

A STUDY OF PATENT SYSTEM IN INDIA IN LIGHT TO PATENT CORPORATION TREATY

*Harsh Arya

ABSTRACT

The International Patent regime is governed by a system that has developed through the accumulation of practices rather than set rules. With the onset of liberalization in India, the protection and enforcement of intellectual property rights gained immense importance. The PCT has ushered in an era of international cooperation in the development and sharing of commerce and scientific knowledge. This paper discusses the evolution of Indian patent system. It discusses the role of PCT in harmonizing filing of patent applications across the contracting states, and its benefits in comparison to the traditional system. It also examines the process of filing for a patent through the PCT in India.

INTRODUCTION TO PATENTS

According to WIPO, a patent is “A patent is an exclusive right granted for an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To get a patent, technical information about the invention must be disclosed to the public in a patent application.”¹⁹¹⁶

The modern word “Patent” is derived from “patent-em”, a latin word meaning “open”. This was essentially a document issued by the state that granted exclusive right of manufacture and sale of an invention for a specified period of time. During a period where traders and merchants established monopolies, patents allowed inventors to dictate the use and disclosure of their own inventions.

The object and theory behind the system of patents is summed up succinctly in Ayyangar’s report (1959) “the theory upon which the patent system is based is that the opportunity of acquiring exclusive rights in an invention stimulates technical progress in four ways; first is that it encourages research and invention; second, that it induces the inventor to disclose his discoveries instead of keeping them a trade secret; third, that it offers a reward for the

*Amity Law School, Noida.

¹⁹¹⁶ Patents, Available at: <https://www.wipo.int/patents/en/> (last visited August 11, 2020)

expenses of developing inventions to the stage at which they are commercially practicable and fourth, that it provides an inducement to invest capital in new lines of production which might not appear profitable if many competing producers embarked on them simultaneously"¹⁹¹⁷

EVOLUTION OF THE PATENT SYSTEM IN INDIA

Indian legislature has historically supported inventors through legislation. It was the Act of 1856 (Act VI of 1856) which granted certain exclusive privileges to inventors for a period of 14 years. This Act later modified to be enacted as Act No. XVI of 1859. the beginning stages of development of patent law in India were modelled after British Laws. So, this Act was based on the English Patent Act, 1852 which called monopolies created as a result of patents granted "exclusive privileges". Following the Patterns and Design Protection Act in 1872, the Invention & Designs Act 1888 was put into force. Subsequently, Indian Patents & Designs Act was passed replacing all previous Acts. the period from 1911 to 1970 saw various amendments made to the act. Dr. Bakshi Tekchand, headed a committee on whose interim report amendments were made to this Act in 1950. Ayyangar's report was submitted in 1959, containing recommendations that would impose radical changes to existing laws governing patents. Eventually, The Patents Act, 1970 was passed and it came into force on 20th April 1972.

The Patent Act, 1970 and Patent Rules 1970 framed thereunder display the following salient feature: an elaborate definition of an invention, declaration of certain inventions as non-patentable, abolition of product patents for drugs and medicines, stringent requirements regarding description of the invention, extension of grounds for opposing the grant of a patent, etc. On March 26, 1999, Patents (Amendment) Act 1999 came into force from 1st January 1995. this made it possible to make an application for patent specifically for a substance. It was this substance that is intended for use as medication by itself excepting during the intermediate preparation of drug. Exclusive marketing rights were bestowed for five years or till the date of grant of patent or date of rejection of the application whichever came earlier. The Patents (Amendment) Act 2002 came into force in May 2003, inter alia, making the term of every patent which is in force including a patent restorable under Section 16 as on 20th May 2003 to 20 years from the date of filing. As per this amendment, "Process"

¹⁹¹⁷ Ayyangar's report (1959) para 17 quoted from Swan Committee's Report

defined under S. 3(1) in case of plants, are now 11 PAs. 130 (7), PAs. 91 (1) patentable while a process which is diagnostic and therapeutic has now been considered as non-patentable. It coined a new definition for “invention”. This new definition now in force says that a new product or process involving inventive step and capable of industrial application, is an invention.

