



The Patent Cooperation Treaty (PCT): Its Advantages and Implications for Economic Development in Contracting States

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Received: 05/01/2026

Accepted: 02/05/2026

Published: 13/07/2026

Abstract :

As a result of the inability of the Paris Union Agreement for Industrial Property to cover the procedural aspect of the patent system, international efforts have tended towards proposing a new international system for inventions embodied in the Washington Treaty on patent Cooperation of 1970. This treaty includes several advantages, which the most important is that it simplified the procedures for the international protection of the invention by stipulating a central system for filing and examining international patent applications. It also brings other benefits to the member states, especially developing ones, by receiving technical services that support their development and enhance their economic growth

Keywords: Washington treaty, Patent of invention , Innovation , International application, International search.

Introduction

Intellectual property rights in general, and inventions in particular, are characterized by their international nature, since intellectual creativity knows no borders.¹ Consequently, legal protection provided solely under national legislation is insufficient, which necessitates extending protection to the international level. This objective is consistent with the mission of the World Intellectual Property Organization (WIPO), to which Algeria has acceded,² and which advocates "international cooperation as a means of encouraging creativity, disseminating and utilizing the products of human intellect, and ensuring their protection, thereby serving the economic, cultural, and social advancement of humanity."³

On this basis, several international agreements concerning patents have been concluded.⁴ However, Algeria has ratified only two of them. The first is the general instrument governing

¹ Nouara Hussein, *Industrial Property in Algerian Law* (Tizi Ouzou: Al-Amal Printing, Publishing and Distribution, 2015), p. 5.

² Ordinance No. 75-2 bis of 9 January 1975 ratifying Algeria's accession to the Convention Establishing the World Intellectual Property Organization, signed in Stockholm on 14 July 1967, *Official Gazette*, 4 February 1975, No. 13, p. 198.

³ Mohammed Ali Al-Rawahneh, *Intellectual and Industrial Property*, 1st ed. (Dar Al-Thaqafa, 2009), p. 7.

⁴ These include: the Strasbourg Convention of 27 November 1963 concerning the unification of substantive patent law relating to patentability requirements and the legal effects of patent grants; the Brussels Convention of 27 September 1968 concerning the enforcement of infringement actions relating to national patents; the Strasbourg Agreement of 24 March 1971 establishing the International Patent Classification (IPC); the Munich



industrial property protection, namely the Paris Convention for the Protection of Industrial Property,⁵ to which Algeria acceded in 1966 pursuant to Ordinance No. 66-48 of 25 February 1966 and ratified in 1975. The second is the Washington Treaty, namely the Patent Cooperation Treaty (PCT).

Although the Paris Convention is of paramount importance because it comprehensively addresses the various aspects of industrial property and establishes three fundamental principles—the principle of national treatment, the principle of the right of priority, and the principle of the independence of patents—which today constitute the cornerstone of the international industrial property system, the present study focuses on the aforementioned Washington Treaty because it specifically regulates the filing procedures for applications seeking international patent protection.⁶

The Treaty also provides for the establishment of an international union known as the International Patent Cooperation Union, operating within the framework of the Paris Union for the Protection of Industrial Property. Consequently, the Paris Convention remains the international constitutional framework governing the protection of industrial property.

The specific purpose for which this Treaty was concluded distinguishes it from other international legal instruments by granting it several unique advantages. Accordingly, the present paper seeks to answer the following research question:

What are the distinctive advantages of the Washington Treaty on Patent Cooperation, and how do these advantages contribute to economic development in the contracting States?

To address this issue, the study adopts a comparative analytical approach, which is appropriate for analyzing and comparing the provisions of the Treaty, identifying its distinctive features, and comparing its system with other international legal frameworks.

Accordingly, this study is divided into two main sections. The first examines the advantages of the Treaty in simplifying international patent protection procedures through the establishment of a centralized system for filing and examining international patent applications. The second highlights the effectiveness of the Treaty in promoting innovation and fostering economic development.

Section One: Simplifying International Procedures for the Protection of Inventions

The significant developments witnessed worldwide in the economic, social, cultural, and particularly technological fields have played a major role in encouraging the international community to strengthen the legal position of inventors by granting them broad protection. This trend stems from the realization that the principle of territoriality, upon which the patent system

Convention of 5 October 1973 on the European Patent; the Luxembourg Convention of 15 December 1975 establishing a Community Patent for the Member States of the European Economic Community; and the Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

⁵ Chavanne, A., & Burst, J.-J., *Industrial Property Law (Précis Dalloz)*, 5th ed., (1998), p. 298.

