

Proposal for an Optional Mechanism within PCT: The WIPO Social Purpose Licensing Incentive

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Introduction

The WIPO PCT system, various regional patent organizations and national patent authorities charge fees to apply, obtain and maintain patents on inventions.

One not uncommon feature of the international, regional and national patent systems is the differentiation of fees charged by applicants, including discounts available based on the characteristics of the patent applicant or patent holder, or the availability of a patented invention through licensing.

Discounts on standard fees can be available based upon the country of the inventors or applicants, the size of the assigned holder of the rights (micro, small or medium sized enterprise), or status as a natural person, an educational, research or governmental organization, or a commitment by a patent holder to agree to make invention available to to any licensee, on reasonable terms, through a license of right endorsement.

The amount of money involved for these discounts varies by patent authorities, and the global nature of the discounts is highly fragmented. A patent applicant may benefit from discounts in some PCT fees, but not others, and the discounts available at the regional or national level for applying, obtaining and maintaining patent protection can be limited to national entities, or not available at all.

The fragmented nature of the discounts limits their impact as an incentive.

I will review the current practice of fee discounts, and proposes a new coordinated system of discounts to induce the licensing of inventions to achieve a social outcome.

Current practice of patent fee discounts

PCT Related fees

- Fees set by a receiving office (RO):
 - The first step for an applicant is to submit an application to an RO, which acts as a gateway to the PCT. There are reportedly 85 recognized regional or national entities that are ROs, and the WIPO international bureau can also act as an RO. Each RO sets its own fees.
- Fees set by a WIPO approved International Searching Authority (ISA/IPEA):
 - **Search Fee:** Applicants are required to pay a fee for an ISA to conduct a search for prior art and to issue a written opinion on the invention's potential patentability. There are currently 25 approved International ISAs. The search fee is set by the ISA independently, and in 2025, ranged from a few hundred dollars to \$2,400. There are also supplementary search fees, which is an optional service, typically to expand the search in different languages and regions, and an application can request an optional International Preliminary Report on Patentability (IPRP), essentially a second opinion on the patentability of the invention, which an applicant can use before deciding to enter the more expensive national phase of obtaining patent protection. The International Preliminary Examining Authorities (IPEAs) are the same entities as the ISAs.
- Some ROs, ISAs provide discounts for specific categories of applicants or the language of the application.
- Fees set by WIPO:
 - The International Filing Fee and handling fees.

PCT International Filing Fee discounts

A 90 percent fee reduction applies when:

1. An applicant who is a natural person and who is a national of and resides in a State that is listed as being a State whose per capita gross domestic product is below US\$ 25,000 (according to the most recent 10-year average per capita gross domestic product figures at constant 2005 US\$ values published by the United Nations), and whose nationals and residents who are natural persons have filed less than 10 international applications per year (per million population) or less than 50 international applications per year (in absolute numbers) according to the most recent five-year average yearly filing figures published by the International Bureau; or
2. An applicant, whether a natural person or not, who is a national of and resides in a State that is listed as being classified by the United Nations as a least developed country.

RO transmittal, ISA search, and IPEA preliminary exemption discounts

Varies from no discount to 90 percent for a variety of criteria. Examples would be discounts for the language of the applications, the nationality of the inventors or assignees, the type of entity (education, research, government, natural person, etc.), and the size of the entity.

For example, for preliminary examination fees:

- **Chile:** 80 percent discount where the applicant is (a) a Chilean university, or (b) a foreign university headquartered in any of the States that benefit, in accordance with the Schedule of Fees under the PCT Regulations, from the 90% reduction of the international filing fee.
- **The Philippines:** 50 percent discount for small entity or government. Applicable where the applicant is a small entity which refers to any natural or juridical person whose assets are worth not more than one hundred million pesos (P100M); or any entity, agency, office, bureau or unit of the Philippine government including government-owned or controlled corporations, state universities and colleges and government-owned or government-run schools.

Fees in the National Phase

The PCT fees are important, but more significant will be the fees paid to regional or national patent authorities, when a PCT applicant enters to national phase, seeking protection in different geographic markets.

