Table 1: General overview of the PCT procedure

<table>
<thead>
<tr>
<th>Event</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case I: International publication</strong></td>
<td>- The international publication is the first serious event for the applicant.</td>
</tr>
<tr>
<td><strong>Case II: International preliminary examination</strong></td>
<td>- Following the international publication, the applicant may request an international preliminary examination (IPE).</td>
</tr>
<tr>
<td><strong>Case III: International检索</strong></td>
<td>- If the applicant chooses to undergo an international检索, the International Searching Authority (ISA) prepares a检索 report.</td>
</tr>
<tr>
<td><strong>Case IV: Access to the WO-ISA</strong></td>
<td>- After the检索 report, the applicant may access the WO-ISA.</td>
</tr>
<tr>
<td><strong>Case V: Request for supplementary检索</strong></td>
<td>- If the applicant is not satisfied with the检索 report, they may request a supplementary检索.</td>
</tr>
<tr>
<td><strong>Case VI: International Search report</strong></td>
<td>- The applicant receives the international Search report and the检索 opinion.</td>
</tr>
</tbody>
</table>

**Legend:**
- **PCT:** Patent Cooperation Treaty
- **EPC:** European Patent Convention
- **ISA:** International Searching Authority
- **IPE:** International Preliminary Examination Authority
- **RO:** National Intellectual Property Office
- **IB:** International Bureau
- **TIS:** International Search Team
- **TL:** Time limit

**Notes:**
- The time scale is not accurate and only provides a rough idea of the sequence of the relevant events. There are no differences between the elected states applying the "normal" 30 month TL under Art.22(3) PCT and the elected states applying an "extended" 31 month TL under Art.22(3) PCT.
- The PCT is designed to provide for early filing of demand for Preliminary Examination (Prel.-Exam.) (for certain states only) [§ III.3.3].
- If priority is claimed, a copy of the priority document must be filed within 16 months from the priority date or, if priority has not yet been established as the first written opinion, in the 30 month period from the priority filing date. Where no demand is filed, the International Preliminary Examination is not carried out, and any amendments requested by the applicant in response to the检索 report are also not accepted by the ISA.

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Reference must always be made to the official documents (the PCT, the EPC and their implementing regulations and guidelines).
Table 2: Relevant provisions and time limits relating to PCT Chapter I

| Time limits calculated from priority date | Max 12 months from the priority date | 1 month from the filing date | 14 months from priority date |

| Priority right [§ I.1] | Note: many time limits under the PCT are calculated from the priority date of the earliest priority application, and not the filing date of the application itself.

**Priority**
- Art.10(1) PCT: priority can be claimed from one or more PCT applications or from an international application under the PCT.
- Art.10(4)(a) PCT: priority can be claimed from a family of non-PCT applications.
- Art.10(5) PCT: priority can be claimed from one or more applications filed in a Paris Convention country (other than the country in which the application is filed).

**Priority period [§ I.1] and restoration [§ I.2]**
- Art.2(4) PCT: Conditions and effects of a priority claim are regulated by Art.4 of the Paris Convention.
- Art.4(3) PCT: The priority period is 12 months from the filing of the first application.
- Art.4(5) PCT: If the priority claim is restored, the filing date of the later application shall be the date of the priority claim.

**The priority document [§ I.2]**
- R26bis.5(a) PCT: The copy of the priority document must be filed within 16 months from the filing date of the application.
- R26bis.5(b) PCT: The copy of the priority document must also be filed within 9 months from the priority date.

**Language of the application [§ I.3]**
- Art.18(1) PCT & R81(1)(a) PCT: The applicant has the right to file the application in any language for which the applicant has the right to file.
- Art.18(2) PCT & R81(1)(a) PCT: The applicant has the right to file the application in any language for which the applicant has the right to file.
- R90bis.1(b) PCT: If the earliest priority is abandoned, the requirements of Art.11(1) PCT are not yet fulfilled, any language for filing (see R19.4(a)(ii) PCT).

