

Learning path for patent administrators

International search: EPAC – entry level

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Introduction

This publication, "International search, EPAC – entry 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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All references to natural persons are to be understood as applying to all genders.

Contents

1.	Learning objectives	4
2.	Abbreviations	4
3.	ISAs: appointment and operation	4
4.	Minimum requirements for an ISA	5
5.	Competent ISA and representation	5
6.	International search fee	6
7.	PCT Direct	7
8.	Rectification of obvious mistakes	8
9.	International search: restrictions	9
10.	Informal clarification	9
11.	Lack of unity of invention	9
12.	Protest	10
13.	ISR	10
14.	Declaration of non-establishment of ISR	12
15.	WO/ISA	12
16.	SISR	13
17.	Beyond the course	13

1. Learning objectives

Participants in this course will learn about:

- the ISA's appointment, operation and requirements
- ISA related fees, reductions and refunds
- PCT Direct
- ISA decisions on obvious mistakes in the IA
- restrictions to the international search
- lack of unity of invention including payment under protest
- the ISR and its components
- the Declaration of non-establishment of ISR
- the WO/ISA
- the ISA acting as SISA

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 supplementary international search
SISR	supplementary international search report
WIPO	World Intellectual Property Organization
WO/ISA	written opinion of the International Searching Authority

3. ISAs: appointment and operation

- ISAs are appointed by the PCT Assembly for a fixed period of time, which is, however, extendable. Only national offices or intergovernmental organisations can be appointed as ISAs.
- Being appointed as ISA automatically confers the status of an appointed IPEA.
- Acting as an ISA/IPEA is subject to an agreement between the IB and the ISA/IPEA.
 - [Please click here for an overview of the agreements between the IB and the various ISAs/IPEAs](#)

- Offices and/or organisations may only be appointed as ISAs if they fulfil certain minimum requirements.

Legal references:

Art. 16 PCT; Art. 17 PCT

Rule 35 PCT

4. Minimum requirements for an ISA

- An ISA needs:
 - at least 100 staff members capable of carrying out international searches
 - possession of or access to the minimum documentation:
 - patents issued in and after 1920 by CH, CN, DE, FR, GB, JP, KR, RU, SU and US
- ISA staff have to be capable of understanding the languages of the minimum documentation or its translations.

Legal references:

Rule 34 PCT; Rule 35 PCT; Rule 36 PCT

5. Competent ISA and representation

- Depending on the applicants' situation, one or more ISAs may be competent to carry out the international search. Among others, the deciding factors are language and the applicant's place of residence and nationality.
- The various ROs have specified which ISA is competent for which kind of situation. The [PCT Applicant's Guide](#) contains a list of all ROs with the necessary details.
- By default, the ISA will correspond with the applicant, common representative or agent indicated in the request form. There is, however, the option of sub-authorising as well as filing a separate [power of attorney](#) for representation before the ISA only.
- The EPO does not require a power of attorney for payments made on behalf of the applicant. This situation could occur after the issuance of an invitation to pay additional fees, for example. For more information, please see [Chapter 11](#).

Examples

PCT

POWER OF ATTORNEY
(for an international application filed under the Patent Cooperation Treaty)
(PCT Rule 90.4)

The undersigned applicant(s) (Names should be indicated as they appear in the Request Form (PCT/RO/101)):

hereby appoints (appoint) the following person as: ☐ agent ☐ common representative

Name and address
(Family name followed by given name; for a legal entity, full official designation. The address must include postal code and name of country.)

to represent the undersigned before ☐ all the competent International Authorities
☐ the International Searching Authority only
☐ the Authority specified for supplementary search only: _____
(please indicate the Authority(ies) specified for supplementary search)
☐ the International Preliminary Examining Authority only

in connection with the international application identified below:

Title of the invention: _____

Applicant's or agent's file reference: _____

International application number (if already available): _____

filed with the following Office _____ as receiving Office
and to make or receive payments on behalf of the undersigned.