THE PATENT COOPERATION TREATY

The PCT is an international treaty responsible for facilitating cross border applications for patent protection. The provisions contained within this treaty facilitate the granting of applications for patent protection in several countries using a single application¹⁹¹⁸. The PCT has established a well-defined procedure for the filing and processing of a single application, that is put under consideration by the patent offices of the contracting states.¹⁹¹⁹

The PCT has streamlined the system for filing international applications seeking patent protection. A single application managed by a centralized authority has made a previously time-consuming and tedious process considerably more efficient. The lack of multiple filings has made the process more economical than before.¹⁹²⁰

The following are the main benefactors:

- Applicants or Inventors who are interested in obtaining patent protection for their inventions
- National Patent office administration across the world responsible for processing the applications.

The PCT aims to establish a definitive path for applicants to follow when they submit their applications for consideration. The treaty attempts to steer clear of the massive duplication of work required in filing for individual nations.¹⁹²¹

In a judgement from the England and Wales High Court in *Oxonica Energy Ltd v Neuftec Ltd*.¹⁹²² It was held that the PCT is merely facilitatory in the sense that it simplifies the

¹⁹¹⁸ James Anglehart, “Extending the International Phase of PCT Applications” *Journal of Patent and Trademark Office Society*, 101.

¹⁹¹⁹ PCT Distance Learning Course, available at: <https://welc.wipo.int/lms/course/view.php?id=3842> (visited on August 22, 2020)

¹⁹²⁰ PCT Distance Learning Course, available at: <https://welc.wipo.int/lms/course/view.php?id=3842> (visited on August 22, 2020)

¹⁹²¹ PCT Distance Learning Course, available at: <https://welc.wipo.int/lms/course/view.php?id=3842> (visited on August 22, 2020)

¹⁹²² [2008] EWHC 2127 (Pat) Case No: HC 07 C 00437

procedure but is no guarantee of patent protection. the final decision rests in the hands of the national and regional patent offices in whether or not such protection will be granted to the applicants.¹⁹²³

The World Intellectual Property Organisation is responsible for the administration of the PCT. The staff that are responsible for management also simultaneously coordinate with contracting states. They form the International Bureau. Their responsibilities include processing and reviewing submissions, along with communicating with applicants and handling the publication of the applications.

HISTORY OF THE PATENT COOPERATION TREATY

The PCT was signed during the Washington Diplomatic Conference on the Patent Cooperation Treaty held between 25th May and 19th June 1970. It was signed on 19th June 1970.

With 18 contracting states at the offset, it came into force on 24th January, 1978.¹⁹²⁴

Massel and Tourowski say that the development of the PCT system gained steam in 1966, with the United States suggesting that a study be conducted by the WIPO to determine if a method could be conceived that would prevent the duplication of search efforts for applications in other nations.¹⁹²⁵ It was WIPO (then known as BIRPI) that was tasked with identifying solutions to prevent the frequent duplication of efforts faced by patent offices. Following several revised drafts, the Patent Cooperation treaty was signed in 1970.¹⁹²⁶

The treaty entered into force on 24th January 1978, with 18 contracting states.¹⁹²⁷ It was amended in 1979, then modified in 1984 & 2001.¹⁹²⁸

Any contracting state to the Paris Convention for the Protection of Industrial Property can become a member of the PCT.¹⁹²⁹ As of 2019 there are 153 contracting states to the PCT¹⁹³⁰, with Samoa being the latest nation to become a contracting state.¹⁹³¹

¹⁹²³ Oxonica Energy Ltd v Neuftec Ltd [2008] EWHC 2127 (Pat)

¹⁹²⁴ World Intellectual Property Organization, *The First Twenty-five Years of the Patent Cooperation Treaty (PCT) 1970–1995*, 1995, ISBN 92-805-0601-3, page 141.

¹⁹²⁵ Massel O. Louis and Tourowski, "PCT Implementation, Effect on Filing and Procedure", 59, *Journal of Patent and Trademark Office Society*. 2 10, (1977).