**Correction / addition of priority claim [§ I.8]**
- R54bis.1 PCT: If the applicant intends to file the demand for international preliminary examination, the applicant must file the demand by the later of:
  - the priority date at the IB; and
  - the priority date at the RO.

**Filing of the priority document [§ I.8.2]**
- Art.19(1) PCT: A brief explanatory statement can be filed with the amendments.
- Art.20(2) PCT & R92(2) PCT: The applicant must file with the RO a translation of the priority document within 12 months from the filing date of the application.

**The date of filing (DOF) [§ I.15]**
- Art.11(1) PCT & R23.2(a) PCT: On receipt of the application, the RO releases a filing date if:
  - the applicant or at least one of them has the right to file a PCT application at the RO based on his or her nationality / residence / status of legal representation.
- Art.11(1) PCT & R23.2(a) PCT: On receipt of the application, the RO releases a filing date if:
  - the applicant or at least one of them has the right to file a PCT application at the RO based on his or her nationality / residence / status of legal representation.

**Application not yet filed as a PCT application [§ I.16.1]**
- Art.13(1) PCT & R30.2 PCT: If the applicant does not file an application at the IB within 12 months from the filing of the request, the applicant can file a national application or an international application at the IB within 12 months from the filing date of the request.

- Art.15(3) PCT & R44(1) PCT: As soon as they are received, the applications are transmitted to the states designated by the applicant(s) and/or to the International Bureau if the applicant(s) did not designate any state(s).

**Amendments under Art.10 PCT [§ I.8.1]**
- Art.19(1) PCT: A brief explanatory statement can be filed with the amendments.
- Art.21(5) PCT & R90bis.1(c) PCT: The applicant may request a correction of the priority data at any time before the application is transmitted.
- Art.26bis.1(a) PCT: If the earliest priority is abandoned, the requirements of Art.11(1) PCT are not yet fulfilled, any language for filing (see R19.4(a)(ii) PCT).

**Corrections of formal defects [§ I.18.1]**
- Art.14(4) PCT & R31.1 PCT: If, within 4 months after a transmission of a DOF, the RO finds any of said defects, the RO may inform the applicant and give the applicant the opportunity to correct the defects within 2 months from the receipt of such notification.
- Art.14(4) PCT & R31.1 PCT: If, within 4 months after a transmission of a DOF, the RO finds any of said defects, the RO may inform the applicant and give the applicant the opportunity to correct the defects within 2 months from the receipt of such notification.

**Fee due on filing / Refunds Reductions [§ 1.9]**
- Art.3(4)(a) PCT & R27.3(a) PCT: An international application is subject to a filing fee.
- Art.3(4)(a) PCT & R27.3(a) PCT: An international application is subject to a filing fee.
- R16bis.1(b) PCT: If there is more than one applicant, at least one of them must have the right to file the application in any language for which the applicant has the right to file.
- R16bis.1(b) PCT: If there is more than one applicant, at least one of them must have the right to file the application in any language for which the applicant has the right to file.
- R16bis.1(c) PCT: If after being invited, the applicant does not pay the fee(s) on time, then the application is declared withdrawn by the RO.
- R16bis.1(c) PCT: If after being invited, the applicant does not pay the fee(s) on time, then the application is declared withdrawn by the RO.
- R16bis.1(e) PCT: If the applicant pays the missing fee(s) after this TL expires, but before the application is declared withdrawn, then the fee is deemed paid within the 14 months of the priority date.
- R16bis.1(e) PCT: If the applicant pays the missing fee(s) after this TL expires, but before the application is declared withdrawn, then the fee is deemed paid within the 14 months of the priority date.

**Translation for publication [§ 1.13]**
- Art.41(1) PCT & R42(1) PCT: The applicant may request within 19m of the priority date to file a translation of the application.
- Art.41(1) PCT & R42(1) PCT: The applicant may request within 19m of the priority date to file a translation of the application.

