

CONFERENCE DOCUMENTS

CONFERENCE DOCUMENTS OF THE “MAIN” SERIES

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TEXT OF DOCUMENTS PCT/DC/1 TO PCT/DC/131

PCT/DC/1 July 11, 1969 (Original: English)
BIRPI

History of the Plan for a Patent Cooperation Treaty

Editor's Note: This document contained a chronological account of the said Plan from its inception (1966) until July 1969. After the Diplomatic Conference, the same account was completed so as to cover also the period from July 1969 up to and including the Diplomatic Conference. The document so updated was published on October 16, 1970, as document PCT/PCD/1, and is reproduced on pages 741 to 745 below.

PCT/DC/2 July 11, 1969 (Original: English)
BIRPI

Summary of the Proposed Patent Cooperation Treaty

Editor's Note: This document summarized the provisions of the Draft Treaty and the Draft Regulations as they appeared in documents PCT/DC/4 and 5 (see below). After the Diplomatic Conference, this document was revised in accordance with the Treaty and the Regulations as adopted. The document so revised was published on October 16, 1970, as document PCT/PCD/2, and is reproduced on pages 746 to 758 below.

PCT/DC/3 July 11, 1969 (Original: English)
BIRPI

Main Differences Between the 1968 and 1969 Drafts

Introduction

1. For the purposes of the present document, "1968 Draft" means the draft Patent Cooperation Treaty (PCT) and the draft PCT Regulations as contained in documents PCT/III/5 and 6, respectively, whereas "1969 Draft" means the draft Patent Cooperation Treaty (PCT) and the draft PCT Regulations as contained in documents PCT/DC/4 and 5, respectively, both dated July 11, 1969, and distributed at the same time as the present memorandum. (The 1968 Drafts, it is recalled, were dated July 15, 1968, and served as the basis for discussions in the Committee of Experts which met at Geneva in December 1968.)

2. The aim of the present memorandum is to enumerate the *main* differences of *substance* between the 1968 and 1969 Drafts. Minor differences of

substance and differences in style or presentation are not mentioned. Furthermore, if a change in one of the provisions involves one or more consequential changes, the difference is generally mentioned in connection with what is believed to be the most important *locus*, whereas some or all of the consequential changes may not be mentioned at all.

Main Differences in the Introductory Provisions

3. *Safeguard of rights under the Paris Convention.* The 1969 Draft expressly provides that nothing in the Treaty may be interpreted as diminishing the rights which the Paris Convention guarantees to nationals and residents of countries party to the Paris Convention (Article 1(2)). The 1968 Draft did not contain such a provision.

Main Differences in Chapter I (International Application and International Search)

4. *Who may file.* The 1968 Draft provided that the applicant must be the inventor or the successor in title of the inventor (Article 9(1)(b)). The 1969 Draft contains no provision on the question whether anyone other than the inventor may file. But it does provide that, where the applicant, for the purposes of any designated State, is a person who under the national law of that State is not qualified to file a national application, the *international* application may be rejected by the national Office of that State (Article 27(3)). In order to enable the applicant to avoid such rejections, it is provided that the international application does not have to show the same persons as applicants for all the designated States but may show different persons as applicants for different designated States (Article 9(3) and Rule 18.4)).

5. *Where to file.* Under the 1968 Draft, the applicant would have had to file in the country of his residence and could have filed in the country of his nationality only if he resided in a non-Contracting State (Article 10(1)). Under the 1969 Draft, the applicant may, at his discretion, file either in the country of which he is a national or in the country of which he is a resident (Rule 19.1).

6. *The request.* The 1969 Draft provides for a check list as part of the request (Rule 3.3). The check list will make it possible to ascertain whether all the required elements of the international application are present. No such check list was provided for in the 1968 Draft.

7. *Designation of States.* It is no longer proposed that if the international application fails to designate any Contracting State it will be considered to have designated all of them (Article 14(2) of 1968 Draft). According to the 1969 Draft, failure to designate any Contracting State will result in the international

application's not being accorded a filing date (Article 11(1)(iii)(b)).

8. *Time when designations must be made.* Under the 1968 Draft, designations would have been allowed after the filing of the international application up to the expiration of one year from the priority date (Article 4(2)). This system of "later designations" does not exist in the 1969 Draft, under which all designations must be made in the international application itself (Article 4(2)). However, the international fee is now split into two parts: the "basic fee" part and the "designation fees" part, and the designation fees are payable any time up to the expiration of one year from the priority date (Rule 15).

9. *Naming of the inventor.* Under the 1968 Draft, failure to name the inventor in the international application could have led to the rejection of the international application in all designated States (Articles 4(1)(iii) and 26). Under the 1969 Draft, the said failure cannot lead to such rejection in designated States where the national law does not require the naming of the inventor (Article 4(4)).

10. *Differences in national laws as to who is the inventor.* In order to take into account such differences, the 1969 Draft allows different persons to be indicated as inventors for the purposes of different designated States (Rule 4.6(c)). No such possibility existed under the 1968 Draft.

11. *Incomplete names.* The 1968 Draft might have been interpreted as meaning that, if the name of the applicant was not indicated in the application as completely as the Regulations prescribed, the receiving Office might have refused to accord a filing date (Article 11(1)(iv)(b) and Rule 5.4(a) and (b)). The 1969 Draft makes it clear that the mere fact that the applicant's name is incompletely indicated is not a sufficient reason for refusing to accord a filing date as long as the applicant's identity can be established (Article 11(1)(iii)(c) and Rule 20.4(b)).

12. *Signature.* As under the 1968 Draft (Rules 5.14 and 2.1), so also under the 1969 Draft (Rules 4.13 and 2.1), the international application may be signed by the applicant's agent (provided he has a good power of attorney). However, the 1969 Draft allows any designated State to require the applicant to "ratify" the application, for example through his own (the applicant's) signature, before the designated Office (Article 27(2)).

13. *The description.* The Rule concerning the manner of describing is more permissive in the 1969 Draft (Rule 5) than in the 1968 Draft (Rule 6). As to the "best mode" for carrying out the invention, the 1969 Draft provides that such mode must be described but it also provides that, where such requirement does not exist under the national law of the designated State, failure to describe the best mode cannot harm the application in that State (Rule 5.1(a)(v)).

14. *The claims.* The Rule concerning the manner of claiming is more permissive in the 1969 Draft (Rule 6) than in the 1968 Draft (Rule 7). The 1969 Draft also contains a new provision which stipulates that, where the national law of the designated State does not require the "manner of claiming" provided for in

Rule 6.3(b), failure to use that manner cannot harm the application in that State (Rule 6.3(c)).

15. *What do claims define?* The 1968 Draft said that they defined "the protection applied for" (Article 6). The 1969 Draft says that, "subject to later amendments," they define "the matter for which protection is sought" (Article 6).

16. *In what cases are drawings required?* The 1968 Draft contained two conflicting proposals (Article 7, Alternatives A and B). The 1969 Draft merges them into a compromise: at the time of filing, drawings are required if they are necessary for the understanding of the invention but, if the designated Office, in the national phase, so requires, drawings will have to be filed (also) where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings (Article 7). Drawings of the latter kind, although not required at the time of filing, may, of course, be included already at that time (Article 7(2)(i)).

17. *The abstract.* The provisions on how to draft an abstract (Rule 9 in the 1968 Draft, and Rule 8 in the 1969 Draft) have become more precise.

18. *Claiming priority.* The 1968 Draft generally allowed the claiming, in an international application, of the priority of a national application (Article 8) but did not deal with two special problems, namely, that of "self designation" and that of "repeated designation." The first arises when the international application claims the priority of a national application filed in a given State and designates *that* State. The second arises when the international application claims the priority of an earlier other international application and all or some of the States designated are the *same* in both. The 1969 Draft deals with these situations and provides, in effect, that each State may refuse to recognize the validity of such "self-designation" or "repeated designation" (Article 8(2)). Of course, a State may also make the recognition of the validity of such designations dependent on certain conditions, for example, "self-designation" on the withdrawal of the national application, and "repeated designation" on the withdrawal of the designation in the earlier international application.

19. *Delegation of the responsibilities of the receiving office.* The provision concerning such delegation appeared, under the 1968 Draft, in the Treaty (Article 10(2)). A similar provision in the 1969 Draft appears in the Regulations (Rule 19.1(b)) rather than the Treaty.

20. *Change in the person or name of the applicant.* The 1969 Draft provides that any such change will, on the request of the applicant, be recorded by the International Bureau, and that the latter will notify the interested International Authorities and the designated Offices accordingly (Rules 18.5 and 54.4). The 1968 Draft was silent on this matter.

21. *The international fee.* The amount of the international fee depended, in the 1968 Draft, on the length of the international application (increase when longer than 50 sheets) (Rule 15.2(b)). In the 1969 Draft, the amount depends not only on the length

(increase when longer than 30 sheets) but also on the number of the designated States and, for each designated State, on whether it requires the furnishing of a copy under Article 13 (Rule 15). The cost of furnishing copies of the priority document to the designated State, under the 1969 Draft, is to be absorbed by the international fee and no special fee has to be paid by the applicant (Rule 17.2(a) of the 1968 Draft).

22. *The search fee.* It is no longer proposed that the procedure for fixing the fee should be different in cases where the international search is carried out by the International Patent Institute for an applicant who is a national of a State not member of the Institute from the procedure in other cases (Rule 16). According to the 1969 Draft, the procedure will be the same, whether the International Searching Authority is the International Patent Institute or a national Office, and irrespective of the nationality of the applicant (Rule 16).

23. *Transmittal of the record copy.* The 1968 Draft provided that the record copy would be transmitted to the International Bureau either by the receiving Office or, at the applicant's option, through him, the record copy in either case having to reach the International Bureau by the end of the 13th month from the priority date (Article 12 and Rule 22). In order to make the missing of the deadline even more difficult and, thus, the system almost completely foolproof, the 1969 Draft provides for two systems. In one system, the receiving Office must send the record copy to the International Bureau by the expiration of the 13th month; the receipt of that copy must be promptly notified to the applicant; if the applicant is not in possession of the notification of receipt 10 days after the expiration of the 13th month he must be given another copy of the application by the receiving Office; that copy may then be transmitted by the applicant to the International Bureau and must reach the International Bureau by the end of the 14th month. In the other system, the applicant has a choice between the procedure as outlined above or a procedure which consists of the following main steps: the record copy is mailed by the receiving Office to the applicant not later than 15 days before the expiration of the 13th month; the applicant himself files the record copy with the International Bureau not later than by the end of the 13th month; should the applicant not receive the record copy from the receiving Office at least 10 days before the expiration of the 13th month, he may file with the International Bureau a "provisional" record copy (an uncertified copy) by the end of the 13th month; that copy must then be replaced by the record copy or a "substitute" record copy (certified) by the end of the 14th month; in the latter case, a special fee is due. See Rule 22. It is to be noted that in the 1969 Draft all these provisions appear in the Regulations (rather than in the Treaty) so that, if experience shows that a change in the system is desirable, it should be possible to bring about such change more easily.

24. *Purview of the Treaty.* Contrary to the 1968 Draft, the 1969 Draft does not refer to the notion of "purview of the Treaty." Article 11(1)(iii) and Rule 3

of the 1968 Draft are omitted. Consequently, even when the international application relates to generally non-patentable subjects – for example, rules for playing a card game – the receiving Office will accord it an international filing date (follows *a contrario* from Article 11(1) and (3)).

25. *Expressions contrary to morality, etc.* Expressions contrary to morality or to *ordre public*, certain disparaging or irrelevant statements, references to trademarks, and fancy names, were called "matter excluded" under the 1968 Draft (Rule 6.2). If the international application contained expressions obviously coming under the definition of "matter excluded," the receiving Office would have had to invite the applicant to remove them (Article 14(1)(a)(vi) and (b)) and if the applicant did not comply, the application would have been considered withdrawn (Article 24(1)(ii)). Under the 1969 Draft, the notion of "matter excluded" no longer exists. The receiving Office is no longer required to check the international application in this respect and the presence of that which used to be called "matter excluded" can never lead to the application's being considered withdrawn. The 1969 Draft merely provides that expressions contrary to morality or public order, as well as disparaging, irrelevant or unnecessary statements, may be noted by the receiving Office or the International Searching and Preliminary Examining Authorities and that such Office or Authorities may suggest to the applicant that he delete them (Rules 9.2 and 66.2(a)(ii)). The applicant's failure to comply with the suggestion will have no consequence and the international application will be processed in the normal way except that expressions or drawings contrary to morality or public order and disparaging statements may be omitted from the international publication. Even if they are so omitted, they will be communicated to the designated Offices (Article 20) and, on request, to any third party (Article 21(6)).

26. *Formerly fatal defects correctable.* Under the 1968 Draft, if the international application had certain serious defects (for example, did not indicate the name of the applicant, did not contain a part which on the face of it appeared to be a description), the applicant could not correct them. Under the 1969 Draft, he not only may correct them but must be invited to do so (Article 11(2)(a)). The international filing date will be the date on which the correction is received (Article 11(2)(b)).

27. *Checking of certain non fatal defects.* Contrary to the 1968 Draft (Article 14(1)(a)(ii)), the 1969 Draft does not provide that the receiving Office will check whether the international application contains indications concerning the inventor. Neither will it check whether the international application contains "matter excluded" (Article 14(1)(a)(vi) of the 1968 Draft). The notion itself of "matter excluded" (Rule 6.2) does not appear in the 1969 Draft. See, however, paragraph 25, above.

28. *International-type search ("Belgian route").* The possibility of asking for an international-type search on a national application was mentioned, in the 1968 Draft, only by implication and only in the

Regulations (Rule 5.11). In the 1969 Draft, it is expressly mentioned also in the Treaty (Article 15(5)). Whether an applicant has a right to such a kind of search will depend on the national law of his country (Article 15(5)). The 1969 Draft provides also that the international-type search report must be used in the international search and that a rebate on the search fee must be granted to the extent that the said report was useful for the international search (Rule 41).

29. *Missing title or abstract.* Under the 1968 Draft, if the receiving Office did not notice that the title or abstract was missing but the International Searching Authority noticed it, that Authority alerted the applicant through the receiving Office (Rule 36). Under the 1969 Draft, the International Searching Authority will, in such a case, deal direct with the applicant (Rules 37 and 38).

30. *Definition of unity of invention.* This definition has become more precise in the 1969 Draft (Rule 13).

31. *Division of the international application.* As opposed to the 1968 Draft (Articles 17(3)(a)(ii) and 34(3), Rules 37.5, 37.7 and 62), the International Searching Authority and the International Preliminary Examining Authority cannot request, nor can the applicant volunteer, under the 1969 Draft, division of the international application in the international phase. Of course, the designated or elected Offices may require division if the international application does not comply, in their opinion, with the requirement of unity of invention as defined in Rule 13. Furthermore, the applicant may voluntarily divide his application before any national Office to the extent permitted by the national law of that Office.

32. *Cases in which no international search report will be established.* Under the 1968 Draft, no international search report was to be established where the subject was outside the purview of the Treaty or if the application was totally unclear (Article 17(2)(a)). Under the 1969 Draft, the second reason is maintained (Article 17(2)(a)(ii)) but the first is dropped since the notion of "purview of the Treaty" itself is dropped. However, where the subject matter is one which the International Searching Authority is not required to search, it will be entitled to declare that it will not search the application (Article 17(2)(a)(i)). Such subject matter is enumerated in the Draft Regulations. It includes mathematical and scientific theories, plant and animal varieties except for microbiology, ornamental designs. It also includes computer programs but only to the extent that the International Searching Authority is not equipped to search prior art concerning such programs. See Rule 39.

33. *Consequence of declaration that no international search report will be established.* Under the 1968 Draft, the consequence of such a declaration would have been that the international application would have ceased to have the effect of national applications (Article 24(1)(iii) as it referred to Article 17(2)) (subject to possible review by the designated Offices on the request of the applicant (Article 25)). Under the 1969 Draft, the declaration will have no such consequence. The international application will maintain its effect. It will be automatically communicated to the designated Offices

as if it had been searched. The only consequence will be that the period otherwise given to the applicant for furnishing the required translation and paying the national fee will be shorter, namely, two months from the notification of the declaration that no international search report will be established. See Article 22(2).

34. *Consequence of declaration that part of the international application will not be searched.* When such a declaration is made by the International Searching Authority (because part of the international application relates to a subject matter which it is not obliged to search or because part of that application is totally unclear; see Article 17(2)(b)), then, under the 1968 Draft, the unsearched part would have been considered withdrawn (Article 24(1)(iii) as it referred to Article 17(2)). Under the 1969 Draft, there will be neither this consequence nor any other for the applicant.

35. *Consequence of not paying additional search fees or not restricting the claims.* Where the international application does not comply with the requirement of unity of invention and the applicant fails to comply with the International Searching Authority's invitation to pay additional fees or restrict the claims, the unsearched part would, under the 1968 Draft, have been considered withdrawn (Article 24(2) as it referred to Article 17(3)(b)). The 1969 Draft does not provide for such a consequence. Under that Draft, the unsearched part continues to have the same effect as the searched part. What is permitted is merely that the national law of each designated State may declare that the unsearched part (if the invitation to pay or restrict was justified) will be considered withdrawn unless a special fee is paid by the applicant (to indemnify the designated Office for the incompleteness of the international search) (Article 17(3)(b) and (c)).

36. *Additional search fees paid under protest.* Unlike the 1968 Draft, the 1969 Draft provides that the applicant may pay any additional search fee under protest, in which case the well-foundedness of the invitation by the International Searching Authority to pay such a search fee must be re-examined (Rule 40.2(c)).

37. *Time limit for international search.* Whereas the 1968 Draft provided that the international search must generally be completed within three months, the 1969 Draft provides that it must be completed within three months from the receipt of the search copy or nine months from the priority date, whichever time limit expires later (Rule 42).

38. *Translation of the international search report.* The 1968 Draft provided for the translation of the international search report (where translation is required) into English, French, German, Japanese, or Russian (Rule 41). Under the 1969 Draft, translation will be made only into English (Rule 45) because it was realized that search reports were essentially nothing more than lists of numbers and symbols and that where there are words (mainly titles of articles or books) an English translation would make them generally understandable.

39. *Amendments in the international phase.* The 1968 Draft provided that the applicant may amend the claims in the international phase (Article 19). The 1969 Draft allows the applicant to attach to the amendments of the claims a *statement* (i) explaining the amendments, and (ii) indicating any impact that such amendments might have on the description and the drawings (Article 19(1)). Such a statement will be communicated to the designated Offices (Article 20(2)). It will not be published if it was too long or was argumentative about the international search report (Rules 46.4 and 48.2(a)(vi)).

40. *Communication to designated Offices.* The 1948 Draft provided, in the Treaty itself, that copies of the international application would be communicated to designated Offices by the International Bureau (Article 20). The 1969 Draft provides likewise, but only in the Regulations (Rule 47) so that, if experience shows that another system – for example, transmittal by the applicant – is more desirable, such change should be capable of being brought about more easily. In any case, it is to be noted that any translation of the international application which must be filed with the designated Offices and any national fee which must be paid to those Offices will have to be filed and paid direct by the applicant, without going through the International Bureau. The same is true of the copy of the international application should the time limit under Article 22 expire before the communication under Article 20 has taken place. See Article 22.

41. *Time limit for furnishing translations and paying national fees.* Under the 1968 Draft, the fixing of such time limit would have been left to the laws of the Contracting States provided that the said time limit could not have been shorter than 20 months from the priority date (Article 22). Under the 1969 Draft, that minimum became the rule and a Contracting State will have to make special provisions only if it wants to provide for a longer time limit (Article 22(1) and (3)). See also the last sentence of paragraph 33, above.

42. *Early processing by designated Offices.* Unlike the 1968 Draft, the 1969 Draft expressly provides that the applicant may ask that his application be processed earlier than the expiration of the deadlines for delaying national procedure (Article 23(2)). Whether it will be so processed will depend on the designated State.

43. *New case of review by designated Offices.* Under the 1968 Draft, designated Offices could not be requested to review a decision of the receiving Office not to accord an international filing date. Under the 1969 Draft, the applicant will have a right to ask for such a review also in such a case (Article 25(1)).

44. *Error by receiving Office or the International Bureau.* Contrary to the 1968 Draft, the 1969 Draft expressly provides that, where the designated Office finds that the refusal of the receiving Office to accord an international filing date, or its declaration that the international application is considered withdrawn (because certain defects have not been corrected), or the finding of the International Bureau that the record copy has arrived too late, is the result of an *error* on the part of such Office or Bureau, it (the designated Office) must treat the international application as if

the error had not occurred (Article 25(2)(a)). It is to be noted that such a provision covers all the possible errors which might be prejudicial to the rights of the applicant. It is also to be noted that, whereas under the 1968 Draft the International Searching Authority's error might have caused prejudice to the rights of the applicant, under the 1969 Draft this is no longer the case (see paragraphs 33 to 35, above).

45. *International publication.* Under the 1968 Draft, international publication would have been effected upon the expiration of the 18th month from the priority date if, among the designated States, there was at least one which provided for the publication of national applications within the same time limit; otherwise international publication would have occurred when the first national publication occurs (Article 21(2)). Under the 1969 Draft, international publication is to be effected upon the expiration of the 18th month from the priority date except where all the designated States are States which have declared (in a general way) that they do not wish international publication; in that case, international publication will be effected when the first national publication is effected (Articles 21(2)(a) and 60(3)). The result, in practice, may thus be the same under both Drafts, although arrived at by different routes. For possible earlier publication, see the following paragraph.

46. *Early publication of the international application.* The 1969 Draft, contrary to the 1968 Draft, allows the applicant to ask that his international application be published earlier than it would have to be published; it will then be so published (Article 21(2)(b)).

47. *Effects of the international publication.* Unlike the 1968 Draft, the 1969 Draft makes it clear that international publication has an effect only as far as the protection of any rights of the applicant are concerned (so-called "provisional protection": Article 29(1)). Consequently, no State will be obliged to consider internationally published applications as part of the prior art already from the priority or the filing date (rather than only from the publication date), even if such State were a designated State when the publication was effected and even if, for national applications, its law so provided.