Signature of the applicant(s) (where there are several applicants, each of them must sign; next to each signature, indicate the name of the person signing and the capacity in which the person signs, if such capacity is not obvious from reading the request or this power):

Date: _____

Form PCT/Model of power of attorney (for a given international application) (January 2009)

Legal references:

Rule 90 PCT

6. International search fee

General

- ISAs may charge a search fee for their own benefit.
- The fee amount differs from ISA to ISA and is the amount valid on the date that the RO received the IA.
- Usually, that date is the IFD. It can be a later date in cases where the RO was not competent and the IA was transmitted to RO/IB under [Rule 19.4 PCT](#).
- In principle, ISAs in Europe charge the same amount.

Legal references:

Rule 16 PCT

Reductions

- Some ISAs offer fee reductions. ISA/EP, for example, grants a 75% reduction for applicants from [low-income or lower-middle-income economies](#), subject to conditions, which have to be fulfilled by all applicants:
 - The applicant is a natural person.
 - The applicant is both a national and a resident of one of the listed countries. Nationality and residence can be in different countries.
 - The countries in question are not EPC member states.

Legal references:

OJ EPO 2021, A58

Refunds

- Some ISAs will refund (part of) the search fee if the results of an earlier search carried out by the ISA can be taken into account.
- For ISA/EP, that is 100% or 25% of the search fee, depending on the extent to which the earlier search was taken into account. For some national offices, the EPO carries out searches, but does not issue a written opinion. The refund percentages for those cases are lower, 70% and 17.5%. In order to qualify for a (partial) refund of the international search fee, the application for which the earlier search was carried out must be claimed as priority.
- ISA/EP will also refund 100% of the search fee if the IA is withdrawn before the start of the international search.
- The exact conditions for refunds by the individual ISAs can be found in the [PCT Applicant's Guide](#).

Legal references:

Rule 41 PCT

OJ EPO 2022, A9

7. PCT Direct

- IAs claiming priority of an earlier application that was searched by the EPO may make use of the so-called PCT Direct filing, under which ISA/EP allows the applicant to file informal comments together with the IA. Filing an IA using PCT Direct needs to be indicated in the request form.
- The applicant can amend the IA or comment on the results of the earlier search and file a summarising statement.
- The examiner will take the above into account for the international search and mention that fact in the WO/ISA.
- The aim is to increase the patentability chances of the IA.

Legal references:

OJ EPO 2017, A21

8. Rectification of obvious mistakes

General

- Obvious mistakes in the IA or any other submitted document may be rectified at the applicant's request. The request has to be filed within 26 months of priority and with the competent authority:
 - for mistakes in the request: the RO
 - for mistakes in the description, claims, drawings or SEQL: the ISA
 - if preliminary examination has started: the 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."

Exclusions

- The addition of elements is not allowable.
- The omission of one or more entire elements or sheets cannot be rectified. There might be a possibility to have those enter the IA using incorporation by reference under Rule 20.5 PCT. The competent authority to contact is the RO.
- Mistakes in the abstract or title cannot be rectified under this rule but can be dealt with in the framework of the ISR.
- Mistakes in an amendment under Art. 19 PCT are excluded unless the IPEA is competent.

Filing a request

- Filing replacement sheets is mandatory, in both a marked-up version and a final version.
- The sheets should contain as little non-technical information as possible, e.g. the words "rectified sheet" should be avoided.
- Only sheets that were actually changed due to rectification have to be filed.
- The replacement sheets must be interchangeable with the ones on record, so that the IA remains consistent.
- Using a spell checker when drawing up the IA can avoid typographical errors, the correction of which causes significant extra work and costs.

Decision

- The decision on the request is communicated to the applicant by means of Forms [PCT/RO/109](#), [PCT/ISA/217](#) or [PCT/IPEA/412](#), depending on the competent authority. A copy of those forms and possible rectified sheets is sent to the IB.
- Authorised sheets are stamped "RECTIFIED SHEET (RULE 91)" or an equivalent text in the language of filing or publication. They become part of the IA and are published by the IB. Although these sheets substitute the original ones, they are considered originally filed.
- Positive decisions under Rule 91 PCT are mentioned in the ISR and WO/ISA.

