

Topic 4: Types of Work Products and Sources for their Retrieval

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> Cybercity November 23, 2021

Agenda

Types of work products/examination results

- intermediary
 - PCT international phase
- final
- Overview of options and sources for retrieval
 - Patent registers (primary sources)
 - Work-sharing platforms (secondary sources)



Work-Sharing in the PCT national phase

Utilizing examination work products from other national phases for improving **efficiency** and **quality** requires

Databases/platforms providing

- Patent family information (family table) [>Topic 2]
- Examination status of family members [>Topic 3]
- Access to examination work products (dossiers, file wrappers) of family members [>Topic 4]
- Ideally, platforms which integrate this information in a user-friendly manner, e.g. within family table; and with additional tools, for example, for comparing work products (Common Citation Document CCD) [>Topic 6]
- Information on differing national practices (naming and content of work products; important case law; exclusions; ..)

Actions during life cycle of application

Actions are performed by

- Applicant/representative
- Office officials
- (Third parties)

As defined by

- Law
- Regulations
- other (codified) legal instructions
- Habitual practice

Communicated usually in written form

- Paper copies
- Electronic copies in file wrapper/dossier
 - > 'examination work products'

Publicly accessible ('laid open') for published applications:

> 'file inspection'

WORLD INTELLECTUAL PROPERTY ORGANIZATION

Types of examination work products

Intermediary or pre-grant work products

- Search reports
 - basic list of citations (cited by examiner, by applicant)
 - enriched search reports (citation category X, Y, ..; relevant claims;...)
- Search strategies
- Written opinions, examination reports
- Communications from applicant to examiner
- Protocols of hearings
- Third party observations
- **Final** work products/results
 - Granted claims; claims after opposition
 - Rejections; withdrawals following substantive reports; abandoned claims
- **Post-grant** work products/results
 - Additional prior art from opposition/re-examination/invalidation
 - Restricted claims
 - Communications between involved parties (3+)

Overview of differing terminology

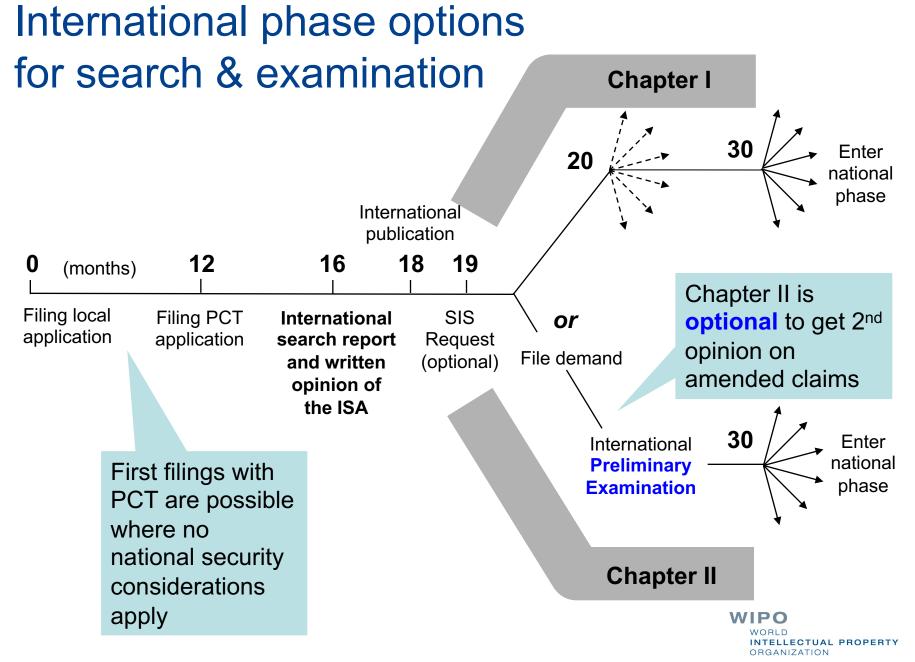
Search reports (basic; enriched)/Citations

- USPTO: "List of references cited by examiner", "List of references cited by applicant and considered by examiner"
- JPO: "Search Report by Registered Searching Organization"
- EPO: "European Search Report"

