Insights: Publications

Where to Enter the PCT National Phase?

February 15, 2022

Just about anywhere in the world is where one may claim a patent with an international PCT patent application. There are, after all, 154 countries bound by the Patent Cooperation Treaty (PCT). But almost no one, except well-heeled pharmaceutical companies, files in every last one. That is, when companies have to start spending real money to enter the PCT national phase at the 2½ year (30 month) deadline, they trim their choices way down.

What is remarkable is that those choices tend to be the same countries, at least for U.S.-origin PCT applications. U.S.-origin PCT applications are those with a “US” in the international application number, such as PCT/USxx/xxxxx. This is true even though there is a veritable laundry list of considerations that companies presumably analyze for each and every patent application.

That the same countries are selected makes sense because many of the considerations tend to tread the same paths. Where are the largest markets? Where is there manufacturing? Where are the courts helpful in enforcing patent rights? And once a company settles upon a list of target countries, it tends to file there for subsequent applications. Some companies even have small, medium, and large lists of standard countries. For a particular application, they choose a list and then add and subtract countries given their IP budget and where there are articulatable business reasons.

So where do they file? We can answer this question by asking precisely: given all U.S.-origin PCT applications that come up on their 30-month deadlines, what percentage are filed in any given country? For example, 100% would mean that every single PCT application entered the national phase in that country, and 0% would mean than none were. Seeking what people do in normal times, we purposely analyzed 2019 data because it was the last “normal year” before the COVID-19 pandemic. We'll start with the most popular.