

Patent Cooperation Treaty (PCT) Working Group

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PCT MINIMUM DOCUMENTATION TASK FORCE: STATUS REPORT

Document submitted by the European Patent Office and the United States of America

SUMMARY

1. This document provides an update on the work of the PCT Minimum Documentation Task Force (“the Task Force”) led by the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO). The Task Force made much progress in its review of the PCT minimum documentation. After intensive work in the Task Force as well as discussions at various sessions of the Meeting of International Authorities under the PCT (MIA) and PCT Working Group, the PCT Assembly, at its fifty-fifth (24th ordinary) session (July 6 to 14, 2023), adopted amendments to Rules 34, 36 and 63 (document PCT/A/55/2 and paragraph 32 of document PCT/A/55/4). The Task Force is now focusing on the preparations required for the timely implementation of the revised legal framework which will govern the PCT minimum documentation as of 2026.

BACKGROUND

2. In 2005, the MIA decided to set up a Task Force to undertake a comprehensive review of the PCT minimum documentation. The Task Force was mandated to address issues relating to both patent documentation and non-patent literature, including traditional knowledge related databases (document PCT/MIA/11/14). However, due to various reasons the process stalled for several years. In 2016, the MIA reactivated the Task Force under the lead of the EPO. The mandate that was given to the Task Force in 2016 and work endorsed by the MIA in early 2017 (see paragraphs 3 and 4 of document PCT/WG/17/16) can be summarized as follows:

- (a) Create an up-to-date inventory of the patent literature and non-patent literature parts of the current PCT minimum documentation.

- (b) Recommend objective criteria and up to date standards for the inclusion in the PCT minimum documentation of both patent documentation and non-patent literature, including traditional knowledge-based prior art.
3. At its twenty-ninth session (June 20 to 22, 2022), the MIA agreed to add the following three objectives to the Task Force's mandate (see paragraph 22 of document PCT/MIA/29/4 and paragraph 51(c) of document PCT/MIA/29/10):
- (a) Guide and support Offices in being technically ready by the date of entry into force of the amended definition of the PCT minimum documentation to make available, in accordance with the technical and accessibility requirements, all patent documents, and where applicable utility model documents, published on or after the said date of entry into force.
- (b) Agree on a roadmap over the 10 years following the date of entry into force of the amended definition of the PCT minimum documentation to support Offices in meeting the technical requirements to make available all patent documents, and where applicable utility model documents, published on or after the cutoff date up until the said date of entry into force.
- (c) Ensure that the implementation of the agreed roadmap is included in the mandate of the (future) standing Task Force on PCT minimum documentation under the PCT MIA that will start operating after the entry into force of the amended Regulations and new provisions of the Administrative Instructions relating to the PCT minimum documentation.
4. Usually, the Task Force conducts its work using an electronic forum made available by WIPO ("the wiki"). In addition, where felt appropriate to facilitate progress in the discussions, the Task Force meets either physically or virtually.

STATE OF PLAY

5. After intensive work in the Task Force as well as discussions at various sessions of the MIA and PCT Working Group, the PCT Assembly, at its fifty-fifth (24th ordinary) session (July 6 to 14, 2023), adopted amendments to Rules 34, 36 and 63, and an Understanding regarding the interpretation of Rules 36 and 63 (document PCT/A/55/2 and paragraph 32 of document PCT/A/55/4). They will enter into force on January 1, 2026.
6. At its sixth session (May 22 to 25, 2023), the Task Force focused on the implementation of the proposed revised legal framework that will govern the PCT minimum documentation as of 2026 and agreed on the implementation roadmap proposed by the EPO for the patent documentation. That roadmap consists of two phases:
- (a) Phase 1 "Preparatory activities" covers actions up to the end of 2025 for patent Offices to be ready to meet the PCT minimum documentation requirements in force from January 1, 2026. This will involve preparing the Authority File under WIPO Standard ST.37 to indicate the availability of the abstract, description and claims in text searchable format for patents published after that date. Each Office with a patent collection belonging to the PCT minimum documentation will also need to create a repository from where an ISA can bulk download PCT minimum documentation data, requiring all patent documents published on or after January 1, 2026, to be in text searchable format. All ISAs will also need to ensure that they can bulk download other PCT minimum documentation bulk collections from their repositories.
- (b) Phase 2 "Operational activities" covers actions from 2026 onwards in terms of operational activities to handle patent documents published from January 1, 2026, and transition activities up until the end of 2035 to digitize back file publications published from

January 1, 1991. For new publications, an Office will be required to include the additional Authority File information, store patent data in text searchable format in the repository at the latest two months after the publication date, and bulk download other PCT minimum documentation collections. In terms of transition activities, an Office will need to have included the additional information in its Authority file for patent documents published from January 1, 1991, and digitized these patent documents and stored the data in text searchable format in the repository of the Office before December 31, 2035.

7. At its sixth session, the Task Force also approved the roadmap for the non-patent literature aspects and the review cycle of the future permanent Task Force, which were proposed by the USPTO (document PCT/MD/6/6, attached as an Appendix to document PCT/MIA/30/2). According to the said roadmap, the future permanent Task Force would identify an ISA coordinator to lead/host a comprehensive review of the list of non-patent literature items in the PCT minimum documentation in November 2025 (the USPTO having volunteered to be the first coordinator, this step is already met), and then meet for the first comprehensive review in May 2026. The Task Force would then present its first revised list of items of non-patent literature for adoption at the Meeting of International Authorities later in 2026 in order for the International Bureau to publish the updated list in January 2027. ISAs would need to comply with the new list within two years of its adoption. Annual reviews of the list to remove obsolete and discontinued resources, as well as make metadata updates, would take place in May each year, chaired by a volunteer ISA on a rotational basis. The second comprehensive review would take place in May 2031. The public would also be able to suggest non-patent literature items for the Task Force to consider for inclusion in the PCT minimum documentation at the following comprehensive review.