48. *What national laws may and may not prescribe.* Whereas the 1968 Draft mainly dealt with the negative part of the question – what may not be prescribed (namely, other formalities than those provided in the Treaty: Article 27(1)) – and, as far as the positive part of the question is concerned, merely said that the furnishing of documents proving allegations made in the international application may be required (Article 27(2)), the 1969 Draft both elaborates on this latter aspect and clarifies additional cases where the national law is freely applicable. The elaboration refers to the "not necessary but useful" drawings (see paragraph 16, above) and the confirmation of the signature of the international application (see paragraph 12, above) (Article 27(2)). The further clarifications consist in emphasizing certain freedoms allowed to each Contracting State, freedoms which go without saying but whose expression gives reassurance. Such freedoms include, in particular, the

freedom of each designated State to require that the applicant be the inventor (Article 27(3)), the freedom of each State to provide for formal requirements which are more favorable (to the applicant) (Article 27(4)), the freedom of each State to prescribe whatever substantive conditions of patentability it wishes (including the freedom to apply its national law in so far as the effective date of an international application for prior art purposes is concerned) (Article 27(5)), the freedom of each designated State to require evidence that such conditions are met (Article 27(6)), and the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security (Article 27(7)).

49. *Amendments in the national phase.* Under the 1968 Draft, designated Offices would have had to give the applicant the opportunity to amend the claims but not the description and the drawings (Article 28). Under the 1969 Draft, they will have to allow amendment of the description and the drawings, as well as of the claims (Article 28(1)).

Main Differences in Chapter II (International Preliminary Examination)

50. *Amendment of the international application before the International Preliminary Examining Authority.* The 1969 Draft expressly provides that the applicant may amend not only the claims but also the description and the drawings in the procedure before the International Preliminary Examining Authority (Article 34(2)(b)). Such express reference to the description and drawings was lacking in the 1968 Draft.

51. *Consequences of not complying with invitation to restrict or pay.* Under the 1968 Draft, if the International Preliminary Examining Authority found that the international application did not comply with the requirement of unity of invention, it could invite the applicant to restrict the claims or to divide the application (Article 34(3)). The 1969 Draft provides for an invitation to restrict the claims or to pay additional fees (Article 34(3)(a)). Failure to comply with the invitation would have led to no international preliminary examination report on any part of the application under the 1968 Draft (Article 35(3)). Under the 1969 Draft, there will be an international preliminary examination report on the main invention and no such report only on the rest of the international application (Article 34(3)(c)). Those parts of the application which have not been examined as a consequence of the restriction or the non-payment of the additional fee may be considered withdrawn by the elected State (if the invitation to restrict or pay was justified) unless a special fee is paid by the applicant (to indemnify the elected Office for the incompleteness of the international preliminary examination) (Article 17(3)(b) and (c)).

52. *Comments on the translations of the international preliminary examination report.* The 1969 Draft expressly gives to the applicant a right to make comments on such translations (translations which are prepared by the International Bureau) (Rule 72.3). No such provision existed in the 1968 Draft.

53. *Time limit for furnishing translations and paying national fees.* Under the 1968 Draft, the fixing of such time limit would have been left to the laws of the Contracting States provided that the time limit could not have been shorter than 25 months from the priority date (Article 39). Under the 1969 Draft, that minimum becomes the rule (Article 39(1)(a)) and a Contracting State will have to make special provisions only if it wants to provide for a longer time limit (Article 39(1)(b)).

54. *Amendment of the international application before elected Offices.* The 1969 Draft expressly provides that the applicant may amend not only the claims but also the description and the drawings in the procedure before the elected Offices (Article 41). Such express reference to the description and drawings was lacking in the 1968 Draft (see Article 41).

Main Differences in Chapter III (Common Provisions)

55. *Request for alternative kind of protection.* Under the law of Germany (Federal Republic), the same application may be directed to the grant of a patent and, subsidiarily, to the grant of a utility model. To cover this and analogous possibilities, a new paragraph (paragraph (2)) is added to Article 45 in the 1969 Draft.

56. *Intentionally incorrect translation.* The 1968 Draft provided that, if there was a discrepancy between the international application as filed and its translation and such discrepancy was intentional on the part of the applicant, the national patent which had been issued on the basis of such translation could be declared null and void in its entirety (Article 46(2)). This provision is omitted in the 1969 Draft.

57. *Delay in meeting certain time limits.* The 1968 Draft provided that any Contracting State must, as far as that State was concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit (Article 48(2)). The 1969 Draft maintains this provision (Article 48(2)(a)) but adds that any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in the said provision, any delay in meeting any time limit (Article 48(2)(b)).

Changes in Chapter IV (Administrative Provisions)

58. *Committee for Technical Cooperation.* The 1968 Draft provided for the establishment of what was called an Advisory Committee on International Searching and International Preliminary Examination (Article 52). The 1969 Draft changes the name of this body into "Committee for Technical Cooperation" (Article 52) and increases its powers. The Committee may not only give advice but also express recommendations (Article 52(3)). The 1969 Draft adds to the Committee's aims the constant improvement of the services provided for under the Treaty (Article 52(3)(i)). It provides for direct access to the Committee – for the purposes of suggestions or complaints – by States and by any interested intergovernmental or non-governmental organization (Article 52(4)) and direct access by the Committee not only to the Assembly or the Executive Committee but also to any International Searching Authority,

International Preliminary Examining Authority, or receiving Office, and to the International Bureau (Article 52(5)).

59. *Amendment of certain Rules.* Under the 1968 Draft, certain Rules could have been amended only by the unanimous consent of all the Contracting States (Article 54(2) and Rule 80). Under the 1969 Draft, amendment of some of the same Rules will still require unanimity, others a two-thirds majority which would be subject, however, to the veto power of countries whose national Offices are International Searching Authorities or International Preliminary Examining Authorities. Such veto power will also be given to one of the member States of the International Patent Institute. See Article 54(2) and (3). Rules modifiable by unanimous decision include those concerning the transmittal fee, the possibility of transmittal of the record copy by the applicant rather than the receiving Office, the time limit within which the record copy must reach the International Bureau, and the definition of prior art for the purposes of international search and international preliminary examination (Rule 88.1). Rules modifiable by a majority vote but subject to the said veto power of certain States include those concerning minimum documentation and the subject matter for which there is no obligation for the International Searching Authority or Preliminary Examining Authority to search or examine (Rule 88.2).

60. *Expenses of delegations.* The 1969 Draft provides that the expenses of each Delegation will be borne by the Government which has appointed it (Rule 84). There was no provision on this matter in the 1968 Draft.

61. *Free copies to the Authorities.* Unlike the 1948 Draft, the 1969 Draft provides that any International Searching or International Preliminary Examining Authority will have the right to receive, free of charge, two copies of every published international application, of the Gazette, and of any other publication of general interest issued by the International Bureau under the PCT (Rule 87).

Main Differences in Chapter V (Final Provisions)

62. *Entry into force of the Treaty.* Under the 1968 Draft, the Treaty would have entered into force if five States, in three of which more than 40,000 national applications each had been filed in the preceding year, had become party to it (Article 58(1)). Under the 1969 Draft, two situations may cause entry into force. One is the same as in the 1968 Draft (Article 58(1)(i)). The other is where each of seven States becoming party to the Treaty meets one of the following two conditions: (i) the State's nationals or residents have, in the previous year, filed at least 1,000 patent applications in one foreign country, (ii) the State's national Office has, in the previous year, received at least 10,000 patent applications from abroad (Article 58(1)(ii)).

63. *Reservations.* The 1968 Draft provided for one possibility of reservation, namely, the possibility for each Contracting State not to accept Chapter II (international preliminary examination) (Article 60). Under the 1969 Draft the same possibility is

maintained (Article 60(1)) and two further possibilities of reservation are also provided for. One of them is that a State accepting Chapter II may still require that the translations to which it would otherwise have a right only after 25 months from the priority date be filed by the applicant by the end of the 20th month from the priority date (Article 60(2)). The other is that any State may declare that it does not require the international publication of the international application, with the consequences described in paragraph 45, above.

64. *Commencement date of actual operation of Treaty.* The 1969 Draft provides that it will be the Assembly that will fix the dates from which international applications may be filed and demands for international preliminary examination may be submitted. Such dates may not be later than six months from the entry into force of the Treaty, or of Chapter II, respectively (see Article 61(2)). There were no such provisions in the 1968 Draft.

65. *Regulations to be adopted by the Diplomatic Conference.* Even under the 1968 Draft, the intention was that the Regulations would be adopted by the same negotiating (diplomatic) conference as the Treaty. This intention is expressly stated in the 1969 Draft, which speaks about Regulations "annexed" to the Treaty (e.g., Article 64(2)).

PCT/DC/4 July 11, 1969 (Original: English)
BIRPI

Draft of the Patent Cooperation Treaty

Editor's Note: The text of the Draft Treaty as appearing in this document is reproduced in the left-hand column of the pages of even number from page 282 to page 362, below. The "Notes" which accompanied the text of the Draft Treaty in the said document are omitted in this volume. "Notes" revised in accordance with the Treaty as adopted by the Diplomatic Conference appear on page 763 below (document PCT/PCD/4).

PCT/DC/5 July 11, 1969 (Original: English)
BIRPI

Draft of the Regulations Under the Draft Patent Cooperation Treaty

Editor's Note: The text of the Draft Regulations as appearing in this document is reproduced in the left-hand column of the pages of even number from page 364 to page 514, below. The "Notes" which accompanied the text of the Draft Treaty in the said document are omitted in this volume. "Notes" revised in accordance with the Regulations as adopted by the Diplomatic Conference appear on page 763 below (document PCT/PCD/5).

PCT/DC/6 July 11, 1969 (Original: English)
BIRPI

Glossary and Index to the Draft Patent Cooperation Treaty and the Draft Regulations Under the Draft Patent Cooperation Treaty

Editor's Note: This document is not reproduced in the present volume. An Index revised in accordance with the Treaty and the Regulations as adopted by the Diplomatic Conference appears on page 763 below (document PCT/PCD/6).

PCT/DC/7

March 5, 1970 (Originals: indicated in each case)
AUSTRIA, FINLAND, GERMANY (FEDERAL REPUBLIC), ISRAEL, JAPAN, NORWAY, SOUTH AFRICA, SOVIET UNION

Observations on the Drafts*

AUSTRIA

One of the aims of the proposed Patent Cooperation Treaty, which should be the principal aim above all other aims, is "to save effort – time, work and money – both for the applicant and for the national Offices in cases where patents are sought for the same invention in a number of countries."

It is an undeniable fact that the Austrian Government as well as Austrian industrial circles are most interested in Austrian activities with a view to the conclusion of such an agreement. It should be noted, however, that the Draft Treaty and the Draft Regulations not only entail fewer advantages than disadvantages for Austria but even involve a certain element of danger.

Even the first phase – the international application – is not calculated to raise the hopes which one ought to expect in connection with an international application.

Notwithstanding the regulation of formalities, the international application is not sufficiently uniform so long as there are substantially different requirements as to the person of the applicant, the inventor, and the need to produce drawings, etc. The most serious objection, however, is that, though later amendments have to be taken into consideration, the applicant is bound by the various national stipulations governing the description and the claims.

Furthermore, the international application – contrary to the principle stated in Article 11(3) – does not have the same effect as national applications in the designated States. Above all, the exception of Article 27(5) limits the value of an international application to a very considerable extent.

The principal phase of the proposed Treaty – the international search as at present intended – makes it impossible for Austria to participate in the scheme.

It must first be pointed out that the Austrian Patent Office

(a) carries out the work of examination without any considerable delay and within a period which is at least comparable with, if not shorter than, those provided for in the Draft;

(b) has, at its disposal, for its work of examining, search material properly arranged for search purposes as provided in the Draft;

(c) does not employ more than about one hundred examiners.

This means that an applicant who files with the Austrian Patent Office receives information on prior art and patentability early enough to decide whether or not to file in other countries (or to file an international application). The quality of the novelty search is adequate for an international search but it is much cheaper. The search report, however, cannot be used as an international search report. The Austrian Patent Office could not therefore act as an Authority because it does not employ 150 examiners. Austrian applicants would gain hardly any advantages as regards time or work and no financial advantages whatsoever. All the international fees provided for would exceed the fees and costs in force for the national procedures and there would be no equivalent advantages to make up for the higher costs of the international application, to say nothing of the risk of losing rights in the course of the international procedure.

The Office itself will probably save some time when it receives search reports for foreign applications under the proposed Treaty. This gaining of time, however, is not likely to be very considerable. In any case, it is not going to be essential for maintaining the examining system. On the other hand, the consequence of restricting the research work to national applications could be that the arranging of the search material for the purposes of the novelty search would have to be neglected or even abandoned, which would certainly not be favorable for the examining service.

(Original: English)

FINLAND

Article 6 and Rule 6: As to the question of dependent claims and the two proposed alternative wordings in Rule 6.4, the Finnish Government recommends that the wording of Alternative B should be used.

Article 9 and Rule 18.5: In its present form this Article and this Rule leave the question unanswered whether an assignee of a (pending) international application should also meet the conditions stipulated in the said Article for PCT applicants. Since it is proper that an application after filing should be assignable to any person, a statement to that effect should be included at least in the comments.

Article 15 and Rule 34: The general provisions for regulating the search for novelty in paragraph (4) of this Article are supplemented by the list of "minimum documentation" presented in Rule 34. Search documentation should not, however, be limited as stated in the said Rule, as limitation would considerably diminish the value of the search. It is preferable that the search should reach as far back in time as possible.

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

Article 16: According to advance information received, the national Offices expected to act as International Searching Authorities have announced that within the framework of the PCT Plan they will examine only applications filed with them. In addition to the said national Offices, the International Patent Institute is expected to be one of the International Searching Authorities, but already it is overburdened and there is no clear picture whether it will be possible to increase its searching capacity or not. In these circumstances, it is imperative that States not actively participating should have the right to have their applications examined by one of the other International Searching Authorities expressly guaranteed by a stipulation to that effect in the Treaty itself or in the Regulations.

Article 17 and Rule 13: Of the two alternative wordings of Rule 13.2, Alternative A is to be preferred.

Article 20 and Rule 47: The wording of these provisions should be clarified so as to state expressly the applicant's right to send his application himself to BIRPI and to the designated Offices, as in the case of the record copy of the application according to Rule 22.2.

Article 22: According to section 22(2) of the Patent Law of Finland (and all Nordic States), a patent application is published after the expiration of 18 months from its filing or priority date. If the term of 20 months is maintained in the Treaty, an amendment of the said Law will be necessary. Since it is reasonable that the designated States should receive an application written in their own language simultaneously with its international publication in accordance with Article 21, the Finnish Government proposes that the limitation to 18 months of the term stated in Article 22 should still be considered.

Article 27(5), last sentence: This Article makes it possible to nullify the provisions of Article 11(3), and enables each Contracting State, as far as it is concerned and according to its national law, to determine which date is to be deemed the filing date of an international application. Such a possibility will cause uncertainty among applicants, who may even in some cases fear the loss of their priority. By virtue of section 102 of the United States Patent Law, the last sentence of Article 27(5) of the Treaty will make it impossible to obtain a United States patent by means of an international application filed late in the priority year, unless it is filed as a national United States application before the expiration of the priority year.

In the light of the foregoing, and in view of the stipulation in section 2(2), second sentence, of the Patent Law of Finland (and all Nordic States), which states that "the content of a patent application *filed in this country* before the date stated in subsection 1 is regarded as part of prior art, provided the said application is published according to the provisions of section 22," it follows that an international application will obtain priority also in our country only when filed in Finland. The Finnish Government, therefore, proposes that the last sentence of Article 27(5) should be deleted, although the provisions of Article 11(3)

would in that case necessitate an amendment of our national law.

Rule 24.2: The international application and all information pertaining thereto are secret until international publication is effected. According to the Treaty, it is, however, permissible to publish in the States covered by the application the serial number of the international application, the filing date, the name of the applicant, and the receiving State. For a third party, however, the value of this information remains comparatively small if the title and the class of the invention are not disclosed. This fact calls for an amendment of the Treaty to the effect that the title and the class of the invention may also be published.

(Original: English)

GERMANY (FEDERAL REPUBLIC)

The Government of the Federal Republic of Germany welcomes the plan to initiate world-wide cooperation in the filing and processing of applications for patents and inventors' certificates by concluding a Treaty open to all the member States of the Paris Convention. The Draft Patent Cooperation Treaty and the Draft Regulations thereunder, elaborated by the United International Bureaux for the Protection of Intellectual Property (BIRPI in Geneva in a very short time, appear on the whole to be balanced and well considered.

The German Federal Government considers that the fundamental importance of the Treaty must be seen to lie in the fact that it is a first step towards world-wide protection of inventors. Even in its present shape it will facilitate the work of patent applicants and Patent Offices and ensure a wider dissemination of technical knowledge. In addition, it provides the starting point and the organizational basis for the closer international cooperation which is hoped for in the future, and it will promote standardization of the procedural and substantive provisions of national or regional patent laws. Patent applicants desiring patent protection in several States are spared the trouble of having to submit several applications in different languages and to observe a multitude of varying provisions as to form. They can file just one single international patent application with their own Patent Office, where it is checked centrally for compliance with the uniform provisions as to form and, thereafter, the competent Searching Authority prepares one single search report. The considerable expenses incurred through the submission of translations and the payment of national application fees need not be met before the expiration of 20 months, i.e., at a time when applicants have usually received an international search report which permits them to assess the application's prospect of success. A further advantage is the possibility of requesting an international preliminary examination under Chapter II of the Treaty.

The national Patent Offices in their capacity as designated Offices receive the application in a processed condition, i.e., after examination as to form, accompanied by a search report and, in certain cases, even by a preliminary examination report, a procedure

which saves them a considerable amount of work, at least if they act merely as designated Offices.

Finally, the international publication provided for in the Treaty ensures a wider dissemination of the technical knowledge contained in the application and thereby furthers one of the main aims of the patent system. The developing countries especially, could greatly benefit from such information on new technical knowledge, as well as from the central examination as to form, the information on prior art relevant to the application, and the results of the preliminary examination. The German Federal Government greatly welcomes the efforts to give consideration to the special problems of developing countries in drafting the Treaty.

The German Federal Government also approves as a first step towards standardization the provision in the Draft Treaty to the effect that no designated State shall require compliance with requirements relating to the form and contents of the international application different from those which are provided for in the Treaty and the Regulations (PCT Article 27(1)). This provision also constitutes a first step, though necessarily a modest one, towards further standardization of formal patent law. Moreover, the provisions of Chapter II laying the foundations for a preliminary examination are thought to contribute towards standardizing substantive patent law.

The German Federal Government does not intend to state its views on every detail of the present Draft Treaty and Regulations but may wish to make further comments on a later occasion.

I.

Article 4: PCT Article 4(1)(iii), which provides that the request shall contain the name of and other prescribed data concerning the inventor, appears not to be flexible enough to allow for the inventor's wishes to be taken into consideration in special cases. Although the inventor will usually be interested in having his name mentioned at the time the application is made, he may, in an individual case, have valid reasons for not wanting to be named from the outset. Furthermore, the applicant may find it difficult to give the inventor's name at the time the application is filed, if, for instance, the inventor's identity has not yet been established beyond doubt. In the German Federal Government's opinion, Article 4 should be supplemented to the effect that the inventor's name may be submitted at a later date until the beginning of the national procedure. For the purposes of the national procedure, it should suffice if the inventor's name and personal particulars are available by the time it starts.

The German Federal Government, therefore, suggests the following version of PCT Article 4(4):

"(4) The name and other data concerning the inventor's identity may subsequently be submitted in a communication to the designated Offices within the time limit provided under Article 22. Failure to indicate the name or other data concerning the inventor's identity within that time limit shall have no consequence in any designated State according to the national law of which an

indication of the inventor's identity would not, generally or under the circumstances of the particular case, be required in a national application."

Article 8(2)(b) and (c): The German Federal Government expects that in most cases the applicant will first file a national application and subsequently, during the priority year, file an – in certain cases enlarged – international application. It would make the work more difficult for both the Patent Offices and the applicant if in this international application the applicant were not permitted to designate the country of the original national application in a case where he wanted to claim the priority of the original application for the international application (which will be the rule). In such a case the applicant would have to maintain several applications: the original national application, the international application and, in some cases, national applications for the grant of patents of addition in respect of improvements and developments of the invention which have already been included in the international application. The Patent Office in the State of the original application would then have to process several applications instead of one. A Contracting State may avoid this unsatisfactory result – which would be contrary to the purpose of the PCT plan – by recognizing in its national law the validity of such priority claim, provided that certain requirements are met. However, it would be undesirable for the sake of standardization to leave the question of recognizing the validity of a priority claim to the national laws of the Contracting States which might provide for it in somewhat different ways. The German Federal Government would therefore prefer to have the Treaty itself provide for a procedure as uniform as possible. It would, moreover, speed up ratification of the PCT if the Contracting States could accept the Treaty without the requirement of any major and complicated additional provisions in their national laws.

Even in the German Federal Government's opinion, however, and despite the view put forward above, two matters should be left to the national law: the determination of the time limit for the necessary withdrawal of the national application and the authority to calculate the duration of a patent granted upon the international application from the date of the original application-if this is considered expedient for reasons of national law.

Paragraph 2(c) should be reworded accordingly.

The German Federal Government therefore proposes the following version:

"(b) The priority of one or more national applications filed in a State designated in a subsequent international application may also be claimed for the international application with effect in that State, provided that the said national applications are withdrawn within a time limit determined by the national law of that State. Subject to this condition, the conditions for, and the effect of, this priority claim with respect to that State shall be as provided in the Paris Convention for the Protection of Industrial Property. Every Contracting State may prescribe that the duration

of a patent granted upon the international application is calculated from the date of the first national application filed in that State the priority of which has been claimed for the international application.