Written opinions, examination reports

- PCT: "Written opinions" = examiner statements before IPRP issuance (sent to applicant)
- PCT: IPRP = Written opinion sent to designated/elected offices at the end of the international phase
- EPO: "European search opinion", "Communication from the examining division" (subsequent written opinions during examination)
- USPTO: "Non-final rejections", "Final rejections"
- JPO: "Notification of reasons for refusal"
- CA: "Examiner requisition"





Main products of international phase

Work products of authorities

- Publication of international application (bibliographic data, abstract, description, drawings, claims) [Rule 48]
- International Search Report (ISR) [Rule 43]
- Written Opinion of ISA (WO-ISA) [Rule 43bis]
 - prepared as complement to international search, but deals in substance with examination matters
- Optional) Supplementary International Search Report (SISR) [Rule 45bis.7]
 - International Preliminary Report on Patentability (IPRP)
 - IPRP (Chapter I) = WO-ISA plus cover sheet [Rule 44bis], or
 - IPRP (Chapter II) = International Preliminary Examination Report (IPER)
- Other statements related to patentability
- (Optional) informal statements by applicant on WO-ISA and respective amendments of claims [Article 19(1); Rule 46.4]
- (Optional) third party observations [Sect. 801ff]

International publications

- 18 month after filing/priority date: WO-A1 or WO-A2
- WO-A1: international application + international search report
 - WO-A2: international application only if ISR not yet available
 - Front page, description, drawings, claims
 - Declaration that no ISR will be established (Article 17(2)(a))
- WO-A3: Later publication international search report + front page
- WO-**A4**: Later publication of amended claims and/or statement (Article 19)
- WO-**A8**: Republication front page with corrections
- WO-A9: Republication of full application or ISR with corrections, alterations or supplements



International Search Report (ISR)

- Established by (selected) competent ISA
- Search based on claims as originally filed (Article 15)
 - Limited utility of ISR for claims amended for national phase entry
- Search performed according to PCT Examination Guidelines
- Prior art is everything made available to the public (Rule 33)
 - in written disclosure (ISR may refer to oral disclosure, exhibition, though)
 - prior to the international filing date (i.e. priorities are not taken into account for the international search)
- Not any written disclosure is to be searched: only PCT minimum documentation (Rule 34)

Top-up search in national or further patent collections

- In case of lack of unity, only the "first" invention will be searched (Rule 40), unless additional fees are paid
- ISA can decline search of certain subject matter (Rule 39), namely subject matter that is excluded from patentability in national law (PCT does not define what is patentable!)

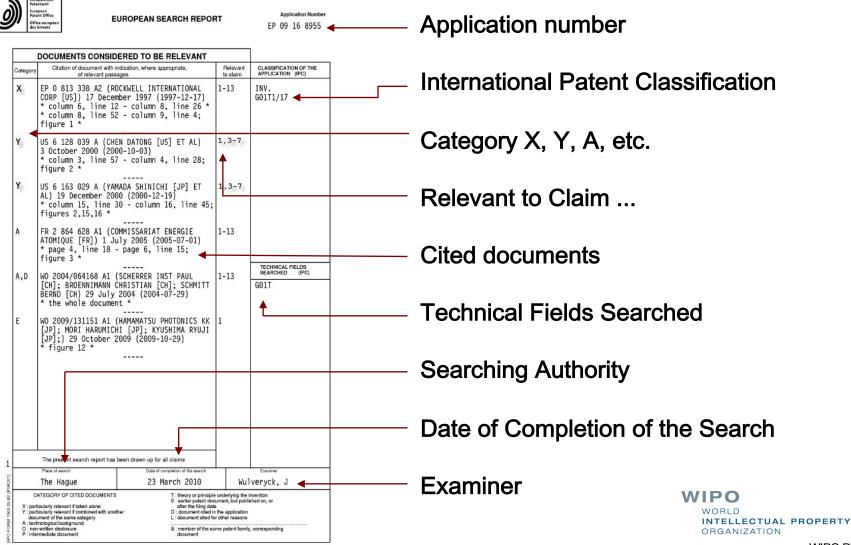


ISR

ISR is "enriched" search report as it includes

- List of relevant prior art documents (citations) **plus** indications:
- Claims for which a citation is relevant
- Parts of the cited document which are relevant (e.g. 'line 5-6, page 7; drawing 6') for those claims
- Why the document is relevant (challenging novelty, inventive step; describing background art)
- IPCs of the claimed subject matter
- Limited search strategy: technology areas (IPC) searched
- Includes observations regarding lack of unity (Box III), or whether no meaningful search could be performed (clarity of claims)

