ePCT Version 4.0 User Guide – Third Party Observations

April 13, 2017

CONTENTS

THIRD PARTY OBSERVATIONS	3
REQUIREMENTS TO USE THE SERVICE	3
ABOUT THIRD PARTY OBSERVATIONS	4
IDENTIFYING AN ELIGIBLE INTERNATIONAL APPLICATION	6
MAKING AN OBSERVATION	7
COMING FROM PATENTSCOPE	7
GOING DIRECTLY TO ePCT	7
WHEN YOU CAN'T MAKE AN OBSERVATION	7
ENTERING OBSERVATIONS	8
PERSON MAKING THE OBSERVATION	10
DETAILS CONCERNING THE OBSERVATION	10
ADDING CITATIONS	11
ADDITIONAL FREE-FORM INFORMATION	14
SAVE AND PREVIEW	15
SUBMIT THE OBSERVATION	15
AFTER THE OBSERVATION IS SUMBITTED	
WHOM TO CONTACT	17
ANNEX - SAMPLE OF A SUBMITTED OBSERVATION	18



THIRD PARTY OBSERVATIONS

REQUIREMENTS TO USE THE SERVICE

The third party observation service is provided through the ePCT system https://pct.wipo.int

Visit the ePCT <u>SUPPORT</u> page for further details how to create a <u>WIPO account</u> and sign in to ePCT.



ABOUT THIRD PARTY OBSERVATIONS

Traditionally, the only people 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 and International Searching and Preliminary Examining Authorities). Third parties were offered some information on the process, but have had no opportunity to comment unless national laws allowed them to do so during the national phase.

The third party observation service now permits third parties to make certain observations on an international application during the international phase if they believe that the claimed invention is either not new (lacks novelty) or is obvious (lacks inventive step). The key points of the service are as follows:

- Observations on an IA can be submitted from the international publication date until 28 months from the priority date using the service described in this guide.
- A person may only make a single observation on any particular IA.
- A maximum of ten observations may be submitted on any particular IA.
- An observation consists of a list of at least one and up to a maximum of ten citations
 that refer to 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 one is considered to be relevant to the novelty or inventive
 step of the claimed invention.
- Bibliographic details of the relevant citations and a brief explanation of the relevance of each one (maximum of 5000 characters per citation) must be entered in a structured form. However, a short free-text PDF document may also be attached, for example to show formulae or to more clearly explain how different documents should be read together to demonstrate a lack of inventive step.
- Preferably, the observation should be accompanied by a copy of each relevant cited document, which will be made available to the applicant and Offices, but will not be made publicly available on PATENTSCOPE.
- 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. This can be done preferably through ePCT or by sending a letter to the International Bureau.
- The observations, cited documents and any responses by the applicant will be notified to the applicant, ISA (if the international search report has not yet been received by the IB), IPEA (if applicable and the international preliminary report on patentability has not been received by the IB) and DOs.
- It is up to the individual Offices 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 international application, save what may be possible in the national phase through opposition and similar procedures.
- The observations (excluding copies of cited documents) and any responses by the applicant will be made publicly available on PATENTSCOPE. Copies of cited documents will not be made publicly available on PATENTSCOPE.



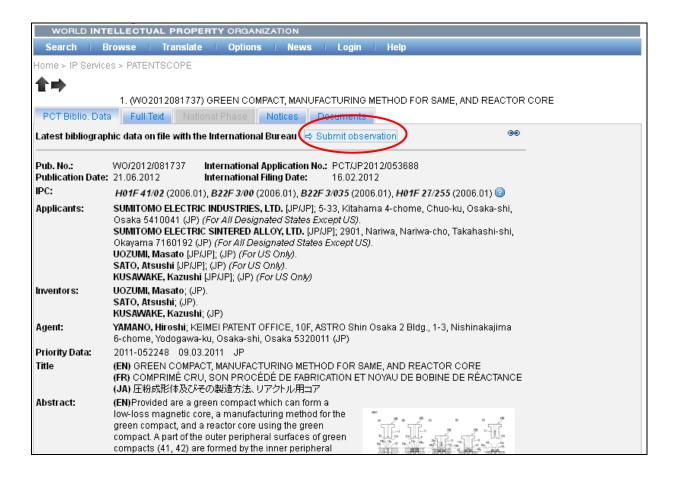
 Submissions made by third parties other than through this system (for example on paper or by uploading a PDF file) will normally not be treated as an observation and will not be visible on the file of the international application, whether for the applicant, Offices or publicly through PATENTSCOPE.