(c) The priority of one or more international applications may be claimed for an international application even if a State designated in the subsequent international application has already been designated in the previous international application, provided that the previous international application is withdrawn not later than one month from the date of filing of the subsequent international application. Subject to this condition, the conditions for, and the effect of, this priority claim with respect to that State shall be as provided in the Paris Convention for the Protection of Industrial Property. Paragraph 2(b), third sentence, shall apply *mutatis mutandis*.”

Article 24: In the German Federal Government’s view, third parties may be interested in being informed in which States, designated in an international application according to PCT Article 24(1), the effect of that international application as a national application (PCT Article 11(3)) ceases after the conclusion of the international phase. The German Federal Government is therefore of the opinion that a way should be found for third parties to obtain information on the fate of the international application, at least until the beginning of the national procedure, without having to resort to expensive and time-consuming inquiries with the various designated Offices. This could be done by obliging the designated Offices to inform the International Bureau if the applicant withdraws the international application after its communication to the designated Offices under PCT Article 20 and before the expiration of the time limit provided for by PCT Article 22 in respect of the designated State or, if the applicant fails to perform the acts referred to in Article 22, within the applicable time limit. The International Bureau should be obliged to inform a third party, upon request and upon payment of a fee, of designated States from which communications of this kind have been received in respect of a certain international application.

Third parties would also benefit from further-reaching provision under which the International Bureau would have to be informed of the fate of the application after the beginning of the national phase as well and would have to supply information about it upon request. However, such a procedure might involve too much administrative work for both the designated Offices and the International Bureau. The German Federal Government, therefore, proposes that a new paragraph 3 be inserted in PCT Article 24 to read as follows:

“(3) If the applicant withdraws the international application after the communication referred to in Article 20 and before the expiration of the time limit provided for in Article 22 in respect of a designated State or if he fails to perform the acts mentioned in Article 22 within the applicable time limit, the designated Office of such a State shall

inform the International Bureau thereof without delay unless that State nevertheless maintains the effect of the international application as a national application under the provision of Article 24(2).”

Article 27(5): The provision of PCT Article 27(5), second sentence, according to which the effective date of an international application for prior art purposes (as distinguished from priority purposes) in each Contracting State is governed by the national law of that State and not by the provisions of PCT Article 11(3) or any other provision of the Treaty, contains, in the German Federal Government’s opinion, a regrettable breach of the principle established by the said Article 11(3) to the effect that an international application fulfilling the requirements of Article 11(1) shall have the effect of a regular national application in each designated State as of the international filing date. This exception jeopardizes the success of the PCT procedure for the communication of applications to those States which for prior art purposes regard, for instance, the receipt of the international application by their competent designated Office as the applicable date. A person wishing to file a patent application in such a State will in practice feel compelled to do so by way of a special national application and not by way of an international application under the PCT procedure, so as to ensure that his application may as early as possible be cited as constituting prior art against other patent applications filed by third parties in that State. On the other hand, however, applications from that State are free to obtain patent protection benefiting from the full effect of PCT Article 11(3) in the vast majority of the other Contracting States which will not avail themselves of the possibility open to them under PCT Article 27(5).

The German Federal Government must therefore firmly insist that the partial abrogation of PCT Article 11(3) contained in PCT Article 27(5) be abolished and that PCT Article 27(5) be cancelled.

Article 29(2)(iv): According to PCT Article 29(2)(iv) the national law of a designated State may prescribe that the protection provided for in PCT Article 29 para. 1 shall be applicable only from such time as a translation of the international application into the language prescribed by the national law of such State for the publication of national applications has been published *and*, in addition, such translation has been transmitted to the unauthorized user of the invention. In the German Federal Government’s view, this provision impairs to an excessive extent the beginning of the protection for the international application. The legitimate interests of users of the invention in not being taken by surprise by actions of the applicant will be sufficiently taken care of by the publication of the international application. The German Federal Government therefore proposes that the combination of subparagraphs (i) and (iii) in PCT Article 29(2)(iv) be cancelled, so that subparagraph (iv) would read as follows:

“(iv) both the acts described in (ii) and (iii) have taken place.”

II.

Rule 6.4: The German Federal Government proposes that Alternative A of Rule 6.4 be adopted. The prohibition of multiple dependencies contained in Alternative B would lead to an undesirable increase in the number of dependent claims.

Rule 13.2: In the case of Rule 13.2, the German Federal Government again favors Alternative A, which permits the applicant – in contrast with the narrower Alternative B – to include in the same international application, in addition to an independent claim for a given product, at least one independent claim for at least one process for the manufacture of the said product *as well as* at least one independent claim for at least one use of the said product. The German Federal Government considers that this Alternative satisfies the applicant's interest in a combination of independent patent claims of different categories to an extent that is justifiable. It is also proposed that the bracketed words "specially adapted" be cancelled since it is feared that the various designated Offices might construe this restricting term differently, thereby prejudicing the applicant's interests. The very purpose of this provision should be to safeguard the principle of the unity of invention in terms as unambiguous as possible and thus to guarantee uniform application.

(Original: English)

ISRAEL

1. The Government of Israel has the honor to submit its observations on the Draft of the proposed Patent Cooperation Treaty and Regulations prepared by BIRPI and contained in documents PCT/DC/4 and 5.

The Government of Israel welcomes the opportunity to express its approval of this further effort to achieve effective and practical cooperation in the international sphere, which it is sure will be crowned with success. It desires in particular to pay tribute to the labors of BIRPI and the various committees and other bodies that have studied the problems involved in the international processing of patent applications, the results of which are set out in the Draft Patent Cooperation Treaty and the Regulations to be made thereunder.

The Government of Israel is pleased to affirm its readiness to contribute to the deliberations on the Draft Treaty and its ultimate acceptability as part of international cooperation.

2. The Government of Israel feels that it would be opportune at this stage to set out briefly certain principles and criteria which should inform the efforts to arrive at a desirable solution of the problems involved and which, it is persuaded, will commend themselves to all participating States. The principles and criteria are as follows:

- (a) simplicity of structure and of procedures,
- (b) economy of effort, time and cost,
- (c) clarity of provisions,
- (d) safe-guarding of the full rights and expectations of applicants,

(e) free access of residents and nationals of all States members of the proposed Union to the services provided under the Treaty and the Regulations,

(f) comprehensive assistance to States requiring guidance and expertise in patent granting procedures,

(g) full and non-discriminatory reciprocity of treatment under the Treaty and the Regulations among Contracting States,

(h) preservation of sovereignty of States.

3. The approach of the Government of Israel to the proposed Treaty and Regulations is positive. Its attitude is inspired by the above principles and criteria.

4. The Government of Israel reserves the right, both prior to and during the contemplated Diplomatic Conference, first, of submitting further observations, after having the opportunity to consider the comments, suggestions and proposals of other States, and, secondly, of tendering proposals with regard to the existing provisions of the Draft Treaty and Regulations as well as to such matters as it feels should be included therein, with or without modification of the views it has previously expressed.

5. In the light of the foregoing, the Government of Israel has the following particular observations to make on documents PCT/DC/4 and 5.

Article 1: Clarification of the relationship between the proposed International Patent Cooperation Union and the World Intellectual Property Organization appears to be necessary.

Article 3: The advisability of separating the international application from the international search should, it is suggested, be considered, possibly by way of preserving the right to transmit applications to such States as agree to accept the same without an international search, for the purpose simply of establishing priority under the relevant national laws.

Furthermore, since what is involved under the proposed Treaty is not international patents, it is also suggested that consideration be given to providing that a national application should always precede an international application. Such a provision would help to overcome the difficulties that might arise under the national law regarding titles, claims, etc., would simplify priority, and would render clearer the application of the Paris Convention and more particularly Article 4.A thereof.

Article 3(3)(i): In the interests of applicants and to avoid problems arising in connection with accuracy of translation, it might be administratively convenient to have one prescribed language at the international stage, not necessarily that of the receiving Office, which will then be acting as an international and not as a national organ.

Article 3(3)(iii): The Convention should as a general rule not deal with substantive matters that should be determined by designated Offices. Accordingly, the requirement of unity of invention should not form a feature of the international application, at which stage it is not pertinent. Likewise, the International Searching Authority should in this regard only be concerned with the practical requirements of the search (see Article 17(3)).

Article 4(1)(iii): An applicant should be able to indicate an address for service (where necessary) as well as an agent or agents as regards both the international application as such and each designated Office.

Article 13(1): For the very reason that an international application will have the effect of a national application, every designated Office should receive a copy of the international application unless it waives such requirement (see Article 20(1)(a)).

Article 14(4): Once the receiving Office has processed an international application, it is *functus officio* and should not deal again in the capacity of receiving Office with the application irrespective of any defects that may later be found therein.

Article 16: One Searching Authority with an international staff and applying uniform and consistent international standards appears to be desirable.

Article 18(2): The transmission of the international search report to the applicant should be effected as soon as possible after it has been “established” or produced in accordance with Rule 42.1.

Article 20: The international application, having already been communicated to the designated Offices under Article 13, need not be transmitted once again. This observation pertains also to Article 22(1).

Article 28(2): The right of a State to limit the scope and effect of amendment should be preserved; there is domestic legislation which does not regard amendment as affecting priority date.

Article 29: The right to withhold protection should be preserved in the case of States which do not grant provisional protection until after examination.

Article 30(1): The whole question of sanctions for breach of confidence calls for consideration. Are such sanctions to be international or national? Are they to take the form of dismissal or of criminal charges? Some assurance is necessary that appropriate sanctions will be taken. It is suggested that a study be made of the current legal situation in this regard so that corresponding provisions are incorporated in the Treaty.

Article 30(2)(b): The national application number, if any, should be included in the information that may be divulged.

Article 31: To meet the needs of those States which do not have examination facilities, a State bound by Chapter II should be able to declare that no applicant may designate it without also electing it, or alternatively that all applications designating it should undergo immediate preliminary examination. On the other hand, an applicant may elect a Contracting State without designating it. Where an applicant designates and elects simultaneously, the State so designated and elected would receive *in lieu* of a search report a preliminary examination report, a procedure which meets the case of States where there is no pre-examination protection.

Furthermore, there seems to be no very good reason why the demand for international preliminary examination should be limited to a resident or national of a “Chapter II” State.

Article 38: See observations on Article 30 above.

Article 46: It should be additionally provided that all States will as a general rule admit amendments of mistakes in an application arising out of erroneous or incorrect translations.

Article 50: The provisions of Article 14 of the Paris Convention relating to the Executive Committee should be incorporated *mutatis mutandis* in the Treaty.

Article 60: Though headed “Reservations” this Article contains provisions which are termed and are of the nature of “declarations” rather than “reservations” according to the sense of the term in the Vienna Convention on the Law of Treaties, 1969. It appears inadvisable to have any divergence between the Patent Cooperation Treaty and the Vienna Convention and it is expected that at some subsequent stage the former will be adapted to the Vienna pattern.

Article 60(1)(a): It is suggested that power be reserved for any State upon appropriate notice to annul a declaration already made or to make a declaration *de novo* prospectively as from a particular date. Adoption of this suggestion may of course affect Article 61, which will have to be amended accordingly.

Article 63: The precise significance and effect of an official text is a matter of some doubt.

Regulations: Since, as is understood, a pre-Conference Committee of Experts is to discuss the Regulations, the Government of Israel refrains from commenting thereon but reserves its right to do so subsequently.

6. In view of the clearly important nature of the subject matter of the Treaty and the repercussions it may have in a variety of directions, the Government of Israel wishes to state that those parts thereof on which no comment has been made in the present memorandum are not to be presumed as being necessarily fully acceptable to it either in substance or in form.

(Original: English)

JAPAN

Article 9(2): In the Draft, it is proposed that nationals of States other than the members of the Paris Convention would be allowed to apply for an international application. However, this would mean departing from the principle that the PCT is part of the Paris Convention. We propose, therefore, to revise the Draft so that “specified States” should be limited to Paris Convention member States.

Basis: Under this Article, with the assent of the majority of two-thirds of the PCT Assembly, nationals of States which are not members of the Paris Convention may apply for an international application. However, we believe that (1) the PCT is part of the Paris Convention and it is not necessary to let nationals of non-member States enjoy the benefits of the PCT, and (2) if the same resolution restricts the States that voted against it, it would actually mean that the principle of reciprocity would be violated, and further, in connection with Article 11(4), it may give rise to the possibility of violating the Paris Convention. Thus we believe the privilege should be limited to Paris Convention member States.

Article 24(1): The wording “shall cease” of this Article does not clarify the legal effect it entails. It should therefore be revised and a passage inserted that would leave it to national legislation to take care of the legal effect of the consequences of “shall cease.”

Basis: As regards the legal effect of the withdrawal of the international application, merely to stipulate that the international application concerned “shall cease” would not make it clear whether the status of prior application would remain or not.

From the Note on this Article it may be understood that the status of prior application would remain. But in Japan we cannot recognize the status of prior application for an international application that is not accompanied by a Japanese translation and, in the light of the fact that the legal effect would vary from country to country, we suggest that the matter should be left to the national law.

Article 29(1): For the purpose of protecting the applicant’s right in connection with the international application, we believe that a provision to the following effect should be inserted: “A State that does not provide for reservation under Article 60(3)(a) must guarantee to the applicant a right to provisional protection by so stipulating in the national law.

Basis: According to the present text of the Draft, when a State which has made no provision in its national law for the right of the applicant to provisional protection does not also provide for reservation under Article 60(3)(a) (reservation for international publication after the expiration of 18 months from the priority date), an international applicant will have to have his application published to the world (act of international publication) in the language of the international publication after the expiration of 18 months from the priority date without any protection. And this, we think, would be detrimental to the interest of such applicant.

Article 41(1): A new provision should be made to the effect that, if an applicant demands an international preliminary examination after the expiration of 19 months from the priority date, he cannot be given the opportunity for amendment provided for in this paragraph.

Basis: According to the present text of the Draft, it is not clear whether, when an applicant requests preliminary examination after the expiration of 19 months from the priority date, the opportunity is given for the amendment provided for in this Article or only for amendment under Chapter I, Article 29 (international application).

However, (1) the opportunity for filing amendments with the designated State (or elected State) is closely related to the time the translation is submitted; (2) in the case concerned, some States, after the expiration of 20 months from the priority date, will already have started internal examination and it seems doubtful that an opportunity for amendment of the application will be given in the international stage. For these reasons it seems only rational that the opportunity for amendment provided by this Article should not be given.

Article 60: Seeking protection other than a patent through an international application should be provided for by the national law of each country. We therefore propose that in this Article provision should be made to the following effect: “Each State may reserve the right to apply the provisions of Article 45 as far as that State is concerned.”

Basis: The protection of utility models, etc., varies from country to country and it does not seem feasible to unify the form of such protection.

Rules 4.5 and 4.7: A new provision should be made on the method of indicating the applicant (Rule 4.5) and the agent (Rule 4.7): “If an international application is written other than in the Roman alphabet, the items mentioned in Rule 4.5 and Rule 4.7 should also be written in the Roman alphabet.”

Basis: According to Rule 92.2(d) and (e), all communications between the applicant and the International Bureau should be in English or in French. In an international application which is not in the above two languages (for instance, Japanese), the name and address of the applicant should be transcribed in the Roman alphabet for practical purposes in addition to the original language.

Rule 4.12: If, through a misunderstanding, an applicant seeks protection other than a patent in a country that does not stipulate such protection (for example, a utility model) within the scope of the PCT, a provision such as the following should be inserted as a remedial measure: “The request for such protection shall be considered not to have been made.”

Basis: The existence of protection through other means than a patent (for example, a utility model) varies from country to country, and the regulations for such protection may be unfamiliar to foreign applicants. Therefore, we make the above suggestion to prevent the risk from being borne entirely by the applicant.

Rules 18.3 and 18.4: The present text of the Draft may mean a violation in principle of reciprocity and it may also give rise to the possibility of violating the Paris Convention Article 4 (for priority). It should therefore be revised to read as follows: “All the joint applicants must be nationals of the member country (or countries) of the Paris Convention or nationals having their domicile or establishment in Paris Convention member countries.”

Basis: The present text of the Draft allows an international joint application by A (national of a Paris Convention member country), B and C (both nationals of countries which are not members of the Paris Convention). It therefore violates the principle of reciprocity and permits nationals of countries not members of the Paris Convention to enjoy the benefits of the said Convention. This would constitute a violation of the Paris Convention.

Rules 32.1 and 75.1: In the case of withdrawal of an international application filed by several applicants without designating a common representative, it is suggested that, to protect the interest of each of the joint applicants, the following provision should be

made: “For withdrawal of such application, the signatures of all the joint applicants are required.”

Basis: According to Rule 4.8(b), when a representative is not designated in the case of an application filed by more than one applicant, the applicant first named is considered to be the common representative in any act, including such detrimental acts as withdrawal or abandonment of the application, designation, demand or election. This seems to indicate failure to protect the interests of each of the joint applicants.

Rule 4.4(b): We wish to confirm that the expression “official designations” in this text should be interpreted as including the name of the representative of a legal entity.

Basis: The method of indicating a legal entity varies from country to country. In the PCT, the items to be mentioned in an application are unified as part of the “form or contents.” We believe that, unless a flexible interpretation is given to this rule, confusion may arise.

Rule 6.4: As no provision has been made for multiple claims in Japan, we have no strong demand for “multiple dependencies” but we choose Alternative B to avoid the complexity of dependent claims (“prohibition of multiple dependencies”).

Basis: We may transfer to a multiple claim system but, for the present, we are still in the process of deliberating what form it should take. We therefore prefer Alternative B, which allows each country to approve or not to approve of “multiple dependencies.”

Rule 13.2: As regards unity of invention, we choose Alternative B, which is a more restrictive provision for claims belonging to different categories.

Basis: We have a provision by which several inventions are allowed in one application, and in relation thereto the restrictive provision (of process claim or use claim as against product claim) rather than the less restrictive provision (of process claim and/or use claim as against product claim) is more convenient for our current practice.

Rule 43.4: The words “and the declaration concerning the absence of such a search report” should be inserted after “the international search report.”

Basis: There is no provision regarding the language in which the declaration should be made concerning the absence of a search report (in cases where the international search cannot be carried out).

Rule 48.2(a): Since there is no great need for international publication of the applicant’s so-called statement, we believe Rule 48.2(a)(vi) may be deleted.

Basis: The purpose of submitting a statement by the applicant to the International Bureau with the amendment of the claims is achieved if it is sent to the designated State. We believe therefore that the international publication of such a statement is not necessary.

Rule 58.1: There is no clear provision regarding the due date of payment of the preliminary examination fee. But we believe that a provision similar to Rule 16.1(b) for the search fee should be made.

Basis: No provision for the due date of payment has been made.

Rule 59: In case there may be several International Preliminary Examining Authorities, a provision similar to Rule 35.2 for Searching Authorities may be desirable.

Basis: Article 16(2) is applied *mutatis mutandis* to Article 32(2) where there are several International Searching Authorities. Similar provision should therefore be made for the PCT Rules.

(Original: English)

NORWAY

One important feature of the proposed Treaty is that the formalities of the international application are to be set down in the Treaty and the Regulations. Article 7(2), however, is an exception to the rule in that it permits any designated Office to require that the applicant file drawings not necessary for the understanding of the invention. This exception should, in the view of the competent Norwegian Authorities, be omitted.

According to Article 16(2), each receiving Office shall specify the International Searching Authority or Authorities competent for the searching of international applications filed with such Office. It is suggested by the competent Norwegian Authorities that at least applicants not belonging to countries whose national Office is appointed an International Searching Authority should be able to choose from among those Searching Authorities which are willing to search international applications from his country. As all the International Searching Authorities are supposed to perform work on the same high level, one can see no reason why the receiving Office should make the above-mentioned decision.

Document PCT/DC/2, paragraph 30, states that centralized search could be instituted should experience show that decentralized search is not entirely satisfactory “and should those national Offices which are now unofficial candidates for the role of International Searching Authorities be ready to renounce such a role.” There is no such requirement in Article 16 of the proposed Treaty. Neither should such a requirement be written into the Treaty or the Regulations.

Article 27(5) states that any Contracting State “is free to apply, when determining the patentability of an invention claimed in an international application, its national criteria of prior art.” The competent Norwegian Authorities suggest that this provision should be deleted so that the international application shall have the full effect of a regular national application in each designated State as of the international filing date (cf. Article 11(3)).

Before the international publication, the national Office, according to Article 30 of the Draft Treaty, is allowed to publish the fact that it has been designated. Such publication may, however, contain only the following data: identification of the receiving Office, name of the applicant, international filing date and international application number. In the Norwegian view, these data are of little value unless the title and

the classification of the invention can be made public too.

Article 13 gives any designated Office the right to ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in *Article 20*. As is pointed out in the note on *Article 13*, the designated Office may need the copy for processing *other* applications. The designated States have, however, no possibility of knowing that they have been designated. For this reason, the competent Norwegian Authorities suggest that the International Bureau publish weekly lists in English of international applications received by the Bureau. These lists should contain, besides the name of the applicant, the international filing date and the international filing number, the title and the classification of the invention.

As for *Rule 6.4*, the Norwegian Authorities prefer Alternative A.

Rule 12 states that, if the agreement between the International Bureau and the International Searching Authority specifies several languages, one of which is an official language of the receiving Office, the receiving Office may prescribe that the international application be filed in that language. The competent Norwegian Authorities assume that many receiving Offices may wish to make similar limitations, no matter whether their official language is one of the languages specified in the above-mentioned agreement. The rule should be modified.

Rule 13.2. Alternative A is preferred. The words "specially adapted" should then be retained. The Norwegian Authorities suggest, furthermore, that the words "at least" should be deleted everywhere in *Rule 13.2*. This will simplify the rule considerably and in turn save much of the work in connection with the international search.

