

# Learning path for patent administrators

## Filing an international application: EPAC – intermediate level

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## Introduction

This publication, "Filing an international application, EPAC – intermediate level", is part of the "Learning path for patent administrators" series is edited and published by the European Patent Academy. The series is intended for patent administrators who are taking part in training and certifications organised by the European Patent Office (EPO). It is also freely available to the public for independent learning.

Topics covered include: general aspects of the patent system; the European patent system and the European patent granting procedure; the International Patent System (PCT) and the PCT procedure; European and international publications; filing a European patent application and filing an international application; the formalities during the European and during the international search; the formalities during the European examination and during the international preliminary examination; the formalities during the appeal procedure after refusal (EPC), during the opposition procedure (EPC); national validation (EPC); entry into national/regional phases and entry into the European phase (PCT).

Each chapter focuses on one topic at entry, intermediate or advanced level, as appropriate. The series will be revised annually to ensure it remains up to date.

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## 1. Learning objectives

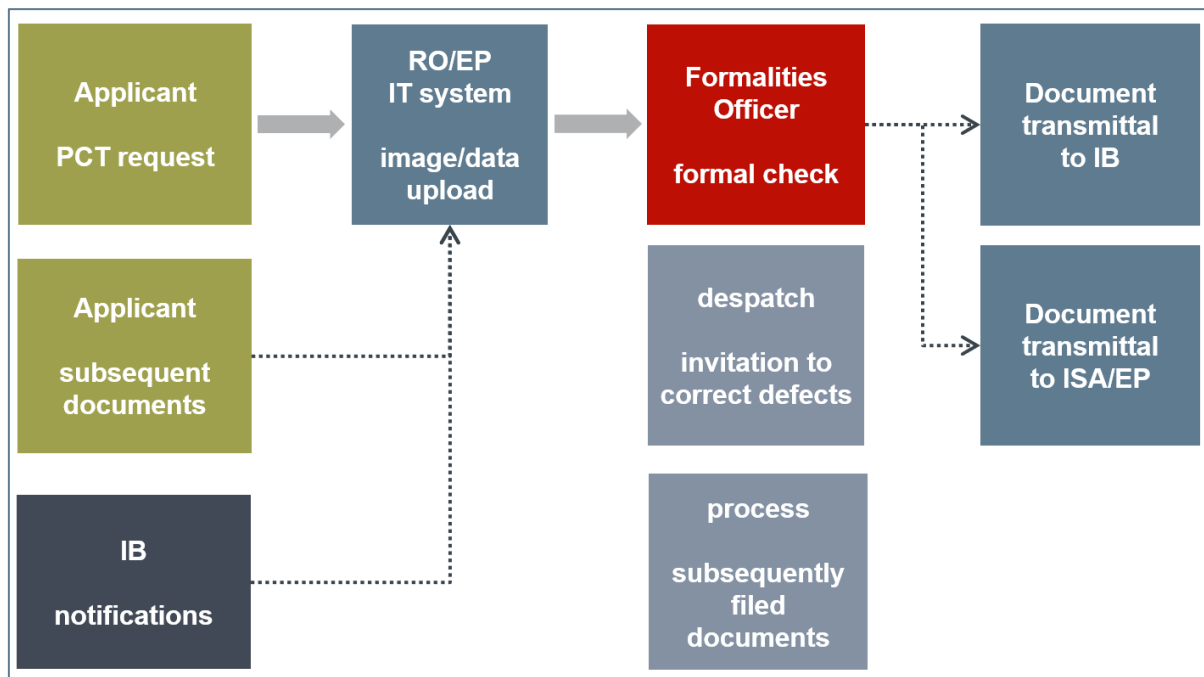
Participants in this course will learn about:

- formal defects in international applications
- insufficient payments
- missing elements
- missing parts
- incorporation by reference
- obvious mistakes
- adding, correcting and withdrawing priority claims
- restoration of the right of priority