¹⁹²⁶ International Bureau of WIPO, *WIPO and International Cooperation in Relation to Patent*, PS /KL /86/1. Para 114, 1986.

¹⁹²⁷ World Intellectual Property Organization, *The First Twenty-five Years of the Patent Cooperation Treaty (PCT) 1970–1995*, 1995, ISBN 92-805-0601-3, page 141.

¹⁹²⁸ Patent Cooperation Treaty, 1970

¹⁹²⁹ Patent Cooperation Treaty, 1970 [Article 62\(1\)](#)

OBJECTIVES OF THE PCT

The PCT aims for applicants to be able to seek for patent protection in multiple nations at the simultaneously using a single application. This would supplant several separate national and regional applications that would have to be filed instead. The PCT does not grant patents in any form, that power remains with the national or regional patent offices.¹⁹³²

Through this, the PCT has simplified the process of filing patents. It makes it more effective and economical in the interest of the applicants and the offices administrating the process.¹⁹³³

The PCT also facilitates the distribution of technical information from various industries and other sectors to developed countries. It does this by allowing access to such information. An increase in access to this technology means the rise of more potential patents with new inventions in the future.

The PCT implements the following to accomplish its goals:¹⁹³⁴

- Establishing a system which allows filing of a single application (the “international application”) internationally with a single patent office (the “receiving office”). In a language having effect in one of the contracting states which the applicant names (“designate”) in the application.¹⁹³⁵
- Allows the formal examination of the application by the “receiving office”.
- Subjects the international application to an “international search” and securitizing the report generated. The report cites prior art which consists of published patents relating to previous inventions. These are taken into account while deliberating the acceptability of the application.¹⁹³⁶

¹⁹³⁰ [The PCT now has 153 Contracting States](https://www.wipo.int/pct/en/pct_contracting_states.html) available at: https://www.wipo.int/pct/en/pct_contracting_states.html (last visited 29 August, 2020)

¹⁹³¹ Newsletter, “PCT Newsletter No. 10/2019” (PDF) *WIPO October 13, 2012*

¹⁹³² Frequently Asked Questions - Patent, available at: http://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_FREQUENTLY_ASKED_QUESTIONS_-_PATENT.pdf, last visited on September 10, 2020)

¹⁹³³ WIPO Background Reading Material on Intellectual Property. 109, 110. Geneva. Publication No.659 (E) 1988.

¹⁹³⁴ Patel Nishidhkumar Manilal, “A-Z of the Patent Cooperation Treaty“ (PCT) Available at:SSRN: <https://ssrn.com/abstract=1922351> (last visited on September 4, 2020).

¹⁹³⁵ Patel Nishidhkumar Manilal, ” A-Z of the Patent Cooperation Treaty“(PCT) Available at:SSRN: <https://ssrn.com/abstract=1922351> (last visited on September 4, 2020).

¹⁹³⁶ Patel Nishidhkumar Manilal, ”A-Z of the Patent Cooperation Treaty“ (PCT) Available at:SSRN: <https://ssrn.com/abstract=1922351> (last visited on September 4, 2020).

- Provides for a single international publication of applications, along with the international search reports. These are then communicated to the appropriate national or regional offices.
- Contains the provision for international preliminary examination, which is a report which opines whether or not the application meets the international standards set for patentability.¹⁹³⁷

The preceding paragraph describes the “International Phase” of the PCT procedure. The following “National Phase” is the final step in the granting of a patent, and is administered by the designated national office.

By the time an application arrives at a national office, the relevant documents have been examined by the receiving office, international searching authority and the International Preliminary Examining authority. These steps that are a part of the international phase reduce the pressure on the national offices.

