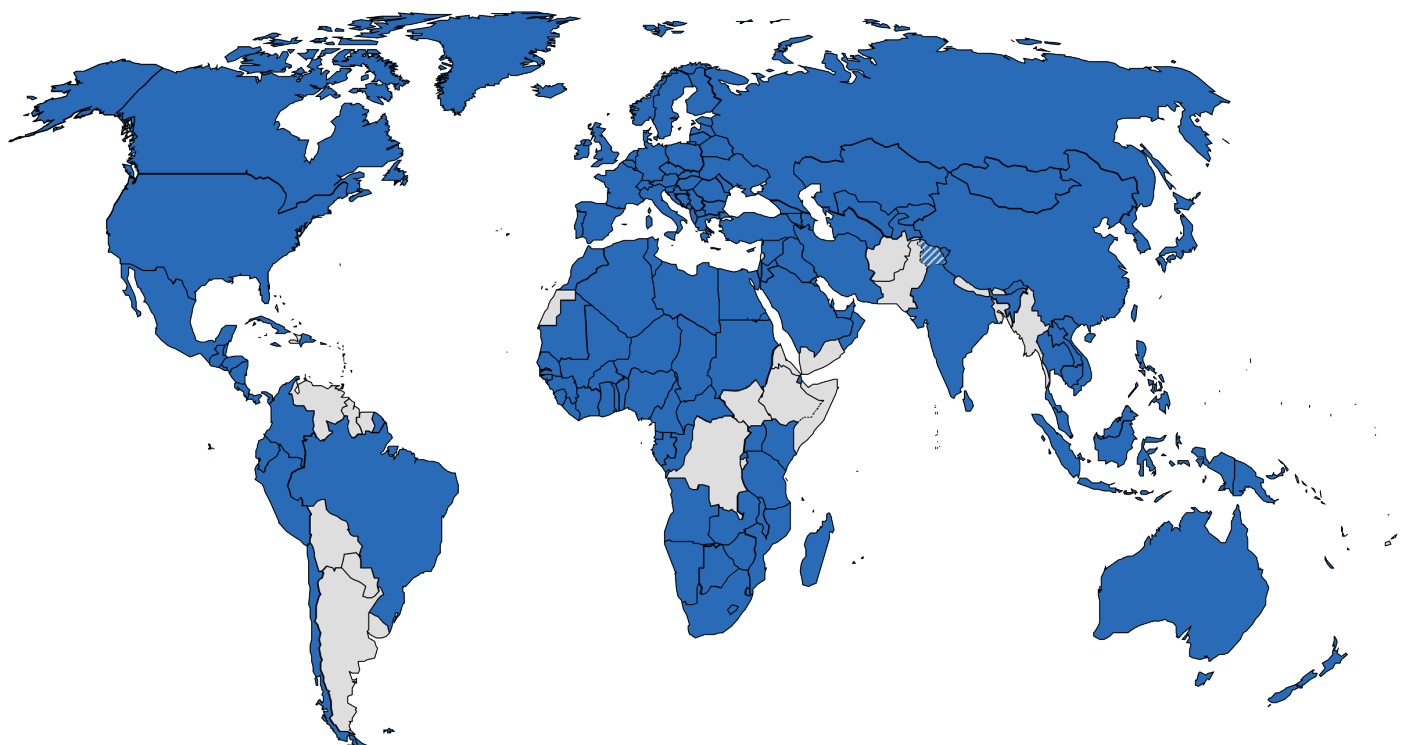
¹³ Date of accession by the Soviet Union, continued by the Russian Federation as from December 25, 1991.

¹⁴ Serbia is the continuing State from Serbia and Montenegro as from June 3, 2006.

¹⁵ Ratification in respect of the United Kingdom and the Isle of Man.

¹⁶ The United Kingdom extended the application of the Madrid Protocol to the territories of Gibraltar and the Bailiwick of Guernsey with effect from January 1, 2021. In accordance with Article 8(7)(a) of the Protocol, this Contracting Party has declared that the Bailiwick of Guernsey, in connection with each request for territorial extension to it of the protection of an international registration and the renewal of any such international registration, wishes to receive an individual fee, instead of a share in the revenue produced by the supplementary and complementary fees.

PCT Contracting States and Two-letter Codes (156 on 1 May 2022)