Enriched prior art search reports



Categories of citations

- X particularly relevant if taken alone (novelty)
- Y particularly relevant if combined with another document of the same category (inventive step)
- A technological background
- O non written disclosure
- P intermediate document, i.e. published between the earliest priority date and the filing date
- E earlier document but published on or after the filing date
- T theory or principle underlying the invention
- D document cited in the application
- I (applied by EPO for limited period of time)

See 16.59ff of the PCT Examination Guidelines

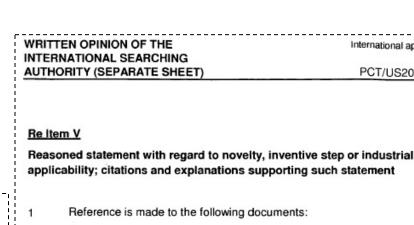


Written Opinion (WO), IPRP (Chapter I,II)

- WO is established together with ISR but not published with ISR
- Deals in substance with examination matters; presents a preliminary opinion on:
 - novelty (not anticipated)
 - inventive step (not obvious)
 - industrial applicability
- Priority dates are taken into account
- Sent to applicant with ISR
- WO is converted to IPRP (Chapter I) if no chapter II preliminary examination is requested, and communicated to DO (30 months) together with any informal comments of the applicant on WO-ISA
- Not binding for national phase examination
- Made publicly accessible (file inspection) after 30 months (Rule 44ter), e.g. in
 - Patentscope, EP-Register, Global Dossier
 - not yet in CCD



PCT - WO



- D1 US 2002/186921 A1 (SCHUMACHER LYNN C [CA] ET AL) 12 December 2002 (2002-12-12)
- D2 WO 2007/136816 A2 (MASSACHUSETTS INST TECHNOLOGY [US]; BULOVIC VLADIMIR [YU]; KYMISSIS IO) 29 November 2007 (2007-11-29)
- The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claims 1, 4-15, 17-18, 20 is not new in the sense of Article 33(2) PCT.
- 2.1 D1 discloses

2

an optical fiber capable of being diagnosed non-invasively comprising

an optical fiber (12) for conveying a light beam; said optical fiber comprising a first end for receiving said light beam and a second end opposed thereto, a core (14) comprising an inner wall, and a cladding (16) surrounding said core,

said optical fiber further comprising at least one uncladded portion comprising a plurality of quantum dots (26) dispersed in a medium,

wherein said quantum dots become activated by evanescent wave coupling resulting from total internal reflection of said light beam contacting said inner wall of said optical fiber core and wherein said activation results in emittance of light from said quantum dots (Fig. 2c; paragraphs [0033], [0045]).

ORGANIZATION

Therefore, the subject-matter of present claim 1 is not novel over the teachings of D1.

D1 also discloses 2.2

WIPO PUBLIC

International application No.

PCT/US2010/020787

Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

. Statement				
Novelty (N)	Yes:	Claims	<u>3, 19</u>	
	No:	Claims	1.2.4-18.20	
Inventive step (IS)	Yes:	Claims		
	No:	Claims	<u>1-20</u>	
Industrial applicability (IA)	Yes:	Claims	1-20	
	No:	Claims		

Citations and explanations

see separate sheet

Form PCT/ISA/237 (April 2007)

Statements (Rule 70.6)

Explanations (Rule 70.8)

Access to Examination Work Products

- **File inspection (dossier)** gives access to all communications between applicant and office/examiner, i.e. examination work products, <u>for published applications</u>, in particular
 - Search reports (citations)
 - examination reports/written opinions
 - Original and amended claims
 - Opinions and search reports are based on (amended) claims
 - Claim sets may be different in different jurisdictions
 - May limit the utility of work products if claim set to be examined is different from that of other jurisdictions
 - Final rejection rulings, grant decisions



Dossier Access (and Status Information)

