

C. PCT 1612

December 8, 2020

Madam,
Sir,

Implementation of the Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic

This Circular is addressed to your Office in its capacity as a receiving Office and/or International Searching and Preliminary Examining Authority under the Patent Cooperation Treaty (PCT).

Background

At the thirteenth session of the PCT Working Group, which took place from October 5 to 8, 2020, the European Patent Office submitted a proposal titled *Strengthening PCT Safeguards in case of General Disruption* (document PCT/WG/13/10). Paragraphs 6 to 10 of the Summary by the Chair of the session (document PCT/WG/13/14) summarize the discussions of the proposal. Paragraph 10 of the Summary sets out the follow-up for the next session of the Working Group, as follows:

“10. The Working Group expressed support for the principle of providing for better safeguards for applicants and Offices in cases of general disruption outside their control and:

- (a) invited the European Patent Office, France, Switzerland and the United Kingdom to submit a revised proposal to the next session of the Working Group, taking into account the comments made by delegations; and
- (b) requested the International Bureau, in cooperation with the Member States, to assess the experiences of Offices in the implementation of the *Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic* that it issued on April 9, 2020 and to submit a report to the next session of the Working Group.”

/...

Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic

The International Bureau of the World Intellectual Property Organization (WIPO) issued an *Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic* (“the Interpretative statement”) on April 9, 2020 (see https://www.wipo.int/pct/en/news/2020/news_0009.html). The Interpretative statement gives details of how the International Bureau applies the circumstances of the global COVID-19 pandemic to requests under PCT Rule 82*quater*.1 for excuse of delay in meeting time limits. The Interpretative statement also announced that the International Bureau, in its capacity as a receiving Office, would delay the issuance of notifications of withdrawal of an international application (Form PCT/RO/117), for example, for failure to pay fees within the prescribed time limit, until May 31, 2020, and waive the charging of late payment fees under PCT Rule 16*bis*.2. The Interpretative statement urged other Offices to adopt the same interpretation of PCT Rule 82*quater*.1 and the same practice with regard to issuance of notifications of withdrawal.

On May 27, 2020, the International Bureau announced that it would extend the period for deferring the issuance of notifications of withdrawal for failure to pay fees within the prescribed time limit in its role as a receiving Office until June 30, 2020, (see https://www.wipo.int/pct/en/news/2020/news_0014.html). The International Bureau, in its role as a receiving Office, therefore restarted the issuance of Form PCT/RO/117 for failure to pay the required PCT fees as of July 1, 2020. In the announcement dated July 3, 2020 to confirm the end of this period, the International Bureau stated that it would continue to waive the payment of any applicable late payment fees under PCT Rule 16*bis*.2 until further notice (see https://www.wipo.int/pct/en/news/2020/news_0017.html).

Experiences of Offices in the Implementation of the Interpretative Statement

./ In response to the request from the PCT Working Group set out in paragraph 10(b) of document PCT/WG/13/14, above, you are invited to respond to the attached questionnaire. An electronic copy of the questionnaire is available as a Word document on the WIPO website at <https://www.wipo.int/pct/en/circulars>. You may respond in any of the six UN official languages (Arabic, Chinese, English, French, Russian and Spanish).

You are invited to submit your completed questionnaire in response to this Circular to the International Bureau by January 15, 2021, preferably by sending it by e-mail to Mr. Michael Richardson, Director, PCT Business Development Division at: pct.wg@wipo.int. After this date, the International Bureau will use responses to prepare a report for the Working Group on the experiences for Offices in the implementation of the Interpretative statement.