## 2. Abbreviations

DO	designated Office
EO	elected Office
EPO	European Patent Office
IA	international application
IB	International Bureau of WIPO
IFD	international filing date
IPEA	International Preliminary Examining Authority
IPER	international preliminary examination report
IPRP1	international preliminary report on patentability, converted WO/ISA
IPRP2	international preliminary report on patentability, converted IPER
ISA	International Searching Authority
ISR	international search report
PCT	Patent Cooperation Treaty
RO	receiving Office
SEQL	sequence listing
SISA	authority specified for the supplementary international search
SISR	supplementary international search report
WIPO	World Intellectual Property Organization
WO/ISA	written opinion of the International Searching Authority

### 3. Overview of the process within RO/EP



### 4. Invitation to correct defects

If the formal check by the RO reveals defects, the RO will issue an invitation to correct deficiencies in the IA.

Depending on the situation, one of the following forms will be used.

- Form [PCT/RO/106](#) if
  - the defect is in the application form
  - there is a formal defect in the specification
- Form [PCT/RO/133](#) if all or part of the prescribed fees were not paid
- Form [PCT/RO/103](#) if no IFD was accorded
- Form [PCT/RO/107](#) if parts appear to be missing
- Form [PCT/RO/110](#) if there is a defect concerning the priority claim or the priority document(s)

#### Legal references:

Art. 11(1) PCT

Rule 20.3 PCT; Rule 20.6 PCT; Rule 26 PCT; Rule 91.1 PCT

### 5. Time limits in invitations to correct defects

Time limits:

- are prescribed by the PCT
- start on the date of despatch
- cannot end on a day the RO is closed for business

Time limits set by RO/EP for responding to certain notifications may be extended and applied with increased flexibility.

- e.g. Form [PCT/RO/106](#), Form [PCT/RO/133](#)

For communications taking longer than seven calendar days to reach the addressee, [Rule 80.6 PCT](#) applies. Any time limit is extended by one day for each day the communication took longer to arrive.

Useful tool: the [PCT Time Limit Calculator](#) on the WIPO website

#### **Legal references:**

Rule 80 PCT

## **6. Defects: physical requirements**

The specification of the IA has to comply with the [physical requirements](#), e.g. character size, page margins or the quality of drawings.

In order to communicate any physical defects found, the RO will issue Form [PCT/RO/106](#). The time limit for a response is two months, although this may be extended.

The time limit is considered to be met if any corrections reach the IB before the completion of the technical preparations for international publication.

Any extension will be confirmed by issuance of Form [PCT/RO/138](#). There is, however, no time extension for a defective signature on the application form.

#### **Legal references:**

Rule 11 PCT; Rule 26.2 PCT; Rule 80 PCT

## **7. Defects: failure to pay prescribed fees**

If all or part of the prescribed fees were not paid, the RO will invite the applicant to pay the missing amount, possibly together with a late payment fee, within a non-extendable time limit of one month from the date of the invitation (Form [PCT/RO/133](#)).

For RO/EP, payment with a late payment fee is accepted even after expiry of the time limit, as long as the final notification that the IA is considered to be withdrawn (Form [PCT/RO/117](#)) has not been issued.

#### **Legal references:**

Art. 14 PCT

Rule 15 PCT; Rule 16 PCT; Rule 16*bis* PCT; Rule 27.1 PCT; Rule 29.1 PCT

## **8. Missing elements and parts in the IA**

What is an element and what is a part of the IA?

Missing elements	Missing parts
No description	Description present, but incomplete
No claims	Claims present, but incomplete
	Drawings present, but incomplete
	Drawings referred to, but not present
Form <a href="#">PCT/RO/103</a>	Form <a href="#">PCT/RO/107</a>

#### Legal references:

Art. 11(2) PCT

Rule 20 PCT

## 9. Missing elements in the IA

The RO may accord an IFD to an IA if all of the following elements are present.