Note: The third party observation service is not for use by the applicant or his representatives. However, an equivalent function is provided as an "action" in ePCT called "observations on close prior art" (note that you must <u>sign in to ePCT with strong authentication</u> in order to do this). This function is available at any time up to 30 months from the priority date, including before international publication, and has no limit on the number of observations which can be made for a particular international application.



IDENTIFYING AN ELIGIBLE INTERNATIONAL APPLICATION

If you wish to make an observation on an international application, it is easiest to locate it in WIPO's PATENTSCOPE service at http://patentscope.wipo.int/search/en/search.jsf. This offers access to all published international applications and can be searched in a variety of different ways, such as by international application number, publication number, text searches, international patent classification searches or simply browsing through the international applications which have been published in a particular week.



For international applications where the 28 month period for submitting observations has not yet expired, the bibliographic data tab includes a link at the top "Submit observation" (see above). Clicking on this will redirect you to ePCT view for the relevant international application. You will need to sign in, as described below.



MAKING AN OBSERVATION

COMING FROM PATENTSCOPE

If you click on the "Submit observation" link while browsing a published international application in PATENTSCOPE, you will be automatically prompted with the sign-in screen of ePCT to identify yourself (enter your WIPO account username and password), after which you will be automatically directed to the third party observations screen for the international application in question, with no need to retype the IA number or international filing date.

GOING DIRECTLY TO ePCT

You can use the third party observation system directly from ePCT at https://pct.wipo.int/ePCT. Once signed in to ePCT, use the "Search" box to enter an international application number. You will be prompted to enter the corresponding international filing date. From the view of the international application which opens, click on the "Actions" link and select the action "Third Party Observations."

WHEN YOU CAN'T MAKE AN OBSERVATION

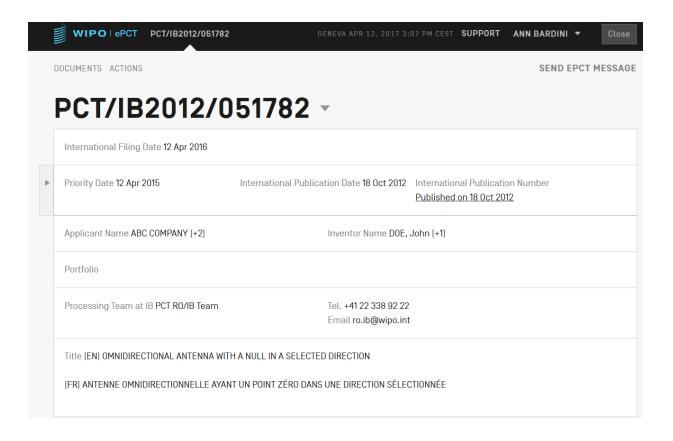
There are certain situations in which you cannot or should not make a third party observation using this service:

- The international application has not yet been published.
- The time limit has expired (28 months from the priority date) it is advisable to make any observations before the last day of the period so that there is the possibility of making corrections if your observation is initially found unacceptable for any reason.
- The international application has been withdrawn or is no longer being treated as an international application.
- You have already submitted an observation on this international application.
- A total of 10 observations have already been submitted for this international application.
- You are the applicant or if you represent the applicant. However, an equivalent function is provided as an "action" in ePCT called "observations on close prior art" (note that you must sign in to ePCT with strong authentication in order to do this). This function is available at any time up to 30 months from the priority date, including before international publication, and has no limit on the number of observations which can be made for a particular international application.
- If your account has "eOwner", "eEditor" or "eViewer" rights for the international application, you will receive an error message warning you to use the above-mentioned "action" instead.