⁶ Three draft versions of the Treaty were prepared successively: the first in 1967, the second in 1968, and the third, which was adopted by the Washington Diplomatic Conference in June 1970.



is traditionally based, has become inadequate and incompatible with the concept of globalization, which emerged during the second half of the twentieth century and has since become one of the defining features of the contemporary world.⁷

Such an international orientation can only be effectively achieved through the establishment of a flexible and efficient international system capable of addressing the technical difficulties arising from the increasing number of patent applications filed worldwide, as well as the growing volume of documents that must be examined. These challenges inevitably prolong the procedures required for obtaining patent protection.

Against this background, the Patent Cooperation Treaty (PCT) was concluded. As its name suggests, the Treaty was designed to promote cooperation among States in carrying out the procedures preceding the grant of patents.⁸ It introduced a centralized system for filing and examining patent applications submitted under its framework. This centralized mechanism represents one of the Treaty's most significant advantages, as it substantially simplifies the procedures for obtaining international patent protection for inventions.

Accordingly, examining this issue requires addressing the filing procedure based on a single international patent application (Section One), which is itself subject to prior substantive examination (Section Two).

Section One: The Requirement to File a Single International Application in Lieu of Multiple National Applications

One of the most significant features of the Patent Cooperation Treaty (PCT) is that it establishes a unified international system for filing and processing international patent applications through simplified procedures. A patent application may be filed in any language, at any time throughout the year, and at any hour of the day. Such filing produces the legal effects of a duly filed national patent application in more than 150 countries.⁹ It should be noted, however, that benefiting from this feature requires the application to comply with the harmonized international formal requirements governing the international application, which in itself constitutes one of the principal advantages of the Washington Treaty (PCT) (Subsection One). This is followed by an examination of the international legal effects of the patent application (Subsection Two).

Subsection One: Standardization of the Form of the International Patent Application

The standardization of the form of the international patent application saves both time and costs that would otherwise be spent verifying compliance with the procedural requirements imposed by each country in which the inventor seeks patent protection.¹⁰ As a mandatory legal

⁷ Abdel Karim Adli Mohammed, "The Patent Cooperation Treaty: Towards the Establishment of an International Patent Grant System between Achievement and Aspiration," *Journal of Legal and Social Sciences (Algeria)*, No. 4 (2019), p. 506.

⁸ Chavanne, A., & Burst, J.-J., op. cit., p. 304.

⁹ Khira Mosaddaq, *The Claims Document in Patent Law: A Comparative Study*, Published PhD Dissertation, University of Oran 2, Oran, Algeria, 2014–2015, p. 350.

¹⁰ Bouchoux, D.-E, *Intellectual Property: Trademark Law, Copyright Law, Patent Law, and Trade Secrets*, translated by Baron-Renault, B. (Nouveaux Horizons, 2007), p. 332.



instrument, the application enables the inventor to acquire a legitimate right over his or her intellectual creation.¹¹ The application is submitted in the form of a file containing a set of documents (First), drafted in a single language (Second).

First: Documents Constituting the International Application

The set of documents required by the Treaty serves a dual purpose. On the one hand, it clarifies the nature, type, and characteristics of the invention; on the other hand, it defines the scope of its legal protection. Accordingly, the application must include a request, which is an administrative form provided by the competent industrial property authority to the applicant. Through this form, the applicant expresses the intention to file an international patent application pursuant to the provisions of the Patent Cooperation Treaty (Washington Treaty). The request must contain several items of information, including details relating to the identity of the applicant or the appointed representative, as well as information identifying the inventor. In addition to these identifying particulars, the request must include information relating to the invention itself. This includes a precise title of the invention that facilitates its classification within the list of inventions. Most importantly, the applicant must designate the countries in which patent protection is sought. The request form must also be signed by either the applicant or the duly authorized representative.

Besides these mandatory particulars, the request may also include a declaration claiming the priority of one or more earlier applications relating to the same invention, provided that such claim is made within a period of twelve (12) months from the filing date of the first application. The exercise of this right, known under the Paris Convention for the Protection of Industrial Property as the right of priority,¹² prevents third parties from relying against the applicant on applications filed after the date of the first filing.¹³ It should also be noted that the priority date plays a fundamental role under the provisions of the Treaty, as it constitutes the starting point for calculating the various time limits prescribed for completing the required procedures, whether during the international phase—which includes international filing, international search, and international publication—or during the national phase.¹⁴

Moreover, in addition to the request form, the international application must include a description of the invention that is comprehensive, clear, concise, and precise. Along with the request form and the description, the application must also be accompanied by drawings whenever they are necessary for understanding the invention. For example, if the invention is of a mechanical nature, merely providing a written description of the invention would be insufficient.

