



**A STUDY OF PATENT SYSTEM IN INDIA IN THE LIGHT OF PATENT
COOPERATION TREATY**

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ABSTRACT

This article discusses the role of patent laws in protecting new inventions and the evolution of India's patent system. Patents are considered intellectual property and provide legal protection for novel and practical innovations. The current patent law in India was established in 1972 and has since undergone several modifications to keep up with technological advancements. In 1998, India signed two international agreements, namely the Patent Cooperation Treaty (PCT) and the Paris Convention on the Protection of Industrial Property (PCT), which govern the protection of industrial designs, trademarks, and patents. The PCT allows inventors to file a single application that is valid in multiple countries, making it more convenient and cost-effective to obtain patent protection globally. The paper focuses on India's patent system within the framework of the PCT, exploring its effectiveness in promoting innovation and economic growth. It also examines the challenges faced by Indian companies and inventors when applying for domestic and international patents. The study utilizes data from government reports, court cases, and expert interviews to provide valuable insights for decision-makers, inventors, and companies navigating the Indian patent system and the PCT framework. Additionally, it delves into the patent filing process in India through the PCT.

Keywords: PCT, Patent, IP, Application, WIPO etc.

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INTRODUCTION

The emergence of the Patent Cooperation Treaty (PCT) has brought about significant changes in the global landscape of intellectual property rights. The patent system is a crucial component in safeguarding and fostering the rights of inventors, as nations endeavour to establish a milieu that is conducive to innovation and technological progress. India, renowned for its multifaceted and dynamic innovation ecosystem, has been examining the ramifications of the Patent Cooperation Treaty on its current patent framework within this particular setting. The present discourse delves into the complexities of India's patent system, scrutinising the influence of the Patent Cooperation Treaty (PCT) and investigating the obstacles and prospects it entails. Through an examination of India's strategy towards the Patent Cooperation Treaty (PCT), significant knowledge can be obtained regarding the country's efforts to conform its patent framework with global norms and encourage innovation-based development.¹

PATENT APPLICANTS

“As per Section 6 of the Patent Act of 1970, any of the aforementioned individuals may submit an application for a patent for a creation, either alone or in collaboration with another:

- a. by anyone claiming to be the true and original creator of the work;
- b. by anyone holding the right to produce such an application as the assignee of the person claiming to be the true and original creator; or by the legal representative of any deceased person who, immediately prior to his passing, met the requirements to submit such an application.”²

THE PATENT COOPERATION TREATY

The Patent Cooperation Treaty (PCT) is a globally recognised legal instrument that aims to streamline the process of filing patent applications across different jurisdictions. Its primary objective is to provide a framework for the efficient and effective international protection of inventions through a centralised filing system. The treaty provisions enable the consolidation of patent protection applications across multiple countries into a single application. The Patent Cooperation Treaty (PCT) has implemented a clearly delineated protocol for the submission and

¹ Massel O. Louis and Tourowski, “PCT Implementation, Effect on Filing and Procedure”, 59, *Journal of Patent and Trademark Office Society*. 2 10, (1977).

² The Patent Act of 1970, § 6.

handling of a singular application, which is subsequently evaluated by the patent offices of the participating nations.

The Patent Cooperation Treaty (PCT) has implemented a more efficient mechanism for submitting global patent protection requests. “The implementation of a singular application under the control of a centralised governing body has resulted in a significant improvement in the efficiency of a previously laborious and monotonous procedure. The lack of multiple filings has made the process more economical than before.” 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.”

“The England and Wales High Court rendered a verdict in the case of *Oxonica Energy Ltd v Neuftec Ltd*, wherein it was established that the Patent Cooperation Treaty (PCT) serves a facilitative role by streamlining the patent application process, but does not provide an assurance of patent protection. The ultimate determination as to whether or not to grant such protection to the applicants lies with the national and regional patent offices.”³

The administration of the PCT falls under the purview of the World Intellectual Property Organisation. The managerial personnel concurrently engage in coordination with the contracting states. The International Bureau is formed. The individual's duties encompass the processing and evaluation of submissions, in addition to engaging with applicants and managing the publication of the applications.

REASONS FOR THE PATENT COOPERATIVE TREATY FORMATION

Initially, the concealment of creations was rigorously maintained to ensure their confidentiality. The advancements in innovation were occasionally presented as a matter of public notoriety as they grew. During the Paris exposition of 1867, Germany received significant recognition as an

³ [2009] EWCA Civ 668.

industrialised nation. During the renowned Vienna exhibition in 1873, it was observed that the American delegation did not partake in the event. The rationale behind the need for scholarly assurance of American manifestations from German countries is to ensure that the ideas are well-protected. This event marked the commencement of the Paris exhibition in the year 1883. This global agreement facilitated the ability of individuals from one country to secure their expressions in another country, contingent upon the other country's membership in the convention. The principal advantage lies in the innovator's entitlement to claim ownership of their creation based on necessity. Consequently, this marked the inception of mechanical property insurance in several nations. The year 1893 marked the establishment of the United International Bureau for the Protection of Intellectual Property (BIRPI) in Berne, Switzerland, with the aim of fulfilling managerial responsibilities.

