

Harmonization Update

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IP System – harmonization?

Not a one size fits all approach



International agreements leave open a policy space for countries to make choices regarding their implementations.

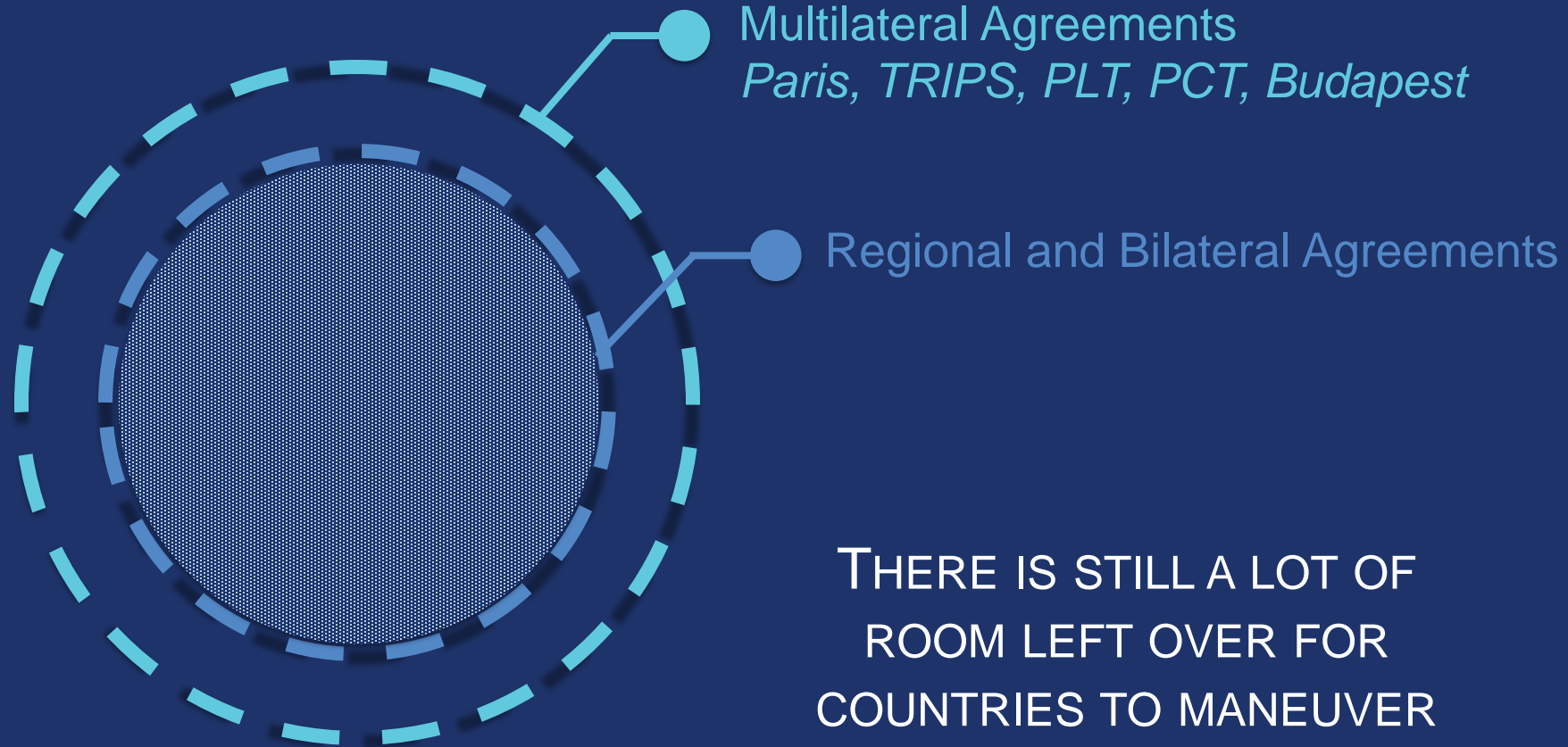


Governments implement these choices in their national legislation, selecting the options that meet local needs.



Expectation: stakeholders using the resulting national legal framework will be positioned to achieve local policy goals and objectives. Is the system efficient and beneficial for the users?