ENTERING OBSERVATIONS

At the top of the third party observations screen you will see a range of bibliographic information, designed to let you ensure that you have selected the international application which you intended.



Note: The international publication date and the international publication number provide a link back to PATENTSCOPE to see the fuller view of information available through that system.

The lower part of the third party observations screen contains the necessary fields for entering observations.

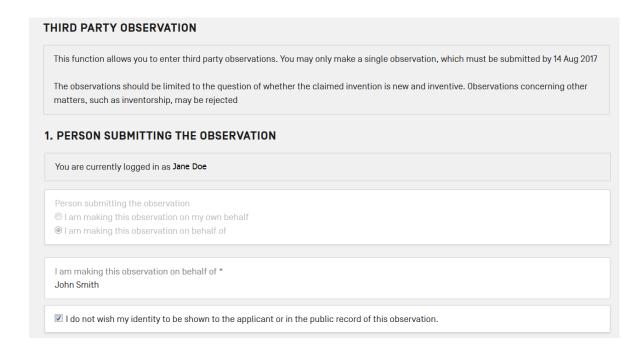


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PERSON MAKING THE OBSERVATION

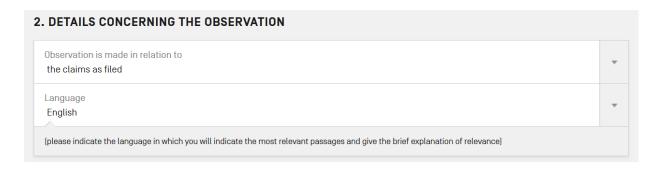
Before you make the observation itself, you need to indicate whether you are making the observation on your own behalf or on behalf of another, specified person. You may also indicate that you want your identity to be kept confidential by ticking the appropriate checkbox.



If you tick the checkbox, your name will not be indicated in the records made available to the public nor to the applicant and Offices. Your address and e-mail address will not be included whether you select the checkbox or not.

DETAILS CONCERNING THE OBSERVATION

You must indicate, where appropriate, which version of the claims are referred to (if Article 19 amendments have been filed, the dropdown will allow you to select either the claims as filed or those as amended) and the language in which the observations are being made.

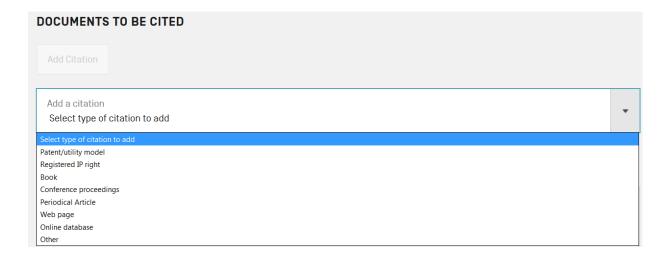




Note: You may enter observations in any language of international publication. However, the International Bureau will not provide translations. Consequently, if you are able to write in several languages, you should consider which one is most likely to allow your comments to be understood effectively by the applicant and by the Offices in which you are particularly interested in the results of examination. In most cases, it will probably be most effective to enter the observations either in English or, where you believe that the international application may be undergoing international preliminary examination, in the language of publication of the international application.