**Filing of the complete priority document [§ I.12]**
- Art.10(1) PCT & R18(1)(a) PCT: If the applicant files a priority document, the application must be filed within 16 months from the date of the priority document.
- Art.10(1) PCT & R18(1)(a) PCT: If the applicant files a priority document, the application must be filed within 16 months from the date of the priority document.

**Late payment [§ I.1.3.1] & [§ I.1.3.2]**
- Art.14(b) PCT & R16bis.1(e) PCT: If the applicant pays the missing fee(s) after the TL expires, but before the application is declared withdrawn, then the fee is deemed paid within the 14 months of the priority date.
An International search of the application under Art.17(3)(a) PCT shall be performed by the International Search Authority (ISA). The ISA issues the WO-ISA which contains a search report and the International search report on patentability (Chapter I of the Patent Convention)."
Establishment of the IPER (§ III.10.7)

Legend: 

[§ III.10.7.14 & § III.7.12] 

translation (if required) & annexes (in original language) are communicated by the IB to the responsible ISA. This report is called "the IPER" (see § III.10.7.14).

In order to receive the IPER, the applicant must file a request under Art.37(1), PCT, or a Declaration to this effect. This request or declaration will be treated as filed with the IB 12 months after the priority/ filing date.

For more information on this procedure see § III.10.2.

Note: if the demand for preliminary examination is filed, R.44bis.1(a) does not apply and the IPEA prepares a "real" preliminary examination report.

Art.35(2)(c) PCT & Art.66(1)(a) PCT: the IPEA prepares the search report and in the SIS (if the SIS-search report is not already prepared) for drafting the IPER. However, the EPO may invite the applicant to do the following within the prescribed TL:

- provide additional information;
- provide documents relating to the PCT application

Art.35(2)(d) & (e) PCT: the IPEA may invite the applicant to file such documents as they consider necessary for the preparation of the IPER, or to file additional documents before the examination procedure is initiated.

where the IPEA has decided to refuse the application (or the claims concerned), is not subject to examination. The IPER states this fact.

Art.34(5)(a) PCT: the applicant may file amendments to the description, claims, drawings, and illustrations, before the relevant date.

R.54.2 PCT: if there are two or more applicants, at least one of them must be resident / national of a PCT state bound to chapter II PCT.

Art.34(2)(b) PCT: the applicant may file amendments to the description, claims, drawings, and illustrations, before the relevant date.

R.59.1(b) PCT, R.35.3(a) PCT & R.19 PCT: if the application was filed at the IB as RO, the competent IPEA is that which would have been the competent ISA if the application had been filed as WO at the EPO.

R.59.1(a-b) & R.35.2(a) PCT: where more than one IPEA is competent the applicant may have a choice among them.

R.66.1(e) PCT & R.70.2(d) PCT: the IPEA is not obliged to examine the subject matter which it is not obliged to examine, then the application (or the claims concerned), is not subject to examination. The IPER states this fact.

R.55.1 PCT & R.55.2 PCT: Demand must be in the language in which the PCT application is drafted and in which the application is examined (see § III.3.4).

Art.34(3)(a) PCT & R.68.2 PCT: the applicant must respond to the invitation under Art.34(3)(a) PCT within 1 month from the invitation (§ III.12.2.2).

R.68.3(c-d) PCT: a review body examines the protest and, if it finds it justified, it orders reimbursement of any fee paid in excess. (For review body at EPO see OJ 2015, A59 & § III.12.3).

R.68.3(e)PCT : if the protest is entirely justified, the protest fee is also reimbursed (§ III.12.3).

Substantial issues in preliminary examination

Form & content of the IPER (§ III.10.7.15)

Art.35(2)(a) PCT: the IPER is a written opinion on the basis of which the IPEA determines whether the invention is patentable or not. The IPER expresses an opinion of the IPEA.