- **An indication that what was filed was intended as an IA.** This indication is made explicit on the application form (Form [PCT/RO/101](#)). The use of this form is mandatory, so a situation in which the requirement is not met is rather unlikely.
- **At least one PCT contracting state is designated.** The application form also indicates the designation of all PCT contracting states at the time of filing, so the designations would have to be withdrawn actively by the applicant.
- **The applicant's name**
- **A description**
- **At least one claim**

If any of the requirements are not met, the RO will issue Form [PCT/RO/103](#). The documents received will not be considered an IA until all requirements are met. Until then, it will be called a purported international application. Also, nothing will be transmitted to the IB at this time.

The time limit for filing a correction is two months from the date of the invitation and is not extendable.

There is a special warning if the time limit expires after 12 months from the filing date of the earliest application for which priority is claimed. This is to safeguard that the priority claim is not lost. If a correction is made within the time limit, the date of receipt of that correction becomes the IFD.

Once all requirements are met, the IA is transmitted to the IB.

If the requirements are not met, the RO will issue Form ([PCT/RO/104](#)). This is the final notification that the purported IA is not considered valid and will not be treated as an IA.

#### Legal references:

Art. 11 PCT

Rule 20 PCT

## 10. Missing parts in the IA

If **part(s)** of the description, **part(s)** of the claims, **part(s)** of the drawings or **all** drawings are missing, Form [PCT/RO/107](#) will be issued.

The RO will transmit the IA to the IB accompanied by Form [PCT/RO/107](#).

### Examples:

- **Description**
  - interrupted paragraph(s)
  - missing part(s) at the top and/or bottom of the sheet(s)
  - numbering of example(s), table(s) and/or paragraph(s)
- **Claims**
  - non-sequential numbering (1, 2, 3, 4, 6...)
  - interrupted paragraph(s)
  - missing part(s) at the top and/or bottom of the sheet(s)
- **Drawings**
  - numbering of drawing sheet(s) does not match numbering of drawings in description
  - references to certain drawings in description but no such drawings filed
  - incomplete image(s)
  - non-sequential numbering
  - missing parts at the top and/or bottom of sheet(s)

### Legal references:

Art. 11 PCT; Art. 14 PCT

Rule 4.18 PCT; Rule 20 PCT

## 11. Incorporation by reference

If element(s) or part(s) of the IA were missing when it was filed, but the missing part(s) or element(s) can be found in the priority application, the RO will invite the applicant to file a written confirmation of incorporation by reference, including:

- an indication where the missing part is contained in the earlier application
- sheet(s) with missing part(s) to be incorporated
- a copy of the priority application or its translation that contains the element(s)/part(s)

The invitation is issued using Form [PCT/RO/107](#) and the time limit is the one set out in that form. If applicants notice the absence of element(s) or part(s) themselves, they may file the confirmation within two months from the IFD.

In case of a positive decision by the RO:

- the IFD remains the same
- the newly filed sheets become part of the IA and are
  - considered originally filed



- stamped SHEET INCORPORATED BY REFERENCE (RULE 20.6)

The applicant and the IB are informed using Form [PCT/RO/114](#).

If Form [PCT/RO/103](#) (missing elements) was issued previously:

- the IA is transmitted to the IB only now
- the IFD is communicated to the applicant using Form [PCT/RO/105](#)

The RO will issue a negative decision in the following situations.

- No explicit confirmation of incorporation by reference.
- No indication where the missing part is contained in the earlier application.
- No sheet(s) with missing part(s) to be incorporated were submitted.
- No priority document or its translation is present.
- The IA does not claim a priority.

The decision is communicated using Form [PCT/RO/114](#). Simultaneously, Form [PCT/RO/126](#) is issued, indicating the applicant's options after the rejection of the incorporation by reference. The applicant has two options:

- Option 1: request that the sheets submitted later be disregarded and the original IFD be kept.
- Option 2: have the sheets submitted later added to the IA. In that case, the IFD is changed to the date on which the RO received the sheets.

The time limit for response is one month from the date of the mailing of Form [PCT/RO/126](#). If no response is filed, the RO will apply option 2.

