



ANNEX 2 - Summary of Responses to FICPI Questionnaire regarding Paris Convention Article 4A(1)

Country	Argentina (AR)	Australia (AU)		Austria (AT)	Brazil (BR)	Canada (CA)
Question	Convention Application	Convention Application	PCT Application	Convention Application	Convention Application	Convention Application
<p>1</p> <p>Has your country adopted the provisions of Article 4A(1) of the Paris Convention into its law, or has your country introduced provisions which differ in language or effect from Article 4A(1)?</p>	Argentina adopted the provisions of Article 4A(1) of the Paris Convention into its law.	Sections 29B, 43 and sch 1 of the Patents Act 1990. Regulations 3.12, and 3.13B define the priority date for a convention application.	Regulations 3.12, and 3.13A define the priority date for a PCT application.	The Paris Convention (PC) is adopted directly in provisions § 95(1) PatG, § 24(1) MaSchG, § 20(1) MuSchG.	Ratification of the Stockholm Revision of the Paris Convention; Article 16 of the Brazilian Industrial Property Law.	Sections 28.1(1), 28.2 and 28.4 of the Patent Act.
<p>2</p> <p>If the provisions implementing Article 4A(1) in your country differ from the wording of Article 4A(1) of the Paris Convention, such that there is a discrepancy between the two provisions, which provision has legal effect, the provision in your national law or the Paris Convention?</p>	Article 4A(1) of the Paris Convention takes precedence (international treaties enjoy higher hierarchy than national laws).	Local provisions dominate. (see <i>Chiropedic Bedding Pty Ltd v Radburg Pty Ltd</i> [2007] FCA 1869)		N/A since PC is applied directly.	Article 16 is not considered as being in conflict and consequently Article 4A(1) can be considered as having the effects of national law.	Local law has precedent in the event of a conflict.

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3a Does the right to claim priority in your country from an earlier filed Priority application in a foreign country rest solely with the applicant of that earlier filed Priority application?	No	No	No	No	Yes, but it can be assigned (see below).	No
3b Or can this right to claim priority rest with:						
(i) the successor in title of the Priority application (i.e. the assignee of the Priority application)	Yes	Yes	Unlikely	Yes	No	Yes
(ii) the successor in title to the priority right (i.e. the assignee of the right to claim priority)	Yes	Possibly. The right to file is that of a "Convention applicant". It is sufficient for the applicant to be the assignee of the priority application or entitled to the invention.	Likely that the PCT applicant filing in Australia will need to be the assignee of the priority right prior to filing the PCT application.	Yes	Yes	
(iii) the successor in title of both the Priority application and the priority right	Yes	Yes		Yes	No	
3c						

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Can this right to claim priority extend to other persons:					
(i) Is it sufficient for the person claiming the right of priority to merely have the "consent" of the applicant of the priority application to enable a priority right to be claimed?	The right to claim priority can be assigned to any person. Consent is not sufficient.	Yes, since the applicant would be a Convention applicant.	Likely to be insufficient since definition of Convention applicant does not apply.	No	No, formal assignment is required.
(ii) If the right to claim priority can extend beyond the original applicant and the successor in title of the original applicant, please explain the legal basis for this extension of the priority right	The Argentine Civil and Commercial Code provides that, as a principle, any right can be assigned. Art. 19 of the Argentine Patent Act - priority rights can be assigned within 90 days of the filing date.	"Convention applicant" includes a person who has the consent of the original applicant, the assignee, or a person who is entitled to an assignment, or legal representative of any of those persons.	Priority entitlement for a PCT application is governed by Article 8 of the PCT and Article 4 of the Paris Convention.		Article 5 of the law.
(iii) Can an additional person who does not have any rights in the Priority application be named as an applicant in a Later application filed in your country claiming priority under the Paris Convention:					
(A) where the person contributed patentable subject matter to the Later application	Yes. - Yes, it is sufficient to	Yes - Yes, being named an		N/A	Yes, If applicant of the

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not previously disclosed in the Priority application, or obtained rights to such subject matter? - Is being named as an applicant sufficient for the person to be a patentee? - Can the priority claim in the patent be valid?	enable the additional person to be a patentee and the priority claim in the patent would be valid.	applicant is sufficient. - Yes, the priority claim will be valid.			priority application is a co-applicant of the later application, then the priority claim would be valid. Otherwise, assignment is required.	
(B) where there is no contribution of patentable subject matter to either application, and no right to claim priority from the Priority application in the country? - Is being named as an applicant (but not having the priority right) sufficient for the person to be a patentee? - Can the priority claim in the patent be valid?	Yes. - Yes, it is sufficient to enable the additional person to be a patentee and the priority claim in the patent would be valid.	Yes, if the person is assigned a right in the Later application - Yes - Yes	An assignment of the priority right is likely to be necessary - Probably not - Probably not	N/A	Yes, as for A above.	Yes, assuming that the applicant can acquire rights to the invention.
(C) where there is no contribution of patentable subject matter to either application, and no right to the invention in the country? - Is being named as an applicant (but not having a right to the invention) sufficient for the person to be a patentee for the patent eventually obtained? - Can the priority claim in the patent be valid?	As above for A and B.	Yes - No, the person needs to be assigned rights in the invention - Yes, if the patent proceeds to grant		N/A	Yes, as for A above.	No, assuming that the applicant cannot acquire rights to the invention.

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(iv) Any other circumstances?		No			N/A
4a In your country is it necessary (for the purposes of filing an application which will lead to the grant of a patent with a valid priority claim) for the applicant to possess rights in the invention (i.e. the right to obtain a patent) at the time of filing the Later application for the invention in your country?	Not necessary; the right to claim priority suffices.	Depends on whether a person possessing only the right to claim priority in Australia qualifies as a Convention applicant. - If so then such a filing would be possible.	The right to claim priority at the time the PCT application is filed is most important.	No	Rights in the invention are assumed to be possessed by the applicant. Yes, a person must have rights in the invention. A disentitled applicant cannot make an application.
4b Or if the application is filed by a "disentitled" applicant:					
(i) can the disentitled applicant obtain rights to the invention at a later date (i.e. after filing the Later application) so as to become entitled to be granted the patent?	N/A	Possibly, but not definitely (see 4(b) above).	Yes	Yes	Yes, the rights to the invention may be received by a later assignment. No

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(ii) can the disentitled applicant later transfer/assign the Later application to the person possessing rights in the invention (the "entitled" person) in your country so that entitled person can be granted the patent?	N/A	Yes, (before filing) by transfer of the application under s 36. If the application can be filed, then assignment to an entitled person after filing should be possible.	Yes, should be possible without relying on section 36.	Yes	Yes, but the disentitled applicant would first need to receive rights via assignment (as in (i) above) to assign all his rights back to the entitled person.	No