8. On January 4, 2024, the International Bureau issued Circular C. PCT 1660 to consult the PCT membership on the proposed modifications to the PCT Administrative Instructions, based on the text in Annex III to document PCT/WG/16/6. At the seventeenth session of the PCT Working Group (February 19 to 21, 2024), the EPO and the USPTO provided an update on Task Force's work (document PCT/WG/17/16), which was noted by the Working Group.

9. The Task Force held its seventh session from April 22 to 25, 2024. At that session, the International Bureau provided an update on the replies to Circular C. PCT 1660. The Task Force formally endorsed the new provisions of the PCT Administrative Instructions setting out the technical and accessibility requirements of the renewed PCT minimum documentation, including new Annex H. The modifications to the PCT Administrative Instructions were promulgated on June 19, 2024, through Circular C. PCT 1672 and will enter into force on January 1, 2026. Otherwise, at this session, the Task Force focused on the preparations required for the timely implementation of the new PCT minimum documentation requirements as of 2026. The Task Force reviewed and validated a set of checklists prepared by the EPO to monitor progress with respect to the patent collections that are likely to belong to the renewed PCT minimum documentation. The participating Offices shared their respective preparation plans, progress and questions. Moreover, the Task Force confirmed the time plan proposed by the USPTO regarding the comprehensive review cycle of the future permanent Task Force, which will focus on updating the non-patent literature part of the PCT minimum documentation as from 2026 onwards. For further details on that session, see document PCT/MD/7/6, attached as an Appendix to document PCT/MIA/31/6.

10. As agreed at the seventh Task Force session, the EPO posted on the wiki in May and September 2024 updated versions of the checklists presented during the session reflecting the suggestions from the Task Force and some terminological updates. The EPO invited all Task Force members to review and fill out the updated checklists before October 1, 2024. Moreover, to help Offices in their preparations towards meeting the new PCT minimum documentation requirements, in May 2024 the International Bureau proposed on the wiki to offer one on one clinics with the relevant experts from individual Offices to provide advice on a confidential basis.

At the thirty-first session of the MIA (October 16 and 17, 2024), the EPO and the USPTO provided an update on Task Force's work (document PCT/MIA/31/6), which was noted by the MIA.

11. On December 6, 2024, the following 15 Offices had posted on the wiki their updated checklists: Australian Patent Office, Austrian Patent Office, Canadian Intellectual Property Office, China National Intellectual Property Administration, Eurasian Patent Office, EPO, Japan Patent Office, Korean Intellectual Property Office, Norwegian Industrial Property Office, Patent Office of the Republic of Poland, Intellectual Property Office of Singapore, Spanish Patent and Trademark Office, Swedish Intellectual Property Office, Ukrainian National Office for Intellectual Property and Innovations and USPTO. The EPO thanks these Offices as well as all the others having in the meantime filled out the updated checklists. Any other ISA as well as other Offices wishing that their patent documentation be included in the PCT minimum documentation as of 2026 are urged to provide their updated checklists as soon as possible.

12. The completed checklists posted on the wiki serve to prepare the testing phase which is a crucial step to ensure a timely and smooth implementation of the new PCT minimum documentation requirements as of 2026.

NEXT STEPS

13. A first round of tests as to whether the PCT minimum documentation data is available and can be accessed in accordance with the new requirements should take place in the first quarter of 2025 and a second round of tests should take place in the second quarter of 2025. Some Offices (EPO, KIPO, USPTO) are well advanced in their preparatory activities and thus seem to be ready to run the tests in the first quarter of 2025. Any ISA and other Offices that wish their patent (and where applicable utility model) documentation be included in the PCT minimum documentation as of 2026 should run the tests in the first half of 2025. This would give the respective Offices the time to resolve any potential issues and to notify the International Bureau in the third quarter of 2025 regarding the availability of their documentation in accordance with the new requirements.

14. As far as ISAs are concerned, according to the outline of the format of the application for extension of appointment that was supported at the last session of the MIA, an application for extension of appointment would contain *inter alia* a report on the implementation of the requirements for the PCT minimum documentation that take effect on January 1, 2026 (paragraph 19(b) of document PCT/MIA/31/8 and paragraphs 36 and 37 of document PCT/MIA/31/11). According to the timeline supported at the last session of the MIA, each Authority will need to submit its application for extension of appointment to the International Bureau around December 1, 2025 (paragraphs 10, 18, 19 and 21 of document PCT/MIA/31/8 and paragraphs 35 to 37 of document PCT/MIA/31/11). The Task Force will support ISAs in reaching compliance with the new PCT minimum documentation requirements (paragraph 21(c) of document PCT/MIA/31/8), but their active and timely participation to the Task Force's activities is crucial.

15. At the next session of the Task Force, the USPTO will present for discussion the form and format for how Offices may submit proposed non-patent literature additions to the PCT minimum documentation list referred to in Rule 34.1(b)(ii) ("the list"). The first comprehensive review of the list is anticipated to take place in May 2026. The USPTO has volunteered to coordinate the first comprehensive review. Offices are invited to begin evaluating what, if any, non-patent literature additions to the list they intend to propose.

16. The next session of the Task Force is tentatively planned for May 2025.

17. The Working Group is invited to take note of the contents of the present document.

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