¹¹ Farha Zarawi Saleh, *Al-Kamil fi Al-Qanun Al-Tijari: Intellectual Rights, Industrial and Commercial Property Rights, Literary and Artistic Property Rights* (Oran: Ibn Khaldoun Publishing and Distribution, 2006), p. 93.

¹² The principle of priority is established under Article 4 of the Paris Convention for the Protection of Industrial Property.

¹³ Farha Zarawi Saleh, *op. cit.*, p. 195.

¹⁴ Boutillon, I., *The Patent Cooperation Treaty (PCT): Legal and Institutional Framework – General Overview*, *JurisClasseur Brevets*, Fasc. 4482 (LexisNexis, 2016), p. 7.



Furthermore, defining the scope of the exclusive rights granted to the inventor can only be achieved by including another document in the international application, namely the claims. These are drafted according to precise standards established by the international legal text.¹⁵ Each claim must be written clearly and concisely so as to define the scope of the protection sought, and it must be fully supported by the description.

Finally, the content of the international application is completed by an abstract. The abstract provides a brief presentation of the invention and is drafted as a single concise paragraph.¹⁶ Its purpose is solely to provide technical information; therefore, it cannot be relied upon to interpret ambiguities arising, for example, from deficiencies in the description or from a lack of clarity in the claims.¹⁷

Secondly: Drafting the International Application in a Single Language

The Patent Cooperation Treaty (PCT) grants applicants a special advantage regarding the language used for filing the international application, which some legal scholars refer to as ¹⁸ the filing language. The applicant is required to prepare the application in only one language, thereby achieving significant savings in time, effort, and costs.

As a general rule, an international application may be filed in any language accepted by the Receiving Office, which is the authority with which the international application is filed under the provisions of the Treaty. However, that language must simultaneously be accepted by the International Searching Authority (ISA) responsible for conducting the international search on the invention, and it must also be a language of international publication, namely one of the ten languages in which international applications are published: Arabic, Chinese, English, French, German, Japanese, Korean, Portuguese, Russian, and Spanish.

Section Two: The International Effect of the Patent Application

The legal effects of a properly filed international application constitute one of the most distinctive features of the Patent Cooperation Treaty. These effects are reflected in the acquisition by the international application of the legal status of a duly filed national application (First), as well as in the commencement of the time limits governing the international phase (Second).

First: Acquisition of the Legal Status of a Duly Filed National Application

The Receiving Office examines the formal requirements of the international patent application, including its content and the language in which it has been drafted. It also verifies that the application has been filed in accordance with the provisions of the Treaty by a person entitled to do so. Once these requirements are fulfilled, the application is accorded an international filing date, which simultaneously constitutes the international priority date.¹⁹

¹⁵ Article 6 of the Washington Treaty, together with Rule 6 of its Regulations.

¹⁶ Bouchoux (D.-E.), op. cit., p. 291.

¹⁷ Article 3(3) of the aforementioned Washington Treaty.

¹⁸ - Boutillon, I., The Patent Cooperation Treaty (PCT): In Search of a Constantly Reinvented, Dynamic Balance, Doctoral Thesis in Private Law, University of Strasbourg, 2016, p. 193.

¹⁹ Abdel Hamid Al-Manzalawi, Industrial Property (Algiers: Office des Publications Universitaires, 1983), p. 52.



From that date onward, the international application enjoys the same legal effect as a duly filed national application in each State designated in the application. More precisely, an international filing made in accordance with the provisions of the Treaty has the same legal effect as a regular national filing in every Contracting State designated for the grant of a national patent, and in every designated State for the grant of a regional patent.²⁰

The international legal effect of a patent application is effectively reflected in its being subject to the same legal conditions applicable to national applications filed in the designated States. Consequently, the applicant acquires a number of rights while simultaneously assuming a set of obligations. Among the most important rights acquired is the right to institute legal proceedings, which, under these provisions, entitles the applicant to bring a patent infringement action in any of the designated States.²¹ Such an action constitutes a legal remedy established by legislation to challenge any act that, in whole or in part, infringes the patentee's exclusive right to exploit the invention, including acts of manufacturing, use, or marketing of the protected product, or even the process used to obtain it, where such process is itself protected by the patent.

Second: Commencement of the Time Limits for International Procedures

The international protection established under the Washington Treaty is implemented—according to a significant body of legal scholarship—through three stages, two of which are international in nature. The first international stage is mandatory and concerns the international application and the international search. The second international stage relates to the international preliminary examination; however, it is optional,²² as Contracting States may enter reservations concerning these provisions, and the applicant may likewise choose not to subject the application to such examination. The national stage, on the other hand, concerns the grant of the patent and is conducted before the competent authorities of the States designated in the application for protection.