THE PCT PROCESS

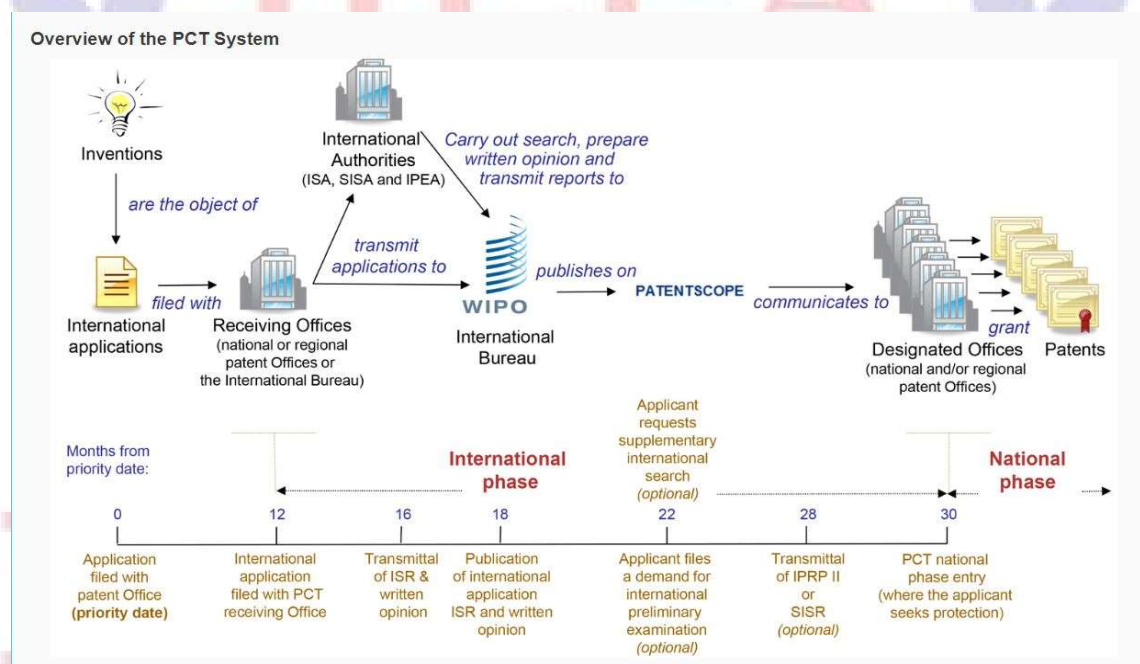


Figure 1. The Functioning of the PCT System¹⁹³⁸

¹⁹³⁷ WIPO Background Reading Material on Intellectual Property (Geneva: 6, 1998).

¹⁹³⁸ Frequently Asked Questions, available at: <https://www.wipo.int/pct/en/faqs/faqs.html#note1> (last visited on September 1, 2020)

The Patent Cooperation Treaty follows an International Phase & a National Phase through various steps:

International Phase

- Filing of the application
- International search
- International publication
- International preliminary examination (*optional*)

National Phase

- Processing of the PCT application by national or regional patent offices

FILING OF THE APPLICATION

The first patent application would be filled with the national or regional patent office. Known as the local application it contains:¹⁹³⁹

1. A petition
2. Description or specification
3. One or more claims
4. An abstract
5. Drawings where necessary

It is on the basis of this application that a PCT application is filed. There are 12 months from the filing date of the local application that an applicant has to file with the receiving office of the national or regional patent office. This is the priority date. The PCT application needs to be filed in one language only, although a translation of the application may be required for the international search¹⁹⁴⁰. At least one applicant must be a national or resident of the contracting state, otherwise no PCT filing date is given.¹⁹⁴¹

The application may be filed directly with the WIPO receiving office if permitted by the applicants' national law.¹⁹⁴²

From the date of filing this international application acts similar to a national application in each of the contracting states. It has the effect of a regional patent application in those states

¹⁹³⁹ PCT Distance Learning Course, available at: <https://welc.wipo.int/lms/course/view.php?id=3842> (visited on August 22, 2020)

¹⁹⁴⁰ Patent Cooperation Treaty, 1970 [Article 15\(5\)\(c\)](#), [Rule 12.3\(a\)](#)

¹⁹⁴¹ Patent Cooperation Treaty, 1970 [Article 9](#), [Rule 18.3](#)

¹⁹⁴² Patent Cooperation Treaty, 1970, Rule 19

which are party regional patent treaties (designated as regional patent, ARIPO patent, Eurasian patent).