AE United Arab Emirates	CV <i>Cabo Verde (from 6 July 2022)</i>	IN India	MG Madagascar	SG Singapore
AG Antigua and Barbuda	CY Cyprus (EP) ²	IQ Iraq	MK North Macedonia (EP)	SI Slovenia (EP) ²
AL Albania (EP)	CZ Czechia (EP)	IR Iran (Islamic Republic of)	ML Mali (OA) ²	SK Slovakia (EP)
AM Armenia (EA)	DE Germany (EP)	IS Iceland (EP)	MN Mongolia	SL Sierra Leone (AP)
AO Angola	DJ Djibouti	IT Italy (EP) ³	MR Mauritania (OA) ²	SM San Marino (EP) ²
AT Austria (EP)	DK Denmark (EP)	JM Jamaica	MT Malta (EP) ²	SN Senegal (OA) ²
AU Australia	DM Dominica	JO Jordan	MW Malawi (AP)	ST Sao Tome and Principe (AP)
AZ Azerbaijan (EA)	DO Dominican Republic	JP Japan	MX Mexico	SV El Salvador
BA Bosnia and Herzegovina ¹	DZ Algeria	KE Kenya (AP)	MZ Mozambique (AP)	SY Syrian Arab Republic
BB Barbados	EC Ecuador	KG Kyrgyzstan (EA)	NA Namibia (AP)	SZ Eswatini (AP) ²
BE Belgium (EP) ²	EE Estonia (EP)	KH Cambodia ⁴	NE Niger (OA) ²	TD Chad (OA) ²
BF Burkina Faso (OA) ²	EG Egypt	KM Comoros (OA) ²	NG Nigeria	TG Togo (OA) ²
BG Bulgaria (EP)	ES Spain (EP)	KN Saint Kitts and Nevis	NI Nicaragua	TH Thailand
BH Bahrain	FI Finland (EP)	KP Democratic People's Republic of Korea	NL Netherlands (EP) ²	TJ Tajikistan (EA)
BJ Benin (OA) ²	FR France (EP) ²	KR Republic of Korea	NO Norway (EP)	TM Turkmenistan (EA)
BN Brunei Darussalam	GA Gabon (OA) ²	LA Lao People's Democratic Republic	NZ New Zealand	TN Tunisia ⁴
BR Brazil	GB United Kingdom (EP)	KW Kuwait	OM Oman	TR Turkey (EP)
BW Botswana (AP)	GD Grenada	KZ Kazakhstan (EA)	PA Panama	TT Trinidad and Tobago
BY Belarus (EA)	GE Georgia	LA Lao People's Democratic Republic	PE Peru	TZ United Republic of Tanzania (AP)
BZ Belize	GH Ghana (AP)	LC Saint Lucia	PG Papua New Guinea	UA Ukraine
CA Canada	GM Gambia (AP)	LI Liechtenstein (EP)	PH Philippines	UG Uganda (AP)
CF Central African Republic (OA) ²	GN Guinea (OA) ²	LK Sri Lanka	PL Poland (EP)	US United States of America
CG Congo (OA) ²	GQ Equatorial Guinea (OA) ²	LR Liberia (AP)	PT Portugal (EP)	UZ Uzbekistan
CH Switzerland (EP)	GR Greece (EP) ²	LS Lesotho (AP)	QA Qatar	VC Saint Vincent and the Grenadines
CI Côte d'Ivoire (OA) ²	GT Guatemala	LT Lithuania (EP) ²	RO Romania (EP)	VN Viet Nam
CL Chile	GW Guinea-Bissau (OA) ²	LV Luxembourg (EP)	RS Serbia (EP)	WS Samoa
CM Cameroon (OA) ²	HN Honduras	LY Libya	RU Russian Federation (EA)	ZA South Africa
CN China	HR Croatia (EP)	MA Morocco ⁴	RW Rwanda (AP)	ZM Zambia (AP)
CO Colombia	HU Hungary (EP)	MC Monaco (EP) ²	SA Saudi Arabia	ZW Zimbabwe (AP)
CR Costa Rica	ID Indonesia	MD Republic of Moldova ⁴	SC Seychelles	
CU Cuba	IE Ireland (EP) ²	ME Montenegro ⁵	SD Sudan (AP)	
	IL Israel		SE Sweden (EP)	

¹ Extension of European patent possible.

² May only be designated for a regional patent (the "national route" via the PCT has been closed).

³ Italy may be designated for a national patent only in international applications filed on or after 1 July 2020.

⁴ Validation of European patent possible.

⁵ Only extension of European patent possible. Applicants wishing to obtain patent protection in Montenegro should enter the regional phase before the European Patent Office (EPO) and seek the extension of the European patent application and the granted European patent to Montenegro as there is no national phase before the Intellectual Property Office of Montenegro.

Where a State can be designated for a regional patent, the two-letter code for the regional patent concerned is indicated in parentheses (AP = ARIPO patent, EA = Eurasian patent, EP = European patent, OA = OAPI patent).

Important: This list includes all States that have adhered to the PCT by the date shown in the heading. Any State indicated in **bold italics** has adhered to the PCT but will only become bound by the PCT on the date shown in parentheses; it will not be considered to have been designated in international applications filed before that date.

Note that even though the filing of a request constitutes under PCT Rule 4.9(a) the designation of all Contracting States bound by the PCT on the international filing date, for the grant of every kind of protection available and, where applicable, for the grant of both regional and national patents, applicants should always use the latest version of the e-filing software used to generate the request form, or the latest versions of the request form (PCT/RO/101) and demand form (PCT/IPEA/401) (the latest versions are dated 1 January 2022). The request and demand forms can be printed from the website, in editable PDF format, at: <https://www.wipo.int/pct/en/forms/>, or obtained from receiving Offices or the International Bureau, or, in the case of the demand form, also from International Preliminary Examining Authorities. Where possible, applicants are encouraged to use ePCT-Filing in order to benefit from the most up-to-date PCT data.