

Traditionally, the only parties involved in the international phase of the PCT have been the applicant and the Offices conducting the various aspects of processing (receiving Office, International Bureau (WIPO) and International Searching and Preliminary Examining Authorities). Third parties are able to access some information during the PCT (once the PCT application has been published), but have had no opportunity to comment on PCT applications unless national laws allowed them to do so during the national phase.

The new PCT third party observation service (available as of July 2, 2012) now permits third parties to make certain observations on any published PCT application during the international phase if they believe that the claimed invention is either not new (lacks novelty) or is obvious (lacks inventive step). WIPO believes that this new service will result in higher quality patents (when granted), and help to ensure that patents are not granted when unjustified.

A few key points about this new service are as follows:

- 1) Observations on a PCT application can be submitted from the date of international publication until 28 months from the priority date;
- 2) No fee is payable for such submissions;
- 3) Submissions can be made anonymously. Although third parties need to identify themselves to WIPO when making the submission, they have the option of indicating that they would like the observations to be published anonymously, in which case WIPO will not reveal any details about the third party to the public, the applicant, any International Authority or any designated Office;
- 4) A third party may only make a single observation on any particular PCT application;
- 5) A maximum of ten observations may be submitted on any particular PCT application;
- 6) An “observation” in the context of this system consists of a list of at least one and up to a maximum of ten citations of documents published prior to the international filing date (or patent documents having a priority date before the international filing date), together with a brief indication of how each document is considered to be relevant to the novelty or inventive step of the claimed invention. Certain bibliographic details must be provided in order to properly identify each document (a lookup facility is provided to fill in the details of patent publications) and the most relevant passages may be identified;
- 7) Submitted observations should preferably be accompanied by a copy of each cited document, which will be made available to the applicant and Offices;
- 8) Third parties who wish to make prior art submissions must submit them through WIPO’s ePCT system, using the “public services” option, either by logging in directly to [ePCT public services](#) or via a link on the bibliographical data tab of the published PCT application in [PATENTSCOPE](#) (click the button “Submit Observation” which will only appear for published PCT applications in respect of which the above-mentioned 28-month time limit has not yet expired). If the third party does not already have a WIPO user account, they will need to create one in order to log in to ePCT public services – to do this, go to:

<https://pct.wipo.int/LoginForms/epct.jsp> and click on the link “Create an account” under “ePCT public services”.

- 9) Submissions made other than through this system (for example on paper or by uploading a PDF file) will normally not be treated as an observation and will not be visible on the file of the PCT application, whether for the applicant, Offices or publicly through PATENTSCOPE;
- 10) Observations may be entered in any language of international publication of the PCT application in question. WIPO will not provide translations of submitted observations so if the third party is able to write in several languages, he/she should consider using the language which will most likely be understood by the applicant and Offices of States which he/she is particularly interested in), although titles and uploaded copies of prior art documents should normally be in their original language. Translations of documents can also be submitted;
- 11) Submissions, once made, cannot be retracted or modified via the online system;
- 12) The applicant is permitted to respond to observations by third parties until 30 months from the priority date, but is not required to do so.
- 13) The observations (and any responses by the applicant) will be notified to the applicant, the International Searching Authority (if the international search report has not yet been received by WIPO), International Preliminary Examining Authority (if applicable, and the international preliminary report on patentability has not been received by WIPO) and designated Offices (where the applicant has entered the national phase);
- 14) Each observation will be reviewed by WIPO to determine whether it actually relates to questions of novelty and/or inventive step;
- 15) The observations (excluding copies of cited documents) and any responses by the applicant will be made publicly available via the [WIPO PATENTSCOPE database](#);
- 16) It is up to the individual PCT Offices and Authorities to decide what use to make of an observation. The person who submitted the observation does not have any additional right to intervene in the processing of the PCT application, save what may be possible in the national phase through opposition and similar procedures.

The legal framework for third party observations is contained in new Part 8 of the Administrative Instructions under the PCT at: <http://www.wipo.int/export/sites/www/pct/en/texts/pdf/ai.pdf>, and more detailed information on how to submit third party observations can be found in the User Guide to the third party observation service at: [http://wipo.int/pct/en/epct/pdf/epct\\_observations.pdf](http://wipo.int/pct/en/epct/pdf/epct_observations.pdf)