Art.35(2)(b) PCT: the IPER may be a "full" or a "partial" IPER. A "full" IPER is the equivalent of a PCT examination report. A "partial" IPER is an initial opinion expressed by the IPEA, in order to determine whether the invention is patentable or not.

Attorney-in-fact (§ III.10.7.16)

Art.35(2)(c) PCT: the IPER is addressed to the applicant and the ISA, and if the ISA is different from the IB, also to the ISA.

R.57bis PCT: if the protest is not in a language of a certain elected state, that state may require an English translation of the protest. (§ III.12.3).

R.68.3(b) PCT: all additional fees and surcharges are treated as received for the purposes of the examination unless notified by the EPO (or protest body if applicable).
### Table 5a: Procedure before the EPO acting as ISA in case of non-unity

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Partial refund</strong></td>
<td>If the EPO finds that the application does not meet the requirement of unity, it issues a notice to pay additional search fees. The examination is then limited to the claims for which search fees have been paid.</td>
</tr>
<tr>
<td>2. <strong>No refund</strong></td>
<td>If the EPO finds that the application is non-unity and no search fees have been paid, or if fees have been paid but are not sufficient to meet the requirement of unity, the application is rejected.</td>
</tr>
</tbody>
</table>

### Table 5b: Procedure before the EPO acting as IPEA in case of non-unity

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. <strong>Partial refund</strong></td>
<td>If the IPEA finds that the application meets the requirements of unity, or if the amount of fees requested is excessive, it refunds all additional examination fees paid.</td>
</tr>
<tr>
<td>2. <strong>No refund</strong></td>
<td>If the IPEA finds that the application does not meet the requirements of unity, or if the amount of fees requested is excessive, it does not refund any additional examination fees paid.</td>
</tr>
</tbody>
</table>

---

### Flowchart 5a: Procedure before the EPO acting as ISA in case of non-unity

1. **Partial refund**
2. **No refund**

---

### Flowchart 5b: Procedure before the EPO acting as IPEA in case of non-unity

1. **Partial refund**
2. **No refund**

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Re-establishment (Art.122) applied to further processing period (Art.121) are not met, the applicant is requested to appoint a representative within two months.

Applicant to request re-establishment of rights (Art.122 EPC).

Further processing is applicable under Art.121 EPC, 121,2.1 as the application entered the EPO stage (Art.121 EPC).

Further processing is requested by the applicant within the two months time limit (for requesting further processing).

Further processing is applicable under Art.121 EPC, 121,2.1 as the application entered the EPO stage (Art.121 EPC).
Table 7a: Lack of unity passing into the regional phase before EPO – supplementary search performed – IV.12.1

Legend:

PCT: Patent Cooperation Treaty
EPC: European Patent Convention
EPO: European Patent Office
ISA: International Searching Authority
SISA: Supplementary International Searching Authority

Note: This table is provided as annex to the book: P. Watchorn & A. Veronese “PCT Procedures and Passage into the European Phase”. The references in brackets “§...” refer to the relevant paragraphs of the book.

Disclaimer: The authors do not accept any responsibility for the consequences of following the information / tips given in this table. Reference must always be made to the official documents (the PCT, the EPC and their implementing regulations and guidelines).

<table>
<thead>
<tr>
<th>Situation</th>
<th>Supplementary search on entire subject matter</th>
<th>Non-unity: Applicant invited to pay additional supplementary search fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Does the examining division uphold the finding that the application is unitary?</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

Yes

Supplementary search on entire subject matter

If, when performing the European supplementary search, the Examining Division finds that the application is unitary, it searches the entire claimed subject matter (§ IV.12.1).

This is possible even if a non-unity objection was previously raised during the International phase and the application was searched by the ISA only in part.