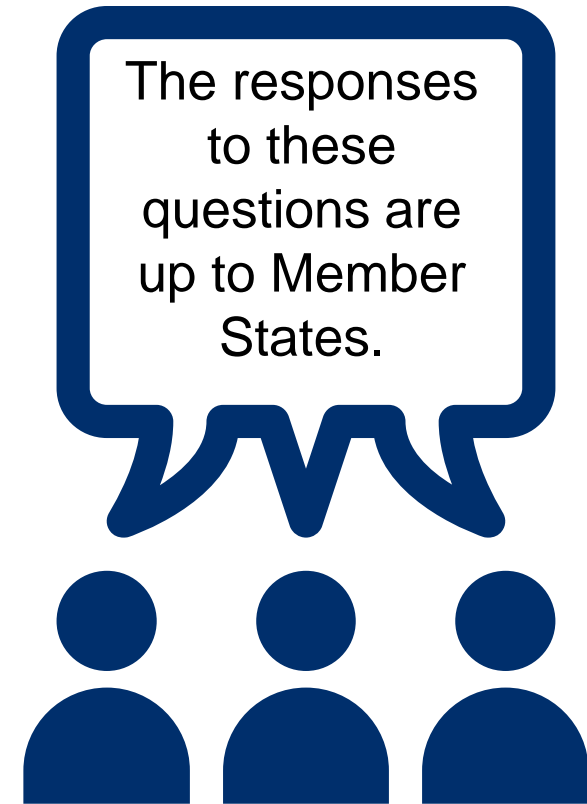
Available policy space for patents



Harmonization – Some questions

- What does Harmonization mean?
- What should be harmonized?
- What drives the harmonization and convergence of IP laws?
- What are the pros and cons?

What is the Role of WIPO?
How WIPO can help?



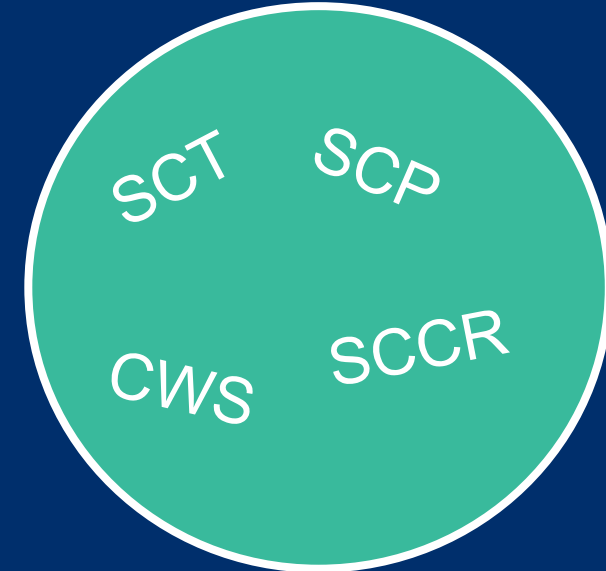
WIPO's role

WIPO's Treaties and Standards



All the WIPO patent treaties are aimed at harmonization of some aspects

WIPO Standing Committees



A forum to discuss issues, facilitate coordination, and provide guidance concerning the progressive international development of IP law, including harmonization of national laws and procedures

Harmonization: Historical settings - Treaties

- Harmonization efforts since the *Paris Convention* (1883)
- *PCT* (1970),
- *Budapest Treaty* (1977)
- *Draft Treaty Supplementing the Paris Convention as far as Patents are Concerned*
 - Started from the discussion on the grace period (1983)
 - Diplomatic Conference for the conclusion of the Treaty (1991)
 - No agreement, but many substantive patent law provisions entered into the *TRIPS Agreement* negotiated during the GATT Uruguay Round (→WTO)
- *Patent Law Treaty* (harmonization of national patent formality requirements)
 - Started negotiation in 1995; Adopted in 2000
 - Draft discussed at CoE; Since 1998, at SCP
 - “Disclosure of the origin of GR in patent applications”
 - Creation of IGC



In summary: WIPO Treaties - Patents

Paris Convention



- Principles: National treatment, priority right, territoriality
- Substantive provisions: Grace period, mention of the inventor...
- All IP rights mentioned

PCT



- International filing system of patent applications
- Helps patent offices with their patent granting decisions.
- Facilitates public access to technical information
- More time for the applicant to decide the future of the application

Budapest



Facilitates the international disclosure of biotechnological inventions through the deposit of a microorganism with an international depository authority (IDA)

PLT



Aim: harmonizing and streamlining formal procedures with respect to national and regional patent applications and patents and making such procedures more user friendly

Standing Committee on the Law of Patents (SCP)

<https://www.wipo.int/policy/en/scp/>

It is a fora to serve for harmonization

It is not at the stage of harmonization

Member States as members
IGOs/NGOs as observers

Agenda and future work are set
by Member States

Forum for policy debate, sharing
of experience & best practices,
negotiation of int. norms