National procedures remain suspended throughout the duration of the international procedures, which extend from twenty (20) months to thirty (30) months from the priority date. This period constitutes one of the most significant characteristics of the Patent Cooperation Treaty (PCT) system. During this time, none of the designated national offices may examine the substantive merits of the application except on an exceptional basis and only upon the applicant's express request. Likewise, during this stage, the applicant may not be required to submit translations of the documents forming the application file or to pay national filing fees.²³

The prescribed period also constitutes a grace period for the international application, as it precludes the designated States from rejecting the application during that time. Since no patent

²⁰ Remiche, B., & Cassiers, V., *Patent and Know-How Law* (Larcier Édition, 2010), p. 287.

²¹ Phelip (B.), *Brevet d'invention: France-étranger-brevet européen* Patents for Invention: France-Foreign-European Patent, 3rd ed., *Encyclopédie pour la vie des affaires*, Delmas, 1994, p. 328.

²² Farha Zraoui Saleh, *op. cit.*, p. 197.

²³ Remiche (B.) & Cassiers (V.), *op. cit.*, p. 287.



may be granted during this period, the application likewise cannot be refused,²⁴ thereby imposing a temporary limitation on the authority of those States.

Furthermore, where the applicant has complied with the formal requirements prescribed by the Treaty, the application may not subsequently be rejected by the national offices on the grounds of formal defects.²⁵

Second Requirement: Prior Substantive Examination of the International Patent Application

One of the most distinctive features of the Washington Treaty is its adoption of a prior technical examination system for patent applications. According to some legal scholars,²⁶ this approach represents one of the most effective methods for examining the substantive merits of international patent applications, particularly with regard to the requirement of novelty and the patentability of the invention. It ensures that inventions are genuine and deserving of legal protection.

This objective is achieved through a series of centralized procedures following the filing of the application, primarily embodied in two technical procedures conducted by highly qualified competent authorities. The first procedure, which is mandatory, is the international search, whose principal purpose is to determine the novelty of the invention (Section One). The second procedure is optional and closely resembles the first; it consists of the international preliminary examination (Section Two).

Section One: The Mandatory International Search on the Novelty of the Invention

The documentary search, which is a procedure carried out by the competent authority prior to the grant of a patent, aims to prepare a document identifying prior art that may affect the novelty or inventive step of the invention for which protection is sought.²⁷ This document is referred to as the "International Search Report" (ISR). The purpose of adopting this mechanism is to identify the state of the art relating to each element of the invention covered by the international application.²⁸ It takes into account all information that has become available to the public before the filing date of the patent application or the claimed priority date, regardless of the means by which such information was disclosed, communicated, or published, irrespective of the time and place of its disclosure, and regardless of the identity of the person responsible for making it available to the public.²⁹ Consequently, it is evident that the Treaty adopts the principle of

²⁴ Boutillon (I.), *Le traité de coopération en matière de brevets (PCT): cadre juridique et institutionnel* The Patent Cooperation Treaty (PCT): Legal and Institutional Framework, op. cit., p. 4.

²⁵ Salah Zine El-Dine, *Industrial and Commercial Property: Patents, Industrial Designs, Industrial Models, Trademarks, and Trade Names*, Dar Al-Thaqafa, 2000, p. 183.

²⁶ Salah Zine El-Dine, op. cit., p. 63.

²⁷ Farha Zraoui Saleh, op. cit., p. 119.

²⁸ Farha Zraoui Saleh, op. cit., p. 196.

²⁹ Azéma (J.) & Galloux (J.-C.), *Droit de la propriété industrielle* Industrial Property Law, 7th ed., Précis Dalloz, 2012, p. 212.



absolute novelty with respect to both time and place,³⁰ requiring consideration of all inventions known worldwide, irrespective of the date on which they were created.

