

## PCT based National phase applications entry time in US

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The national phase entry of a PCT application is ought to be within either 30 or 31 months<sup>1</sup> from the earliest filing or priority date associated with the PCT application (Art 22)<sup>2</sup>. As the legal parameters such as patent filing, enforcement etc., are under the jurisdiction of individual countries patents act, so is the case with selection of 30/31 months for national phase entry.

For example:

- US, JP and China follow 30 month rule
- India and Korea follow 31 month rule

The 30/31 months period is measured from:

- The filing date of the earliest patent application to which the PCT application claims priority under the Paris Convention;
- The International filing date of the PCT, if no Paris Convention priority was claimed

WIPO also facilitates the relaxation of stringent time lines defined in the article 22<sup>2</sup> in the following manner: Any national law may, for performing the acts referred to in paragraphs (1) or (2) of Article 22<sup>2</sup>, fix time limits which expire later than the time limit provided for in those paragraphs.

Following are the few select WIPO patent applications which have entered US after the stipulated time i.e., 30 months, when considered from priority filing:

Case study	Priority filing date with country	WO Pub. # With filing date	WO publication date	US - National phase filing date with application #	Patent number with Title
#1	29 <sup>th</sup> Sep1992 SE (Swedish)	WO/1994/008115 29 <sup>th</sup> Sep 1993	14 <sup>th</sup> April 1994	18 <sup>th</sup> Sep 1995 - 08/406,967	US5655392 Anti-theft device for shoes
	0 months	12 months	>18 months	36 months	
#2	27 <sup>th</sup> Mar 2001 GB	27 <sup>th</sup> March 2002 WO02094868	28 <sup>th</sup> Nov 2002	20 <sup>th</sup> Oct 2004 - 10/471,571	US7608276 Staphylococcus aureus proteins and nucleic acids
	0 months	12 months	20 months	>42 months	

On the contrary, if we consider PCT filing dates, then the rule of 30 months period prevails. To conclude, both PCT filed patent applications are not claiming Paris convention.

1 [http://www.world-intellectual-property-organization.com/pct/en/texts/time\\_limits.html](http://www.world-intellectual-property-organization.com/pct/en/texts/time_limits.html)

2 [http://www.world-intellectual-property-organization.com/pct/en/texts/articles/a22.htm#\\_22](http://www.world-intellectual-property-organization.com/pct/en/texts/articles/a22.htm#_22)

**Some more cases for study**

<b>Priority data</b>	<b>PCT publication with filing date</b>	<b>National phase data (US)</b> ***** <b>PAIR data</b>	<b>Publication number (US)</b>	<b>Conclusion</b>
WO2005IB51841 07 June 2005 <b>IL</b> – Israel (Inventor’s address)	WO2006131786 07 June 2005	Filing or 371 (c) Date: 08th April 2008 ***** Information Disclosure Statement (IDS) Filed - 12-06-2007	US20080198866 Hybrid Method and Device for Transmitting Packets	34 months from PCT/Priority ***** Within stipulated time
GB20050011623 08 June 2005	WO/2006/131739 07 June 2006	Filing or 371 (c) Date: 31st Mar 2009 ***** IDS filed - 12-07-2007	US20090221462 Fragrance compositions	33 months from PCT ***** Within stipulated time

In the above study, rule of 30 months is violated in either of the situations, with / without claiming Paris convention. However, a deep study of PAIR shows that IDS is filed within stipulated time.

So, from FTO perspective, the take away point is to search for WO patent applications designating US, for a given period i.e., instead of searching all WO applications designating US, one can search for WO patent applications which have been published post 2007/08.

Moving back to our topic, it is really challenging to know when an international patent application designating US will be entering the national phase in the context of “Paris convention”.

This information is particularly critical, when a product manufacturer in USA or exporter / importer “to USA” would like to commercialize the product in that country.

Coming back to rule of 30/31 months period in case of international filing, one needs to know whether a Paris convention is used for patent filing in multiple countries or not. However, getting the Paris convention priority data appears to be obscuring.

This is just a study from US perspective. National stage filing for other countries needs to be explored.