According to *Rule 48.3*, a great many of the international applications will be published in either French, German, Japanese or Russian, together with an abstract in English. In the Norwegian view, this is not satisfactory. If the PCT is to give inventors and industry all over the world the assumed advantages, all applications should be published also in English. The patent claims at least should be published in English, together with the abstract.

A practical problem not solved in the Drafts is how the national Office and the applicant can get hold of the documents cited in the international search report. It is suggested that in some way copies of the cited documents should be made available by the International Searching Authority.

Document PCT/DC/2 mentions in paragraph 28 certain countries that have indicated, unofficially, that they would probably wish to become International Searching and/or Examining Authorities. In this connection, the competent Norwegian Authorities would like to refer to the meeting of the Committee of Experts, from December 2 to 10, 1968. At that meeting, the Representative of Sweden, speaking in the name of all the Scandinavian countries, expressed the wish that the door would be kept open for the

cooperating Scandinavian Patent Offices to participate as one appointed authority. This still applies.

(Original: English)

SOUTH AFRICA

The comments which follow have been drafted in two forms. Firstly, where it has been possible to suggest amended drafts for existing rules, additions have been italicized and omissions bracketed.

Secondly, other comments have been of a general nature but, having regard to the peculiar difficulties raised, no attempt had been made to prepare a redraft since the principles contained therein will need further consideration.

Where Rules have been redrafted, it will be observed that the "receiving Office" is being given certain options with a view to facilitating the administrative procedures and to avoid the possibilities in certain instances that the "receiving Office" may, through inadvertence or otherwise, cause the applicant to lose his rights to his detriment.

Additions and changes are in italics.

Omissions are in brackets.

Rule 3.2: Copies of the printed forms shall be furnished free of charge by the receiving Offices to the applicants *or, at the option of the receiving Office, the applicant may furnish his own forms provided such forms are identical with the forms furnished by the receiving Office.*

Rule 4(1)(a)(iii): Indications concerning the applicant, the inventor, and the agent, if there is, or is required to be, an agent.

Rule 4.8(a): If there is more than one applicant and the request does not refer to an agent representing all the applicants ("a common agent"), the request shall designate one of the applicants who is entitled to file an international application according to *Article 9* as their common representative; *provided that, at the option of the receiving Office, any applicant or applicants, as the case may be, who are not resident in the country where the receiving Office is situated shall appoint a resident agent to do all things on behalf of the applicant or applicants as are required by the Treaty and the Regulations. Such requirements of such receiving Office shall be communicated to the International Bureau.*

Rule 11.1(b): Any receiving Office may require that the international application be filed in two or three copies. In that case, the receiving Office shall be responsible for verifying the identity of the second and the third copies with the record copy; *provided that, at the option of the receiving Office, such Office may require that the second and/or third copies be certified as identical with the record copy, either by a notary public or the agent for the applicant or applicants.*

General Comments

Rule 20:

Comment: When this Rule is read with *Articles 11* and *12(3)* it appears that the international application will automatically be withdrawn if it is not received within the time limits prescribed. In the case of an application claiming priority under *Article 8*, it is

submitted that the penalty is too severe, and that it should be limited to loss of the priority date.

Rule 20.5(c): The receiving Office shall promptly notify the applicant of the international application number and the international filing date; *provided that, at the option of the receiving Office, such office shall forward to the applicant one bound copy of the record copy duly certified as a true copy of the documents filed and as to payments made, containing the international application number and the international filing date; where a receiving Office so elects, it shall notify the International Bureau of its requirements.*

Rule 20.8: If the receiving Office later discovers, or on the basis of the applicant's reply realises, that it has erred in issuing an invitation to correct since the requirements provided for under Article 11(1) were fulfilled when the papers were received, *or that it has erred in deciding that any correction tendered still does not fulfill the requirements provided for under Article 11(1), it shall proceed as provided in Rule 20.5.*

Rule 22.1(a): The record copy shall be transmitted by the receiving Office to the International Bureau promptly upon receipt of the international application or, if a check to preserve national security must be performed, as soon as the necessary clearance has been obtained. In any case, including the case where such check must be performed, the receiving Office shall transmit the record copy in time for it to reach the International Bureau by the expiration of the 13th month from the priority date. If the transmittal is effected by mail, the receiving Office shall mail the record copy not later than 10 [5] days prior to the expiration of the 13th month from the priority date.

Rule 21.1(d): *The receiving Office may at any time request the applicant to furnish such additional copies of the application as it may require.*

Rule 22.2(a): Notwithstanding the provisions of Rule 22.1, any receiving Office may provide that the record copy of any international application filed with it shall be transmitted at the option of the *receiving Office* [applicant], by the receiving Office or through the applicant. The receiving Office shall inform the International Bureau of the existence of any such provision. *Where the receiving office has so elected, it shall certify that all fees and payments due to the International Bureau and to the examining authorities have been paid.*

(b) *Delete.*

(c) Where the applicant *transmits the record copy* [opts for transmittal by the receiving Office], the procedure shall be the same as that provided in Rule 22.1.

(d) Where the applicant *transmits the record copy* [opts for transmittal through him], he shall indicate [in the notice referred to in paragraph (b)] *to the receiving Office* whether he wishes to collect the record copy at the receiving Office or wishes the receiving Office to mail the record copy to him.

If the applicant expresses to wish to collect the record copy, the receiving Office shall hold that copy at the disposal of the applicant as soon as the

clearance referred to in Rule 22.1(a), *if such is required*, has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 15 [10] days before the expiration of 13 months from the priority date. If the applicant expresses the wish that the receiving Office mail the record copy to him or fails to express the wish to collect the record copy, the receiving Office shall mail that copy to the applicant as soon as the clearance referred to in Rule 22.1(a), *if such is required*, has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 15 days before the expiration of 13 months from the priority date.

Comment: Why should the applicant have to pay a special fee of \$25 when the fault is either that of the receiving Office or that of the postal authorities?

Apart from this, I suggest retention of the present BIRPI draft.

Rule 22.3(b): Delete.

Comment: It seems an unnecessary hardship on applicants to lose their rights through circumstances beyond their control.

Rule 22.4: Delete.

Comment: No useful purpose seems to be served by maintaining these statistics.

Rule 23.1(a): The search copy shall be transmitted by the receiving Office, *or at the option of the receiving Office by the applicant*, to the International Searching Authority at the latest on the same day as the record copy is transmitted to the International Bureau [or, under Rule 22.2(d) to the applicant]; *provided that the receiving Office notifies the International Bureau of such arrangements and provided that the receiving Office certifies that the search copy and the record copy are identical and that the fees of the International Searching Authority have been paid.*

(b) If the International Bureau has not received, within 10 days from the receipt of the record copy, information from the International Searching Authority that that Authority is in possession of the search copy, the International Bureau shall promptly transmit a copy of the international application to the International Searching Authority. Unless the International Searching Authority has erred in alleging that it was not in possession of the search copy by the expiration of the 13th month from the priority date, the cost of making a copy for that Authority shall be reimbursed by the receiving Office to the International Bureau. *Such costs may be recovered from the applicant at the option of the receiving Office.*

(c) *Delete.*

Comment: This seems to be an unnecessary duplication of statistics.

Rule 26:

Comment: It is understood that the procedure contemplated for Rule 26 (read with Article 14) can take place well after the international application has been received by the International Bureau and the International Searching Authority. This being the case, neither the Bureau nor the Searching Authority can be sure, until the time limits prescribed by Rule 26

have expired, that the documents it has in its possession are not going to be amended at some future date or even that the international filing date is not going to be changed under Article 14(2).

Rule 29.1(iii): [the receiving office shall not transmit] the search copy *shall not be transmitted* as provided in Rule 23, or, if such copy has already been transmitted, [it shall notify] the International Searching Authority *shall be notified* of the said declaration *by the receiving Office*.

Rule 37.1: If the international application does not contain a title [and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect], the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

Rule 37.2(a): If the international application does not contain a title and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish a title, *or from the applicant if he has been so invited*, or if the said Authority finds that the title does not comply with Rule 4.3, it shall itself establish a title and invite the applicant's comments thereon.

Rules 38.1: If the international application does not contain an abstract and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect, *or in the case where the applicant has transmitted the search copy in terms of Rule 23.1 he has notified the International Searching Authority that he has been invited to correct such defect*, the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

Rule 38.2(a): If the international application does not contain an abstract and the International Searching Authority has not received a notification [from the receiving Office] to the effect that the applicant has been invited to furnish an abstract, or if the said Authority finds that the abstract does not comply with Rule 8, it shall itself establish an abstract (in the language in which the international application is published) and shall invite the applicant to comment thereon within one month from the date of the invitation.

Comment: Rule 42 sets a time limit for the performance of the international search and it must be assumed that the International Searching Authority will commence its work as soon as possible after receipt of the documents, but if that Authority does not know whether documents it has are in their final form it will either have to conduct the search on the basis of unamended documents and an uncertain date, which is plainly unsatisfactory, or it will have to defer the search. It may however be impossible to defer the search in view of the time limits provided for in Rule 42. The applicant is fully entitled to file his international application on the last day of the priority

year. Under present practice, applicants frequently avail themselves of the full period prescribed by the Paris Convention.

Rule 42:

Comment: It is not clear what the purpose is in providing, *inter alia*, that the search report shall be produced within nine months of the priority date. It would seem sufficient to provide that it shall be produced within three months of the receipt of the search copy.

(Original: English)

UNION OF SOVIET SOCIALIST REPUBLICS

Rule 5.1(a) does not contain the title of the invention described. It is suggested, therefore, that the description should commence with the title of the invention.

Rule 11.3 limits the choice of material to be used for the preparation of the international application to paper only. It is suggested that this limitation should not be imposed and that the possibility should be provided of using other suitable material meeting the prescribed requirements.

Rule 13.5 is capable of constituting a basis for a wider interpretation of unity of invention than is provided for in Rules 13.1 to 13.4. It is suggested, therefore, that Rule 13.5 be deleted.

Rule 22.2(e) provides for a special fee payable by the applicant for an omission on the part of the Receiving Office; it is hardly justified.

Rule 34.1(a)(i)2 reads "Federal Republic of Germany, from 1920." Apparently this is an error, and should be corrected as follows: "2. Germany, from 1920, and Federal Republic of Germany, from 1949" (i.e., from the time of its constitution).

Rule 80 provides for a method of computation of time limits which, in Rule 80.1 and 2, is in contradiction to Article 4.C(2) of the Paris Convention, whereas Rule 80.3 conforms to the method provided for in the above-mentioned Article 4.C(2).

(Original: Russian)

PCT/DC/8

April 6, 1970 (Originals indicated in each case)
DENMARK, HUNGARY, ITALY,
NETHERLANDS, SWITZERLAND, UNITED
KINGDOM

Observations on the Drafts*

DENMARK

General Comments

The Danish authorities support the view that technological progress has created a need for a higher degree of concentration and efficiency of examinations for novelty and patentability, and that the PCT plan can help fill this need, thereby becoming useful to applicants and industry as well as to the patent authorities of the participating countries.

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

The Danish Government accepts that the plan may on the whole lead to the advantages pointed out by BIRPI and is therefore in principle prepared to accept both Phase I and Phase II of the Plan, provided that the Plan is accepted by the major industrial countries. Hence, Denmark will be represented at the Diplomatic Conference to be held in Washington on May 25 to June 19, 1970, for the purpose of final consideration and adoption of the Plan.

In the preparation of the PCT Plan, it has been assumed that the International Patent Institute at The Hague and, in any case, the Patent Offices of the United States of America, Japan, the USSR and Germany (Federal Republic) would serve as international authorities under the Plan. In the preliminary negotiations, the Swedish authorities, with support from the other Scandinavian countries, pointed out that in view of the Nordic patent cooperation the door should be kept open for active Scandinavian participation in international cooperation. The BIRPI Draft does, in fact, provide for active participation by the national patent authorities of countries additional to the four mentioned above.

For an applicant availing himself of an international application system it will be an obvious advantage to have the international search carried out by the patent authority of his home country because he may use his own language and will have easier access to the patent authority.

Such advantages should not be reserved for applicants who belong to major industrial countries or major language groups. The Danish authorities would therefore find it useful to have, inside the Scandinavian area, both an International Searching Authority and an International Preliminary Examining Authority on an equal footing with the four national Offices specifically mentioned in the PCT Plan.

Comments on Individual Articles

Article 20: In view of the short time allowed for amendment of claims during the international phase, it is essential for an applicant to be informed of the publications to which reference is made in the search report. It would therefore be highly desirable if copies of such publications could be attached to the search report.

Article 27: According to Article 11(3), an international application shall have the effect of a national application in each designated State from the date of filing. However, this principle is set aside by the provision of Article 27(5) from which it follows that each country will decide whether international applications are to rank equally with national applications with respect to priority over applications filed later. Under the provisions of the patent legislation of the Scandinavian countries, an application already takes priority from the date of the application and, if priority is claimed, the date of priority shall be the date of filing also in this respect.

The Danish authorities would find it regrettable if in this respect an international application were not to rank equally with a national application in the designated States.

Article 29: As noted above, Article 11(3) provides that an international application has the effect of a national application in each designated State. Hence, international applications which are published within 18 months and which cover Denmark take priority, from the filing date of the international application, over national applications filed later in Denmark, even if the international application is withdrawn as far as Denmark is concerned before the Danish patent authority's examination has begun.

Paragraph 47 of document PCT/DC/3 shows, however, that Article 29(1) is understood to mean that such priority can be confined to international applications which are followed up by national applications when the international search has been completed. This limitation is not clearly shown in Article 29(1).

Article 30: During the time between the filing of an application and the publication of it, both the application itself and its contents shall be kept secret. The BIRPI Draft, however, permits that the number, the date of filing, the name of the applicant, and the name of the country in which an application is filed may be published in the countries covered by the application. Seeing that these details will be of little value unless they are accompanied by the title and class in the classification system and that the publication of such details cannot be regarded as infringements of the applicant's interest in secrecy, the provision should be amended to allow publication of the title and class of an invention.

Administrative Regulations

Rule 6: Rule 6.4 on dependent claims is formulated as an alternative rule. Denmark prefers the least restrictive alternative *viz.* Alternative A.

(Original: English)

HUNGARY

Article 9: According to the Draft, the most important task of the Patent Cooperation Treaty would be to facilitate for applicants the filing of applications abroad and to reduce and simplify the work of industrial property Offices as far as examining is concerned. The Draft Treaty is therefore intended to guarantee to applicants an additional advantage and for that reason it would not be right to limit in any way those possibilities which have so far been open to them. In the circumstances, it would be unwise if on the basis of the new instrument limitations were introduced which in effect are in conflict with the spirit of the Paris Convention and possibly also with the text itself.

The text of Article 9 of the Draft Patent Cooperation Treaty contains a limitation regarding the filing and acceptance of international applications of Contracting States. Such a limitation is not in conformity with the principle of national treatment. Under the Draft Treaty, the international application is to be treated in the Contracting States as if it were a national application. In cases where the Contracting States provide such a possibility for their own nationals – and give an undertaking so to do by signing the Treaty – they cannot prevent nationals of

other Contracting States from availing themselves of the same possibility.

In this connection, the Treaty limits the existing possibilities of inventors to the extent that they cannot claim priority on the basis of the Paris Convention although they would hitherto have chosen themselves the country where the first application was filed. At the most, only the national law of their own country could limit this possibility.

It should also be noted that the provisions of the Paris Convention must be regarded as offering the minimum benefits and that there is nothing in those provisions to prevent a country from granting applicants wider possibilities.

By virtue of the provisions of Article 9 of the Draft, an international application can be filed only by nationals or legal entities of Contracting States. Under the text of the Paris Convention in force, it is possible for a person within the jurisdiction of a non-Union country to file the first application if such application is not refused by the country of the Union. This is a possibility which exists, for example, in Hungary, where the rule of law permits anyone to file the application. An applicant who does not belong to a non-union country can file his application again in another Union country on the basis of his first application filed in Hungary, and can claim the benefit of Union priority. It is true, such other Union country is not obliged to accept the application or to ensure the benefit of Union priority, but it is not in conflict with the Paris Convention even if it does ensure priority in such cases. Should Article 9 of the Patent Cooperation Treaty be accepted, however, such a possibility would cease to exist. To ensure that the said possibility will continue to exist, we propose the adoption of the following new text:

Article 9(1)

“Any person may file an international application if he is entitled under the Paris Convention to file a national application in the Contracting State.”

If the proposed text is accepted, paragraph (3) of Article 9 concerning residence and nationality could be deleted and the word “prescribed” could be removed from the text of Article 10.

To avoid the possibility of any doubts or misunderstandings, the text of Article 9 (or possibly of Article 27 concerning national requirements) could be completed by the addition of a paragraph to the effect that paragraph (1) of Article 9 would not affect the right of designated States to refuse to consider an international application as a national application. The designated State would adopt such a position on the ground that neither the international treaty nor the national law grants the applicant the right to file the application.

The proposed amendment would also be beneficial in so far as there would be no necessity for the complex rules as to competence concerning the applications of persons within the jurisdiction of several countries of the Union, or of countries of the Union and countries outside the Union.

It should also be mentioned that even the text of Article 9 of the Draft is not an absolute guarantee that an application from any Contracting State will be filed with the prescribed Office. In view of the fact that the claim to the grant of a patent may be transferred, there is nothing to prevent the applicant from filing his invention in the country of his choice by means of a transfer of trustee type.

The proposed amendment would not even involve the risk of a disproportionate increase in the work of the International Searching Authority. The great majority of applicants will naturally file their international applications in their own countries and will choose another country as receiving Office only in special cases and provided the national law permits it.

Under the new text, Contracting States are not restricted as regards their decision on the question where their nationals may file international applications. As this question can be settled at the national level, there is no need for a limitation of this nature to be prescribed in an international agreement.

Articles 11 and 14: Under the Draft, the filing date of the international application, in cases where correction has been required, is to be considered the date of dispatch of the required correction by the applicant in compliance with the invitation to file the said correction. This provision is perfectly justified in cases where the correction concerns the substance of the application, but, if the correction is purely formal and does not affect the substance of the invention filed, it would be unjust to the applicant to apply the above ruling.

In the light of the foregoing, it would be advisable to amend the text of the two Articles in such a way that the date of receipt will be considered the date on which certain indications subsequently filed are received, only in those cases where the correction concerns the substance of the application.

Articles 17 and 34: For the sake of clarity, it would seem to be absolutely essential to sum up in a common Article provisions concerning those cases where the application must be considered withdrawn by the applicant.

Article 50: Paragraphs (9) and (10) deal with the Executive Committee. The Executive Committee is a very important body of the Union. From the point of view of clarity as well as substance, it would be desirable to regulate in a separate Article the questions of the composition, competence, etc., of the Executive Committee.

Article 56: According to the Draft, it is possible that an amendment adopted by the Assembly which has not entered into force because of an insufficient number of notifications of acceptance will be binding on a country acceding to the Treaty after the decision of the Assembly. To avoid this controversial situation, it is desirable to amend the text of this Article in such a way as to provide in subparagraph (c) of paragraph (3) that any amendment which has entered into force in accordance with the provisions of subparagraph (a) of paragraph (3) is binding on countries acceding to the Treaty at a later date.

Article 60: Subparagraph (a) of paragraph (4) permits reservations or withdrawals of such reservations to be made at a later date. Maintaining this provision would lead to legal uncertainty. To avoid such uncertainties, it would be advisable to delete the provision.

Article 63: It would be desirable and perfectly justified to replace the present wording of paragraph (1) by the provisions of paragraph (1)(a) of Article 20 of the WIPO Convention, to the effect that the original text shall be signed in four languages: English, French, Russian and Spanish.

Paragraph 2 should further stipulate the place where the Treaty will remain open for signature.

(Original: French)

ITALY

The competent Italian authorities have examined the 1969 Draft Patent Cooperation Treaty (PCT) and the Draft Regulations under that Treaty.

They have noted with satisfaction that the opinions and certain of the proposals of the various countries and interested non-governmental organizations (which participated on several occasions in meetings on the subject) have been taken into consideration by BIRPI and have led to changes in the 1969 PCT Draft as compared with the 1968 Draft. In the 1969 Draft, however, there are still some questions to be solved which we think it advisable to draw to the attention of BIRPI.

A. General observations

Centralization of search

This problem has not yet been solved. The difficulties preventing the immediate achievement of such an objective are appreciated and, in this connection, it is noted that nothing in the existing text of the Treaty would prevent its achievement in the future.

On the other hand, no Article in the Treaty states the desirability of such an objective.

The competent Italian authorities consider, however, that it would be advisable to insert in the Draft Treaty an express statement stressing the need for an international search (as referred to in Article 15 of the Draft Treaty) which would be *centralized* or at any rate *under the direction* of a central body.

It would be even better if a definite time limit could be set for attaining this objective.

While the fact has already been noted, it seems useful to emphasize here again that a search for anticipation ("international search") performed by a central body, adequately equipped, would satisfy a number of requirements. First of all, as far as inventors are concerned, they would be on a strictly equal footing, irrespective of the member country of the Treaty from which their applications originated. In view of the fact that the situation would be the same for all, the results of the search would be identical for the obvious reason that searches would be performed by the same *person* or the same group of persons, on the same materials, and using the same *method*. It would also be easier to institute the practice whereby this search would be *accepted* without having to be performed again, by the Patent Offices of countries

with an examining system. Duplication of effort would therefore be avoided and time and work would be saved, thus achieving one of the essential aims of the Plan.

Besides, it is difficult to see how the Committee for Technical Cooperation provided for in Article 52 could take the place of a central body having the power to make decisions.

It should be recalled however, that the study of the problems of centralization is one of the tasks of the said Committee.

The Committee should find a specific solution to this problem. As a first step, centralized search could be envisaged on a regional basis. In this connection, attention is drawn to the fact that the European Draft Patent Convention provides for centralized search by a single European Bureau.