SCP and harmonization: Historical settings

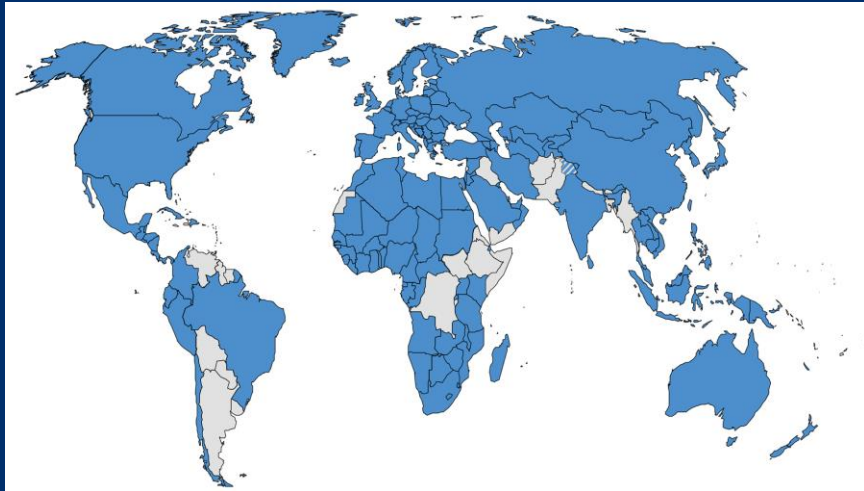
- *Draft Substantive Patent Law Treaty*
 - Based on where MSs left in 1991
 - Extended scope raised concerns about reducing flexibilities (ex. patentable subject matter, grounds for refusal of patent grant)
 - Counter proposals (ex. transfer of technology)
 - No agreement on the scope
 - SPLT negotiation put on hold in 2006

- PLT: Main achievement aiming at harmonization of formalities.
- Member States are free to join.
- Up to date: 43 Member States



PCT Statistics Update

PCT FILINGS AND COVERAGE:
CONTINUE TO INCREASE



- **157** Member States with 4 recent accessions over 2022 and 2023: Jamaica, Iraq, Cabo Verde and Mauritius
- **36** Countries NOT-YET Members of the PCT: on-going discussions with: Bangladesh, Bhutan, Fiji, Pakistan and
- **278,100** PCT applications in 2022 (↗ 0.3%)
- **134** countries where PCT applications were filed (↗ 3)
- **17.1%** Share of women among PCT inventors (↗0.6%)
- **58.9%** share of PCT National Phase Entries worldwide (↗2%)

WIPO Standard ST.26

RECOMMENDED STANDARD FOR THE PRESENTATION OF NUCLEOTIDE AND AMINO ACID SEQUENCE LISTINGS USING XML (EXTENSIBLE MARKUP LANGUAGE)

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- ST.26 seeks to **harmonize** sequence listing practices across all patent offices, reflect advances in biotechnology and meet international sequence database requirements
- Revision approved by the **Committee on WIPO Standards (CWS)**
- The new Standard applies to international applications filed on or after **July 1, 2022**. As of the same date, Members States also apply the new Standard to national and regional patent applications.

PATENTSCOPE

WIPO FREE OF CHARGE SEARCH
DATABASE PROVIDING ACCESS TO
MILLIONS OF DOCUMENTS



- Over **5 Million new** NPL (non-patent literature) documents from IEEE now available in PATENTSCOPE:
 - WIPO-IEEE collaboration (IEEE publishes a third of the world's technical literature in electrical engineering, computer science, and electronics)
- **Key features and Benefits:**
 - Comprehensive Search Capability
 - IPC Integration
 - Integrated Results
 - Translation tool
- For more information, reach out to Patentscope@wipo.int

WIPO Recent Developments

ENHANCING7UPGRADING PCT SERVICES AND FEATURES



- The **ePCT Business Continuity Service** replacing the previous 'PCT Contingency Upload Service' is a backup solution
- International Publication content management: **New pilot XML arrangement for improving international publication** of PCT applications when replacement/substitute sheets were submitted during the international phase processing
- **Safeguard mechanism:** PCT Rule 82*quater*. expanding the “force majeure” circumstances to excuse delays with PCT time limit compliance

Other topics on the WIPO agenda

01 | IGC



02 | Trade Secrets



03 | Standard Essential Patents (SEPs)



04 | Design Law treaty (DLT)



05 | Conversation on IP and Artificial Intelligence (AI)



Draft Design Law Treaty (DLT)

→ Simplification of Registration Formalities

- The 2022 WIPO General Assembly decided to convene:
 - a Diplomatic Conference to conclude and adopt a Design Law Treaty to take place no later than 2024
 - a Preparatory Committee in the second half of 2023, to establish the necessary modalities of the Diplomatic Conference
 - The Preparatory Committee will also approve the Basic Proposal for the administrative and final provisions of the Treaty;
- The Preparatory Committee approved that the Diplomatic Conference be hosted by the Kingdom of Saudi Arabia from November 11 to 22, 2024

The Draft Design Law Treaty (DLT) provides in particular:

- A **maximum** set of requirements for industrial design applications
- A **grace period** for filing further to a disclosure of the industrial design;
- **Safeguard mechanisms:** to avoid the unintentional loss of rights as a result of failure to comply with time limits

WIPO's AI related initiatives: Update



- **WIPO's Conversation on IP and AI**
 - September 23: IP and generative IP
 - 5,000 attendees from 162 countries
 - Reflects on rapid adoption of generative AI driven by ChatGPT
- **AI inventorship paper:** WIPO to publish a guide to assist for policy makers on:
 - How to support innovators in the AI space
 - Brainstorming on available options should AI become capable of autonomous invention
- **Grass roots projects**
 - IP management clinics for SMEs in the field of AI

Thank you

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