Yours sincerely,



John Sandage
Deputy Director General

Enclosures: Annex – Questionnaire on Implementation of Interpretative Statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in Light of the COVID-19 Pandemic

Questionnaire on Implementation of Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in Light of the COVID-19 Pandemic of April 9, 2020

Name:
Job Title:
IP Office:
E-mail address:

Implementation of Interpretative Statement at your Office in its function under the PCT

1. Did your Office adopt the following aspects of the Interpretative Statement?

(a) The global COVID-19 pandemic falls within the scope of “natural calamity ... or other like reason” in Rule 82 <i>quater</i> .1	Yes / No
(b) Any request under Rule 82 <i>quater</i> .1 for excuse of delay citing COVID-19 related issues should be treated favorably, without requiring evidence to be provided.	Yes / No
(c) Notifications that an international application is considered withdrawn (PCT/RO/117) should not be issued until at least May 31, 2020 ¹ .	Yes / No
(d) Notifications that an international application is considered withdrawn (PCT/RO/117) should only be issued where deadlines have expired at least two months previously.	Yes / No
(e) Late payment fees under Rule 16 <i>bis</i> .2 should be waived	Yes / No / n/a ²

2. If your Office, in its capacity as a receiving Office, did not issue or delayed the issue of notifications of withdrawal (PCT/RO/117) (question 1(c) and (d)), or waived late payment fees under Rule 16*bis*.2 (question 1(e)) due to the COVID-19 pandemic, please indicate the periods that your Office applied these measures.

3. If you have answered No to any of the measures in question 1, please explain why your Office did not adopt that part of the Interpretative Statement.

4. Did your Office adopt any different measures to alleviate difficulties with meeting time limits for international applications because of the COVID-19 pandemic?

5. Approximately how many or what proportion of applications were the subject of requests to excuse delay in meeting a time limit? If possible, please provide information in relation to delays in payment of fees and other issues. If your Office acts as both a receiving Office and an International Searching and Preliminary Examining Authority, please indicate the number

¹ The International Bureau issued a further notice on May 27, 2020 to defer the issuance of notifications to declare international applications as withdrawn having failed to pay the appropriate fees within the prescribed time limit until June 30, 2020.

² The question might not be applicable, for example, if your Office does not charge late payment fees.

or proportion of the total requests that were related to a time limit for performing an action before your Office in its capacity as a receiving Office, and the number or proportion of requests that were related to a time limit to perform an action before your Office in its capacity as an International Searching and Preliminary Examining Authority.

6. Did your Office have any experience with requests under Rule 82*quater*.1 before the COVID-19 pandemic?

7. Approximately how much time did your Office spend in considering an average request for excuse of delay citing COVID-19 related issues? If your Office has experience of handling requests under Rule 82*quater*.1 before the issue of the Interpretative Statement, please provide an approximate indication of the time saving on a typical request, such as not being required to examine evidence or request further information before allowing the request.

8. Did your Office refuse any requests for excuse of delay citing COVID-19 related issues, excluding any requests filed later than the six months from the applicable time limit as required under Rule 82*quater*.1(b)? If so, please provide reasons why your Office refused such requests.

9. Has your Office received any requests to excuse delay in situations that might require the reversal of an earlier action, such as where your Office had already issued a notification to declare that the application was considered to be withdrawn, or where a late payment fee had already been invited? If so, please provide information on the number of requests and any relevant details about these cases.

10. Does your Office have any other comments on your experience in implementation of the Interpretative Statement?

Related Measures in the National or Regional Process

11. Has your Office offered measures to assist applicants with difficulties in meeting national or regional time limits because of the pandemic, such as:

(a) Closure of the office	Yes / No
(b) Excuse of delays in meeting a time limit	Yes / No
(c) Extension of time limits (other than those automatically extended due to closure of the office)	Yes / No
(d) Deferring actions that would result in an application being considered withdrawn	Yes / No
(e) Other (please specify)	

12. For what periods of dates (if any) did your Office take the above measures?

13. Approximately how many national or regional applications took advantage of such measures? Please provide numbers for each measure taken.

14. Approximately how much time did your Office spend in dealing with the operational administration of each of those measures (in relation to individual applications – not including the time taken to decide, set up and advertise the measures)?

[End of Annex and of Circular]