ROLE OF THE PATENT COOPERATIVE TREATY

The Patent Cooperation Treaty confers several benefits to patent system clients. Specifically, it involves the submission of a single application in a single language, which is recognised in PCT member countries. Additionally, it provides a one-time evaluation of the patent instead of requiring evaluation in each individual country, offers global search capabilities to facilitate determination of prior art for patentability, enables international publication of related search reports, reduces communication requirements by allowing for a single correspondence to all designated offices, permits any individual from a member country to file a single opposition regarding the patentability of the invention, and provides uniform procedures and economic advantages for the inventor in all relevant aspects. Moreover, the primary objective of the Patent Cooperation Treaty (PCT) is to facilitate and expedite access by businesses and other sectors to technical information pertaining to innovations, while also assisting developing countries in their efforts to access technology.

RECENT DEVELOPMENTS REGARDING THE PCT

- **PATENT SCOPE**

Since 2018, UI has been dedicated to the advancement of e-PCT Filing, e-PCT Document directing, and e-PCT filing. Presently, UI has access to approximately 55 available receiving Offices. The Patent scope provides clients with unrestricted access to over 67 million patent records, in addition to over 3.3 million Patent Cooperative Treaty applications. The aforementioned encompasses the collections of public patent information from various patent

agencies. The PATENT SCOPE platform offers a range of impressive features, such as cross-lingual and synthetic compound search capabilities, as well as machine translation.

The interface is presently available in ten different languages. The tab labelled 'Records' has been updated to include a novel section titled 'Search and Examination-Related Documents'. The PATENT SCOPE platform has implemented a secure access system that operates through HTTPS. Cross-Lingual Information Retrieval (CLIR), also known as Cross-Lingual Expansion, has advanced to enable the search for a term or expression and its various forms in multiple languages. Upon inputting the essential terminology in a given language, the system will suggest all conceivable variations and subsequently proceed to interpret the term(s), while also conducting a search for patent records in various languages.

- **The WIPO Pearl**

The WIPO dataset, an online linguistic resource employed for multilingual content retrieval, has recently incorporated an additional component known as WIPO Pearl. It is available in each of the ten Patent Cooperation Treaty (PCT) languages. This facilitates the promotion of precise utilisation of pivotal terminology across diverse languages and also simplifies the process of searching and disseminating scientific and technical information. All substances listed under the Pearl classification system of the World Intellectual Property Organisation (WIPO) have been approved by WIPO specialists and terminologists with extensive experience in the field.

- **Licensing accessibility**

Candidates who are interested in implementing authorization arrangements similar to those of their PCT application may refer to the International Bureau (IB) and request that this information be made available on PATENT SCOPE. It is necessary for candidates to submit an Authorising Availability Request along with the completion of Form PCT/IB/382 via the e-PCT system to the International Bureau (IB). Kindly note that this request can be initiated either at the time of recording or within a period of 30 months from the date of need. Applicants have the ability to document multiple authorization requests or revise previously submitted ones (within a timeframe of 30 months from the date of requirement). The authorization indicators will subsequently be displayed on PATENT SCOPE within the Bibliographic Information section, accompanied by a hyperlink to the submitted request for permission. The recently updated WIPO GREEN platform serves as a connected platform that facilitates the matching of owners of environmentally

sustainable technologies (ESTs) with technologies that are seeking licencing or partnership arrangements.

CONCLUSION

In summary, the analysis of the Indian patent system within the framework of the Patent Cooperation Treaty (PCT) presents potential advantages and obstacles for the country's intellectual property environment. The research underscores the favourable consequences of India's adherence to the PCT, as it has facilitated opportunities for heightened global cooperation, simplified patent application procedures, and fortified patent safeguarding for innovators. Notwithstanding, there are specific apprehensions that persist, including the necessity to tackle the accumulation of patent applications and enhance the effectiveness of examination protocols. Furthermore, prioritising the accessibility of patent rights for all stakeholders, including small and medium enterprises and individuals, is imperative. The study's results emphasise the significance of ongoing assessment and enhancement of the Indian patent system to facilitate innovation, stimulate investment, and drive the nation's technological progress on a worldwide scale.