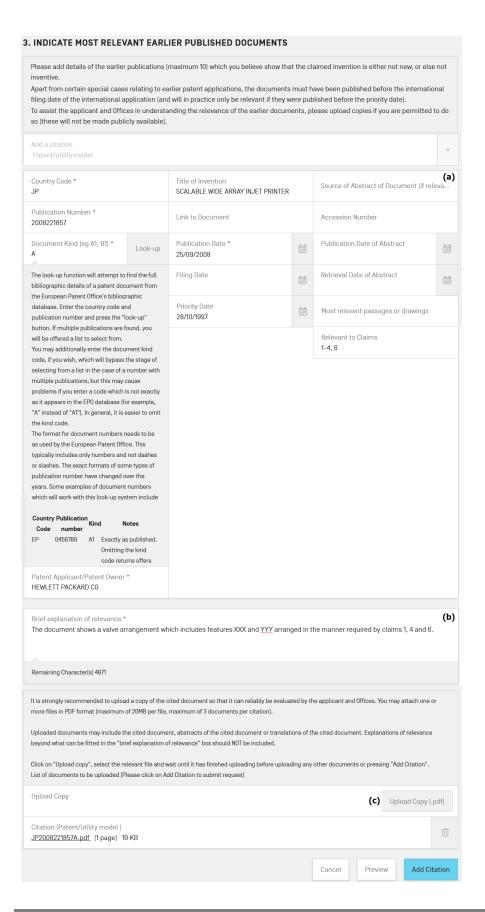
ADDING CITATIONS

The third section is a list of cited documents which make up the observation. You must add at least one citation before you can submit the observation by clicking on the "Add Citation" button and select the relevant type of citation you are adding.



Select the type of citation which best describes the particular publication which you wish to refer to.







The exact screen which appears will depend on the citation type selected, but each follows the same pattern:

- (a) Bibliographic data fields to identify the relevant cited document:
 - The fields marked "*" are required.
 - Most cited documents can only be relevant prior art if they were published before the international filing date (and normally before the priority date) of the international application about which the observation is made. Patent documents may also be cited if their priority date was before the international filing date.

Note: In the case of patent citations, you can use the "look-up" button to try to fill in the main bibliographic data fields automatically. Enter a two letter country code and a publication number (for example "GB" and "2000001") and press the "look-up" button. The system will attempt to retrieve data for that publication number from the European Patent Office's bibliographic database. This lookup is done using a non-secure connection from your browser. As a result, some browsers may display a warning such as "This page contains both secure and non-secure items". This dialog can be disabled using the browser settings, but it is not recommended to do so since it cannot be done on a "per-site" basis specifically for this tool.

(b) An indication of the relevance of the cited document – you must indicate which are the most relevant passages or drawings in the document and give a brief indication (maximum 5000 characters) of how the document is relevant to the novelty or inventive step of the claimed invention. It is strongly recommended to indicate exactly which claims you consider are not novel or not inventive in view of the disclosure in the cited document.

Note: This indication of relevance should contain comments only on novelty and inventive step. The current system does not permit observations on any other matter and including other types of comment may lead to the observation being rejected.

(c) An opportunity to upload a copy of the cited document in PDF format. Up to 3 documents per citation of up to 20MB each may be uploaded (for example, allowing the main document, an abstract and a translation of key passages to be added separately). Once you have uploaded a document, you can click on the document link to check that it is the correct one and delete it if necessary.



Note: It is strongly recommended to upload a copy of the cited document if you are permitted to do so. This way, your observation is more likely to be taken into account. The documents will be made available to the applicant and to International Authorities and designated Offices, but for copyright reasons will not be made visible to the public on PATENTSCOPE. Consequently, it is particularly important also to ensure that you provide sufficient bibliographic data to allow the document to be identified reliably for retrieval from other sources.

When you have entered all the required details, press "Add citation". The "Documents to be cited" table will now contain a row summarizing the citation (the text shows the first 50 characters of some of the main fields for identifying the cited document, followed by the first 50 characters of the "Brief explanation of relevance" and the number of documents which you have uploaded relating to that citation). If you have selected the wrong document type to add, press "Cancel" to go back to the main screen without adding the citation.

From this point, you may add further citations (up to a maximum of 10).

Citation Number 1	Type Patent/utility model	Citation details JP 2008221857 A [HEWLETT PACKARD C0] 25 Sep 2008 - The document shows a valve arrangement which inclu [documents attached-1]	0
Citation Number 2	Type Web page	Citation details WIPO, World Intellectual Property Organization, http://www.wipo.int /portal/en/index.html, Retrieved: 12 Apr 2017 - This website is extremely relevant [documents attached- none]	0

ADDITIONAL FREE-FORM INFORMATION

Where possible, the relevance of the cited documents should be explained in the web form provided for each individual citation. However, sometimes this may not be practical. The fourth section allows a PDF document to be uploaded containing information which cannot be readily placed in these boxes, such as equations demonstrating a particular point or explaining how the disclosures in different citations may be combined to demonstrate a lack of inventive step. Such PDF documents should be as short as possible and (as for other uploaded documents) be prepared in A4 portrait format (US letter format is also accepted) with black and white text and diagrams only.