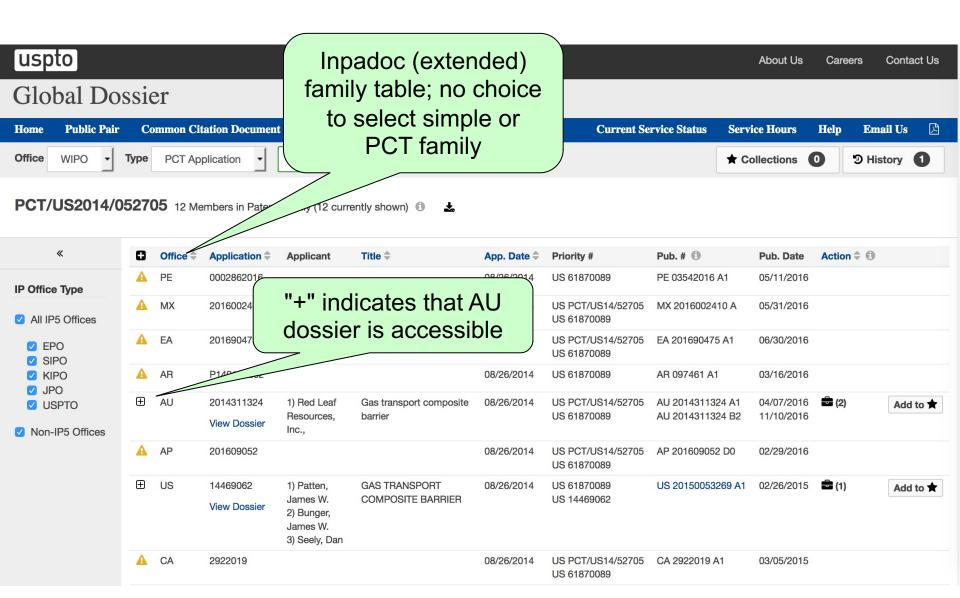
- Primary sources: each jurisdiction defines how authoritative (official) patent information is published and the respective authority in charge
- National Patent Registers are authoritative sources for
 - national legal status: all do (many online)
 - national family relations (divisions, continuations)
 - national publications
 - online access to national **dossiers** (public file inspection): **some do**
 - **Secondary sources (dossier access platforms):** one-stop shops to access information from several primary sources through a unified user interface (building on a table of the patent family); access with English user interface:
 - **Espacenet Global Dossier** (public)
 - **USPTO Global Dossier** (public)(Google Patents links to USPTO GD)
 - J-PlatPat One Portal Dossier (public)
 - CPQUERY (registration required)
 - **WIPO CASE** (non-public)
 - **WIPO PATENTSCOPE** (public)

Global Dossier

- Initially IP5 initiative (initially labelled One Portal Dossier)
- Access to IP5 Offices' file wrappers/dossiers
 - always up-to-date because it is retrieved on-the-fly from IP5 national registers
 - Machine translation for non-English documents
 - Accessible via Espacenet, USPTO-GD, J-PatPLat, CPQUERY, Google Patents
 - Same data, only different user interface
 - Access to non-IP5 dossiers of 'providing' Offices of WIPO-CASE
 - partly operational
- Espacenet interface with additional information/tools
 - Different types of families viewable (USPTO GD only extended family)
 - Inpadoc legal status
 - integrated access to Common Citation Document (CCD):
 - viewing <u>and</u> comparing of citations from members of extended and simple families from AP, AU, CA, CN, DE, EA, EP, JP, KR, RU, TW, US, WO,
 - 'comparing': which examiners have seen a particular citation or an equivalent thereof

WORLD INTELLECTUAL PROPERTY ORGANIZATION

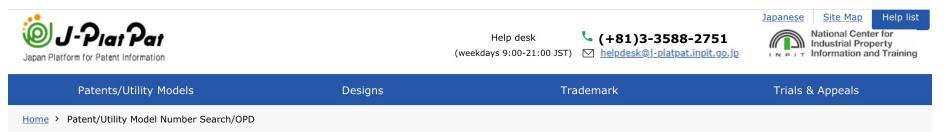
Global Dossier at USPTO



Global Dossier at USPTO

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One Portal Dossier (OPD) in J-PlatPat

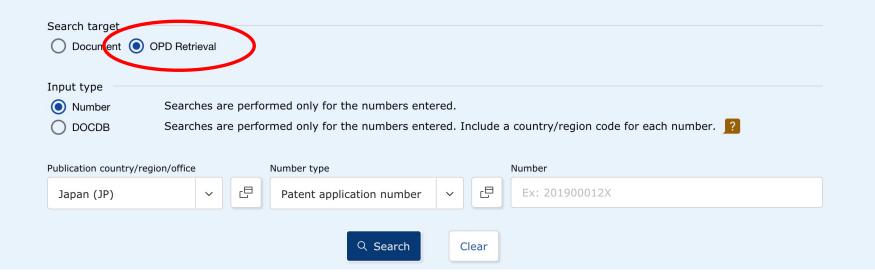


Q Patent/Utility Model Number Search/OPD

If you select a document, you can retrieve various publications including patents/utility models, foreign documents, and non-patent documents (journals of technical disclosure).