Reservations

The competent Italian authorities maintain the reservations already expressed on the subject of Chapter II in connection with the international preliminary examination. According to Article 60(1)(a): "Any State may declare that it shall not be bound by the provisions of Chapter II."

Entry into force of the Treaty (Article 58)

This Article provides two alternatives for ratification of the Treaty. The competent Italian authorities consider it preferable to retain only the second possibility but to raise from seven to ten the number of States required under this Article.

National requirements (Article 27(5))

Article 11(3) of the Draft states that any international application fulfilling certain requirements shall have the effect of a regular national application in each designated State as of the international filing date.

This Article is without doubt one of the fundamental provisions of the Treaty. In some respects, it can be compared to Article 1(2) of the Madrid Agreement Concerning the International Registration of Marks.

In addition, the last part of Article 27(5) states that "the effective date of any international application for prior art purposes (as distinguished from priority purposes) in each Contracting State is governed by the national law of that State and not by the provisions of Article 11(3) or any other provision of this Treaty."

This provision, the wording of which is, incidentally, extremely ambiguous, represents a serious exception to the fundamental principles of the Treaty and must be deleted.

Amendment of the claims in the national phase (Article 28)

Article 28(1) states that the applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit.

This provision would necessarily involve a substantial change in the Italian law and other national laws. The competent Italian authorities are therefore of the opinion that another provision should be added

to Article 60, whereby interested States could reserve the application of Article 28(1).

B. Particular observations

Designation of the inventor (Article 4(4))

This Article renders more flexible the obligation to mention the name of the inventor. The competent Italian authorities consider, however, that such obligation should be transferred to the national phase, failing which, the inventor or inventors should be designated and the designation should produce its effects only in certain of the designated States. To that end, Rule 4.6 could be completed having regard to the fact that provision has already been made for the designation of different inventors in different States (Rule 4.6(c)).

Description

Rule 5.1(a)(v) requires that the description should set forth at least "the best mode" contemplated by the inventor for carrying out the invention claimed. This condition is undoubtedly excessive, unpractical and sometimes difficult to fulfill. It ought therefore to be deleted.

Unity of invention (Rule 13.2)

The competent Italian authorities are in favor of Alternative A under Rule 13.2.

They further propose that Rule 13.5 be deleted in view of the impossibility of establishing objective interpretation criteria.

Amendment of the Regulations (Article 54(3)(a)(ii))

In the last part of this paragraph, it is provided that the agreement required of the International Searching Authority may, when that Authority is an intergovernmental organization, be given by that State member of the organization in which the highest number of patent applications is filed. It seems, on the contrary, that it would be more advisable to ask for a majority decision by the board of directors of that organization.

Communication to designated Offices – Languages in which the international application is published (Rule 47.3)

In some cases, the language in which the international application is published is not the language in which the application was filed (for example, an application filed in the Dutch language). When such cases arise, it should be made clear that, in the event of an error in translation, *it is the original text which is the authentic text.*

(Original: French)

NETHERLANDS

Articles 4 and 22: According to Article 4(1)(iii), the request shall contain the name of the inventor. Whether the inventor's name will be included in the international publication is left as yet to the Administrative Instructions (Rule 48.2(b)(i)). It is to be expected that these Instructions will prescribe that the inventor's name be mentioned in the international publication.

In view of the great publicity to be given to this publication, attention should be given to the consequences of a possible error in naming the

inventor. The true inventor should at least have the possibility of enforcing correction of the international publication; an adequate procedure for such correction would have to be introduced into the Treaty, which would mean a serious complication.

To avoid this complication it would be desirable to defer naming the inventor from the time of filing the international application until the start of the national phase in the designated States. Such deferment would also meet other objections which were raised by the Netherlands against the obligation to name the inventor in the international phase.

The stipulation in some national laws that the inventor's name should be mentioned when a national application is filed (as distinguished from the requirement that an application can be filed only by the inventor) can easily be considered to be on a par with the national requirement that the application must be written in the national language and that a national fee must be paid.

Since, under Article 22, the latter national requirement may be complied with at a later date (20 months after the priority date), it seems feasible to prescribe that the national requirements (if any) regarding the indication of the inventor's name must also be complied with at the said later date.

It is proposed therefore to cancel in Article 4(1)(iii) the words "the inventor," and to replace in Article 22(1) the words "and pay the national fee (if any)" by "pay the national fee (if any) and indicate the name of the inventor (as required)."

Articles 11 and 27: Article 27(5), last sentence, seriously undermines the fundamental principle of Article 11(3) and therefore the provision not only seems to be contradictory to the spirit of the Treaty, but also makes it possible to interfere seriously with the interests of the applicants which the present Treaty is intended to serve. We propose that the sentence in question be deleted and, in order to exclude any possibility of doubt concerning the principle of Article 11(3), that the following words be added to paragraph 3 of Article 11: "which shall be considered to be the actual filing date in each designated State."

Article 44: It is proposed that paragraph (1) of this Article be drafted as follows: "Contracting States that conclude a treaty providing for the filing of patent applications with effect in more than one State may, by that treaty or an amendment thereto, provide that any international application fulfilling the requirements of Article 11(1) and containing the designation of at least one of these States with a special reference to that treaty shall have the effect of a regular application under that treaty. Any of these States may additionally, by national law or by an agreement concluded between them, provide that Article 11(3) does not apply to them. However, in case the national patent system in any of these States has been abolished, any international application fulfilling the requirements of Article 11(1) and containing the designation of such State has automatically, even without any reference to the aforesaid treaty, the effect of a regular application

under the treaty and the provision of the second sentence does not apply.”

Commentary

In the 1968 Committee of Experts, the Delegation of the Netherlands, supported by the Delegations of Germany and Italy, proposed that States setting up a regional patent system should be given the possibility of closing the PCT route as a means of obtaining their national patents. As this proposal was not opposed, the fact that it is missing in the final Draft must be ascribed to a pure omission. The proposed amendment aims to fill this gap.

In the final Draft, the assimilation of regional to national patent applications is automatic: if regional applications exist, the PCT route leads to them as well. Although this automatic effect will in many cases be justified, it is possible that the regional group of States may not desire the PCT route to lead to regional applications. It is therefore better (in accordance with the basic idea of the PCT, which is not to force Contracting States to modify their patent system if it is not necessary for the operation of the PCT) to leave the choice to the regional group.

The first sentence of the proposed amendment achieves this purpose.

Two points in this sentence deserve attention. The first is that use of this faculty must be made through a treaty and therefore jointly. In fact, it seems impossible to conceive that any State in the group could do this on its own, even if the regional treaty provided for regional applications having effect in only one State, because in any case the regional machinery would have to be set in action.

The second point concerns the words “with a special reference to that treaty.” In this manner, the difficulty existing under the automatic system, namely, how to decide whether the applicant wishes a regional patent or national patents in all States of the group, is avoided.

The second sentence of the amendment achieves the purpose of the afore-mentioned proposal in the 1968 Committee of Experts.

The effect of the word “additionally” in this sentence is such that the use of this second faculty is only possible if the first faculty has been used.

Attention is drawn to the fact that the second faculty may be used by only one State in the group. In fact, for PCT purposes it does not matter if the PCT route to national applications remains open in some States in the group and is closed in others. It may be that the States in the group themselves do not wish any one of them to act separately; in that case they can say so in their regional treaty.

The words “by an agreement concluded between them” refer not only to agreements concluded by all States in the group but also to agreements to which only some of them are parties.

The third sentence takes care of the rather remote possibility that the PCT route to regional applications may not have been opened and yet one of the national patent systems concerned is abolished. In that case, the PCT route in such country would encounter a blank wall, though the regional patent system would

continue to exist even for that country. The automatic effect is then fully justified and cannot lead to designation difficulties: the fact that a country without national patents is designated clearly means that a regional patent is desired.

Perhaps this possibility is considered so remote that the third sentence is deemed unnecessary; it could then be deleted without difficulty.

(Original: English)

SWITZERLAND

General Remarks

1. The Treaty and the Regulations both contain numerous *recommendations* which, as such, cannot be enforced. For that reason, we should prefer recommendations to be made solely in information notices and forms prepared by the International Bureau. The text of the Treaty and the Regulations would thus be considerably reduced in volume.

2. The proposed texts contain innumerable *references* which make them very difficult to read. As shown by the wording of Rule 29.1, this defect could be greatly improved upon by adding to the numbers of those articles and rules to which reference is made a brief indication, in parentheses, of the contents. The reading of Rules 30, 31, 49 and 50 would thus be greatly facilitated if this suggestion were adopted.

Observations on the Treaty

Article 9(1): We take it that the conditions of this paragraph should be fulfilled only at the time of filing; in other words, it is our understanding that if, for example, after filing his application, an applicant who is not a national of a Contracting State chooses an address for service in a non-Contracting State, or if the successor in title of the applicant does not fulfill the conditions laid down for the applicant, the validity of the filing will not be affected. If our interpretation does not coincide with the intentions of the authors of the Draft, we consider that it would be necessary to add a provision dealing as indicated above with the cases we cited by way of an example.

The right for “any resident or national of a Contracting State” to file an international application is limited by Article 27(3), which provides that the national Office of any designated State may reject the international application “where the applicant ... is a natural person who or a legal entity which according to the national law of that State is not qualified to file a national application.” We propose, therefore, that the following sentence be added to the first paragraph: “Article 27(3) is reserved.”

Article 13: The wording of this Article does not automatically allow the conclusion to be drawn that the applicant can also require transmittal of a copy of his international application, independently of the fact that the Office of the designated State has or has not asked for prior transmittal in accordance with paragraph (1).

In some States, however, applications for patents are not assimilated to prior art until the documents filed are actually in the possession of the Offices of those States. The applicant must therefore be able to ask for immediate transmittal of a copy of the

international application to the Offices of those States if he has designated them.

In our opinion, this right must be expressly granted to the applicant and we therefore propose that a new paragraph 3 be added and that it be worded as follows:

“(3) Any applicant may require that the International Bureau, prior to the communication provided for in Article 20, also transmit copies of the international application to designated States which do not avail themselves of the possibility provided for in paragraph (1).”

In such cases, of course, the “presence” of an application filed in a given State cannot be made subject to the presentation of a text drafted in an official language of that State.

Article 21(2)(a): The international application is not published when it “contains the designation only of such States as have made the declaration that, as far as they are concerned, international publication of international applications is not required” (Article 60(3)). The international application will nevertheless be published “at the request of the applicant” [Article 60(3)(c)(i)] or “when a national application or a patent based on the international application is published by the national Office” [Article 60(3)(c)(ii)]. This is not a satisfactory situation. It leads to inequality of treatment of applicants and legal insecurity. In our view, publication of all international applications after 18 months is one of the advantages of the Treaty.

Furthermore, in order to trace those applications which would not be published – applications which would probably be few in number – a highly complex system of notification and supervision would have to be established.

Article 30(2)(a): Under this provision, access to international applications by the authorities would not be allowed. It may, however, be necessary for the courts to consult such applications if, for example, the applicant is not the owner of the rights. We propose, therefore, that the following sentence be added to this paragraph:

“The provisions of the national law regarding legal assistance to the judicial authorities shall be reserved.”

Article 58(1): The conditions for entry into force of the Treaty are so worded that, in each of the three eventualities, the Treaty could enter into force after ratification by States of Western Europe only.

Those are the States, however, that are at present concluding among themselves a treaty which goes even further than the Patent Cooperation Treaty. There is therefore reason to fear that those very States will not ratify this Treaty until other non-European States have ratified it.

To avoid such a situation, it would be desirable to find a formula which would permit entry into force when the Treaty had been ratified not only by European States but also by some of the major non-European States. We propose, therefore, that paragraph (1)(i) and (1)(ii) be completed as follows:

“(i) the number of States having taken action as provided in Article 57 is not less than five and

among such States there are at least three, *belonging to different continents*, in each of which...”

“(ii) among the States having taken action as provided in Article 57 there are at least seven, *belonging to three different continents*, each of which...”

Article 60(3): Reference is made to our proposal regarding Article 21(2)(a), which suggested that Article 60(3) should be deleted.

Observations on the Regulations

Rule 4.4(c): It is “recommended to indicate any telegraphic and teletype address and telephone number.” Referring to our first general remark, we are of the opinion that this recommendation could be omitted and that when the form for the request is established the applicant could simply be asked to give such indications; it seems to us that this course would have more chance of success than a recommendation in the rules of procedure.

Rule 4.5: Under paragraph (c), the applicant’s residence must be indicated (solely) “by the name of the State of which he is a resident.” It seems to us that it would be simpler and clearer, from a drafting point of view, to delete paragraph (c) and complete paragraph (a) as follows:

“(a) The request shall indicate the name, address, nationality and *State of residence* of the applicant or ... of each of them.”

Rule 6.4: In principle, we prefer Alternative A, which corresponds to our national law. However, if Alternative B makes it easier for other States to accede to the Treaty, we can also accept it. Nevertheless, we should like to point out that in such an event we consider that Article 11(3) guarantees to the applicant the maintenance of the international filing date, even if he must later alter the wording of the claims to fulfill the requirements of Rule 6.4(d).

Rule 11.7(b): If the numbering of sheets is done by machine, it is easier to place the number at the top of the sheet than at the bottom. We therefore prefer the alternative which states “top.”

Rule 11.8(a): As the international application is generally published and therefore included in the search documentation, the numbering of lines should not only be “strongly recommended” but prescribed.

Rule 11.10: Paragraphs (b) and (c) do not concern drawings in the proper sense, but chemical or mathematical formulae and tables. We propose, therefore, that the subheading read as follows:

“Drawings, Formulae and Tables in Texts.”

Rule 11.13(n): In this Rule, it is strongly recommended to attach a separate sheet listing all reference signs where the drawings contain a large number of such signs. We are not convinced of the usefulness of such a list. Generally speaking, the presence is noted of a great many reference signs in voluminous and, in most cases, technically complicated descriptions, which in any case require careful study in order to understand the invention. In such cases, a good drawing conforming to the rules of technical drawing and accompanied by the necessary

reference signs is a better aid to the understanding of the invention than an inadequate drawing accompanied by a list of reference signs which, in any case, takes a considerable time to establish. Besides, there is a risk that such a recommendation would encourage applicants to neglect the description and the drawing in the belief that the list of reference signs would fill in the blanks and make up for any inaccuracies in the technical documents. We therefore propose that this recommendation be abandoned. We should also like to recall, in passing, that the place for recommendations is not among the rules and that such recommendations could possibly be made in information notices (see our "General Remarks").

Rule 13.2: The provisions in this Rule concerning the possibility of including claims of different categories in the same international application should be less restrictive. We propose the following text:

"Rule 13.1 shall be construed as permitting any one, or a combination, of the following possibilities:

- (i) in addition to an independent claim for a given product, at least one independent claim for at least one process for the manufacture of that product;
- (ii) in addition to an independent claim for a given product, at least one independent claim for at least one use of that product;
- (iii) in addition to an independent claim for a given process, at least one independent claim for at least one apparatus or means specially designed for carrying out that process."

A combination under (i) and (ii) corresponds to that provided for under the present Rule 13.2(ii), Alternative A. As for the combination under (i) and (iii) (product, manufacturing process, means for carrying out), we are of the opinion that it satisfies the requirements of Rule 13.1 because, if unity of invention exists both for (i) and for (iii), it is logical that it should exist in the combination of (i) and (iii). In our view, the guidelines under Rule 13.5(b) are better respected in the case of the combination of (i) and (iii) than in the case of the combination, admitted in Rule 13.2(i), Alternative A, of a claim for a product and a claim for the use of the said product, since the manufacturing process and the means for carrying it out belong in general to the same field, whereas a product and the use of that product relate, in most cases, to different fields.

Rule 13.5(a): This guideline is not sufficiently clear. How is it to be interpreted?

At the root of all inventions there lies a problem whose solution is precisely that provided by the invention. This problem can always be termed a "hitherto unsolved problem." Let us take the following example:

Suppose that for a hitherto unsolved problem (A) an inventor (X) provides a solution (C). Another inventor (Y) sets himself the problem (B) of finding for the problem (A) solved by the first inventor (X) a new solution that is possibly more economical and, technically, an improvement. The problem (B) posed by the second inventor (Y) is therefore not yet solved

and its solution (D) is provided precisely by the invention he has made.

One might ask whether this guideline is not aimed rather at "problem" inventions, that is to say, inventions in which the mere statement of the problem constitutes the inventive idea and the solution of the problem requires no further inventive activity. If this is so, the guideline in question should be clarified in this sense.

Rule 13.5(b): This guideline is not applicable in most of the cases in which a claim for a product is followed by a claim for one use of that product (see Rule 13.2(i), Alternative A, or 13.2(ii), Alternative B) since the use generally relates to a different field of art than the product. If, for example, the product is a polymerized synthetic resin (International Classification: C 08f), its use may relate to electric insulation (International Classification: H 01b) or to the insulation of buildings (International Classification: E 04b). It is obvious that in cases of this kind searching would be required in different fields of art. According to the guideline under discussion, unity of invention would be lacking in the combination envisaged. Rule 13.2, however, allows the possibility of such a combination.

We propose, therefore, that Rule 13.5(b) be deleted. It is the Searching Authority that will have to decide whether the requirement of unity of invention is satisfied or not.

Rule 19.1: To avoid the necessity for the receiving Office to correspond direct with an applicant who is a resident of a foreign country and to take account of time limits which are unavoidably short, it is desirable that all the applications originating in foreign countries be filed through the intermediary of an agent who is a resident of the State of the receiving Office, or, at least, that such an agent be designated at the time of filing.

We propose therefore that a Rule 19.1bis be added, worded as follows:

"19.1bis: *Obligation to Designate an Agent*

When the applicant is not a resident of the State of the receiving Office, he must file his international application through the intermediary of an agent who is a resident of that State or, at least, designate such agent at the time of filing the said application."

Rule 20.2: According to Rule 20.1(a), the date of receipt is marked only on the first sheet (the request) and, according to Rule 20.2, that date is corrected when additional sheets are subsequently filed.

In the national phase, it can be important to know when the different sheets were received; the date of receipt should therefore appear on each sheet filed subsequently, undated sheets being thus automatically considered as received on the original date. We propose that the single paragraph in the Draft be called paragraph (a) and that a new paragraph (b) be added, worded as follows:

"(b) On each sheet of the text or drawing received at a later date, the receiving Office shall mark the date of receipt."

Rule 80.2: The proposed provision may give rise to misunderstanding when the period starts on the last day of a month which has fewer than 31 days. Thus, a 2-month time limit starting on February 28 expires on April 28 and not April 30. In our experience, applicants often believe that a time limit expressed in months which starts on the last day of a month expires also on the last day of the month of expiration. We propose, therefore, to replace this paragraph by the following text:

“A period expressed in months does not include the day on which the relevant event occurs.”

As a result of this proposal, the period cited in the example given above would not start to run until March 1 and, as it consists of two full months, would expire on April 30.

Rule 87: It is provided that only International Searching or Preliminary Examining Authorities shall have the right to receive, free of charge, copies of the publications of the International Bureau. It is however obviously in the interest of Contracting States that they should also receive such publications, whether or not they be designated States.

We propose therefore that Rule 87 be completed in the following terms:

“Contracting States shall have the right to receive a copy of such publications free of charge.”

(Original: French)

UNITED KINGDOM

Article 14: It may happen that an international application is filed and claims the priority of another application filed more than 12 months before the international filing date. In connection with Article 11, we also note that the receiving Office may accord to the application the date on which the defects requiring correction have been met and it is possible that the new date may be more than 12 months after the date of filing of a previous application, the priority of which is claimed. In such cases, the timing of the procedures throughout the international phase and the start of the national phase would be based on a priority date which is obviously invalid. While we agree that a receiving Office should not generally consider whether a valid claim to priority has been made, we think that in these particular cases the receiving Office should be empowered to invite amendment of the request to delete the claim to priority and to declare the international application withdrawn if the applicant fails to comply within the prescribed time.

For this purpose, we propose the addition to Article 14(1)(a) of a new item as follows:

“(vi) it claims a priority date more than 12 months before the international filing date.”

Articles 22 and 39: We would prefer that it should be made explicit in paragraph (1) that the applicant may be required to provide a translation of any amendments which may have been made under Article 19.

Article 27: It would be unfortunate if the prior art effect of a PCT application in any country were to be different from that which it would have if filed

directly in that country, having regard to the general philosophy of the Treaty as expressed in Article 11(3). We would therefore hope that agreement can be reached to delete the last sentence of Article 27(5).

Articles 28 and 41: It is United Kingdom practice to permit in certain circumstances (*viz.* where there is a clerical error or an obvious mistake) amendments which do go beyond the original disclosure. We wish to maintain this practice and accordingly suggest the addition to Articles 28(2) and 41(2) of the words – “unless the national law of the designated (elected) State so allows.”

Article 34: Although the Searching Authority may have declared that no search will be carried out, we note from Rule 69.1(b)(iv) that examination is nevertheless to commence. It appears pointless in such a case to expect the Examining Authority to express a view on the novelty, etc., of the claimed invention. This also applies to cases where the Searching Authority has made only a partial search under Article 17(2)(b) or 17(3) and to cases where the applicant has, for instance, introduced, by amendment under Article 19 or by amendment before the Examining Authority takes up the case, claims which are not covered by the search report.

We propose therefore the addition of the following item to Article 34(4)(a):

“(iii) the international application contains claims which have not been searched.”

Article 35 and Rules 66 and 70: Article 35(2), last sentence, by the use of the word “may” appears to leave it to the discretion of the Examining Authority as to what observations “the Regulations provide for” it will make. There are, however, matters calling for observations which are not at the Authority’s discretion; for example, Rule 70.13 makes it clear that the Authority must report on amendments which go beyond the disclosure. We consider therefore that the word “may” in Article 35(2), last sentence, should be amended to “shall.”

In order to make clear that an Examining Authority must notify the applicant in its written opinion of any amendment that goes beyond the disclosure, we think the final clause of Rule 66.2(a)(iv) should be deleted and made the subject of a new item (v) as follows:

“(v) if, in the opinion of the International Preliminary Examining Authority, any amendment goes beyond the disclosure in the international application as filed.”