4. ADD FURTHER EXPLANATION (OPTIONAL)	
Where possible, the explanation of the relevance of the earlier documents should be stated in the bold However, you may add further explanation as a PDF document if necessary, for example, to show equinventive step relevant to several documents. Any such additional document should be kept as short	uations or else to deal with issues of
Any document uploaded in this section will be made publicly available	
Attach document	Add Document [.pdf]

SAVE AND PREVIEW

You may save a draft of your observation at any time from the main screen (not while editing details of an individual citation). You can return to the draft observation later by opening the relevant international application and selecting the "third party observations" action.

Use the "Preview" button to make sure that the overall results are as you intended before proceeding to the submit step.

5. CHECK AND SUBMIT			
	Close draft	Preview	Submit Observation

Note: Be certain that you have included the most relevant prior art that you want to refer to. You may only submit one observation and you cannot retract an observation once it has been submitted.

SUBMIT THE OBSERVATION

When you are sure that the observation is complete, press the "Submit Observation" button.



AFTER THE OBSERVATION IS SUMBITTED

After pressing "Submit Observation", you will see a dialog box stating "Third party observation has been submitted to the International Bureau for review" and you will be redirected to the Documents section of the international application where you can see a copy of the observation and any accompanying documents which you have uploaded.

The observation will be reviewed by the International Bureau to check that it appears to be a valid observation and does not include matter unrelated to novelty or inventive step. Normally you will not receive any communication from the International Bureau unless there is a problem with the observation.

If you wish to track the processing of your observation, you can determine its status from the status shown next to the documents:

- When you first submit the observation, the status for each item is "Not yet processed by the IB".
- Once the observation has been reviewed and accepted by the International Bureau, the status for each document will change to indicate if it will be visible on PATENTSCOPE.
- Note that, if the observation is rejected by the International Bureau, it will disappear
 from the Documents list entirely. You will receive an email message from the
 International Bureau explaining why it was rejected.

Once the observation has been accepted by the International Bureau:

- The applicant will be notified.
- If the international search report has not yet been received by the IB, the ISA will be notified.
- If a demand has been filed and the international preliminary examination report has not been received by the IB, the IPEA will be notified.
- The observation (but not the copies of cited documents) will appear on PATENTSCOPE the next day.
- The observation (together with any other observations received and any responses by the applicant) will be notified to designated Offices which have asked to receive such information after 30 months from the priority date or on specific request in relation to an national phase entry.

The Annex to this guide shows a sample of a submitted third party observation as it would be seen on the file of the international application.



WHOM TO CONTACT

For any questions, queries or comments about ePCT, please contact the PCT eServices Help Desk by clicking on the SUPPORT link which appears in the ePCT header.

This will take you to our frequently asked questions page where you may able to find the answer to your question. Every FAQ item also has a "Contact" link for submitting further queries to the Help Desk, as well as "Chat" option when a member of staff is available for online Chat.

The International Bureau welcomes suggestions for improvement to the third party observation service. We cannot make substantive changes to the fundamental aspects (such as the time limits, limitation to observations only concerning novelty and inventive step, and the requirement for observations to be submitted through this system) without consultation with the PCT Contracting States, but the service remains under review and we can include user feedback as part of that review.

Should you need to submit a screenshot relating to a particular issue, please send it by e-mail to pct.eservices@wipo.int.

The PCT eServices Help Desk is available from Monday to Friday, from 9:00 until 18:00 Central European time. Every attempt is made to respond to questions within one business day.

Please note that the PCT eServices Help Desk is closed on Saturdays and Sundays, as well on following non-working days at WIPO which are available at: http://www.wipo.int/contact/en/holidays.html.