If you select OPD retrieval, you can view application information and examination information (dossier information) at patent offices around the world.

Select an issued country/region/issued organization and type, and enter a number.



Help

One Portal Dossier in J-PlatPat



Q One Portal Dossier (OPD) Search

You can view application and examination information (dossier information) at patent offices around the world by document number.

Search criteria	Number of family documents	Document group	ALL	~
Publication/Registration number	14			
WO.2015031359.A*	14			

Expand Document Information

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Help

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Country/region code	Application number	Filing date 🔺	Publication number	Registration number	Options
EP	EP.14840412.A	Aug.26,2014	<u>EP.3038726.A1</u> EP.3038726.A4	-	Classification/Citation Information Expand Document List
US	US.201414469062.A	Aug.26,2014	<u>US.2015053269.A1</u>	<u>US.10036513.B2</u>	Classification/Citation Information Expand Document List
CN	CN.201480046997.A	Aug.26,2014	<u>CN.105492095.A</u>	<u>CN.105492095.B</u>	Classification/Citation Information Expand Document List

Dossiers in CPQUERY

₽ SIPO	China and Global Patent Examination Information Inquiry	China Patent Examination	Global Patent Examination	1
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	Application Number: AU 20182 Publication Number : AU 20182	49563 A1 Publication Date : 2019-10-10) Filing Date : 2018-04-05	
	Application Number: AU 2018 Publication Number : AU 20182		3 Filina Date : 2018-04-05	

Dossier access platforms

WIPO-CASE (non-public) - Centralized Access to Search and Examination

Accessible only for 'accessing' and 'providing' Offices

- 'Providing' offices share their dossiers with other participating offices:
 - IP5 dossiers obtained from GD/OPD (WIPO/EPO collaboration)
 - plus: AU, BN, CA, CL, GB, IL, IN, NZ, SG ...
- All ASEAN member offices are 'accessing' offices, only BN, SG are also 'providing'; others may become 'providing' in the near future
- Family information includes only so-called 'complex' families
 - Proprietary family building based on applications of 'providing' Offices recorded in CASE, and NPEs recorded in PATENTSCOPE
 - EPO INPADOC family data are not integrated
- No plans to open CASE to the public
- Majority of dossiers are also publicly accessible through PATENTSCOPE 'document' tab (labelled as 'Global Dossier')





WIPO CASE - Centralized Access to Search and Examination

The WIPO CASE system enables patent offices to securely share search and examination documentation related to patent applications in order to facilitate work sharing programs.

Many patent applications are filed in multiple offices and patent examiners can increase the efficiency and quality of their work by sharing their examination results.

The system was initially developed by the International Bureau in response to a request from the Vancouver Group offices (the patent offices of Australia, Canada and the UK). Based on their requirements, an initial system was deployed in 2011. The system was further enhanced during 2012 and is now operational for exchange of documents between examiners in the three offices.

Since June 1, 2015, any patent office may join the system by notifying the International Bureau that it is willing to participate according to the new terms and conditions **PDF** for the system. The office will choose whether it wishes to be a providing office or only an accessing office and technical choices need to be made for the exchange of documents between the office and the system. During a transition period, some offices are still participating according to the previous

