



## INTERNATIONAL FILING STRATEGIES FOR BIOFUEL PATENTS

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There is no such thing as an international patent. Patents are granted on a country-by-country basis and are subject to the legal framework of the country of grant. While filing for patents in multiple countries can expand the geographical protection of an invention, this strategy may come with a hefty price tag as patent fees must be paid for each country.

Fortunately, there is an international filing mechanism whereby an international patent application can be filed according to the provisions of the Patent Cooperation Treaty (PCT). The PCT, whose membership includes the vast majority of the world's industrialized nations, allows the filing of only one application while postponing the translations and all other formal requirements of individual countries to a future date.

During the international phase, the applicant may hammer out technical kinks and seek out commercial and financial avenues for its invention, before bringing the technology to market.

The time extension for entering national phase in Canada is one of the longest in the world. Canadian law permits an extension of up to 42 months from the PCT application's earliest priority date to file nationally in the Canadian Intellectual Property Office.

On one hand, Canadian companies can file PCT applications to preserve the option of securing patent coverage in a large number of foreign countries in which their technology might be made, used or sold. On the other hand, foreign companies can file PCT applications to eventually secure protection in Canada for their inventions.

To give two biofuel industry examples, Greenline Industries, LLC, a well-known American manufacturer of biodiesel production equipment, has recently filed a PCT application for its biodiesel production method. This method uses a single-phase reactant mixture devoid of co-solvents to increase the throughput of esterification reactions. This PCT application is currently in the international phase and the 42 month deadline for entering Canada is in October 2010. Thus, uncertainty as to whether Greenline will protect its invention in Canada could exist for another few years.

Biox Corp. is a Canadian biodiesel firm that plans to build and operate its own biodiesel production facilities, such as the one outside Hamilton, Ontario. Biox filed a PCT application in 2001 for its single-phase reaction using a co-solvent such as tetrahydrofuran. A panopoly

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of national phase entries was completed in 2003 and included Canada, Mexico, Japan, Australia, South Africa, New Zealand, China and Europe.

Gaining a few extra years via the PCT to make fundamental business decisions is a godsend for many firms. Later, individual countries can be chosen based on any number of factors, such as where feedstocks, process plants, markets and competitors are located. It should always be kept in mind that a patent allows you to stop others from using your technology and is also a piece of property that can be bought, sold, or licensed within the borders of its country of grant.

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