#### Legal references:

Rule 4.18 PCT; Rule 20 PCT

## 12. Overview: missing elements

Diagram 1

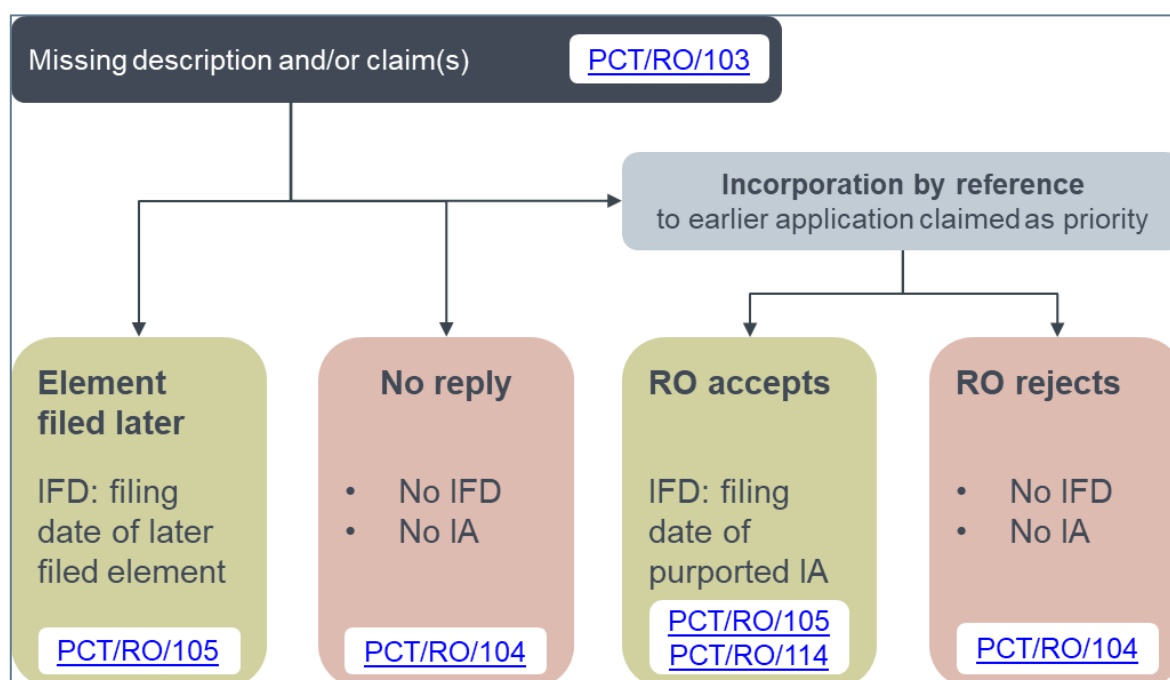
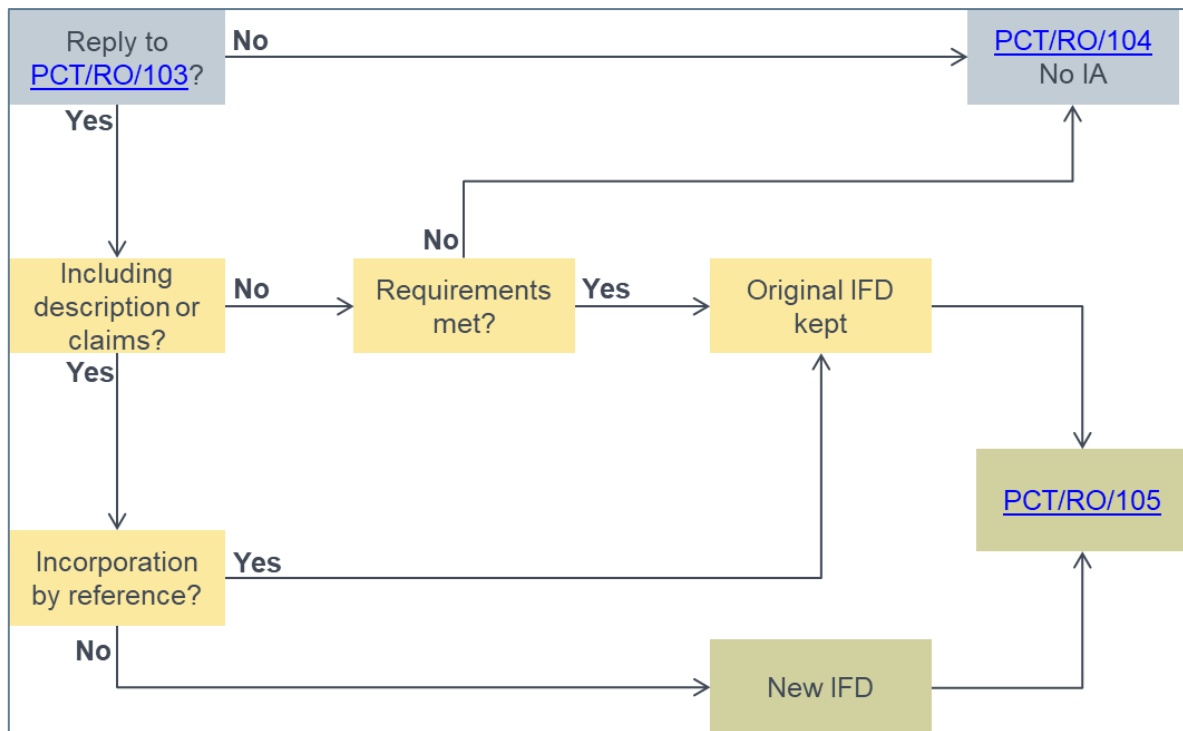