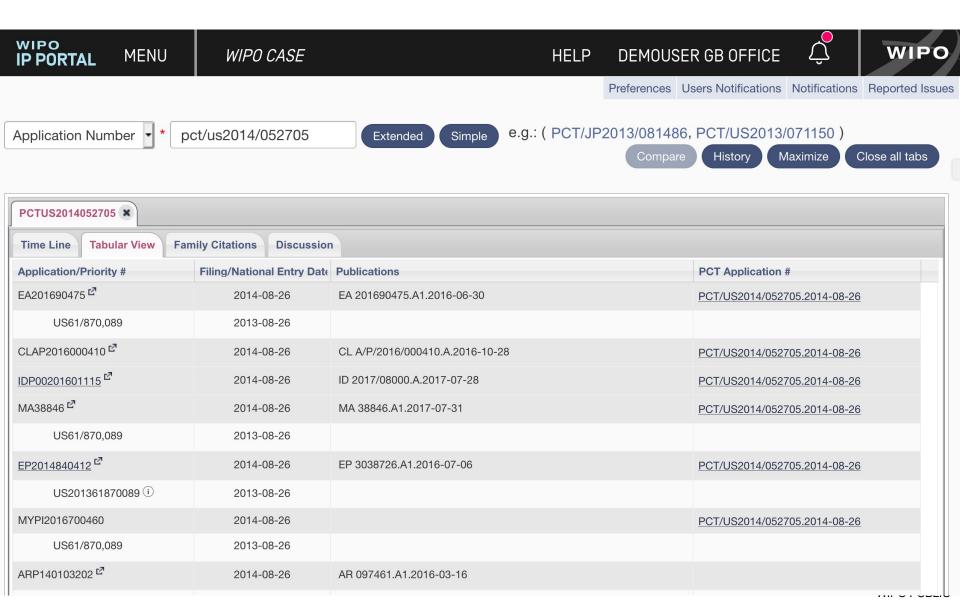
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CASE family table



CASE family table – lower part

Application/Priority # Filing/National Entry Date Publications PCT Application # US201361870089 ① If dossier available, number is linked PCT/US2014/052705.2014-08-26 MYPI2016700460 If dossier available, number is linked PCT/US2014/052705.2014-08-26 ARP140103202 ^{E**} Off-26 AR 097461.A1.2016-03-16 US61/870.089 2013-08-26 AR 097461.A1.2016-03-16 AU2014311324 ^{E**} 2014-08-26 AU 2014311324.B2.2016-11-10, AU 2014311324.A1.2016-04-07 PCT/US2014/052705.2014-08-26 BR112016003861 ^{E**} 2014-08-26 BR 112016003861.A2.2017-08-01 PCT/US2014/052705.2014-08-26 US61/870.089 2013-08-26 CN 105492095.A.2016-04-13 PCT/US2014/052705.2014-08-26 US61/870.089 2013-08-26 CN 105492095.A.2016-04-13 PCT/US2014/052705.2014-08-26 US61/870.089 2013-08-26 VO 2015/031359.A1.2016-05-11 PCT/US2014/052705.2014-08-26 PE2016000286 ^{E*} 2014-08-26 PE 2016-0354.A1.2016-03-16 PCT/US2014/052705.2014-08-26 VDS61/870.089 2014-08-26 VO 2015/031359.A1.2015-03-05 PCT/US2014/052705.2014-08-26	Time Line Tabular View Fa	amily Citations Discussion	n	
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 Document List 				
Document Name	Document Category	Date 🔷	Pages/Size	
RELEVANT DOCUMENTS	Specifications and Incoming Documents	2017-11-21		○ ± ㅇ +
WITHDRAWALLETTER	Specifications and Incoming Documents	2017-11-20		□ ± ㅇ +
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OTHER DOCUMENT	Specifications and Incoming Documents	2017-06-14		□ ± ㅇ +
FORM 18	Specifications and Incoming Documents	2017-06-09		○ ± ㅇ +
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AU dossier via CASE

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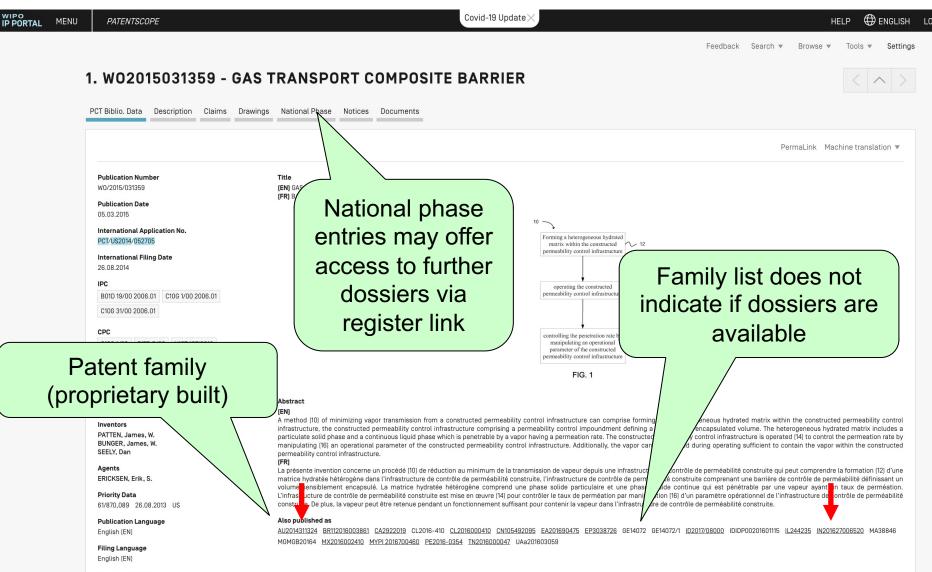
Dossier access platforms