Legal references:

Rule 91 PCT

9. International search: restrictions

- The international search is obligatory for any international application.
- The ISA is not required to carry out searches for claims relating to:
 - scientific and mathematical theories
 - plant or animal varieties obtained by growing or breeding
 - business methods, performing purely mental acts or playing games
 - methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods
 - mere presentations of information
 - computer programs
- Also, claims that are unclear or make unnecessary reference to other parts of the IA do not have to be searched.

Legal references:

Rule 6 PCT; Rule 39 PCT

10. Informal clarification

- Some ISAs have a procedure in place whereby, if examiners encounter a problem identifying exactly what the subject of the international search should be, they can contact the applicant directly to seek informal clarification.
- The ideal sequence of events is that the examiner contacts the applicant by phone to discuss the case, receives clarification on the matter to be searched and writes a summary of the conversation, which is sent to the applicant. If it is not possible to obtain immediate clarification, the applicant is invited to provide clarification using [Form PCT/ISA/207](#). The applicant is not obliged to respond.
- ISA/EP uses a slightly different version of this form. It is called EP/PCT-CLAR and the time limit for response is usually 14 days.

Legal references:

OJ EPO 2011, 327

11. Lack of unity of invention

- An IA should cover one general inventive concept only. If the international search reveals more than one inventive concept, ISAs may invite applicants to pay additional fees.
- Instead of an ISR, the ISA issues [Form PCT/ISA/206](#) (invitation to pay additional fees). The time limit for payment is one month.
- The invitation contains the search result for the invention first mentioned in the claims and a written statement as to why the ISA found that unity of invention is lacking.
- The applicant may pay additional fees under protest. The ISA may charge a protest fee for reviewing the case.

Legal references:

Art. 17 PCT

Rule 13 PCT; Rule 40 PCT

12. Protest

Admissibility

- The admissibility of protests filed with ISA/EP is determined by verifying the due receipt of the following:
 - payment of at least one additional fee
 - payment of the protest fee
 - a reasoned statement discussing the arguments in the invitation
- "Due receipt" means:
 - within the time limit of one month from the date of mailing of the invitation plus a period of grace of 7 days and
 - fees paid in full
- The applicant may choose to pay all additional fees or only selected ones. It is also possible to pay certain fees under protest and others without protest.

Review procedure

- Once the protest has been found admissible, it will be looked at by a review body within the ISA. The examiner who issued the invitation to pay additional fees may be a member of that review body. At ISA/EP, the review body consists of three persons.
- The issue that is discussed during the review is whether the reasoning in the invitation was sufficient. The decision is communicated to the applicant by means of [Form PCT/ISA/212](#). At ISA/EP, the decision has to be unanimous.
- A copy of said form is transmitted to the IB. The applicant may ask the IB to transmit the protest and the decision to the DOs/EOs at the end of the international phase.

Refunds

- If the review body finds the protest entirely justified, all paid additional fees plus the protest fee will be refunded.
- If the review body finds the protest partly justified, the additional fee(s) in question will be refunded, but not the protest fee.
- If the review body finds the protest unjustified, there will be no refund.

Legal references:

Rule 40 PCT

13. ISR

Form, data and language

- The ISR is issued using [Form PCT/ISA/210](#).
- The ISR identifies the IA by indicating the IA number, the IFD and the applicant. It also mentions the name of the ISA, the officer responsible for the ISR, the earliest priority date, the date the international search was completed and the date the ISR was despatched.

- Its language is that of the international search. If this is not a language of publication, it will be in the language of the translation. If the ISR is not in English, another ISR in English is issued.
- In general, the indications in the ISR can also be found in the WO/ISA.