The international publication of the patent application constitutes the final step before the commencement of the examination of the international application by the national authorities of the designated States, unless the application has been subjected to an international preliminary examination. One of the principal advantages of international publication is that it provides the most up-to-date information on inventions in the shortest possible time and in a form that facilitates understanding and exploitation.³¹ The International Bureau publishes the international application together with the International Search Report upon the expiration of eighteen (18) months from the priority date of the application.³² Publication may also take place before the expiry of this period upon the applicant's express request. It is issued in the form of a pamphlet containing the description, contents, claims, drawings, and abstract in the language in which the application was filed³³

The publication may also include additional documents, such as declarations accompanying amendments to the claims, provided that copies of both the original and the amended versions are included. At the same time, the International Bureau publishes official notices in the form of announcements and indexes indicating developments relating to published international applications.³⁴ These notices are made available through the PATENTSCOPE search system, an electronic platform accessible to the public without restriction, which provides the necessary tools—particularly multilingual facilities—to ensure effective access to patent information.³⁵

Section Two: The Optional Request for an International Preliminary Examination of the Patentability of the Invention

The international preliminary examination is one of the most significant procedures adopted to strengthen the technical and substantive examination system for inventions. It constitutes the second stage of the international procedures established under the Washington Treaty. Since the Contracting States are free to adopt or dispense with this procedure, it is considered optional. Its purpose is to provide a non-binding preliminary opinion on whether the invention is patentable. Accordingly, it assesses the suitability of the invention claimed in the international application for legal protection. It is therefore necessary to distinguish this procedure from the international search by highlighting its specific conditions and procedures, as well as its advantages.

³⁰ Khaled Yahya Al-Sabahin, *The Requirement of Novelty (Confidentiality) in Patent Law: A Comparative Study*, 1st ed., Dar Al-Thaqafa, 2009, p. 165.

³¹ Mohamed Hassanein, *Industrial Property in Algerian Law*, Al-Amal Printing, Publishing and Distribution, Tizi Ouzou, 2015, p. 185.

³² Article 21(2)(a) of the Washington Treaty.

³³ Khaled Yahya Al-Sabahin, *op. cit.*, p. 162.

³⁴ Boutillon (I.), *Le traité de coopération en matière de brevets (PCT). cadre juridique et institutionnel*, *op. cit.*, p. 8.

³⁵ Lakhlef (S.), *Guide sur le brevet d'invention: procédures de dépôt en Algérie et à l'étranger* *Guide to Patents for Invention: Filing Procedures in Algeria and Abroad*, CERIST, 2016, p. 21.



The applicant must expressly submit a request for an international preliminary examination. This request is prepared separately from the international application and is filed using a prescribed printed form drafted in the language specified by the Administrative Instructions under the Treaty. The form must indicate the Contracting State or States in which the applicant intends to rely on the results of the international preliminary examination. Under the Treaty, these States are referred to as the "elected States."

The justification for making this declaration mandatory lies in the possibility that the States designated for international preliminary examination may differ from those originally designated in the international application at the time of filing. This is because the States selected for this purpose are necessarily those bound by the provisions governing Chapter II of the Treaty, whereas this is not the case for all Contracting States.

The demand for international preliminary examination must be filed within three (3) months from the date on which the international search report and the written opinion are transmitted to the applicant, or within twenty-two (22) months from the priority date of the application. In this regard, the applicant is required to comply with the prescribed formalities and language requirements, in addition to paying the applicable fees, namely the handling fee collected by the International Preliminary Examining Authority on behalf of the International Bureau for each demand submitted, as well as the international preliminary examination fee payable by the applicant to the competent Authority.³⁶

As a general rule, the international preliminary examination is conducted after the expiry of twenty-eight (28) months from the priority date of the application, or within six (6) months from the date on which all requirements necessary for carrying out the examination have been fulfilled. These requirements include the availability of the international application, the international search report, the written opinion, the demand for international preliminary examination, and the payment of the prescribed fees determined by the International Preliminary Examining Authority.

One of the most significant features of this procedure is that it allows the commencement of the national phase to be deferred until thirty (30) months from the priority date. This grants the applicant additional time to determine the most appropriate course of action regarding the future of the application. However, according to a segment of French legal scholarship, this procedure has been criticized for the relatively high fees associated with the international preliminary examination.³⁷

The applicant receives at least one written opinion from the competent Authority, unless the latter considers that the invention already satisfies the requirements of novelty, inventive step,

³⁶ The International Preliminary Examining Authority (IPEA) refers to the competent authority responsible for conducting the international preliminary examination pursuant to the provisions of the Washington Treaty (Patent Cooperation Treaty). It possesses functions and characteristics similar to those of the International Searching Authority. See: Article 32 of the Washington Treaty (PCT); Rule 59 of the PCT Regulations; Article 152 of the European Patent Convention; and Rule 158 of its Implementing Regulations.

³⁷ Phelip (B.), op. cit., p. 330.



and industrial applicability, or that no observations are necessary because the international application fully complies with all the requirements laid down by the Treaty and its Regulations, within the scope of the Authority's supervisory powers in this respect.³⁸ Where a written opinion is issued, the competent Authority shall notify the applicant of its contents and shall set out in detail the reasons supporting the conclusions reached with respect to each claim individually. Furthermore, the notification must invite the applicant to submit a written response, accompanied, where appropriate, by any amendments deemed necessary, provided that such amendments are submitted before the establishment of the International Preliminary Examination Report and do not extend beyond the disclosure of the invention as contained in the application as originally filed.