Diagram 2

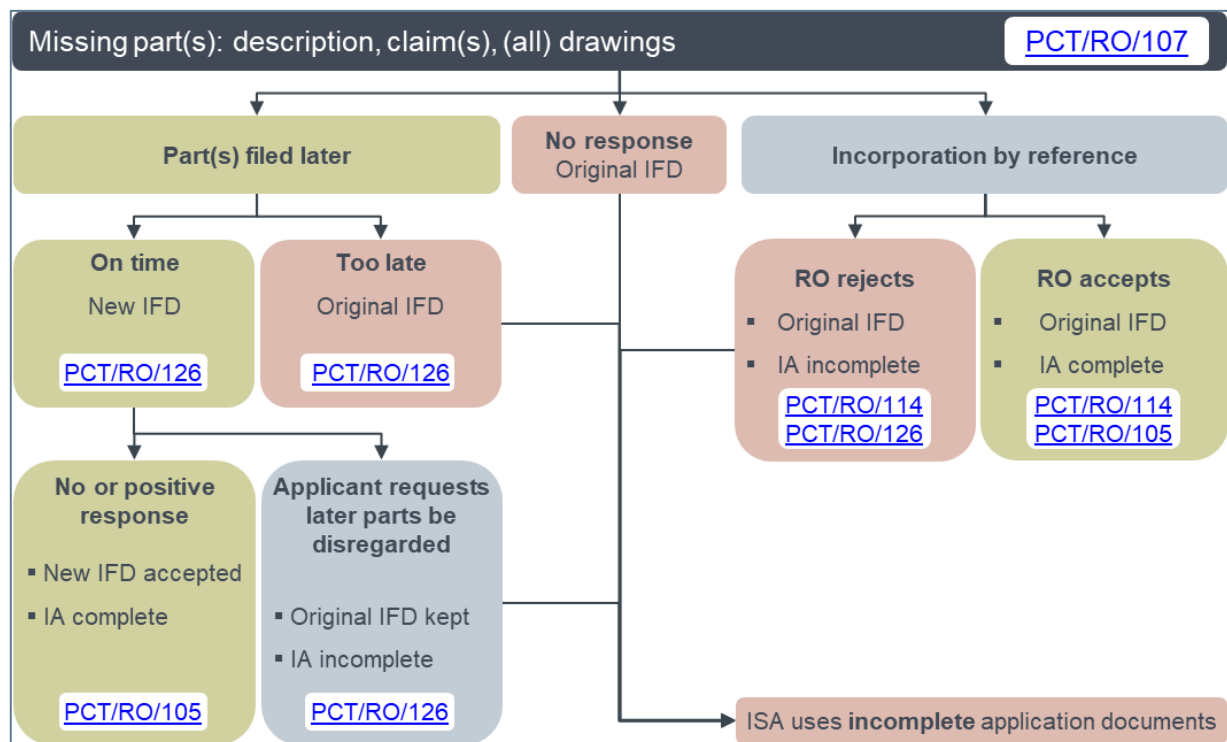


**Legal references:**

Art. 11 PCT

Rule 4.18 PCT; Rule 20 PCT

### 13. Overview: missing parts



**Legal references:**

Art. 11 PCT

Rule 4.18 PCT; Rule 20 PCT

**14. Missing part or obvious mistake?**

Place in IA	Defect	Type and form
Claims	numbering is not consecutive e.g. ...14, 15, <b>16, 18</b> , 19, 20...	Missing part <a href="#">PCT/RO/107</a>
Claims	numbering is repetitive e.g. ...14, 15, <b>16, 16</b> , 17, 18, 19...	Obvious mistake <a href="#">PCT/RO/108</a>
Title	typographical errors e.g. "hybird", "copmuter", "scalpell"	
Description, claims, drawings	typographical errors e.g. "hybird", "copmuter", "scalpell"	

**Legal references:**

Art. 11 PCT

Rule 4.18 PCT; Rule 20 PCT; Rule 91 PCT

**15. Who decides on rectifications?**

Time limits: within 26 months from the priority claim, the applicant may file a request to rectify an obvious mistake under [Rule 91 PCT](#). The competent authority for the decision depends on where the mistake is found:

Mistake in	Authority
Application (Form PCT/RO/101)	RO
Description, claims, drawings, SEQL	ISA After demand for international preliminary examination: IPEA

The definition of an obvious mistake is "that...**something else** was intended than what appears in the document concerned and that **nothing else** could have been intended than the proposed rectification".

**Legal references:**

Rule 91 PCT

## 16. Requests to rectify obvious mistakes

Under Rule 91 PCT, applicants may file a request with the RO by stating the matter to be rectified in a letter. In order to assess whether the mistake in the request was obvious, the RO may consider:

- the application form
- the content of the IA itself
- any other document submitted by the applicant with the request, including any priority document available to the RO on the IFD