The receiving Office, after having accorded an international filing date and made a formal check, sends a copy of the international application to the International Bureau of WIPO (the “record copy”) and another copy (the “search copy”) to the International Searching Authority. It keeps a third copy (the “home copy”). The receiving Office also collects all the PCT fees and transfers the search fee to the International Searching Authority and the international fee to the International Bureau.

The fees incurred for the filing for application are payable in one currency at the receiving office.

This fee consists of three main divisions:¹⁹⁴³

- Transmittal fee to cover the work by the receiving office
- Search fee to cover the work by the International Searching authority
- International fee to cover the work of the International bureau

The receiving Office, after having accorded an international filing date and made a formal check, sends a copy of the international application to the International Bureau of WIPO (the “record copy”) and another copy (the “search copy”) to the International Searching Authority. It keeps a third copy (the “home copy”). The receiving Office also collects all the PCT fees and transfers the search fee to the International Searching Authority and the international fee to the International Bureau.

INTERNATIONAL SEARCH

Every international application is subjected to an international search, of the patent documents and other technical literature in those languages in which most patent applications are filed (English, French and German, and in certain cases Chinese, Japanese, Russian and Spanish). It is carried out by the standards prescribed in the PCT for the documentation, staff qualifications and search methods of the International Searching Authorities, which are experienced Patent Offices that have been specially appointed to carry out international searches by the Assembly of the PCT Union (the highest administrative body created under

¹⁹⁴³ Filing international applications for patent under the Patent Cooperation Treaty, *available at*: <http://www.ipindia.nic.in/writereaddata/images/pdf/pct-filing.pdf> (last visited on September 8, 2020)

the PCT) on the basis of an agreement to observe PCT standards and time limits. They aim to find the relevant prior art relating to the subject of the application. The search results are published in an International Search Report, along with an opinion on whether or not the application should be granted.¹⁹⁴⁴

The international search report can help the applicant decide whether it would be worthwhile seeking national protection. An international search report which is favourable, that is, in which the citations of prior art would appear not to prevent the grant of a patent, assists the applicant in approval of their application. Many national offices rely on the ISR and may refer to it before deciding to approve or not allow the application. The International Searching Authority sends the international search report to the applicant and to the International Bureau. The International Bureau includes the search report in the international publication of the international application and sends a copy to the designated Offices.¹⁹⁴⁵

INTERNATIONAL PUBLICATION

International Publication is necessary to:

1. To disclose to the public, the technological advance made by the inventor
2. To identify and determine the scope of protection applicable to it

The publication is usually around 18 months after the filing of the international application.¹⁹⁴⁶ there are two exceptions to this time frame:

1. Upon request of an early publication, the PCT may choose to public before 18 months¹⁹⁴⁷
2. If 18 months after the priority date, the application is only designated to the united states then it is not automatically published.¹⁹⁴⁸

A PCT pamphlet is published by the International bureau which contains in bibliographic manner the data furnished by the applicant, along with the International Patent Qualification

¹⁹⁴⁴ he written opinion is established by the International Searching Authority (ISA) for international applications filed on or after 1 January 2004 only.

¹⁹⁴⁵ [Oxonica Energy Ltd v Neuftec Ltd \(2008\) EWHC 2127 \(Pat\)](#)

¹⁹⁴⁶ Patent Cooperation Treaty, 1970, [Article 21\(2\)\(a\)](#)

¹⁹⁴⁷ Patent Cooperation Treaty, 1970, [Article 21\(2\)\(b\)](#)

¹⁹⁴⁸ PCT Reservations, Declarations, Notifications and Incompatibilities, *available at:* https://www.wipo.int/pct/en/texts/reservations/res_incomp.html, (last visited on September 1, 2020)

symbol granted to them. It also includes the description, any claims or drawings along with the international search report.

The publication of the pamphlet is announced in the PCT Gazette, which lists international applications that have been accepted for publication. The gazette classifies and puts into order the published applications according to their respective technical fields.