Contents

- The ISR will indicate the following facts:
 - if a rectification of an obvious mistake was taken into account for the international search
 - if certain claims were found to be unsearchable and
 - if the IA is considered to lack unity of invention and if additional fees were paid
- It will elaborate on the ISA's findings relating to unsearchable claims and/or the IA lacking unity of invention.
- Subject-matter and technical fields searched are indicated by International Patent Classification symbols.

Legal references:

Art. 18 PCT

Rule 43 PCT; Rule 45 PCT

Title of the invention

- The title of the invention should be short and precise and have two to seven words when in or translated into English. Longer titles are possible, if the invention cannot be represented properly by a shorter title.
- If necessary, the ISA will establish the title.
- The applicant does not have the right to comment on the title established by the ISA.

Legal references:

Rule 4.3 PCT; Rule 37 PCT

Abstract

- The abstract should give a summary of the disclosure of the IA.
- The text of the abstract is established by the ISA; however, the applicant has the right to modify the abstract or make comments on it. The time limit for this is one month from the date of mailing of the ISR.
- As the abstract appears on the front page of the international publication, together with the figure that best characterises the invention, its main technical features should be followed by reference signs, so that interested parties can easily assess if they need to take a closer look at the IA itself.

Figure to be published with the abstract

- The figure to be published with the abstract should illustrate the disclosure of the IA and be considered together with the abstract.
- Space permitting, multiple figures are possible.
- All other figures will be published in the part containing the IA.

Legal references:

Rule 8 PCT; Rule 38 PCT

Citations, major document categories

- A: general state of the art, not particularly relevant
- E: earlier application or patent but published on or after the IFD
- P: published before the IFD, but after the priority date
- X: particularly relevant. The claimed invention is not novel or does not involve an inventive step. The document is taken alone.
- Y: particularly relevant. The claimed invention does not involve an inventive step. The document is combined with one or more other such documents. The combination is obvious to a skilled person.

Citations, minor document categories

- D: document cited in the description of the IA
- L: document which may throw doubt on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)
- O: referring to an oral disclosure, use, exhibition or other means
- T: document published after the IFD or priority date and not in conflict with the IA, but cited to understand the principle or theory underlying the invention
- &: member of the same patent family

Legal references:

Rule 43 PCT

14. Declaration of non-establishment of ISR

- If no meaningful search can be carried out for the whole IA, the ISA will issue a declaration of non-establishment of ISR (declaration) using [Form PCT/ISA/203](#).
- The reasons why the ISA found the IA to be unsearchable are indicated in the document.
- On receipt of a declaration, the applicant needs to check carefully if the objections to the IA can be overcome in the national or regional phase. Also, international preliminary examination before a different IPEA might be an option.

Legal references:

Art. 17 PCT

Rule 39 PCT

15. WO/ISA

- The WO/ISA is issued using [Form PCT/ISA/237](#), simultaneously with the ISR or the declaration.
- It discusses the passages found in the documents cited in the ISR in more detail, formulating a non-binding opinion on novelty, inventive step and industrial applicability.
- If necessary, it contains information on the validity of priority claims and points out defects in the IA, both formal and technical.
- It will also repeat the remarks on unsearchable claims and/or lack of unity of invention made in the ISR or declaration.

Legal references:

Rule 43*bis* PCT

16. SISR

- The SISA carries out the supplementary international search and issues the SISR using [Form PCT/SISA/501](#). There is no separation between search report and written opinion.
- Most indications in the ISR and WO/ISA can also be found in the SISR. The details that are not included are:
 - mention of payment of additional fees, as these are not foreseen in the SIS procedure
 - the text of the abstract and classification, as they are only important for IPub, which takes place on the basis of the ISR
- The SISR will, however, indicate if the applicant requested a review of a finding of lack of unity of invention.

Legal references:

Rule 45*bis* PCT

17. Beyond the course

You can deepen what you have learned during this course with the following further reading:

- [PCT Applicant's Guide, Chapter 7: international search procedure](#)

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