The RO will authorise the rectification if, and only if, it is obvious to the RO on the IFD that **something else** was intended than what appears in the document concerned and that **nothing else** could have been intended than the proposed rectification.

The RO communicates its decision using Form [PCT/RO/109](#). A copy of the form and authorised or refused sheets is transmitted to the IB.

If the RO authorises the rectification, the rectified sheets will be stamped "RECTIFIED SHEET (RULE 91)", followed by the indication of the RO that took the decision, e.g. "RO/EP".

If the RO refuses the rectification, the sheets will not be stamped. The reasons for the refusal will be indicated on Form [PCT/RO/109](#).

In case of a refusal, the applicant has the right to ask the IB to publish the request and the reasons for the decision. The time limit for this is two months from the decision. The applicant has to pay a [special fee](#).

### Legal references:

Rule 91 PCT

## 17. Correction or addition of a priority claim

Applicants may correct or add a priority claim by filing a request with the RO or the IB. The relevant time limit is:

**either**

- 16 months from the priority date

**or**

- where the correction or addition changes the earliest priority date, 16 months from the changed priority date. In this case, the request may be submitted within four months from the IFD.

Where the correction or addition of a priority claim changes the earliest priority date, time limits based on the previous priority date that are still running will be recalculated from the changed priority date.

Using the [PCT Time Limit Calculator](#) on the WIPO website makes finding out the relevant time limit a lot easier. Simply enter the dates and click **Calculate**.

CORRECT / ADD PRIORITY

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.