INTERNATIONAL PRELIMINARY EXAMINATION

An international preliminary examination may be “*demande*”¹⁹⁴⁹. this examination is made following the international search report. it is conducted by an authorized *International Preliminary Examination Authority* (IPEA) and its objective is "to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable".¹⁹⁵⁰

Since 2004, the International Preliminary Examination Report is called the "*international preliminary report on patentability (Chapter II of the Patent Cooperation Treaty)*" (commonly abbreviated "*IPRP Chapter II*").¹⁹⁵¹

This report is a non-binding opinion on patentability and is only provided to applicants who have filed a demand for international preliminary examination. It is useful for those whose international search report has been unfavourable, it is an opportunity to amend the claims, description and drawings. It has many advantages.¹⁹⁵²

Similar to the International Searching Authorities, the International Preliminary Examining Authorities are appointed by the Assembly of the PCT Union. In nations where patents are granted by giving more weight to the international preliminary examination report, a positive report will go a long way in approval to publish.

Upon publication of the international application, the International bureau communicates their publication of the application to the appropriate national and regional offices. The processing of this application before the designated offices, may not start prior to the

¹⁹⁴⁹ [PCT International Search and Preliminary Examination Guidelines \(Guidelines for the Processing by International Searching and Preliminary Examining Authorities of International Applications Under the Patent Cooperation Treaty\) as in force from March 25, 2004](#)

¹⁹⁵⁰ Patent Cooperation Treaty, 1970, [Article 33\(1\)](#)

¹⁹⁵¹ Patent Cooperation Treaty, 1970, [Rule 70.15\(b\)](#)

¹⁹⁵² "[Factors to be considered when deciding whether or not to file a demand for international preliminary examination – Part 2](#)" (Views of David Reed), Practical Advice, PCT Newsletter No. 05/2010

expiration of 20 months or 30 months (depending on the application of Chapter 1 or 2) from the priority date of the international application.

THE NATIONAL PHASE

Following the search report and the examination report, the applicant now has a clear picture of whether or not they have a chance to obtain patent protection from the respective states. If it seems like the possibility of receiving protection is low, then they may withdraw their application. If they decide to continue in the process to obtain a patent, they must pay the prescribed national fee to the appropriate patent office. If required they may submit copies of their international application, translated in their local language. The furnishing of the translation and the payment of the national fees must be affected within 20 months (or 30 months, if Chapter II is applicable) from the priority date. If not, their application will cease to have effect.¹⁹⁵³

Traditional Patent System In comparison with PCT¹⁹⁵⁴

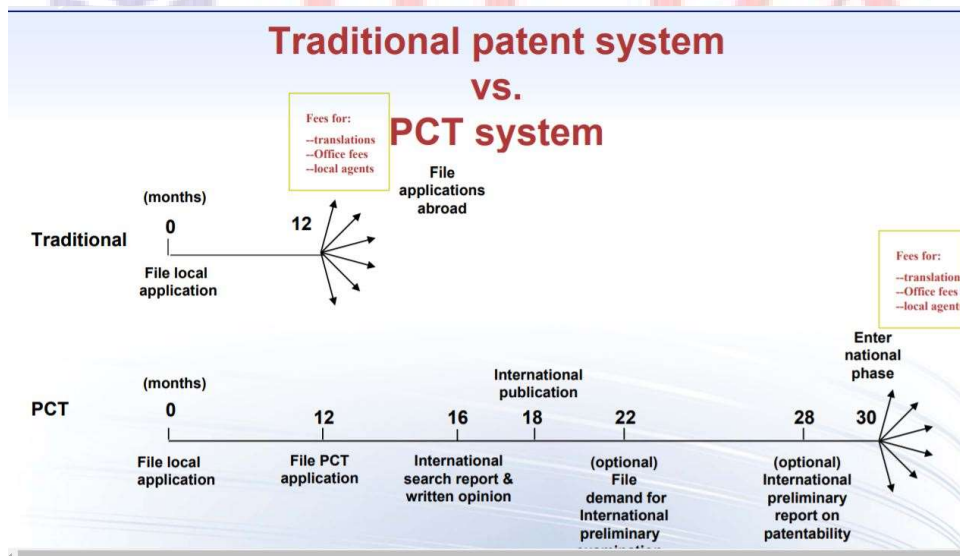


Figure 2: Traditional Patent System vs. PCT System¹⁹⁵⁵

¹⁹⁵³ Patent Cooperation Treaty, 1970, [Article 24\(1\)\(iii\)](#)