Discounts on fees, if any, are varied by jurisdiction.

National maintenance fees

Once patents have been granted, patent holders typically are required to pay annual fees to maintain protection, often escalating over time and with stiff surcharges for late payments. For example:

- The Australian patent annuities are 300 AU\$ in year 5, and increase to 8,000 AU\$ in year 25, for pharmaceutical patents.
- Ecuador (SENADI) begins at \$257 and increases by more than \$2000 by year 20.
- Germany begins at \$116 and escalates to \$2,349 by year 20.
- The more countries, the more significant the cost to the patent holder.

License right fee discounts

A number of governments provide a reduction in patent fees as an incentive for a commitment by the patent holders to provide a license to any applicant on reasonable terms.

The typical discount on fees for a License of Right (LOR) endorsement is 50 percent.

The discount is an incentive to make inventions more widely available (promoting technology diffusion by signaling inventions are open to licensing, and providing greater certainty that a negotiation for a license will be successful, with reduced litigation risks).

A LOR endorsement is similar in some respects to a voluntary commitment to a standards body to make patented inventions available on Fair, Reasonable and Non-Discriminatory (FRAND) terms, in a field of use related to a standard. However, in a typical LOR regime, the government patent authority assumes a potential role in resolving disputes over the licensing terms, the commitment to license the invention is not limited to a specified field of use (a specific application or scope of a technical standard), and the licensee benefits from the reduction in the national patent office fees.

A number of national patent offices have LOR regimes, including several in Europe, and a handful in non-European nations. Some States, like France or India, have also abandoned LOR systems.

Based upon reports from law firms and others, these are the national patent offices that currently offer a LOR discount on national patent fees.

- Europe (including Eastern Europe)
 - Belarus, Czech Republic, Germany, Ireland, Italy, Latvia, Lithuania, San Marino, Slovakia, Spain, UK.
- Non-European
 - Singapore (Section 53 of the Singapore Patents Act)

The LOR regimes have some uptake, for example, in the UK or Germany, but in some jurisdictions, an existing system is not well known and rarely used, and, as noted, is not available at all in most countries.

The LOR concept requires active management. The patent holder has to make a LOR endorsement that the patent office has to record and publish, and when called upon, the patent office plays a role in resolving disputes over licensing terms. Some patent offices do not have strong dispute-resolution bodies or want the responsibility to evaluate licensing terms.

Proposal: Plurilateral mechanism

The proposal is to create, within the PCT, an opt-in mechanism for national and regional authorities to join, providing deep discounts on the fees for applying, obtaining, and maintaining patents on inventions, based upon a qualification linked to licensing practices.

The primary challenge for the creation of a system of plurilateral discounts on lifecycle patent fees is to find a workable way to qualify applicants/rightsholders for the discount.

Current fee discounts are generally limited to the status of the patent holder, by geography, size, or nature of ownership, or LOR enforcement. The LOR endorsement in current national systems is not linked to a social outcome, other than enhancing the availability of the patented invention.

What is proposed here is a plurilateral cooperation that relies upon third parties to qualify patent holders for the discounts. Rather than having a mechanical qualification, such as the size of the rights holder entity, or the binary decision to provide a LOR endorsement in a national or regional market, the qualifications would be allocated by selected institutions, trusted and empowered by a plurilateral governance body. The selected institutions would apply to the plurilateral mechanism for a contract to qualify patent holders for discounts, to achieve specific social objectives for which the selected institution has competence and confidence of the plurilateral body.

Some structure

Within the PCT, create an optional mechanism referred to as the WIPO Social Purpose Licensing Incentive (WSPLI).

This would include, for governance, a Plurilateral Assembly for Social-Purpose Licensing (PASL), aided by the WIPO PCT Secretariat.

The PASL would have to approve a contract with an institution that would in turn, award social purpose endorsements to patent holders, making those patents eligible for fee discounts.

The contracts would set out the limits of the delegates' endorsement powers, both for the subject matter and the number of endorsements, as well as reporting requirements.

Examples of entities that could contract for the social purpose endorsements delegated authority

WHO's HTAP

Medicines Patent Pool

For more information

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