One of the principal advantages of this procedure is the preparation of a thorough and well-reasoned opinion concerning the patentability of the invention. Where the conclusions are favorable to the applicant, they facilitate the continuation of the national procedures through the transmission of the international application and its accompanying documents to the designated national offices.

Chapter Two: The Effectiveness of the Washington Treaty System in Promoting Innovation and Achieving Economic Development

The effectiveness of the system established under the Washington Treaty is not confined to the set of centralized procedures designed to unify the pre-grant patent process as merely a uniform procedural framework. Rather, it extends to other advantages arising from the substantive provisions of the Treaty, which are primarily intended to encourage innovation by providing creators and inventors with a competitive environment and renewed incentives that support their creativity and inventions. This, in turn, contributes to advancing technological development by encouraging investment, stimulating economic activities, and generating significant economic benefits.³⁹ From this perspective, this chapter examines the effectiveness of the Washington Treaty system in promoting innovative activity through the extension of international procedural time limits (Section One), before highlighting the impact of these provisions on achieving economic development in the contracting States (Section Two).

Section One: The Extension of International Procedural Time Limits and Its Impact on Promoting Innovative Activity

The Washington Treaty constitutes one of the most significant international legal instruments concluded with the objective of encouraging inventions and stimulating innovation. Achieving this objective required the adoption of a unique legal framework that seeks to strike a balance between the interests of the inventor and those of the States designated in the application. This is accomplished by granting the applicant sufficient time before confirming the application before the designated national offices, which remain free to determine the appropriate course of action regarding the international application. Examining this issue requires addressing the

³⁸ Article 34(2)(b) and (c) of the Washington Treaty (Patent Cooperation Treaty), previously cited.

³⁹ Nabil Wanoughi, "Intellectual Property Rights as a Means of Achieving Development Requirements," *Legal and Political Studies (Algeria)*, Vol. 3, No. 1 (2017), p. 193.



Treaty's distinctive feature concerning the extended duration of the procedures preceding the grant of a patent (Subsection One), followed by an analysis of the sovereignty of the designated States in determining whether the international application merits patent protection (Subsection Two).

Subsection One: Extension of the Duration of International Procedures

Under the Washington Treaty, the time limit granted for filing procedures is divided into two periods. The first relates to the initial international phase, extending from the date of filing the international application until the completion of the international search. This phase lasts twenty (20) months from the filing date with the receiving Office, or from the priority date where the application contains a declaration claiming the priority of an earlier application pursuant to the Paris Convention for the Protection of Industrial Property. The second period concerns the international preliminary examination phase, which lasts ten (10) additional months and is added to the first period, resulting in a total duration of thirty (30) months.

However, as of 1 April 2002, the Treaty adopted a new approach with respect to these provisions.⁴⁰ It established a single time limit prior to the commencement of the national phase, consisting of thirty (30) months calculated from the priority date of the international application, replacing the previous time limits, which varied depending on the type of procedures followed.⁴¹

The Importance of Extending Procedural Time Limits

The importance of extending procedural time limits lies in fostering innovation by allowing the applicant to benefit from a period of two and a half years to make the necessary amendments that may improve the quality of the invention and enhance its prospects of obtaining patent protection in the designated States. This is particularly significant in the current era, where technological advances are progressing at an unprecedented pace. During this period, the applicant may conduct further experiments on the invention and subject it to additional tests and analyses. Moreover, the extended time frame enables the inventor to assess the commercial potential and market opportunities of the invention in the designated States and to develop an effective strategy for its profitable exploitation while safeguarding the right to obtain patent protection. This objective is achieved by conducting market studies in the target countries with the assistance of experts specializing in the relevant technological field, who can carry out comprehensive research on the economic feasibility of the invention as well as the costs associated with its production and commercialization.

⁴⁰ These provisions were adopted following the amendment of the Washington Treaty and its Regulations on 3 October 2001, which entered into force on 1 April 2002.

WIPO, "PCT Treaty/153: Amendments to Article 22 of the Patent Cooperation Treaty (PCT), Amendments to the PCT Regulations, and Decisions Concerning Entry into Force and Transitional Arrangements," consulted on 3 March 2024.

⁴¹ Boutillon (I.), "Le traité de coopération en matière de brevets (PCT): cadre juridique et institutionnel," op. cit., p. 2.