Non-unity: Applicant invited to pay additional supplementary search fees

R164(1) EPC; § IV.12.1: if the EPO considers that the application documents which are to serve as the basis for the supplementary search do not meet the requirements of unity of invention, then it issues an invitation to the applicant requesting payment of additional supplementary search fees for inventions other than that first mentioned in the claims along with the search results on the first invention in the claims. The time limit for payment is two months.

A supplementary search report is then drawn up on those parts of the application which relate to the invention, or the group of inventions within the meaning of Art.82 EPC, first mentioned in the claims and any other inventions for which additional fees are paid.

Note: The additional search fees paid do not benefit from the fee reduction under Art.153(7) EPC (OJ 2014, A70).

R137(5) EPC; E-VIII, 4.2; § IV.12.1: If after receiving the supplementary search report the applicant files amended claims relating to an invention which differs from any of the originally claimed inventions or groups of inventions and does not combine with these inventions to form a single inventive concept, an objection under R137(5) EPC should be raised in the first communication.

Furthermore, the Examining Division is convinced, e.g. by arguments from the applicant in reply to the ESOP, that the application is unitary but where additional search fees were paid, then an additional search will have to be carried out free of charge on the part of the application which appears to be unitary with the invention which was searched (C-III, 3.1.1 and C-IV, 7.2) and the examination will cover this part.

<table>
<thead>
<tr>
<th>Condition</th>
<th>Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>C-III, 3.2: Any inventions which are excised (searched or not) may be the subject of a divisional application.</td>
<td>Additional search fees paid do not benefit from fee reduction.</td>
</tr>
<tr>
<td>Amendments / arguments filed after the transmission of the search report</td>
<td>Additional search fees paid do not benefit from fee reduction.</td>
</tr>
</tbody>
</table>

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Table 7b: Lack of unity passing into the regional phase before EPO – No supplementary search performed [IV.12.2]

Legend:
- PCT: Patent Cooperation Treaty
- EPC: European Patent Convention
- EPO: European Patent Office
- ISA: International Searching Authority
- SISA: Supplementary International Searching Authority

Note: This table is provided as annex to the book: P. Watchorn & A. Veronese "PCT Procedures and Passage into the European Phase". The references in brackets "§..." refer to the relevant paragraphs of the book.

Disclaimer: The authors do not accept any responsibility for the consequences of following the information / tips given in this table. Reference must always be made to the official documents (the PCT, the EPC and their implementing regulations and guidelines).

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**Are inventions not searched by the EPO as (S)ISA present in the claims on file on expiry of the period of R161(1) EPC?**
- **Yes**
  - **Was a non-unity objection raised by the EPO as (S)ISA in the International phase?**
    - **Yes**
      - Appoint must limit claims to:
        - one invention (satisfying unity requirement under Art.82 EPC)
        - which was present in the claims on expiry of the period under R161(1) EPC, thus satisfying R137(5) EPC (H-II, 6.2).
    - **No**
      - Applicant sent search results with an examination communication under Art.94(3) EPC/R164(2)(c) EPC. He must limit the claims:
        - to one invention (satisfying unity requirement under Art.82 EPC)
        - which was present in the claims on expiry of the period under R161(1) EPC.
  - **No**
    - Applicant sent search results with an examination communication under Art.94(3) EPC/R164(2)(c) EPC. He must limit the claims to:
      - one invention (satisfying unity requirement under Art.82 EPC)
      - which was present in the claims on expiry of the period under R161(1) EPC.

**Do the claims on file on expiry of the period under R161(1) EPC claim (an) invention(s) imported from the description, which is/are not unitary with the subject matter claimed on filing in the PCT (C-III, 2.3)?**
- **Yes**
  - All claimed subject matter is examined.
- **No**
  - Applicant must limit claims to:
    - one invention, thus satisfying the unity requirement (Art.82 EPC), and
    - which was present in the claims on expiry of the period under R161(1) EPC.