Rule 3: It is clear from this and other Rules that the international application may be accompanied by other documents (e.g., the priority document, international-type search report). We think that a single copy only of these documents is necessary and that a Rule should be introduced to the effect that, if the applicant does file them, the receiving Office shall transmit them to the International Bureau and the International Searching Authority as appropriate.

Rule 5: Under the existing Draft, it would be possible for a designated State to reject an international application for failure to comply with Rule 5.1, even though such State does not require national applications in that State to be drafted in the manner

prescribed. It seems to us that, in this matter, there should be no difference between the treatment accorded nationally to description and to claims. We propose therefore the insertion in Rule 5 of a paragraph corresponding to Rule 6.3(c).

Rule 11: An international application may relate to a complex apparatus where it is not possible to show the whole of a single figure on one sheet. We think therefore it would be useful to add to Rule 11.13 a new paragraph (o) as follows:

“(o) Where figures on a number of sheets form in effect a single complete figure, they shall be so arranged that the complete figure can be assembled without concealing any part of another figure.”

Rule 11.10(c) should be revised to allow the inclusion of “tables” in the claims.

Rule 13: We prefer Alternative A for Rule 13.2. If there are claims to a novel product, there seems to be no justifiable reason for excluding claims to a use of the product while allowing the inclusion of claims to a process for making the product.

Rule 18: It would seem that a new subsection should be added to this Rule dealing with the question as to what happens when the applicant dies.

Rule 19: For security reasons, our present law requires an applicant, resident in the United Kingdom, who wishes to file abroad to first apply to the United Kingdom or to seek official permission, and this applies to *all* applications. We believe that there is general agreement that Article 27(7), which overrides Rule 19, permits this. Assuming agreement on this point, we shall not require any amendment of the Treaty or Regulations.

Rule 24: Under Article 22, a designated Office may require the applicant to supply documents and a fee not later than (i) 20 months after the priority date or (ii) two months after the applicant has been notified that the International Searching Authority will not carry out a search. Under Article 24, the failure of the applicant to comply with these requirements may mean that the effect of his international application shall cease in any designated State.

Under Rule 24.2(a), the International Bureau is obliged to inform a designated Office that it has been designated, but the information given does not include the priority date of the international application. It follows that, if the applicant fails to supply the documents and fee within 20 months of the priority date, this will not be found out until one year later, because the designated Office is only able to bring forward the file for consideration 20 months after the international filing date, this being the only date it has been notified of. The result is that the designated Office will be one year later than it ought to be in detecting the applicant's failure. It is not in the public interest that there should be any such delay in informing the public that a patent will not be granted on such an application. For this reason, we propose that the International Bureau should be obliged under Rule 24.2(a) to give the priority date to designated Offices.

Moreover, we believe that Rule 24.2(a) should provide for information being given to the applicant as

to the language in which each designated State requires the application to be translated.

Rule 26: Provision appears to be needed in Rule 26.6 for requiring the receiving Office to send the drawings, if received within 30 days (Rule 20.2(iii)), on to the International Searching Authority and the International Bureau and to notify them of the new date of the application. We propose the following new paragraph (c) for Rule 26.6:

“Each sheet of drawings filed under Article 14.2 shall be marked with the international application number, the stamp identifying the receiving Office, and the date of its receipt by that Office. The receiving Office shall promptly transmit the drawings to the International Bureau and to the International Searching Authority.”

Rules 39 and 67: The scope of the reference to “written representations of information” in item (v) of these Rules is not clear. We would prefer the following wording:

“Designs or arrangements which serve only to convey information and in which the novelty resides solely in the information conveyed or in the form in which the information is presented.”

Rule 46: We think it would be useful if in most cases the publication under Article 21 included amendments of the claims made under Article 19 to take into account the search report. Although we agree that applicants should not be compelled to make amendments, we nevertheless think they should be encouraged to do so. One way of doing this is to allow more time for amendment whenever possible. Rule 46.1 allows a minimum time of two months and provides that, if the search takes place early, three months from transmittal of the search report shall be allowed. We think that when the search report is communicated at an early date, the applicant should always be allowed up to the end of the 17th month if – as is to be inferred from the present wording of Rule 46.1 – this will give the International Bureau time to publish the amendments under Article 21. We propose therefore that Rule 46.1 should read:

“The time limit referred to in Article 19 shall be 2 months from the date of transmittal of the international search report to the International Bureau and to the applicant by the International Searching Authority, if said date is not earlier than the expiry of 15 months from the priority date; otherwise, the time limit referred to in Article 19 shall expire at the end of 17 months from the priority date.”

Rules 49 and 76: It is evident that in many cases the translation will constitute the working document for further processing in national Offices. It is imperative therefore that the translation shall be made in good faith. For this reason we would wish to include in Rules 49 and 76 a paragraph corresponding to Rule 55.2(c).

Rule 55: We agree that the Preliminary Examining Authority should be able to require a translation of the application when necessary. It would seem that a sanction should be placed on an applicant who fails to

supply the translation within the prescribed time. Presumably, the sanction should be refusal to examine, but it is not apparent that the possibility of such a refusal is contemplated by Article 34(4).

Rule 61: We suggest that Rule 61.3 should be amended to specify that the applicant is to be informed as to the language into which each elected State requires the international application and the annexes to the examination report to be translated.

Rule 65: It is important that the "obviousness" of the making of the "combinations" should be judged as at the priority date. We propose therefore that Rule 65 should read "... where such combinations would have been obvious to a person skilled in the art at the relevant date as defined in Rule 64.1(b)."

General

We have a number of purely drafting proposals we have not included in these observations but which will be put forward at the Conference.

(Original: English)

PCT/DC/9

April 6, 1970 (Originals indicated in each case)
INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY (AIPPI), ASIAN PATENT ATTORNEYS ASSOCIATION (APAA), COUNCIL OF EUROPEAN INDUSTRIAL FEDERATIONS (CIFE), INTERNATIONAL FEDERATION OF PATENT AGENTS (FICPI), INTERNATIONAL CHAMBER OF COMMERCE (ICC), UNION OF INDUSTRIES OF THE EUROPEAN ECONOMIC COMMUNITY (UNICE)

Observations on the Drafts*

INTERNATIONAL ASSOCIATION FOR THE PROTECTION OF INDUSTRIAL PROPERTY
(AIPPI)

Organization of a Centralized Search

AIPPI strongly favors a centralized search system.

By centralized system is meant the system in which the search is carried out by a single organization placed under an international authority.

1. The opinion of AIPPI is based on the following reasons:

(a) *Technical reasons:* Centralization will allow the concentration of financial resources and, in consequence, the assembly of the complete mechanized means necessary to carry out a thorough search.

Furthermore, centralization will alone permit a uniform search to be carried out and the uncovering of conflicting applications.

(b) *Political reasons:* It will be easier to induce a country to accept the results of a search originating from a single organization under an international

authority than for it to accept the results of a search originating from different independent offices.

2. AIPPI considers that the organization of a centralized search is both possible and capable of achievement.

The experience of the International Patent Institute of The Hague and various private institutions demonstrates this well enough.

It is only a question of the will to achieve, and the necessary credits.

However, if a decentralized search system were to be introduced, AIPPI is of the opinion that it could only be accepted on the following conditions:

1. The decentralized system should be only a temporary and transitory one.
2. The principle of the centralized system should be expressly written into the Treaty.

The Technical Committee should have for its task the preparation and introduction of the international search and the international preliminary examination. The said search and examination should preferably be entrusted to a single international authority, or on a subsidiary level to the different branches of such a single international authority, situated in various parts of the world.

Furthermore, the Technical Committee should have the task of organizing the establishment of the storage system and the search for the documents relevant to the state of the art applying electronic computers, possibly by sharing existing and future data services (which may be either governmental or private).

Finally, it is suggested that the Technical Committee begin its work as soon as the Treaty is signed, even before the international search begins to function.

Article 4(1) to (3): Article 4 provides that the request should contain "(iii) the name of and other prescribed data concerning the applicant, the inventor, and the agent (if any)."

AIPPI draws attention to the drafting of this provision. It should not be interpreted as constituting an obligation to indicate the name of the inventor in the international application. The inventor should be designated only at the beginning of the national procedure.

Article 9(2): Article 9(2) provides that: "The Assembly may decide to allow residents or nationals of specified States other than Contracting States to file international applications."

AIPPI asks whether it would not be opportune to restrict the benefit of this provision only to members of the Paris Union.

Article 12 and 20: Articles 12 and 20 concern:

the transmittal of the international application to the International Bureau and the International Searching Authority, and

the communication to each designated Office of the international application with the international search report.

The opinion of AIPPI is that it is necessary to allow the applicant himself the possibility of

* «Drafts» means the texts appearing in documents PCT/PCD/4 and 5.

transmitting the international application to the International Bureau and of communicating this application to the designated Offices.

The applicant should indeed have the possibility, in case of negligence or delays, of ensuring that his interests are protected.

Article 15(5): AIPPI is pleased to note that Article 15(5) allows an applicant who files a national application to request that a search be carried out by the International Searching Authority, similar to an international search, on the sole condition that the national law of the Contracting State so permits.

AIPPI asks whether it would not be advisable to oblige the Contracting States to amend their laws in order to permit such searches.

Article 16: AIPPI considers that it is indispensable that, during the period of temporary decentralization, each applicant in a signatory country should have the possibility of freely designating the searching authority or authorities charged with the international search.

Subsidiarily, and for cases where the choice between all the Searching Authorities would not be left to the applicant, AIPPI asks that the applicant should have at least the choice between two Searching Authorities, one being the International Patent Institute.

Article 27(5): Article 27(5), last sentence, provides: "Thus it is also understood that the effective date of any international application for prior art purposes (as distinguished from priority purposes) in each Contracting State is governed by the national law of that State and not by the provisions of Article 11(3) or any other provision of this Treaty."

AIPPI observes that the wording of this provision is ambiguous. It should, therefore, be removed and the provision worded in a more satisfactory fashion.

Article 29: Article 29 concerns the effects of the international publication.

AIPPI expresses the wish that the countries undertake to legislate in order to grant temporary protection to international applications published *in extenso*, on the condition that the patent be granted subsequently.

Subsidiarily, AIPPI expresses the wish that, if a temporary protection is not granted, the application be published only in the form of an abstract.

Article 58: AIPPI approves the text of Article 58 relating to the entry into force of the Treaty.

AIPPI simply makes an observation concerning the number of patent applications mentioned. This should be understood to mean the number of patents applied for annually.

Rules 36 and 63: These rules concern the minimum requirements which must be met by the International Searching and International Preliminary Examining Authorities.

AIPPI observes that these two provisions should be harmonized in so far as the number of employees is concerned. One rule says 150 employees, the other 100.

Rule 43.5: AIPPI poses the question whether it would not be proper to provide the applicant with the possibility of obtaining not only the references of the documents revealed by the search but also copies of these documents.

Rule 46.1: This rule provides for a two-month time limit for the amendment of claims before the International Bureau.

AIPPI would like to see this time limit increased.

Rule 52: Rule 52 concerns the amendment of the claims, the description and the drawings before the designated Office.

1. AIPPI expresses the wish that the wording of the first part of the first sentence of Rule 52.1 be amended in the following manner:

"In any designated State in which processing *or* examination..."

2. AIPPI asks whether it would not be possible to allow the applicant a time limit for the amendment of his claims. This time limit could be, for example, three months from the date of the communication of the international search report to him.

In the present Draft, the search report can be communicated just before the expiration of the twenty-month time limit, and the applicant cannot have the search report at his disposal to amend his claims.

If Rule 52 were modified in this sense, it would also be in order to amend Rule 22.1 to make it agree with the new Rule 52 as far as the time limits are concerned.

Rule 88: Rule 88 concerns the amendment of the Regulations.

AIPPI draws attention to the enumeration of those rules the amendment of which should require unanimity.

Article 48 and Rule 82.2: These provisions lay down that a delay in the carrying out of a formality can be excused if the applicant can prove that the mail service was interrupted in the locality where he resides.

AIPPI believes that it would be wise to make this provision more general and to extend it to cover the interruption of the mail service in the locality where the receiving Office is situated.

(Original: English/French)

ASIAN PATENT ATTORNEYS ASSOCIATION (APAA)

Article 9(2): According to the provision as it now stands, the Assembly may decide to allow residents or nationals of a specified country which is not a member of the Paris Union to file international applications. The Assembly may make such a decision by two-thirds of the votes cast according to Article 50(6)(a). Even a country which casts an opposing vote is bound by such a decision of the Assembly. This results in a violation of the principle of reciprocity.

We propose therefore that this provision be amended in one of the following ways: (1) deletion, (2) changing it so as to provide that such a decision of the Assembly shall bind only those countries which cast votes of approval, or (3) that qualified applicants

shall be limited to residents or nationals of member countries of the Paris Union.

Article 24(1): It is provided that the effect of an international application shall cease in any designated State in cases where such application is withdrawn or is considered withdrawn by virtue of non-compliance with certain requirements. The expression "shall cease" makes it questionable whether an international application which has thus ceased can still be citable against a later application. In Japan, the expressions "withdrawal" and "abandonment" are clearly distinguished from each other as a withdrawn application is considered as not having been filed at all (except as a basis for Convention priority), while an abandoned application is considered to have existed up to the date on which the abandonment was effected, so that such an application may be citable against a later application.

In order to clarify that an application as dealt with under this provision shall not be citable against a later application, it may be necessary to change the expression "shall cease" to "shall be lost *ab initio*". Alternatively, it may be provided that the effect of "shall cease" in each Contracting State is governed by the national law of that State.

Article 27(5): Article 11(3) sets forth the principle that an international application shall have the effect of a regular national application in each designated State as of the international filing date. In view of this principle, the effective date of an international application as such must be the international filing date whether for prior art purposes or for priority purposes and it is illogical to distinguish one from the other. (In countries where the filing date of an application is the date for priority purposes, the international filing date alone should be the effective date of an international application.)

We feel therefore that the last sentence in this paragraph (5) beginning "Thus..." and ending "... this Treaty" should be deleted.

Article 29(1): If any State whose law is silent on the provisional protection afforded as a consequence of the early compulsory publication does not make a reservation that international publication is not required at the expiration of 18 months from the priority date (i.e., the reservation under Article 60(3)(b)), the applicant designating such a State will have no provisional protection at all, despite international publication by the International Bureau 18 months from the priority date.

Therefore, in order to ensure better protection for the applicant, we propose that a stipulation should be made to the effect that a State not making a reservation under Article 60(3)(b) shall, under its national law, guarantee the right to a certain provisional protection for the applicant.

Rule 4.12: If the applicant, in error, has chosen, instead of a patent, a kind of protection which does not exist in a designated State (e.g., a utility model where there is no provision for this), his application should not be regarded as having defects but should automatically be considered as having applied for a patent. For this purpose, we feel that a stipulation

should be made to the effect, for example, that the applicant shall be regarded as not having specified any kind of protection.

Rule 4.14: Since communications to the International Bureau by the applicant must be made either in English or French, we think that to avoid any errors (clerical, postal, or otherwise) it is necessary to require the applicant to add in the request the name and address of the applicant or his attorneys in Roman characters.

In order to provide for an exception to what is referred to as "no additional matter," we think that it should be provided that such indications in Roman characters shall not constitute "additional matter." Alternatively, there might be included in Rule 4.5 a new provision to the effect that, when the name and address of the applicant are in characters other than Roman characters, the applicant shall add notations in Roman characters.

Rule 17.2: By virtue of this provision, the applicant shall not generally be required by a designated State to submit a priority document. As an exception, however, a priority document may still be requested in those countries where a certified translation of the priority document is required. Presumably there would be difficulties in obtaining the priority document if the national application concerned is under examination. In such a situation, instead of obtaining such a priority document from the national Patent Office concerned, it should be possible to obtain from the International Bureau a certified copy of the priority document kept in its custody.

Rules 18.3 and 18.4: The present provisions allow for the filing of an international application jointly by a national of a country of the Paris Union and a national of a country other than such country. This results, in substance, in a violation of the principle of reciprocity.

The related provisions should be amended in either of the following ways: (a) all of the joint applicants shall be nationals or residents of countries of the Paris Union, (b) all of the joint applicants shall be qualified under Article 9 of this Treaty.

Rule 31: Any State which requires a copy of an international application before the communication should obtain it at its own expense. Such costs should not be included in the designation fee. We wish also to point out that, since such a copy procured at an early stage is not classified, there may be difficulties involved in actually using it. In other words, the usefulness of obtaining such a copy at too early a stage is very doubtful.

Rule 32.1: According to the provisions of Rule 4.8(b), the applicant first named in the request in the case where there are several applicants without the designation of their representative may perform certain actions, including those which might be against the interests of the remaining applicants. This carries the risk of damaging the protection of certain joint applicants.

Therefore, in order to ensure the protection of the interests of each of the joint applicants, we propose that a provision should be included to the effect that the withdrawal of an international application in which

no representative is named among the joint applicants shall require the signatures of all the joint applicants.

Rule 59: This provision should be amended so as to permit the existence of several Preliminary Examining Authorities for a single receiving Office as in the case of Searching Authorities under Rule 35.2. This is because, if the IIB becomes available as a Searching Authority to Japanese applicants in connection with certain parts of international applications filed by them, Japan would also use the IIB as a Preliminary Examining Authority.

(Original: English)

COUNCIL OF EUROPEAN INDUSTRIAL FEDERATIONS (CIFE)

The Council of European Industrial Federations (CIFE) is a confederate body of the following national industrial federations: Associação Industrial Portuguesa, Lisbon; Bundesverband der Deutschen Industrie, Cologne; Confederation of British Industry, London; Confederazione General dell'Industria Italiana, Rome; Conseil National du Patronat Français, Paris; Federacion de Industrias Españolas, Madrid; Fédération des Industries Belges/Verbond der Belgische Nijverheid, Brussels; Fédération des Industriels Luxembourgeois, Luxembourg; Federation of Irish Industries, Dublin; Felag Islenzkra Idnrekenda, Reykjavik; Industriraadet, Copenhagen; Norges Industriförbund, Oslo; Suomen Teollisuusliitto, Helsinki; Sveriges Industriförbund, Stockholm; Raad van Nederlandse Werkgeversverbonden, The Hague; Vereinigung Österreichischer Industrieller, Vienna; Vorort des Schweizerischen Handels- and Industrie-Vereins, Zurich.

Delegates from CIFE have taken part in the preparatory work for the Diplomatic Conference for a Patent Cooperation Treaty (PCT), namely, in the Committee of Experts of October 2 to 10, 1967, in the Working Group of March 25 to 29, 1968, in the Committee of Experts of December 2 to 10, 1968, and in other meetings with BIRPI.

CIFE thanks BIRPI for associating the interested circles, including the industrial federations, in these discussions. This has allowed the authors of the draft to take into account the comments and suggestions of industry.

The present report refers to documents PCT/DC/2 to 5, prepared for the Diplomatic Conference; it deals particularly with documents PCT/DC/2 to 4 and refers to some of the Regulations (document PCT/DC/5).

CIFE's comments or remarks on the other provisions of the Regulations will be presented in a separate report or at the Preparatory Working Group which it is intended to convene for March 9 to 20, 1970.

General Comments

CIFE wishes to recall that, in spite of the importance of patent law for industry, the present national systems no longer meet the needs of the present circumstances, particularly the increasing rate of technical evolution and the internationalization of technical and commercial exchanges; their

shortcomings create uncertainty both for applicants and third parties, in some countries because of the lack of examination, and in other countries because of protracted documentary search procedures and examination procedures of insufficient quality.

Remedies for this unsatisfactory situation can best be found in international cooperation which should have the following features and which would offer industry corresponding benefits:

“*dépôt commun*” which by a single patent application has the effect of national applications in several countries, obtaining rapidly a documentary search report of high quality on the prior art,

early publication of patent applications, together with the associated documentary search report, reasonable cost of formalities.

These views of industry were already stated at the Inter-Industries Conference, in Paris, on October 15 and 16, 1968.

CIFE recognises that the PCT as drafted by governmental experts in cooperation with the users of the patent system is intended to remedy certain of the inconveniences of the national splitting of the present patent system, by reducing duplications in filing, searching and examining patent applications.

In its present form, the PCT still contains features which industry would like to have improved. The possible use which industry will make of the PCT will depend on the attractiveness of the PCT-route as compared with the normal national routes. It is therefore important to eliminate as much as possible the inconveniences to applicants which may be found in the PCT-route.

The international application according to the PCT constitutes a kind of “*dépôt commun*,” one of the objectives of industry. To this extent, it will promote the urgently needed international cooperation in the field of industrial property, especially with respect to the gradual coordination and harmonization of national patent laws.

The provisions for a documentary search report on the prior art and the early publication of applications together with the associated documentary search report, as provided in the PCT, may lead to other improvements.

The ideal arrangement for documentary search would be a single searching authority or effective control of several searching authorities (see document PCT/III/14, of December 3, 1968). As long as such a single searching authority is not feasible, CIFE recommends that the PCT should set up an effective organization to control and secure the quality and uniformity of the documentary search reports made by the various searching authorities, guaranteeing to the applicants exhaustive documentary search reports of homogeneous quality.

CIFE treats with reservation the various estimates of the cost of the PCT to international applicants. The PCT does not provide for significant economies in the costs of patent operations, particularly as there is no indication that the fees required by national Offices will be in any way reduced.

The practical value of the international preliminary examination (Phase II of the PCT), the extent to which this part of the PCT will be used by applicants, and the manner in which the examination reports will be used by the national Offices remain to be seen. In this respect, a speedy harmonization of national patent laws and practices is highly desirable.

While approving the concepts of the PCT as set forth in the draft for the Diplomatic Conference, which reflects the collaboration which has taken place with industry, CIFE still has the following remarks to make.