¹⁹⁵⁴ The PCT and its advantages, available at: https://www.wipo.int/export/sites/www/pct/en/presentations/pct_overview_july2007.pdf (last visited on September 10, 2020)

¹⁹⁵⁵ The PCT and its advantages, available at: https://www.wipo.int/export/sites/www/pct/en/presentations/pct_overview_july2007.pdf (last visited on September 10, 2020)

After local patent application is filed, within 12 months multiple foreign applications may be filed under Paris convention. It Involves

- multiple formality requirements
- multiple searches
- multiple publications
- multiple examinations of applications
- translations and national fees required at 12 months
- Complying with the provisions of various regional agreements.

After local patent application is filed, within 12 months an international application may be filed under the PCT claiming Paris Convention priority, with national phase commencing at 20 or even 30 months at the option of the applicant.¹⁹⁵⁶ It is more convenient and includes:

- one set of formality requirements
- international search
- international publication
- international preliminary examination
- international application can be put in order (amended, or modified) before national phase
- translations and national fee required at 20 or 30 months, and only if applicant wishes to proceed.

PROCESS OF FILING APPLICATION UNDER PCT IN INDIA

As per Indian Patent Act 1970 as amended and the Patents Rules 2003 as amended by (amendment) rules 2016, any PCT international application may be filed designating India and it shall deemed to be an application if the corresponding national phase application has also been filed.¹⁹⁵⁷

The procedure of filing a PCT application in India is as follows:

¹⁹⁵⁶ The PCT and it's advantages, available at: https://www.wipo.int/export/sites/www/pct/en/presentations/pct_overview_july2007.pdf (last visited on Setember 10, 2020)

¹⁹⁵⁷ Frequently Asked Questions - Patent, available at: http://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_FREQUENTLY_ASKED_QUESTIONS_-_PATENT.pdf, last visited on September 13, 2020)

FILING THE APPLICATION¹⁹⁵⁸

- An international application can be filed with a Receiving Office (RO/IN) national patent office or directly with the International Bureau (RO/IB) of WIPO. Territorial Limits (Rule 4, Indian Patent Act 1970 as amended and patent Rules 2003 as amended), governs at which patent office's PCT applications are filed.¹⁹⁵⁹ Residents of India can file their PCT applications at the Indian Patent Office at Delhi, Chennai, Mumbai or Kolkata as the Receiving Office (RO/IN).
- A Request (Form PCT/RO/101) accompanied by description, claims, abstract (and drawings if required) of the invention in English or Hindi, this application must be filed in triplicate.
- The Fee payable are Transmittal fee, International Filing Fee and Search fee which have to be paid within one month of the receipt of the application¹⁹⁶⁰
- The receiving office keeps one copy of the international application for record called “home copy”, another is sent to the International Bureau “Record Copy” and the last is sent to the international searching authority called the “Search Copy”.¹⁹⁶¹

INTERNATIONAL FILING DATE¹⁹⁶²

- The Receiving Office India (RO/IN) records as the international filing date the date of receipt of the international application, after the following checks:
 - The applicant is an Indian resident
 - The application was made in English or Hindi
 - The application is indicating that it is an international application
 - The name of at least one contracting state
 - The name of the applicant
 - A part on the face of it which appears to be a description
 - A part on the face of it which appears to be a claim

INTERNATIONAL SEARCH¹⁹⁶³

¹⁹⁵⁸ Frequently Asked Questions - Patent, available at: http://ipindia.gov.in/writereaddata/Portal/Images/pdf/Final_FREQUENTLY_ASKED_QUESTIONS_PATENT.pdf, last visited on September 13, 2020)

¹⁹⁵⁹ Territorial Limits (Rule 4, Indian Patent Act 1970 as amended and patent Rules 2003 as amended).

