

INTERNATIONAL FILINGS

Q1. What is World Trade Organization (WTO)?

World Trade Organization (WTO) is an international organization which administers the rules of trade globally for liberalization and expansion of international trade by developing agreements, frameworks and dispute resolution processes. The WTO came into effect on January 1, 1995 under the Marrakech Agreement which replaced the General Agreement on Tariffs and Trade (GATT) of 1948. Majority of WTO's current work comes from the 1986–94 negotiations called the Uruguay Round and earlier negotiations under GATT. World Trade Organization has 162 members as on November 2015. It is headquartered in Geneva, Switzerland.

Q2. What is the mandate of WTO?

The WTO's main functions are to regulate trade negotiations and enforcement of negotiated multilateral trade rules. These two functions are performed with mandates such as: Assisting in developing and transition of economies, specialized help for export; including establishment of International Trade Centre, global economic policy-making, establishing a transparent system between WTO and Public worldwide.

Q3. What is GATT?

GATT stands for General Agreement on Tariffs and Trade (GATT), which came into effect on January 1, 1948. GATT is a multilateral agreement for regulating international trade. As per its preamble, the purpose was "substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis." It lasted with 123 countries as members till Uruguay Round of Agreements dated April 14, 1994, and then the World Trade Organization (WTO) were established on January 1, 1995.

Q4. What is WIPO?

The World Intellectual Property Organization (WIPO) is a specialized agency of the United Nations set up in 1974. The WIPO administers 26 international treaties in the area of intellectual property. WIPO has 148 member states and was established by a convention on 14 July 1967, entering into force in 1970. It is headquartered in Geneva, Switzerland.

Q5. What are the main objectives of WIPO?

Following are the main objectives of WIPO:

- Intellectual property protection globally through cooperation among member states and, where appropriate, in collaboration with any other international organization.

- Ensuring administrative cooperation among the intellectual property unions created by the Paris and Berne Conventions and sub-treaties concluded by the members of the Paris Union.

Q6. What is International Bureau?

The International Bureau is the secretariat of the WIPO, which centralizes the administration of the unions created under the various conventions. International Patent applications may be filed directly with the International Bureau as Receiving Office to WIPO's headquarters as an alternative to filing with the competent national or regional Office.

Q7. What are the linkages between WIPO and WTO?

There is an agreement of cooperation between WIPO and the WTO that came into force on 1 January 1996. The agreement provides cooperation in three main areas:

- National laws and regulations: Their access, translation and notification.
- Protection of national emblems by implementation of appropriate procedures.
- Technical cooperation.

Q8. What is GATS?

The World Trade Organization introduced a treaty known as “General Agreement on Trade and Tariff in Services (GATS)” in January 1995 as a result of the Uruguay Round of negotiations. The major objectives of GATS are: forming a reliable system of international trade rules; equal and fair treatment of participants, stimulating economic activity through guaranteed policy bindings; and liberalization in trade and its development.

Q9. What is Paris Convention?

Paris Convention is an international convention for promoting trade by encouraging protection of industrial property among member countries. All the member countries provide national treatment to all the applications from the other member countries for protection of industrial property rights.

The Convention was first signed in Paris, France, on March 20, 1883. Since then, the Convention has been revised several times latest being in 1979. India became a member of the Paris Convention on December 7, 1998. The convention currently has 176 members.

Q10. What are the principal features of the Paris Convention?

The fundamental extracts of the Paris Convention are listed below:

- National treatment,
- Right of priority,
- Independence of patents,
- Parallel importation,

- Protection against false indications and unfair competition.

Q11. What is the meaning of national treatment under the Paris Convention?

Paris convention ensures that national of a member country is given equal treatment when he/she protects the invention in other member country as his own national.

For example; if an Indian Pharmaceutical company applies for the grant of a patent for a novel drug compound in USA, as per the Paris Convention, the US Patent Office shall apply the same norms and rules to the applicant from India, as applicable to a US citizen for granting a patent. Therefore, there no requirement for domicile or establishment in the country where protection is sought. .

Q12. Is there a provision for compulsory license in the Paris Convention?

Under the Paris convention, each member country has a right to advocate for the grant of compulsory licenses to prevent the abuses resulting from the exclusive rights offered by a patent. Compulsory licenses for failure to work or insufficient working of the invention may be requested after four years from the date of filing of patent application or three years from the date of the grant. Such licenses are non-exclusive and non-transferable.

Q13. What is PCT?