Section Two: The Exercise of the Sovereignty of the Designated States in Determining the Patentability of the Application

Although the Washington Treaty established a centralized system for the filing and examination of international patent applications, this approach does not undermine the sovereignty of the Contracting States except to a limited extent, as each State retains the authority to decide whether or not to grant a patent.⁴² Once the national phase begins, the designated Offices apply their substantive patent law to the international applications, which are accorded treatment equivalent to that of national patent applications. Accordingly, the system established under the Washington Treaty does not replace national procedures but rather precedes them.⁴³

In general, the national phase commences once the designated Office receives a copy of the international application together with the International Search Report, unless the applicant has requested that the application undergo an International Preliminary Examination. In that case, the national proceedings are suspended until the International Preliminary Examination Report has been communicated to the elected Offices.

From the moment the national phase begins, the international application is transformed into a series of independent national or regional applications. Consequently, the decision of one designated Office regarding the grant of a patent has no legal effect on the decision of any other designated Office.⁴⁴ Each competent authority therefore exercises exclusive jurisdiction to examine the content of the application in accordance with its own examination system and the procedural time limits established under its domestic legislation.

Following the examination process, the national Office may refuse to grant the patent. Such refusal cannot be based on defects in the formal requirements of the international application, since the latter is governed by uniform rules binding upon all Contracting States. Consequently, refusals are limited to substantive grounds, namely whether the invention satisfies the patentability requirements.

Section Two: The Effectiveness of the Treaty System in Promoting the Economic Development of the Contracting States

In the contemporary world, economic development is fundamentally driven by creativity and innovation. The mere availability of capital and labor is no longer sufficient to achieve sustainable economic growth, particularly in developing countries that continue to experience technological underdevelopment. In this regard, it may be observed that the Washington Treaty introduced specific provisions designed to encourage this category of States to achieve their economic development. Nevertheless, these provisions do not diminish the substantial benefits that the economies of developed countries also derive from the Treaty. Accordingly, this section examines the advantages that the Treaty offers to developing countries through its contribution

⁴² Tafforeau, P, *Droit de la propriété intellectuelle Intellectual Property Law*, 2nd ed. (Gualino Éditeur, 2007), p. 479.

⁴³ Remiche, B. & Cassiers, V., *op. cit.*, p. 283.

⁴⁴ Remiche, B. & Cassiers, V., *op. cit.*, p. 294.



to their economic development (Section One), before highlighting the role of these provisions in strengthening the economies of developed countries (Section Two).

Section One: The Contribution of the Treaty to Supporting the Economic Development of Developing Countries

The Washington Treaty devoted an entire chapter to technical services that primarily benefit developing countries. These services include, in addition to technical assistance, patent-related information services.

It is evident from the provisions of the Treaty ⁴⁵that the provision of these information services is entrusted to the International Bureau of the World Intellectual Property Organization (WIPO). Contracting States may obtain technical data or any other information available to the Bureau based on published documents, including patent applications and granted patents. The International Bureau may provide these services directly, through one of the Authorities selected to carry out the International Search and International Preliminary Examination, or through an international or national specialized institution, pursuant to a prior agreement.

These services are provided at cost. However, where a developing country is concerned, they may be offered at a price below cost. A natural person residing in or holding the nationality of a country whose per capita gross national income is less than US\$3,000 is entitled to benefit from a 75% reduction in the fees relating to international applications filed under the Patent Cooperation Treaty (PCT).⁴⁶

With regard to technical assistance, the Assembly of the Union established a special committee known as the Committee for Technical Assistance, composed of the Contracting States, including those representing developing countries. This Committee is responsible for organizing technical assistance for this category of countries with the aim of improving their patent systems, training specialists, seconding experts, and providing equipment for practical demonstrations and operational management. These measures enable the national patent offices of developing countries to establish a prior examination system, thereby enhancing the quality of the patents they grant.

Section Two: The Contribution of the Treaty to Strengthening the Economic Power of Developed Countries

Industrially developed countries account for approximately 95% to 99% of all patent applications filed annually worldwide.⁴⁷ The Washington Treaty grants these dominant countries several advantages, one of which is that they receive the invention disclosure before other countries. This is because their national patent offices are themselves entrusted with conducting the International Search and the International Preliminary Examination of the invention that is the subject of the international application.

⁴⁵ Article 50(1) of the Washington Treaty, previously cited.

⁴⁶ Abdel Karim Mohamed Adly, op. cit., p. 511. See also Zine Eddine Salah, op. cit., p. 180.