**Does the Examining Division agree that unity is present [§ IV.12.2.1]?**
- **Yes**
  - All claimed subject matter is examined.
- **No**
  - Invitation to pay additional search fees for unsearched inventions* sent by EPO Examining Division under R164(2)(a) EPC. Time limit is 2m (§ IV.12.2.2).

---

* According to C-III, 2.3, this includes:
  - Inventions claimed on filing in the PCT, for which the applicant did not pay additional search fees when requested to do so by the EPO as ISA under Art.17(3) PCT/R40 PCT;
  - Inventions other than the single invention searched by the EPO as SISA, because payment of additional search fees to the SISA is not possible (R45bis.6(a)(ii) PCT);
  - Inventions imported from the description, where these are not unitary with the subject matter claimed on filing in the PCT, provided that this was done no later than expiry of the period under R161(1) EPC;
  - Inventions resulting from a cascade non-unity in the PCT (II.8.2.4).
### Table 8: Calculation of time limits under the PCT:

**Preliminary remarks**

The calculation of a time limit first requires the definition of the relevant date triggering the start of the time limit and the computation of the applicable period. The triggering event can be the priority date or the filing date, or the notification of a document requesting the filing date.

Under the PCT, the time limit which is triggered by the delivery of a document from a national office or an international organisation is said to start on the day after the date by which the document was filed or, unless the party concerned proves that the document / letter was posted at an earlier date, or that it was delivered more than seven days later than the date it states. In these two cases extensions of the time limits are applicable under R80.6 PCT.

In this regard the PCT differs from the EPO, which deems all communications posted by PCT as delivered 10 days after the date of posting, unless the document was received before those 10 days, in which case the real date of delivery is the one which counts.

### Time limits calculated in years (R.80.1 PCT) [§ V.1.1]

<table>
<thead>
<tr>
<th>Event Date</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 Mar 2002</td>
<td>End of 10 year period</td>
</tr>
<tr>
<td>11 Aug 2000</td>
<td>End of 3 month period</td>
</tr>
</tbody>
</table>

**End of working day (R.80.7(a-b) PCT): [§ V.1.2]**

- All PCT procedures are performed during the working day of a national office or other party concerned.

**Applicable period.** The triggering event can be the priority date or the filing date, or the notification of a document requesting the filing date, or the fee must be paid before 10 PCT to expire up to midnight on the relevant day.

**Example:**

- 4 April: start computation of 3 month period
- 3 May: end of the month period
- 10 May: start of the next month period

### Time limits calculated in months (R.80.2 PCT) [§ V.1.1]

<table>
<thead>
<tr>
<th>Event Date</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 Mar 1992</td>
<td>Start computation 10 year period</td>
</tr>
<tr>
<td>26 Mar 1992</td>
<td>End computation 10 year period</td>
</tr>
<tr>
<td>1 May 2000</td>
<td>Start computation 3 month period</td>
</tr>
<tr>
<td>11 May 2000</td>
<td>End computation 3 month period</td>
</tr>
<tr>
<td>2 May 2002</td>
<td>Start computation of 1 month period</td>
</tr>
<tr>
<td>13 May 2002</td>
<td>End computation of 1 month period</td>
</tr>
</tbody>
</table>

### Time limits calculated in days (R.80.3 PCT) [§ V.1.1]

<table>
<thead>
<tr>
<th>Event Date</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 April 2000</td>
<td>Start computation of 30 days period</td>
</tr>
<tr>
<td>2 May 2000</td>
<td>End computation of 30 days period</td>
</tr>
<tr>
<td>4 April 2000</td>
<td>Start of 30 days period</td>
</tr>
<tr>
<td>3 May 2000</td>
<td>End of 30 days period</td>
</tr>
</tbody>
</table>

### Local dates for starting time limits (R.80.4(a) PCT): [§ V.1.1]

- R.80.4(a): the date for computing the start of the time limit is the date in the place where the relevant date occurred.