PATENTSCOPE

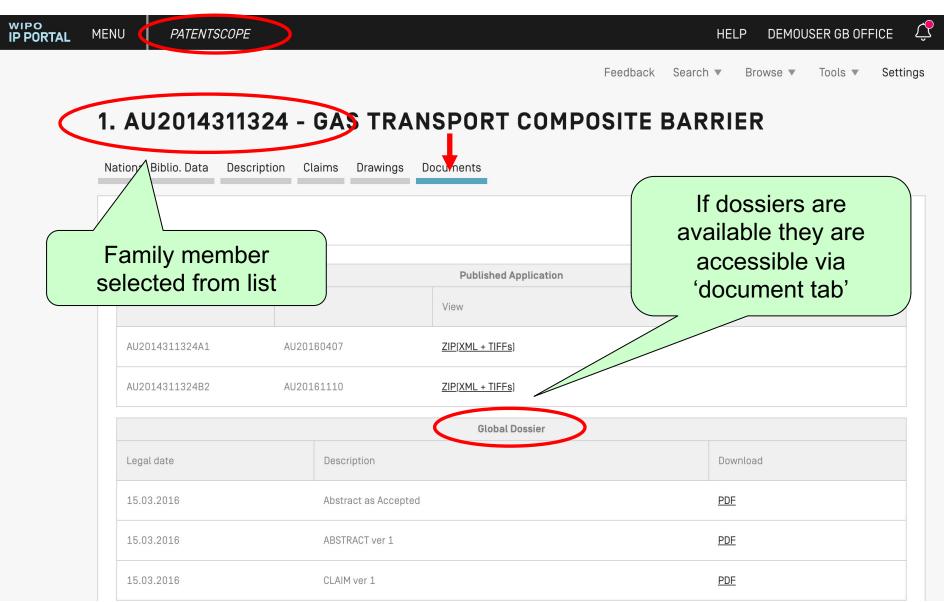
- Public access to WIPO CASE dossiers through 'document' tab (labelled as 'Global Dossier', though)
- For jurisdictions which have authorized public sharing outside of CASE
- For some additional jurisdictions enabling deep-linking to their national registers
- Two distinct family tables
 - PCT family (National Phase Entries (NPE) reported to WIPO from Designated and Elected Offices)
 - only shown for WO publications
 - Not comprehensive because depending on reporting by DO and EO)
 - Additional proprietary family building based on simple family concept
 - EPO INPADOC family data are not integrated