PCT or Patent Cooperation Treaty is administered by the WIPO. It was adopted in 1970 and became operational in 1978. It is an international treaty which facilitates the blocking of priority date with simultaneously designating the country where the invention is intended to be protected. Currently PCT has 148 Contracting States including India.

Q14. What are the advantages of filing PCT application?

The PCT simplifies the process of obtaining patents in a number of countries by filing of a single application. It greatly benefits the applicants, Patent Offices of the designated countries and the general public as well. The advantages of filing patent application through the PCT process are indicated below.

Advantages for the applicant:

- i. PCT saves time, work and money, for any applicant seeking protection for an invention in a number of countries. Under the PCT, the applicant needs to file single application (international application) in one country, in one language and in one format and pay one initial set of fees in one currency as stipulated. The applicant is accorded a date of filing, which will be effective in all the designated countries.
- ii. By designating any or all of the PCT countries, the applicant can simultaneously seek patent protection for an invention in each of a large number of countries.
- iii. Applicant gets 18 months or more to decide if he/she actually wants to proceed ahead with his / her application. Due to this extra time (more than what is available under the traditional patent system) gained by the applicant through filing of PCT application. The inventor can keep all the options

open for protecting his/her invention while still investigating its commercial possibilities abroad until 18 the month window period.

- iv. Through international search report, the applicant can evaluate the possibilities of his / her invention being patented before incurring major costs in foreign countries. Further the PCT provides an option for international preliminary examination utilizing which an applicant can be doubly sure before entering national phase.
- v. If the applicant files his/her international application in the form prescribed by the PCT, he / she is reasonably assured that it cannot be rejected on formal grounds by any Designated Office during the national phase of processing the application.

Advantages for Patent Office of Designated Country:

- i. The National Patent Office of designated countries can have the advantage in handling more patent applications because the verification and other formal requirements would have generally been checked during the international phase.
- ii. The search and examination is done by WIPO, therefore the need for search and examination by the national patent office can be considerably reduced or virtually eliminated. In most cases, the examining Patent Office benefit from these two kinds of special reports generated in the international phase. In case of non-examining Patent Offices, they are in a much better position to complete the process faster if they receive an application already examined in the international phase.
- iii. The Patent Office's can also save publishing costs. If the international application is published in the official language of the country, the National Patent Office can forego the publishing altogether.

The general public is also benefitted by PCT as technical information in patent documentation is disseminated globally and can lead to worldwide information exchange.

Q15. Where can International patent applications be filed?

The international applications can be filed:

- i. At the National Office of or acting for the contracting state of which the applicant is a resident.
- ii. International Bureau (IB) of World Intellectual Property Organization (WIPO).

Indian inventors desiring to file an International application must file with any of the receiving offices at Kolkata, New Delhi, Mumbai & Chennai or the International Bureau of WIPO, Geneva.

Q16. What is an international search authority (ISA)?

The designated International search authority examines the PCT application for patentability and provides the international search and written opinion. The application is examined on the criteria of patentability and queries on the same are raised. In accordance with Article 19 of the PCT, a period of 2 months is provided to answer the objections with necessary changes in the application; this improves the chances of patent acquiring in national phase.

Q17. Which are the International Search authorities (ISA) for Indian applicants?

An applicant from India can choose any one of the following ISA/ International Preliminary Examination Authority (IPEA) for international search and preliminary examination:

- Indian Patent Office
- Australian Patent Office
- Austrian Patent Office
- European Patent Office
- State Intellectual Property Office of the People's Republic of China
- Swedish Patent and Registration Office
- United States Patent and Trademark Office

Q18. What are the essential elements to be included in an International application?

The International application must contain a request, a description, one or more claims, one or more drawings (where required) and an abstract. It must comply with the prescribed physical requirements and should be in one of the prescribed languages added with payment of the required fees. In case of biological inventions, the microbial strain must be deposited in an International Depository Authority (IDA) under the Budapest treaty.

Q19. Can an International application be withdrawn?

Yes, an International application can be withdrawn by a notice at any time before technical preparations for International publication have been completed i.e. not later than 15 days before the date of publication.

Q20. What is the Budapest Treaty?

When a biological invention involves the use of a microorganism, the specification describing the invention cannot efficiently enable third parties to carry out the invention in the absence of biological material. Therefore, for all such inventions, deposition of biological material is imperative. For this purpose, the Budapest treaty was signed in Budapest on April 28, 1977 and later on amended in September 26, 1980. The Budapest treaty has recognized institutes in all its member countries and mandates the deposition of the microbial strain in the International Depository Authority (IDA) and its disclosure in the patent application. India became a member of this Treaty, with effect from December 17, 2001.