Remarks on Document PCT/DC/4

Designation of the inventor (Article 4): Article 4 provides for the designation of the inventor from the date of filing of the international application.

Taking into account that:

(a) the designation of the inventor is not compulsory in all the States likely to adhere to the PCT,

(b) the inventor may ask not to be designated,

(c) in a number of countries, the designation of the inventor is accompanied by administrative formalities which will still be required by the national Offices of the States designated,

(d) striking out this requirement in the international phase would eliminate all difficulties resulting from the wrong designation of the inventor (otherwise it would be necessary to provide for procedures to correct erroneous designations), it seems logical that such designation should be compulsory only as from the beginning of the national granting procedures, in accordance with the national requirements of the designated States.

Since at the beginning of the national procedures the applicant has in any case to fulfill certain formalities prescribed by national laws, CIFE contends that postponing the designation of the inventor until then does not present any inconvenience.

Designation fee (Article 4). Rule 15.2(b) provides that the designation fee will be higher if the designated States ask for the transmission of a copy of the international application as provided by Article 13.

Such a rule would oblige the applicant to bear the cost of a unilaterally imposed formality; CIFE recommends that the designation fee should be set at a standard rate, and that the expenses of transmitting the international application, in accordance with Article 13, should be borne by the designated Office so requesting.

Description (Article 5). Rule 5.1(a)(v) provides that, in the description of the international application, the applicant shall set forth the "best mode" contemplated for carrying out the invention.

If this requirement is to be retained, it should be mandatory only in cases where the national laws of designated States so require.

Claims (Article 6). CIFE is in favor of Alternative A of Rule 6.4 relating to dependent claims.

Effect of the international application (Article 11). CIFE is of the opinion that the concept formulated in

Article 11(3), which gives any international application the effect of a regular national application in all designated States, should not be subject to any restriction or limitation, irrespective of what the consequences at national level might be.

CIFE is strongly opposed to any provision within the PCT which would prevent an international application having the same effects as a regular national application, as from its filing date, in all designated States, and to any provision permitting this. *International search (Article 15).* It is in the interest of industry, the main originator of patent applications, to obtain, within the shortest possible time and at the lowest cost, a competent and exhaustive documentary search on the prior art.

Consequently, CIFE considers that an international-type search on the basis of a national patent application, which involves the simplest formality for the applicant, should be obtainable in all cases, only administrative matters having to be agreed between the filing country and the Searching Authority in charge of the search.

Moreover, if claim is made to the priority of an earlier international application already searched, CIFE contends that the international applicant must have the same financial advantages as the applicant of a national application accompanied by an international-type search.

International Searching Authority (Article 16). In the opinion of CIFE, any decision about a Searching Authority should be taken after having heard not only the interested Office or organization but also the Committee for Technical Cooperation provided for in Article 52.

Obligations of the Searching Authorities (Article 16). Rule 34.1 stipulates the minimum documentation to be consulted by the Searching Authorities under the PCT.

CIFE recalls that industry needs exhaustive documentary searches on the prior art and notes, in this respect, that there is no formal obligation under Article 15(4) for the Searching Authorities to consult the entire documentation in their possession, in cases where it goes beyond the minimum stipulated in Rule 34.1.

Unity of invention (Article 17). CIFE is in favor of Alternative A of Rule 13.2 relating to unity of invention.

Furthermore, the guideline provided in Rule 13.5(b) should be construed so that the fact that a search has been made in separate fields of the art does not connote that there is lack of unity of invention.

Translation of the international application (Article 22). CIFE is of the opinion that the translation of the international application established by an organization under the PCT should only serve the purpose of publication.

Only the original application should be considered as the regular basic application in all designated States.

(Original: English/French)

INTERNATIONAL FEDERATION OF PATENT
AGENTS (FICPI)

REPORT C

Following the PCT Meeting organized by BIRPI in Geneva from December 2 to 10, 1968, the FICPI prepared the following two Reports:

Report A – dated December 17, 1968, and entitled: “Provisional Report on PCT Discussions in Geneva, December 2 to 6, 1968”

Report B – dated January 13, 1969, and entitled “Report on certain questions discussed at the PCT meeting in Geneva, December 2 to 10, 1968”

Both Reports were ratified by the CE of Marrakesh in February 1969 and have thus become official FICPI documents.

The present *Report C* is based on the one hand on Reports A and B and on the other hand on a study and analysis of the official BIRPI documents identified as PCT/DC/I to 5, dated July 11, 1969, and hereinafter referred to as PCT-69.

General remarks

First of all it should be noted with great satisfaction that PCT-69 marks a very considerable step forward towards the principles and proposals advocated by the FICPI in Reports A and B.

The FICPI, therefore, welcomes PCT-69 as a most significant improvement of the previous PCT Drafts and wishes to express its gratitude to BIRPI for what we consider to have been an efficient and successful cooperation and for having favorably considered and to some extent adopted many of the most important proposals submitted by the FICPI and other private organizations.

These proposals and the corresponding provisions of PCT-69 are summarized in Chapter I.

On the other hand, the FICPI still has some misgivings in regard to certain other provisions of PCT-69. These provisions together with our comments and recommendations are set forth in Chapter II.

CHAPTER I

Comparative Analysis of FICPI Proposals and Corresponding PCT-69 Provisions

1. *Transmittal of documents.* The FICPI has advocated that “inter-office correspondence” should be reduced to a minimum (Report A, Item (1)). The *applicant* and not the national or international authorities should attend to the transmittal of documents pertaining to the international application. This applies especially to Articles 12, 13, 20, and 22:

(a) *Article 12* of PCT-69 provides that the record copy and the search copy of the international application shall be transmitted to the International Bureau and to the International Searching Authority respectively *as provided in the Regulations*. Rule 22.2(a) provides that the applicant may (at his option) attend to the transmittal of the *record copy*. On the other hand, Rule 23 provides that the *search copy* shall be transmitted by the receiving Office. It should be noted, however, that the fact that the provisions in regard to the transmittal of these

documents have been transferred to the Regulations will make it easier to change these provisions in the manner recommended by the FICPI (if practical experience should show that this would be desirable) than if these provisions were maintained in the Articles of the Treaty (PCT/DC/3, paragraph 40).

(b) *Article 13* provides for *transmittal by the International Bureau* to any designated Office which may request a copy of the international application prior to the communication provided for in Article 20. Although this provision is not in accordance with the FICPI proposals (see Chapter II), it is believed that such (probably rather limited) inter-office correspondence will be of minor importance.

(c) *Article 20* provides for the communication of the international application and search report to the designated Offices. Rule 47 provides that this communication shall be effected by the International Bureau, which, again, is contrary to the FICPI proposals but nevertheless leaves the way open for improvement by amendment of Rule 47. On the other hand, Article 20 contains the very important proviso that the designated Offices may waive the requirement for communication by the International Bureau, which brings the whole provision much closer to the FICPI proposal.

(d) *Article 22* provides that *the applicant* shall furnish a copy of the international application to each designated Office (together with translation and payment of fee) within 20 months from the priority date, unless the international application has already been communicated in accordance with Article 20.

It will be observed that, to all intents and purposes, the provisions of Articles 20 and 22 of PCT-69 comply with the FICPI Proposal II of Report B that:

“The national law of any State may provide that a copy of the international application shall be sent to the national Office not by the International Bureau, but by the applicant.”

2. *Amendments.* The FICPI – and many other private organizations – have strongly recommended that the applicant should have the opportunity of amending not only the claims, but *also the description* of the international application (Report A, Item 4, and Report B, Proposal I).

More particularly, the FICPI Proposal I states that:

“When the applicant presents amended claims in the international phase, he may at the same time file a brief explanatory note for publication along with the international application.

In the national phase the applicant may amend not only the claims, but also the description, and may divide the application.”

This proposal has been adopted in the relevant Articles of PCT-69, i.e., Article 19(1), Article 20(2), and Article 41(1).

3. *Publication.* In its Report B, Proposal VIII, the FICPI has proposed that:

“at the request of the applicant, international publication may take place earlier than prescribed” and a corresponding provision has been introduced in Article 21(2)(b) of PCT-69.

4. *Unity of invention.* In its Report B, the FICPI has pointed out that the concept of unity of invention is not only an extremely intricate problem, but also a highly controversial issue. The FICPI is therefore of the opinion that it would be preferable to abolish any provision on unity of invention from the PCT and to substitute rules for payment of additional searching fees in respect of very diversified applications necessitating an elaborate search extending to different classes. A proposal to this effect was made in Report B, Proposal V. This proposal has not been adopted in PCT-69. However, Proposal VI of the same Report, which is an "Alternative Proposal for the International Procedure in Respect of Unity of Invention," has to some extent been taken into consideration in Article 17 and Rule 13 of PCT-69. In the opinion of the FICPI this must be considered as a relative though still insufficient improvement (see Chapter II). In any case, it is noted with satisfaction that the requirement in regard to division *in the international phase* has been abandoned as proposed by the FICPI and other private organizations.

5. *Safeguards against loss of rights.* The FICPI has expressed misgivings concerning the consequence of certain erroneous findings in the international phase and has proposed certain safeguards to protect the applicant against any possible loss of rights as a result of such erroneous findings. According to FICPI Proposal IV of Report B, it was proposed to remove – or at least to attenuate – the more or less fatal consequences of erroneous findings in the international phase by providing, on the one hand, that in such cases the international application should not be considered as having been "withdrawn," but to have been "rejected from international processing" and, on the other hand, that the applicant should have recourse to the designated Offices for review of such findings and that, if they were overruled by the designated Offices, the application should have the status of a regularly filed national application.

In PCT-69 not only has the wish expressed by the FICPI for certain safeguards been taken into consideration, but the safeguards have even been further improved in one respect, i.e., by deleting the notion "purview of the Treaty" from the PCT thereby removing one source of erroneous findings on the part of the receiving Office.

In general, the new provisions in PCT-69 referred to in document PCT/DC/3, paragraphs 26, 33, 34, 35, and 44, and more particularly the provision of Article 25(2)(a) and also the new provision of Article 1(2), must be considered as very substantial improvements from the viewpoint of the FICPI.

CHAPTER II

Observations concerning certain provisions of PCT-69

The FICPI recognizes that certain (more or less imperative) considerations may have prevented BIRPI from going still further in following the advice and recommendations submitted by the FICPI and other private organizations. Nevertheless, this Report would not have been complete without commenting on such observations and recommendations which

have not been followed, but are still believed to be well-founded, even if some of these comments may amount to a re-statement of our previous proposals and arguments and more particularly as stated in the plan referred to as FICPI-II.

For the sake of completeness, therefore, this Chapter deals with some of the fundamental principles advocated in Report A and with what is still considered to be insufficient or inadequate provisions in regard to unity of invention as pointed out more specifically in Report B:

1. *Applicant's initiative and responsibility.* The FICPI believes that it is of outstanding importance to the ultimate success of the PCT that the *applicants* should be convinced that the PCT route is more attractive than the traditional route. This applies not only to the prospect of saving cost, but also to the applicant's confidence in the smooth and efficient operation of the PCT machinery.

Now, it cannot be denied that, with all due acknowledgement to the very substantial improvements summarized in Chapter I, the PCT still remains a rather elaborate Treaty, comprising a multitude of provisions and rules and involving what many applicants may – rightly or wrongly – consider to be a complexity of national and international operations.

This may be unavoidable (although the FICPI continues to believe that a system along the lines suggested in FICPI-II might considerably simplify the proceedings), but in any case – if only for psychological reasons – it is believed that everything possible should be done to remove any misgivings or suspicions on the part of the applicants that by following the PCT route their international applications will be subject to operations which escape their control and, in general, tend to hamper their initiative and reduce their responsibility.

Primarily for this reason – but also with a view to facilitating the proceedings in the international phase by discharging the International Authorities from the duties and responsibilities of transmittal of documents and inter-office correspondence – the FICPI has advocated and continues to believe that the applicants themselves should play a more active part and assume a greater personal responsibility in the international proceedings.

Without reverting to the detailed proposals of FICPI-II (which are clearly "not on the cards" at the present stage, it is believed that the above object could be achieved by providing for a decentralization of the initiative and responsibilities along the following lines:

(a) The applicant shall file his international application with the receiving Office, as provided in Article 11.

(b) When the receiving Office has found that the international application complies with the prescribed requirements, it shall issue four copies: (1) a "home copy," (2) a "record copy," (3) a "search copy," and (4) a "file copy" (for the applicant), and shall send copies (2), (3), and (4) to the applicant. (These copies shall be certified by the receiving Office.)

(c) *The applicant* shall send the record copy (2) to the International Bureau and the search copy (3) to the International Searching Authority (within the prescribed terms).

(d) The applicant shall keep his certified file copy (4) as a master copy for reproduction (e.g., by Xerox) of the required number of copies to be sent *by him* to the designated Offices along with the other documents as prescribed in the Treaty. Otherwise the proceedings shall remain substantially as prescribed in PCT-69, except that Article 13 should be amended so as to provide that the *applicant* shall transmit the copy of the international application to the designated Office.

The FICPI can see no reason why this proposal could not be adopted: it would eliminate the need for inter-office correspondence and thus simplify the proceedings. It would relieve the International Authorities of the duty of attending to terms, leaving this responsibility entirely to the applicant, and it would not impose any additional work on the receiving Office, since the issue and transmittal of three copies would hardly be more complicated than the issue and transmittal of the two copies provided for in Article 12.

The proceedings under this system would be similar to (but simpler than) the present system under the traditional route of obtaining and dispatching certified copies of the basic application. Obviously, the applicant would have to face the consequences of non-compliance with the prescriptions of the PCT in regard to terms, fees, etc., as under present conditions, but any risk of errors beyond his control and consequently any need for safeguards against such errors would be eliminated.

In short, the proposed system would tend to increase the applicant's confidence in and to simplify the provisions of the PCT.

2. *Centralized search.* The FICPI maintains its proposal for and arguments in favor of one centralized International Searching Authority (the IIB), as also recommended by a number of official delegates to the PCT meetings, but realizes that this is a most controversial political issue and will therefore abstain from any further comments or arguments.

3. *Search basis.* The FICPI also maintains its proposal and arguments in regard to provisions for a search definition as a more adequate search basis than the claims of the international application but realizes that, at the present stage, there does not seem to be any prospect of introducing this notion in the PCT. It should be added, however, that such search definitions have been used to a fairly large extent and with quite satisfactory results by members of the FICPI in connection with international searches made by the IIB.

4. *Unity of invention.* As already stated in Chapter I, the FICPI continues to believe that provisions concerning this concept should be deleted from the international phase of the PCT and that rules providing for payment of additional fees for the searching of diversified and elaborate international applications should be substituted. In any case, the

FICPI has strong misgivings in regard to Rule 13.5 (Guidelines), the application of which may lead to confusion and clearly unacceptable conclusions, and the FICPI therefore recommends the cancellation of this provision in the PCT.

5. *Definition of "Priority Date."* The FICPI particularly wishes to emphasize its misgivings in regard to what in PCT/DC/6, paragraph 5, is referred to as a "special meaning" and "an artificial meaning" of the term PRIORITY DATE.

The FICPI has, in fact, on previous occasions expressed misgivings in regard to the ambiguity and confusion which would inevitably arise if the definition of PRIORITY DATE as proposed and explained in PCT/DC/6 and as provided in Article 2(v) were adopted, and the FICPI, therefore, maintains its previous proposal (PCT/III/31, paragraph 37) that the date from which the time limits are computed should be defined as the REFERENCE DATE, which may or may not coincide with the actual PRIORITY DATE, i.e., the date of filing the FIRST APPLICATION, as defined in Article 4C(4) of the Paris Convention (Lisbon text).

Moreover, and as a minimum requirement, the FICPI strongly recommends that it should be made perfectly clear whether or not the PCT shall extend to international applications that are neither Convention applications nor FIRST APPLICATIONS.

The FICPI wishes however to emphasize that, in its opinion, the latter alternative should prevail since it would be unreasonable to place applicants in such ("belated") international applications in a more favorable position – as regards the time limit provided for in Article 22(1) – than applicants who file their international applications either as a FIRST APPLICATION (in the true sense of the word) or applicants who file their international applications under Article 8 of the PCT. Although this unreasonable consequence could be remedied by displacement of the REFERENCE DATE in respect of international applications that are neither Convention applications nor FIRST APPLICATIONS, as suggested by the FICPI (PCT/III/31, paragraph 38), this would in any case tend to complicate the provisions and procedure under the PCT.

The principles and opinions advocated by the FICPI in regard to this matter are set forth below in the annexed Memorandum entitled "The Concept of Priority Date Under the PCT."

6. *National Requirements.* The FICPI wishes to take this opportunity of joining other private organizations – and also, we understand, some official delegates – in expressing some concern with regard to the provisions of Article 27(5), and in particular the last passage thereof (see also document PCT/DC/1, paragraph 14, Note 5). In fact, it would seem that this provision, leaving the effective date of any international application for prior art purposes to be governed by national law and not by any provision of the PCT, would tend to dilute the fundamental principle of Article 11(3) in regard to the assimilation of the international application to a regular national application.

Final Remark

Notwithstanding the objections and proposals stated in Chapter II of this Report, and whether or not the hopes and expectations expressed by BIRPI (e.g., in regard to savings of costs (PCT/DC/2, paragraphs 74 to 90)) will materialize, the FICPI joins BIRPI and the delegates of those countries which will no doubt soon become the Contracting Countries in the wish that the AIMS set forth in paragraphs 2 to 7 of document PCT/DC/2 will be achieved through the international patent cooperation for which the proposed Treaty provides.

The Concept of "Priority Date" under the PCT

I. *Ambiguity of PCT/DC papers*

The question of "priority date" under the PCT has been raised by the FICPI on several occasions. There has however been very little response, if any, to the intervention of the FICPI in this respect. The point has therefore not been pressed by the FICPI, on the assumption that all experts concerned with the PCT fully realized all the implications of the PCT priority definition and found them acceptable.

It has now been found that the PCT/DC papers contain an ambiguity, which may indicate that the above assumption is not correct. It has therefore been found necessary to take up the question again.

In paragraph 5 of the Glossary PCT/DC/6, "priority date" is defined as follows:

"PRIORITY DATE has a special meaning in the PCT drafts. It has its natural meaning if the international application claims the priority of an earlier application: in this case, 'priority date' means the date on which the earlier application was filed. But it has an artificial meaning when the international application does not claim the priority of an earlier application: in this case, 'priority date' means the date on which the international application was filed. International applications of the latter category are commonly referred to as 'first' ('first international application') or '*premier dépôt*' (in French). These expressions, however, do not appear in the PCT drafts."

Now, since the expressions "first application" and "*premier dépôt*" do not appear in the PCT drafts, it must be assumed that in the above definition these expressions have been used in their ordinary meaning, i.e., the meaning they have in the Paris Convention.

Under the Paris Convention, a "first application" must be "first" in an absolute sense (subject only to Article 4C(4)). This is construed very strictly under the laws of most countries, and there have been many cases where a patentee has lost not only his priority right, but his whole patent, because it was shown that the application on which his priority right was based was not a first application.

The strictness with which "first application" under the Paris Convention must necessarily be construed is apparent from Article 4C(4) of the Paris Convention, which sets forth the only exception from the requirement of absolute firstness: A subsequent application in the same country shall be recognized as

"first" if the actual first application has beforehand been withdrawn without leaving any trace. This concession was made with some hesitation by the Lisbon Diplomatic Conference and must therefore be regarded as the utmost limit of leniency with which the concept of first application under the Paris Convention can be construed.

In view of this situation, the definition of priority date in the Glossary could be taken to imply that an international application, in order to establish its filing date as "priority date," must be a first application in an absolute sense. However, the definition in Article 2(v)(c) of PCT Draft PCT/DC/4 contains no such requirement.

Seeing that the Glossary must be considered an important source of interpretation of the Treaty, doubt is left as to whether an international application for which no Convention priority is claimed, in order to be valid, must be a "first application." This doubt may give rise to conflict situations, not only between the private parties to any particular case, but also between countries which may give different interpretations to the priority question.

It seems essential that this ambiguity should be removed before the Treaty is concluded.

This could be done either by amending Article 2(v)(c) to read:

"(c) where the international application is a first application (in the sense of the Paris Convention), the filing date of such international application,"

or by changing the last sentence of paragraph 5 of PCT/DC/6 to read:

"It is not a requirement that international applications of the latter category should be 'first applications' or '*premiers dépôts*'."

II. *Will non-Convention international applications generally be first applications?*

Apparently the drafters of the PCT/DC papers have assumed that non-Convention international applications will generally be "first applications."

It is very doubtful however whether this will be the case. The fact is that by filing international applications as "first applications" the applicants will lose one of the important privileges of the Paris Convention, *viz.*, the right to claim multiple priorities and partial priorities.

Under present-day practices it has been found (by an analysis of the weekly lists of applications filed in Denmark) that, where applications are filed by foreign applicants with claim to priority under the Paris Convention, more than one priority is claimed in about 15% of the cases. It is not possible to assess the percentage of cases where partial priority has been claimed, but from general experience it seems probable that this percentage will also be relatively high. These figures indicate that quite a number of inventions are further developed during the first year after the filing of the first application. By filing an international application as a "first application," the applicant loses the possibility of covering such further developments together with the main invention – or

even of obtaining full protection at all for the inventive concept such as this has become crystallized during the first year. He can never add anything to the disclosure of a "first" international application, whereas he is free to add new matter if he files under the Paris Convention. It is therefore dangerous for an applicant at an early stage in the history of an invention to bind himself once and for all, and for *all countries*, to the disclosure which he is able to present in this early stage. It will be more rational to file a national application as a "first application" and then to file an international application towards the end of the priority year. Another reason for this is that it is frequently essential that a first application should be filed with a minimum of delay, and generally it will be much simpler and cheaper to file a national application than an international application. If the applicant feels rather certain in the early stage that the invention is important and suitable for international filing, it will be more recommendable to follow the Belgian route than to start out with an international application from the beginning (similar procedures are in fact followed by quite a number of applicants today).