**Examples:**

- 1 May (17:30 pm, Central EU-Time): EPO requests (by fax) to be applied in Tokyo to file a document within 4 month period.
- 2 May (,..., in Tokyo time): the fax is received by the applicant in Tokyo.

### Local dates for expiry time limits (R.80.4(b) PCT): [§ V.1.1]

- R.80.4(b): the date for computing the end of the time limit is the date where the document must be filed or the fee must be paid.

**Examples:**

- 1 May (17:30 pm, Central EU-Time): EPO requests (by fax) to be applied in Tokyo to file a document within 4 month period.
- 1 June (the EPO date states Central EU-Time): a document is filed in the office.

### Notifications & time limits: late posting / late delivery of documents (R.80.9 PCT): [§ V.1.2.3]

- **Art.47(1) PCT:** The details for computing time limits in PCT are governed by the regulations (e.g. R80.6 PCT)

**Late posting**

- **R80.9 PCT:** If a time limit starts to run on the day indicated on a document or letter emanating from a national office or international organisation, but posting or delivery of the document by the sender was prevented by a force majeure event then the date of mailing (i.e. the postmark or another indication that the document / letter was posted) applies for computing such time limit.

**Examples:**

- 4 February: date on which the applicant mailed the document under R82.1(c) PCT.
- 20 February: date on which the document was received at the applicant's organisation.
- 11 January: date of mailing, according to the sender (cablegram is received).

**Late delivery**

- **R80.9 PCT:** If the applicant can show that a letter or a document arrived more than seven days after the date it bears (regardless when it was posted), then the actual date of mailing applies for computing such time limit.

**Examples:**

- 1 February: date on which the applicant mailed the document under R82.1(c) PCT.
- 20 February: date on which the document was received at the applicant's organisation.
- 11 January: date of posting of the letter.

### Delivery services

- **R80.9 PCT:** If a national office or international organisation can apply the provisions of R80.1 PCT to delivery services other than postal authorities.
- **Art.47(1) PCT:** Where a time limit for paying a fee or filing a document expires on the day that a party is unable to post a document / letter to the person to whom it is addressed, the time limit is extended 2 days under R80.6 PCT.

**Examples:**

- 2 May (... am Tokyo time): the fax is received by the applicant in Tokyo.
- 4 February: date on which the applicant mailed the document under R82.1(c) PCT.
- 14 February: expiration date of a time limit for an international authority for an applicant to file a particular document.

### Postdelay: late arrival of documents (some of the applicant) (Art.40(1) & R82quater.1 PCT): [§ V.1.3.2.2]

- **Art.40(1) PCT:** where a time limit is failed due to postal delay(s) then in the next, to the relevant action is taken is reasonable or possible after the events in question.

**Examples:**

- 13 March: date of receipt of the letter.
- 14 March: date of receipt of the fax.

### Force majeure (Art.40(1) PCT & R82quater.1 PCT): [§ V.1.3.2.2]

- **Art.40(1) PCT:** where a time limit is failed due to postal delay(s) then in the next, to the relevant action is taken is reasonable or possible after the events in question.

**Examples:**

- 13 March: date of receipt of the letter.
- 14 March: date of receipt of the fax.

### Notes

- These are not real examples, because notifications triggering a TL may not be sent by fax (R.92.3 PCT, see § IV.1.3.2).
- The references in brackets “§.....” refer to the relevant paragraphs of the book.
- Reference must always be made to the official documents (the PCT, the EPC and their implementing regulations and guidelines).