Earliest Priority Date *	24/01/2022	
Priority Date as Changed *	22/06/2021	
International Filing Date *	22/06/2022	

Reset
Calculate

In our example, the time limit for correction or addition of a priority claim is 22 October 2022, i.e. four months after the IFD.

(Rule 26bis)

Time Limit for Correction or Addition of Priority Claim  
22 October 2022

### Legal references:

Rule 4.10 PCT; Rule 26bis.1 PCT

## 18. Defects in the priority claim

Both the RO and the IB check that:

- the IFD is within the priority period
- any priority claim complies with the requirements of [Rule 4.10 PCT](#).
- any indication in any priority claim is consistent with the corresponding indication in the priority document

If a defect is found, the RO will invite the applicant to correct the priority claim using Form [PCT/RO/110](#). If the IB finds the defect, Form [PCT/IB/316](#) will be used. Both forms draw the applicant's attention to the possibility of applying for restoration of the right of priority if the IA was filed outside the priority period.

If the applicant does not file a correction of the priority claim, the priority claim will be considered void and the RO or IB will so declare, using Form [PCT/RO/111](#) or Form [PCT/IB/318](#), respectively.

If a response is received after expiration of the time limit, but before issuance of those forms, the RO and IB will still accept it up to one month after the expiration of the time limit.

If the time limit for correction has expired, the applicant may request that the IB publish information concerning the matter. This is possible during the [international phase](#). The applicant has to pay a special fee.

A priority claim shall not be considered void if only:

- the indication of the number of the earlier application is missing
- an indication in the priority claim is inconsistent with the corresponding indication in the priority document
- the IA was filed after expiry of the priority period, but within two months from that date

**Legal references:**

Rule 4.10 PCT; Rule 26*bis*.1 PCT

## 19. Withdrawal of the priority claim

During the [international phase](#), applicants may withdraw one or more priority claims. The corresponding notice may be filed with the IB, the RO or, where a demand has been filed, with the IPEA.

The RO or the IPEA will mark the date of receipt of the notice of withdrawal and transmit it promptly to the IB.

Where the withdrawal of a priority claim changes the earliest priority date, time limits based on the previous priority date that are still running will be recalculated from the changed priority date.

If the notice of withdrawal of a priority claim reaches the IB after completion of the technical preparations for publication, the IB may proceed with the international publication based on the original priority date.

**Legal references:**

Rule 90*bis*.3 PCT

## 20. Restoration of the right of priority

Applicants can maintain the right of priority even if the IA was filed:

- after expiry of the priority period, **but**
- within a period of two months from the 12-month time limit

ROs must apply at least one of two criteria for taking a decision.

- 1. The failure to file within the priority period was unintentional:
  - "**unintentional**" criterion
- 2. The failure to file within the priority period occurred in spite of due care having been taken, as required by the circumstances:
  - "**due care**" criterion

ROs may charge a fee. Please refer to the [alphabetical list of ROs in the PCT Applicant's Guide](#) for more information on this.

Nice to know:

- RO/IB applies the "unintentional" criterion and does not charge a fee
- RO/EP applies the "due care" criterion and charges a fee

At RO/EP, applications for restoration of the right of priority undergo an admissibility check.

- Within two months from expiry of the priority period, the applicant has to:
  - file a written application for restoration of the right of priority
  - pay the [fee for applying for restoration of the right of priority](#)
    - the time limit for payment may exceptionally be extended by two months
  - file a statement of reasons
    - should be supported by declarations or other evidence

Other factors that RO/EP takes into consideration when making a decision:

- Missing the time limit must result from either:
  - an exceptional circumstance
  - an isolated mistake within a normally satisfactory system for monitoring time limit

Please see the [PCT RO Guidelines](#) for more information.

If the IA enters the regional phase before the EPO, only decisions taken under the "due care" criterion will be accepted. The EPO may re-examine the application.

#### **Legal references:**

Rule 26*bis* PCT; Rule 49*ter* PCT

## **21. Beyond the course**

You can explore what you have learned during this course in greater depth with the following further reading:

- [PCT Applicant's Guide, Chapter 5: Filing an international application](#)

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