⁴⁷ Their number is approximately twelve countries, led by Japan, Finland, the United States of America, South Korea, Germany, France, India, the United Kingdom, Canada, China, and others.



However, this advantage is subject to a degree of flexibility. When these countries accept the provisions of the Treaty and consider their mutual relations, they implicitly agree to certain reciprocal concessions. They accept that an international application for the protection of a foreign invention may be filed within their territories, provided that the application is submitted in any member State of the Union using a standardized form, and that the International Search and International Preliminary Examination may be carried out by another industrialized State.⁴⁸ In this context, it should be noted that, despite the advantages offered by the Washington Treaty, an examination of the objectives underlying its adoption indicates that it was not primarily intended to safeguard the interests of developing countries. Rather, it mainly serves the interests of the industrialized countries that shaped its provisions. This is confirmed by statistical data showing that industrialized countries consistently rank first in the number of patent applications filed, far surpassing developing countries.⁴⁹ This demonstrates that the international patent protection system established by the Washington Treaty was designed primarily to protect the interests of developed countries through their multinational corporations, which invest in developing countries with the aim of monopolizing specific markets, exploiting their natural resources, benefiting from low-cost labor, and marketing their products therein. Moreover, the transfer of advanced technology generally takes place only between these multinational corporations and their subsidiaries, rather than with local companies.

Conclusion

This study demonstrates that the significance of inventions lies in the fact that they constitute one of the fundamental indicators for measuring the progress of nations and the advancement of societies. Within the framework of this article, we have highlighted the advantages of the Washington Treaty by explaining the nature of the procedural system governing applications for international patents. This system is based on the centralized filing and substantive examination of international patent applications and offers numerous benefits to applicants by reducing the time and costs normally associated with obtaining international patent protection. It also alleviates the administrative burden on national patent offices by avoiding the duplication of efforts resulting from multiple applications.

The study has also emphasized the effectiveness of the Treaty system in promoting innovation and fostering the economic development of the Contracting States, particularly developing countries. It achieves this by granting applicants sufficient time limits—extending up to two and a half years from the date of filing the international application—which provide valuable support to inventors with limited financial resources and help safeguard their right to patent protection.

Furthermore, we sought to illustrate the economic dimension of this international mechanism by examining the technical services made available to developing countries. These services enable them to train and qualify personnel in the field of patents, thereby facilitating the

⁴⁸ Abdel Hamid Al-Manzlawi, op. cit., p. 57.

⁴⁹ Abdel Karim Mohamed Adly, op. cit., p. 512.



eventual establishment of effective patent examination systems and the modernization of their legal frameworks in a manner that supports their economic and technological development. Nevertheless, this does not diminish the considerable advantages enjoyed by developed countries, which, by virtue of their ownership of advanced knowledge and technology, remain the principal beneficiaries of the globalization of patent systems.

Although the Treaty has succeeded in achieving a degree of harmonization of the procedures preceding the grant of patents, it remains essentially a procedural treaty that has introduced no substantive legal rules. The inability of the international community to establish unified substantive rules as a preliminary step toward the creation of a truly international patent valid worldwide can largely be attributed to the absence of economic, social, and legal homogeneity among States, in addition to the significant differences between the political systems of industrialized and developing countries.

Moreover, the technological disparity between these groups of countries continues to widen the economic gap between them, reflecting the limitations of the current global economic system. This system, largely shaped by the major industrial and former colonial powers since the second half of the twentieth century, has enabled industrialized countries to consolidate their economic dominance over global markets and, consequently, to exert considerable political and legal influence over international institutions and organizations. In contrast, developing countries have remained unable to compete on equal political or legal terms and often lack the capacity even to negotiate the conditions imposed upon them, as the prevailing international order continues to favor those with greater economic power.

In conclusion, it may be inferred that the establishment of a universal patent valid across all countries remains a distant objective. Nevertheless, should such a system eventually be realized, it would constitute a major breakthrough and a qualitative transformation in the global economic order, with significant implications for international economic relations by making them more balanced and equitable.

While this optimism and legitimate aspiration cannot be regarded as certain, their realization may continue to face resistance from developed countries, whose policies often seek to maintain their economic dominance over developing nations through continued control of advanced technologies and the concentration of knowledge and innovation resources. Such practices hinder developing countries from acquiring the technological capabilities necessary for sustainable progress. Under these circumstances, developing countries, including Algeria, have no more effective path toward strengthening their national economies than investing in the talents and skills of their inventors, enhancing their innovative capacities, and reducing technological dependence on foreign sources. Such efforts are essential for establishing a national foundation for creativity and innovation capable of supporting sustainable economic development and achieving a greater degree of technological and economic independence.