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Table 9: Mandatory reply to the ESOP [§ IV.9.1.2.2] and to the WO-ISA, IPER or comments accompanying the SIS-search report [§ IV.6.1.1]

<table>
<thead>
<tr>
<th>Decision</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>The EPO prepares the following:</td>
<td>- the supplementary search report</td>
</tr>
<tr>
<td>The application lies in the competence of the EPO Examining Division under R104 EPC.</td>
<td>The applicant must reply to this communication under RT(0)[2] EPC in time, or the application is deemed withdrawn under Art.94 EPC.</td>
</tr>
</tbody>
</table>

START HERE:

- Does the EPO prepare a supplementary search report?
  - Yes* | Did the applicant waive his right to the communication under R70(2) EPC? |
  - No | Did the applicant file a demand? |
  | Where no IPER was prepared by the EPO***, was the EPO WO-ISA positive (no objections raised)? |
  | Where the EPO prepared an IPER, was this positive? |
  | Where the EPO was the SIS-ISA, were the comments accompanying the SIS-search report positive? |

Applicant invited to amend application (no obligation to reply) - 6 month time limit (R161(2) EPC)**.

6 months

The applicant is sent a communication under R161(1) EPC requesting him to correct the deficiencies noted by the EPO in the PCT, to which he need not reply, because:

- WO-ISA/IPER/SIS-ISA was positive & the applicant has not already replied
- WO-ISA/IPER/SIS-ISA was negative & the applicant has already replied

Did the applicant file either or both of the following on entering the European phase and indicated this on Form 1200:
- amendments [R161(2)(b) EPC]
- arguments

The applicant is sent a communication under R161(1) EPC offering him the chance to amend the application to which he need not reply, because:

- WO-ISA/IPER/SIS-ISA was positive [C-II, 3.2.2] or
- the applicant has already replied [C-II, 3.2.3 & C-II, 3.4.3]...

The communication under RT(0) EPC is sent to the applicant inviting him to confirm the request for examination he filed on entry into the European phase.

If the applicant fails to confirm the request for examination in time, the application is deemed to be withdrawn under RT(0)[2] EPC.

If the applicant does not reply within this 6 month period, the application is deemed to be withdrawn under RT(0)[1] EPC.

The applicant then has 6 months to reply to the ESOP, or 6 months from the expiry of the 31m period if the application has been declared to be withdrawn: RT(0)[3] EPC.

If the applicant fails to the ESOP in time, the application is deemed to be withdrawn under RT(0)[2] EPC.

Further processing applies to both failures.

Legend:
PCT: Patent Cooperation Treaty
EPO: European Patent Office
TL: time limit

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* This includes the case where the EPO prepared the IPER, but in the absence of the WO-ISA, IPER or comments accompanying the SIS-search report (without an IPER), the EPO asks the WIPO for a supplementary search report (via WO-ISA), the EPO will send out the IPER on the basis of the supplementary search report, although it will still prepare a supplementary search report for those in the European phase - [E-VIII, 3.3.2].

** Applies where the EPO performed the International search as ISA, and/or also performed the SIS-search on SIS-ISA [B-II, 4.3.1 & OJ 2009, 594].

*** This includes the case, where the EPO was the ISA and no IPER/IPER/SIS-ISA was positive (no objections raised), but the EPO was not the IPER.

**** OJ 2011, 354 - The applicant can waive this communication under R70a(2) EPC, if the request for examination was made on Form 1200 and no claims were already indicated on Form 1200. If the step has been done, the step is simply checked out.

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Disclaimer: The authors do not accept any responsibility for the consequences of following the information / tips given in this table.

Reference must always be made to the official documents (the PCT, the EPC and their implementing regulations and guidelines).

Note: The table is provided as annex to the book: P. Watchorn & A. Veronese "PCT Procedures and Passage into the European Phase". The references in brackets "§....." refer to the relevant paragraphs of the book.

This includes the case where the EPO prepared the IPER, but in the absence of the WO-ISA, IPER or comments accompanying the SIS-search report (without an IPER), the EPO asks the WIPO for a supplementary search report (via WO-ISA), the EPO will send out the IPER on the basis of the supplementary search report, although it will still prepare a supplementary search report for those in the European phase - [E-VIII, 3.3.2].

This applies where the EPO performed the International search as ISA, and/or also performed the SIS-search on SIS-ISA [B-II, 4.3.1 & OJ 2009, 594].