¹⁹⁶⁰ Patel Nishidhkumar Manilal, "A-Z of the Patent Cooperation Treaty" (PCT) Available at:SSRN: <https://ssrn.com/abstract=1922351> (last visited on September 4, 2020).

¹⁹⁶¹ Filing international applications for patent under the Patent Cooperation Treaty, available at: <http://www.ipindia.nic.in/writereaddata/images/pdf/pct-filing.pdf>, (last visited on September 10, 2020)

¹⁹⁶² Filing international applications for patent under the Patent Cooperation Treaty, available at: <http://www.ipindia.nic.in/writereaddata/images/pdf/pct-filing.pdf>, (last visited on September 10, 2020)

- Every international application is subject to international search by an International Searching Authority (ISA). The authority identifies the published patent documents and prior art which it uses as an indicator as to whether the subject of the application is patentable or not, and establishes a written opinion on your invention 's potential patentability.
- The Indian Patent Office started functioning as ISA from 15th October 2013. The Delhi branch functions as ISA, on receipt of prescribed fee specified in Fifth Schedule of patent act 1970 as amended and patent rules 2003 as amended.

INTERNATIONAL PUBLICATION

- After 18 months have passed from the priority date, the international application is disclosed publicly

INTERNATIONAL PRELIMINARY EXAMINATION (OPTIONAL)¹⁹⁶⁴

- Residents/Nationals of India can file a Demand (Form PCT/IPEA/401) for international preliminary examination in the Delhi branch of the Indian Patent Office which acts as IPEA/IN.¹⁹⁶⁵
- An optional examination of the application can be undertaken by the ISA on request. This is usually done with an amended application which was unfavourably reviewed in the initial international search. Indian Patent office, Delhi Branch performs the function of International Preliminary Examination (IPEA) on receipt of prescribed fee specified in Fifth Schedule of patent act 1970 as amended and patent rules 2003 as amended.¹⁹⁶⁶

NATIONAL PHASE

- The PCT procedure comes to an end with the national phase. It is after 30 to 31 months of the filing of your initial application known as the priority application, that applicants approach their national patent offices with the desire of being granted a patent. In India 31 months is the maximum time limit to enter national phase. The application is given in form 1.

¹⁹⁶³The Patents Act, 1970

¹⁹⁶⁴ Patel Nishidhkumar Manilal, "A-Z of the Patent Cooperation Treaty" (PCT) Available at:SSRN: <https://ssrn.com/abstract=1922351> (last visited on September 4, 2020).

¹⁹⁶⁵ Filing international applications for patent under the Patent Cooperation Treaty, available at: <http://www.ipindia.nic.in/writereaddata/images/pdf/pct-filing.pdf>, (last visited on September 10, 2020)

¹⁹⁶⁶ The Patent Act, 1970

ADVANTAGES OF THE PCT:¹⁹⁶⁷

- Permits people from least developed and developing nations to seek patent protection in developed nations with stronger trade laws
- It promotes the transfer of technology from foreign countries
- Provides a boost to FDI, technology development and job creation
- Builds greater economic and international cooperation.
- Gives access to technical data that might not be available

These are just some of the advantages of the Patent Cooperation Treaty.¹⁹⁶⁸

CONCLUSION

The Patent Cooperation Treaties role in harmonizing the method of filing for patent protection is undeniable. It has greatly eased the logistical and administrative issues that had plagued the previous system. With the evolution of Indian Patent law and its status as a contracting state, the treaty has proven extremely beneficial. It has encouraged inventors to obtain patent protection from other contracted states. The PCT also Plays a major role in bringing in an influx of FDI in the form of trade and technology.

The patent system in India has benefited from its membership as a contracting state.

¹⁹⁶⁷ Rajeev Ranjan, "PCT System and its impact on Developing Countries" *JIPR*, Vol. 8 pp.50-57 (2003)

¹⁹⁶⁸ Rajeev Ranjan, "PCT System and its impact on Developing Countries" *JIPR*, Vol. 8 pp.50-57 (2003)