[Annex follows]



ANNEX - SAMPLE OF A SUBMITTED OBSERVATION

49856

PCT/EP2012/058298

Applicant's or agent's file reference

International application number

PATENT COOPERATION TREATY

PCT

THIRD PARTY OBSERVATION

(PCT Administrative Instructions Part 8)

International filing date (day/month/year)

04 May 2012 (04/05/2012)

Applicant	TEST APP	LICANT CORPO	RATION (+3)	
Third party observation sub	omitted by	Observatio	n submitted o	n behalf o	of
	Anonymous				
Date of submission(day/mo	nth/year)	Language	of observation	18 50	
02 Ma	ıy 2014 (02/05/2014)			Е	nglish
Basis and contents of obse	ervation				
1. The observation is	made on the basis of the cla	ims in the internati	onal applic	ation as	s filed.
2. The observation co	mprises:				
4 references to doc	uments.				
5 uploaded copies	of documents.				
Citation # 1 (Patent	t/utility model) (# uploa	aded documents	s: 1):		
Country code:	Publication number:		>	Doc	ument kind code:
GB	2000001				A
Patent Applicant/Patent Ow		Title of invention:			
DETROIT TOOL	& ENG CO	Tines Asser	mbly		
Link to document:					
Publication Date:	Filing Date:		ľ	Priority I	Date:
04 Jan 1979 (04/01	/1979)			13 J	un 1977 (13/06/1977)
Source of Abstract:	Accession number:	Publication	Date of Abst	ract:	Retrieval Date of Abstract:
Most relevant passages or d	lrawings:		Relevant	to Claims	
Page 3 lines 1-12;	Page 3 lines 1-12; Figures 3 and 4		1, 4-6, 12		
Brief explanation of relevan	nce:				
Figures 3 and 4 she	ow the arrangement of tines	required by claims	s 1, 4 and 5	. Furthe	ermore, page 3 lines 1-12
suggest the use of	a variety of lightweight met	talic materials; the	specific all	loy requ	ired by claim 6 is well known
in the field for a va	riety of purposes (see citation	on 3) and it would	be obvious	to use	it in both the drive shaft and
the tines.					
The ranges require specifically treated	d by claim 12 would be an i	nherent property o	f most allo	ys in th	e dimensions shown unless



Citation # 2(Conference proceedings) (# uploaded documents: 2):

Author:		Conference Title:		Conference Date:
SMITH, James		Cutters World		20 Nov 2011
				(20/11/2011)
Conference Location:		Title of article:		Place of publication:
Berlin, Germany		Varied edge angles	for more	
·1		effective cutting		
Publisher:	Publication Da	Publication Date: 15		<u> </u>
	20 Nov 2	2011 (20/11/2011)		
DOI:	·		•	
Most relevant passages or drawings:		Relevant to Claims:		
Page 3 lines 12-16; Slide 16 of presentation		1-3		
Brief explanation of relevance:				
The presentation indicate	ed the use of cutting edg	ge angles which vary acc	ording to th	e parameters required by
claims 1-3.	Heat also			

Citation # 3(Periodical article) (# uploaded documents:1):

Author: BLANC, André	Title of article: Finishing lightweight alloys for cutting tools	Title of Periodical: Metal Finishi	Publication Date: Apr 2010 (04/2010)
Issue Number of Periodical: Vol 108, Issue 4	Publisher of Periodical:	Pi	ace of publication:
Page range of article within periodical:		IS	SN:
DOI:			
Most relevant passages or drawi Page 43, lines 12-15	ngs:		Relevant to Claims:
Brief explanation of relevance: The article shows an e	xample of the use of the alloy re	equired by claim 6	in a similar cutting arrangement.



Citation # 4(Book) (# uploaded documents:1):

Title:	Author:		Subtitle:	
Cutting Implements	Bı	Branko Ivanov		
Place of publication:	Publis	her:		Year of Publication:
	O	xford Unive	rsity Press	1983
Number of edition:	·	ISBN:		
DOI:				
Most relevant passages or drawings:			Relevant to Clain	is:
pages 123-131		8-13		
Brief explanation of relevance:		7	to the second se	
The book sets out all the underlying	principles which a	ffect the sel	ection of the m	aterials referred to in claims
8-13. Those referred to in claims 8, 9	and 11 are specif	ically sugge	sted on page 12	26. Those of claims 10, 12 and
13 would be obvious alternatives giv	en the criteria indi	cated.		

[End of Document]