Family information in PATENTSCOPE

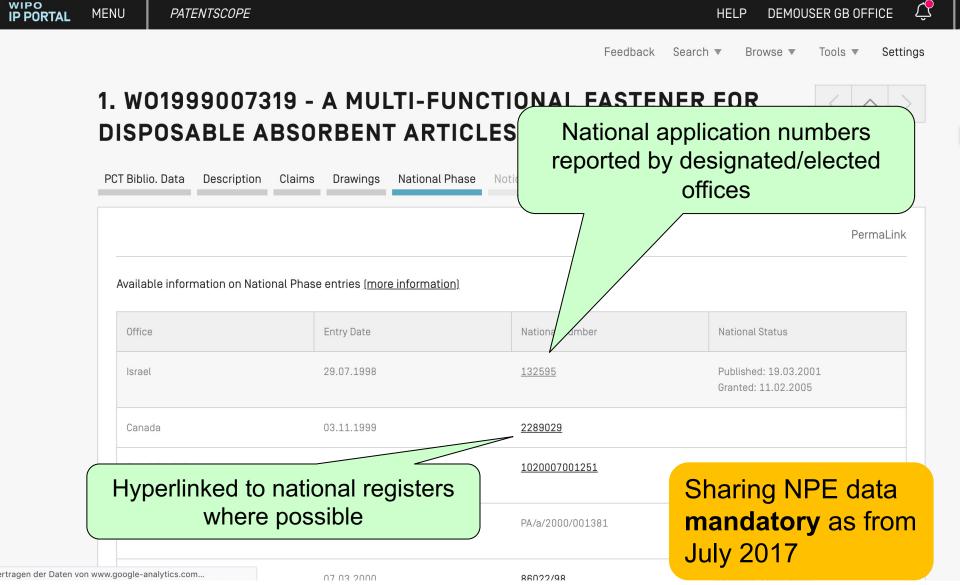


Dossiers in PATENTSCOPE (CASE data)

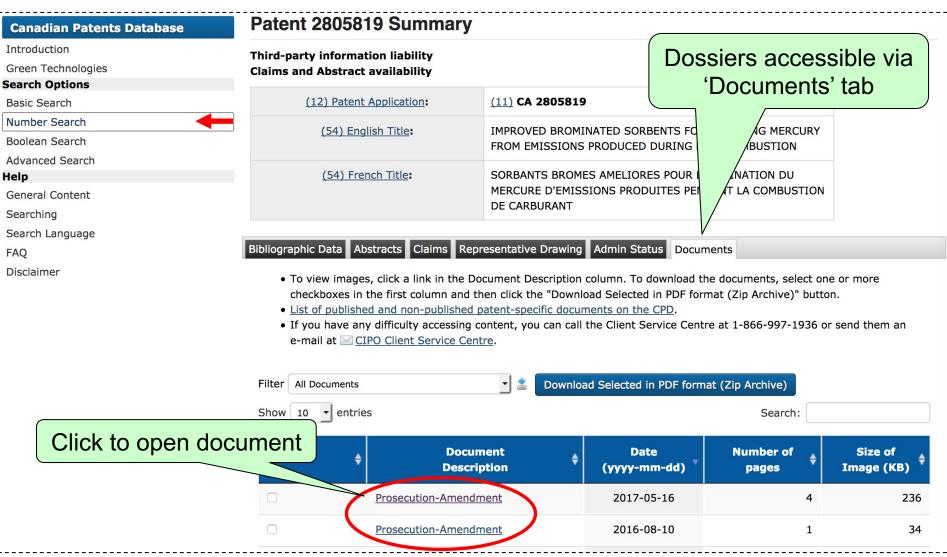


Dossiers in	PATENTSCO	To date, IN dossiers are not systematically updated in CASE and PATENTSCOPE;	ta)
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	Global Dossier		
Legal date	Description	Download	
25.02.2016	DESCRIPTION	PDF	
25.02.2016	DRAWING	PDF	
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05.04.2016	FORM 3	PDF	
05.04.2016	FORM 5	PDF	
05.04.2016	FORM PCT-IB-306	PDF	

National phase entry tab PATENTSCOPE



Register access example: Canada



Future of dossier access platforms

- Espacenet, USPTO-Global Dossier, J-PlatPat and WIPO-CASE & PATENTSCOPE are (at the present) complementary to each other
- Shall, in future, provide access to same set of dossiers
- Which one to use then?
 - Better user interface?
 - Searching, viewing, exporting, ...
 - Additional tools (comparing, translations, alerts, ..)
 - Additional information (citations, enriched citations, different types of families, ...)
- Many national registers already enable deep linking
- Do we still need secondary platforms then? Or just a 'federated register', i.e. a comprehensive family table linking to national registers



Utility foreign examination work products

Examination reports/opinions from family members

Claims need to have equal wording or at least equal scope

Search reports/citations from family members

- Claims of other family member should cover similar inventions or related technologies
 - Usually true even for extended family members
- Top-up search required if relevant collections were not searched; or claims if subject matter of amended claims were not searched previously

Claim sets granted

- Description needs to support foreign claim set
 - Usually true for PCT family members
 - Not necessarily true for simple family
 - Not very likely for extended family
- Awaiting final like claim sets granted results incurs delay
- Using final results usually avoids assessing novelty and inventiveness; requires only assessing if claimed subject matter is exempt/excluded from patentability according to national law

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Thank you

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