Another point of present-day international filing practice is that, where non-Convention applications are filed abroad, they are practically always "overdue applications," i.e., applications filed more than one year after the first application so that priority can no longer be claimed. From the same source of information as above it may be estimated that such "overdue applications" amount to about 8 to 10% of all applications filed. There may be many reasons for filing "overdue applications" and most of these will also exist under the PCT. There will still be situations where an applicant has not had sufficient time, during the 12-month period from his first filing, to carry out the invention in practice, or at least not sufficiently to assess its industrial or commercial value, or where an applicant cannot raise the necessary money before the expiry of the priority year, or where circumstances occur after the expiry of the priority year showing that an invention is much more important than hitherto assumed, etc.

It should also be remembered that under present-day practices it happens quite regularly that "overdue applications" are filed at the last minute, i.e., immediately before publication of the applicant's first application. The temptation to file such last-minute applications will be considerably greater under the PCT, because the applicant will then obtain a further respite of 20 months before taking a final decision on foreign patenting.

For the reasons stated, and many others, it must be assumed that international applications that are filed without claim to priority will generally not be "first applications" but "overdue applications," and that the number of such applications will by no means be insignificant.

In this connection attention should also be drawn to the situations where an application is "overdue" as far as the main invention is concerned, while partial priority under the Paris Convention is claimed only for a later development of the invention. Such partial

priorities will be referred to as "*black partial priorities*" (in contradistinction to the cases where a partial priority is claimed for the main invention, while no priority is claimed for subsequent developments, so that the application contains no "overdue matter"). For the purposes of the PCT, "black partial priority" cases will be analogous to non-Convention applications and should therefore be duly considered in any proposition regarding the priority question.

III. *FICPI proposal to substitute "reference date" for "priority date"*

The ambiguity pointed out under Section I of this report seems to indicate that the use of the term "priority date" in the PCT may easily result in confusion and false reasoning. The FICPI therefore maintains its proposal submitted at the Committee of Experts Meeting from December 2 to 10, 1968 (cf. the official report PCT/III/31, paragraph 37), that the expression "priority date" be replaced by "reference date." This is an entirely neutral term comparable, for example, to "zero time," *viz.*, indicating a date from which time limits are calculated. That is exactly what is needed for the purposes of the PCT.

This terminological clarification in connection with the removal of the ambiguity pointed out in Section I seems to represent the minimum of amendment to the PCT that will be required to avoid confusion.

IV. *FICPI proposal for substantive amendment in respect of "priority date"*

Even if the danger of confusion is removed, as proposed in Section III of this report, the question remains whether it is reasonable, from the point of view of public interest, that the PCT should in fact extend greater privileges to "overdue" international applications than to international applications filed in time to claim priority under the Paris Convention. This question was raised by the FICPI at the BIRPI meeting on October 28 and 29, 1968, where a paper was presented containing the following observations on the priority question:

"Question 1 (Article 2(e)(iii): Does the PCT extend to international applications that are neither Convention applications nor first applications (*premiers dépôts*)?"

Comments: If the answer is yes, there will be three main categories of international applications as specified below.

In the following analysis one aspect of the PCT will be considered, *viz.*, the period of grace within the applicant has to choose countries for which to commit himself to the payment of expenses in order to consolidate (or establish) his claim to patent protection.

A. The international application is a Convention application.

Example: Applicant files his first application (*premier dépôt*) on July 15, 1975, in the form of a national application in his home country. Shortly before July 15, 1976, he files an international application claiming priority from July 15, 1975.

Under Article 22 of the PCT, the total period of grace will be 20 months from July 15, 1975. But if the PCT had not existed, he would have had a period of grace of 12 months under the International Convention. So the net period of grace offered to him by the PCT is $20-12=8$ months.

B. The international application is a first application.

Example: Instead of first filing a national application, applicant starts out immediately to file an international application, which, as in Case A, receives the filing date of July 15, 1975. As in Case A, the period of grace is 20 months from July 15, 1975, but since the applicant would have had a period of grace of 12 months under the International Convention had the PCT not existed, the net period of grace offered to the applicant by the PCT is $20-12=8$ months.

C. The international application is neither a Convention application nor a first application.

Example: The applicant files his first application on July 15, 1975, in the form of a national application in his home country. He does not file abroad (neither nationally nor internationally) within the Convention period of 12 months. However, at a later date he realizes that foreign filing may be worth while, and before publication of his home application, say, January 10, 1977, he files an international application. He does not withdraw his first application of July 15, 1975. The period of grace under the PCT is 20 months from January 10, 1977. No part of these months would have been available to the applicant under the International Convention, so in this case the net period of grace under the PCT is the full 20 months, as against eight months in Cases A and B.

The objection therefore may be raised that what the PCT does in Case C is in fact to extend the benefits of the International Convention (in addition to its own particular benefits) to applicants who are expressly excluded from enjoying these benefits under the International Convention. If this objection is raised, the following alternative suggestions for revision of the PCT may be considered:

- (i) to restrict the PCT to Case A and B applicants. A Case C applicant, in order to avail himself of the PCT, would then have to proceed as prescribed in the International Convention (abandoning his first application and any and all rights that might be based thereon),
- (ii) for Case C applications to deduct 12 months from all time limits specified in the PCT, including that of publication (which should take place irrespective of first publication in any designated country).

It would seem preferable that these questions should be considered and discussed before the conclusion of the Treaty rather than giving rise to possible doubt and annoyance afterwards."

At the Committee of Experts Meeting from December 2 to 10, 1968, these observations were

concretized in the form of a proposal (PCT/III/31, paragraph 38) to the effect that:

"in cases where the international application contains matter disclosed in a national application filed by the applicant or his predecessor in title more than a year earlier than the international application, the "reference date" should be the date minus one year of the international filing."

The FICPI still believes that this solution of the entire problem is preferable and will tend to remove the danger of conflict situations and unreasonable disadvantages to competitors under the PCT practice.

When filing an international application an applicant would then have to declare whether the application contains matter disclosed in a national application filed by him or his predecessor in title more than a year earlier than the international application. The objection has been raised that it would be impossible to check such a declaration. This objection is not valid, however, because the situation would not be different on principle from the situation where the applicant claims priority under the Paris Convention. In the latter case it is impossible to check whether the application on which the applicant bases his claim to priority is really a first application. Whether he makes such a declaration regarding his international application or regarding the application on which he bases a claim to priority is not seen to make any difference at all.

The amendment proposed in this Section also takes care of "black partial priority" situations.

REPORT A

Provisional Report on PCT Discussions in Geneva, December 2 to 6, 1968

The fundamental principles advocated by the FICPI were laid down at the Board Meeting in Geneva on October 21, 1968, and may briefly be summarized as follows:

- (1) that the applicant should retain the maximum of initiative and responsibility, and that inter-office correspondence should be reduced to a minimum;
- (2) that the international search should be centralized (but not necessarily concentrated) under the authority of the IIB;
- (3) that the international search should be based on search definitions rather than on claims, and that in any case the claims of the international application should define *the invention* (for search purposes only) and *not* the protection;
- (4) that the applicant should be entitled to make such amendments in or additions to the specification as would be required to align the specification with the amended claims.

While practically all speakers representing the nongovernmental organizations, in particular the representatives of the IAPIP, the ICC, the NAM, etc., expressed similar views, the opinions of the official delegates were divided, and the position as regards the prospects of a favorable reaction to the FICPI proposals may be evaluated as follows:

re Item (1): No prospects of any changes in Articles 12 and 13 as regards transmittal of

documents. As regards Article 20, the FICPI proposal to allow the applicant to communicate the copies of the international application to the designated Offices was opposed by the Delegate of the Federal Republic of Germany. However, BIRPI would endeavor to provide for a compromise so as to permit the applicant to communicate the copies to such designated Offices as would not object to this procedure.

re Item (2): This is a most controversial political issue, and the whole fate of the PCT may well depend on whether or not a solution can be found. In general, the position is as follows: the four national Offices which desire and expect to become Searching Authorities (Washington, Munich, Moscow, and Tokyo) were strongly in favor of decentralization, and they were supported by the Nordic countries, India, and Austria, who also hope to become Searching Authorities. On the other hand, the Delegates of France, Switzerland, Italy, and several other non-examining countries were equally strongly in favor of a *centralized* Searching Authority. Their arguments were supported by a statement by the General Director of the IIB based on a statistical analysis showing that the IIB would be perfectly capable of assuming this task by 1974, when the PCT was expected to come into operation. The matter is under consideration by BIRPI, but it would seem that no decision can be reached until the Diplomatic Conference preceding the signature of the PCT.

re Item (3): The substitution of a kind of "search definition" for the claims of the international application was strongly advocated by the Delegate of Switzerland, and it was decided to amend Article 6 so as to clearly provide for "tentative" or "provisional" claims defining the invention and not the protection.

re Item (4): The representative of IAPIP strongly advocated a revision of the Draft (PCT/III) so as to enable the applicant to amend not only the claims, but also the specification of the international application. This proposal was favorably commented on by the Delegate of the United States of America, whereas the Delegate of the Federal Republic of Germany expressed certain, but not very serious misgivings. Three proposals were submitted by the FICPI: documents 15, 18, and 22. The first two proposals purported to attenuate the adverse consequences of a "frozen specification," and the third proposal relates to an additional paragraph to Article 1 (but should, in fact, rather be added to Article 28), stipulating that the applicant should be entitled to amend the specification so as to conform with the amended claims. The three proposals are added to this Report and will be self-explanatory. It would seem that at least the proposals of documents 15 and 18 will stand a reasonable chance of being accepted. The fate of the proposal in document 22 will depend on whether or not the countries whose delegations expressed misgivings in regard to amendment of the specification could be persuaded to waive their opposition to such amendment. The possibility of amending the specification was also considered during the discussion of Article 41, Amendment of the Claims before elected Offices. Here the United Kingdom Delegate – who had previously (during the debate on

Articles 19 and 28) expressed strong misgivings in regard to amendment of the specification – advocated that, upon completion of the preliminary examination procedure, the applicant should in fact be entitled to amend the specification before the elected Offices. The Delegate of the FICPI strongly supported this view.

REPORT B

Report on certain questions discussed at the PCT meeting in Geneva, December 2 to 10, 1968

Index and Summary of Propositions

I. *Amendment (Articles 19, 28 and 41):* When the applicant presents amended claims in the international phase, he may at the same time file a brief explanatory note for publication along with the international application.

In the national phase the applicant may amend not only the claims, but also the description, and may divide the application.

II. *Articles 20 and 22:* The national law of any State may provide that a copy of the international application shall be sent to the national Office not by the International Bureau, but by the applicant.

III. *Article 27:* Since the original description of the international application will be the key document for the interpretation of the national patents in designated countries, it should be prescribed in the Treaty that any inconsistencies between the original description and the final claims shall be non-prejudicial to the patentee.

IV. *Possible loss of rights through erroneous findings in the international phase (Articles 11, 12, 14, 17, 24, and 25):* Where the international application goes wrong in the international phase through findings of the receiving Office or the International Authorities, it shall not be considered "withdrawn" but "rejected from international processing." The applicant may demand review of the findings by any designated Office, and if this overrules the findings, the application shall have the status of a regularly filed national application in that State.

V. *International procedure in respect of unity of invention (Articles 17 and 34):* There should be no requirement of division in the international phase. According to a preferred system, searching fees should be calculated not according to the number of inventions into which the international application may be found to be divisible, but by length of specification, number of independent and dependent claims, and number of categories claimed. In the search report, the Searching Authority may render an opinion on unity.

VI. *Alternative proposal for the international procedure in respect of unity of invention:* According to an alternative system, searching fees are payable by the number of inventions into which the application may be found to be divisible, but division may not be required, and when paying additional fees the applicant may protest. The objection of non-unity and the protest will be noted in the search report (unless

the Searching Authority withdraws the objection of non-unity).

VII. *Tentative proposal for guidelines for the determination of unity or non-unity of invention:* Unity of invention shall generally be considered to exist as between (a) features disclosed in combination (unless entirely unrelated and differently classifiable) and (b) embodiments covered by a presumptively valid generic claim.

VIII. *Article 21:* At the request of the applicant, international publication may take place earlier than prescribed.

IX. *Rule 6.1(a)(iii):* In the general part of the description, the invention should not necessarily be explained in terms of "problem to be solved" but rather in terms of "inventive result achieved."

X. *Proposal to transfer part of the Regulations to the Administrative Instructions:* Physical requirements of the international application and similar trivial matters should be transferred from the Regulations to the Administrative Instructions.

Thus, the conclusions as regards the prospects of the FICPI proposals may be summarized as follows:

re (1): Not much progress, but some hope for improvement of Article 20.

re (2): Quite uncertain – political issue beyond our influence.

re (3): Definite improvement.

re (4): Substantial chances of great improvement.

I. *Amendment (Articles 19, 28 and 41):* It is recognized that the international application as filed is the basic document upon which patent protection in any designated State must be properly based. It therefore seems indispensable that the international application must be published as filed (subject only to correction under Rule 25).

On the other hand, it has been strongly urged by all private circles that the applicant must be given the opportunity of amending not only the claims, but also the description. There are several reasons for that. Since the description (and the drawings, if any) are intended for use in countries having different patent laws, they may disclose features or types or categories of innovations that are non-patentable under the laws of a particular country. Since, moreover, the description (and the drawings, if any) were prepared before an international search was made and thus possibly from an incomplete knowledge of the prior art they may incorrectly represent concepts as novel which were in fact known. In many cases the original description will therefore not be suitable for explaining the invention, as claimed in amended claims, in the manner prescribed in Rule 6.1(iii). This may make it difficult for the general public to evaluate the strength and the scope of the amended claims, and it may be fatal for the applicant, if ever his patent comes before the courts.

It is recognized that amendment of the description should be made in such a manner that it will not make the original version of the description disappear. In other words, irrespective of any amendments, the description and the claims should be published in their

original form so as to permit the general public to check whether the amended version is properly based on the original version. This is important, seeing that (as particularly pointed out by the Delegation of the United Kingdom) under Phase of the PCT there is no Authority to make this check and on the national level the same applies to non-examining countries. However, a list of proposed amendments (United States of America subsidiary proposal) or a brief explanatory note (FICPI proposal) could be published along with the original description and the original and the amended claims.

The question was raised by the Delegation of the German Federal Republic whether amendment of the description in the international phase is really essential, or in other words whether the opportunity for amending the description in the national phase will not be sufficient to remove the dangers to applicants.

This question has been thoroughly considered, and the FICPI is inclined to agree with the Delegation of the German Federal Republic that the really essential point for the applicant is to get the opportunity of amending the description in the national phase.

Accordingly, the FICPI proposes the following amended version of Articles 28 and 41:

"28(41):

The applicant will be given the opportunity to amend the description and the claims before each designated (elected) Office within the prescribed time limit, without however adding new matter.

If the amended claims do not comply with the requirement of unity of invention as set forth in the Regulations, the applicant may at the same time divide the application into two or more applications, which will be separately governed by the provisions of the Treaty."

It is to be noted that division is just as important as amendment, because the international search or the international preliminary examination may have shown that no generic claim can be expected to be sustained so that the remaining claims no longer comply with the requirement of unity of invention (see also the subsequent section of this report entitled "Unity of invention under the international procedure").

As far as amendment in the international phase is concerned, it is quite conceivable that in the majority of cases applicants will not avail themselves of the opportunity to amend the claims, seeing that failure to amend will not have any legal consequences.

In fact, it seems as if the only interest the applicant can have in amending the claims in the international phase is more of a practical nature. He may wish to show to the general public and more especially to his competitors the scope of protection to which he believes himself to be entitled after having received the international search report. If that is the case, international publication of amended claims will also be in the interest of the general public. But amended claims which are no longer consistent with the approach of the applicant in the original description (though still properly based on the disclosure of this description) may be cryptic and not in themselves

suitable for showing why the applicant believes himself to be entitled to claims of that scope. The FICPI therefore maintains its proposal to add the following new paragraph at the end of Article 19 (PCT/III/15):

“When filing such amendments to the claims, the applicant may at the same time file a brief explanatory note for publication along with the amended claims under Article 21 without however adding new matter.”

In such a brief explanatory note the applicant could, for example, explain the difference between the invention as claimed and the main references and point out the advantages resulting therefrom. He could announce his intention to cancel certain embodiments which are no longer covered by his claims and/or he could indicate the general lines along which he intends to amend his description in the national phase.

It is believed that the FICPI proposal might encourage applicants to “show their hand” in the international publication, which would also be in the interest of the general public.

There seems to be little difference in substance between the FICPI proposal and the United States of America subsidiary proposal.

It is admitted that applicants may be reluctant to avail themselves of the opportunity offered to them by the FICPI proposal, or of the opportunity to amend their claims at all in the international phase. In that case, Article 19 both in its present form and as amended by the FICPI proposal will do no good, but it will do no harm either.

II. *Articles 20 and 22:* It cannot be denied that these Articles to some extent represent a duplication of effort.

Moreover, it was pointed out by the Dutch Delegation that Article 20 would inevitably result in a considerable amount of superfluous transmittal of copies to designated countries for which the international application will not be confirmed under Article 22.

The remedy proposed by the Dutch Delegation was that, upon receiving the search report, the applicant should pay a confirmation fee for each designated country for which he intends to confirm the designation. This confirmation fee might be set off against the national fee payable under Article 22.

It is the view of the FICPI, that, while the point of view of the Dutch Delegation has much merit in it, the confirmation fee system in the form proposed would not only mean a complication of the procedure, but in addition would either be ineffective for its intended purpose or have consequences contrary to the objectives of the PCT. Thus, if the confirmation fee were relatively low, many applicants might pay it just to extend their option, and if it were relatively high, applicants would feel that the obligation to pay the confirmation fee would deprive them of one of the most attractive privileges extended to them by the PCT, i.e., the period of grace for their final choice of countries accorded to them by Article 22.

Now, it seems to the FICPI that a simpler solution can be found if one considers the following circumstances:

(a) The operations of the provisions of Articles 20 and 22 are intended to take place at approximately the same time.

(b) At that time, the international application and the search report will practically always have been published under Article 21 and thus will be of public record and available on the shelves of each national Office. In the case of countries having a system of national publication after 18 months, it will even be certain that all international applications in which they are designated will have been so published.

(c) Therefore, in the cases under (b), what a national Office will need is in fact only a file copy for processing purposes, not a copy for documentation purposes. A simple copy filed by the applicant will suffice. There will be no temptation whatsoever for the applicant to file an incorrect copy, because the national Office and any third party can at once find out by comparing with the official publication.

(d) The cases where publication of the international application has not yet taken place will be so extremely rare that a slight delay in the documentation will be of no importance.

Based on these considerations, the proposal of the FICPI is: Cancel Article 20, or make it optional for each State.

Rewrite Article 22 as follows:

“(1) The domestic law of any Contracting State may require that, when that State is designated, the applicant shall comply with the following provisions:

(i) Within a fixed time limit the applicant shall pay the national fee (if any) to its national Office and furnish a simple copy of the international application, a translation thereof (as required), a simple copy of the international search report, if available, and a translation thereof (as required). The time limit must be fixed in such a way that it will not expire earlier than 20 months after the reference date.

(ii) If the international search report is not available to the applicant at least one month before expiration of the prescribed time limit, the applicant shall furnish a copy of the search report and its translation (as required) to the national Office within one month after it has become available to him.

(iii) If, at the time when the applicant furnishes a copy of the international application and/or the international search report in accordance with the provisions under (i) and (ii), these have not yet been published under Article 21, the applicant shall at the same time request the International Bureau to furnish a certified copy of the international application and/or the international search report to the national Office.

(2) The domestic law of any Contracting State may provide that, where the international

application is in certain specified languages, the applicant may, as an alternative to filing a translation of the international application under (i), file an amended version, in the national language, of the description and the claims along with amended drawings, if any, for national processing, provided however that at the same time the applicant fulfills the obligation of filing a complete copy of the international application."

The above proposal includes in paragraph (2) a suggestion for a further simplification which is also based on certain ideas expressed by the Dutch Delegation.

It was the understanding of the FICPI representatives that the Netherlands is contemplating waiving national publication of international applications and thus relying only on the international publication. Presumably, the Dutch Patent Office would then publish lists of international applications confirmed in the Netherlands under Article 22, which would enable any interested party to ascertain which applications are really on file in the Netherlands and to obtain copies of the Dutch specifications of such applications.

This procedure seems to constitute a simplification that must be welcomed. Conceivably, some other countries where the general conditions are much the same, such as the Nordic countries, might be inspired to adopt a similar procedure.

Now, the general idea underlying the contemplated Dutch procedure seems to be that, since the vast majority of international applications will be in the English, French, and German languages, and otherwise, in the international publication, will at least be accompanied by an English abstract, they will be directly understandable not only to Patent Office examiners, but also to the interested private circles.

Following up this idea, it is questioned whether it would really be necessary, in the Netherlands and other countries where a good working knowledge of English, French, and German can be taken for granted within the circles having to do with patent applications, that the applicant should file a translation of the international application, if it is in one of these languages. Let us assume, for instance, that the applicant wants to cancel large parts of the description which are unrelated to the invention as claimed on the national level. Would it serve any useful purpose that the applicant should file a translation of these parts? Of course, the Patent Office examiners and anybody else should always have the possibility of checking whether any amended specification and claims are properly based on the international application as filed, but would there be any difficulty in doing that, as long as the original version of the international application is at their disposal in English, German or French? Would that, on principle, be very much different from checking, under current practices, whether priority has rightly been claimed or not (for which no translation is required)?

These are the thoughts underlying the proposed paragraph (2). It is pointed out that this is optional. No country would be obliged to adopt it. Some

countries may find it too radical today, but may welcome it tomorrow.

III. *Article 27:* In document PCT/III/18, the FICPI has proposed an addition to Article 28. It was rightly pointed out by the representative of the ICC that the proposed addition would logically belong to Article 27 rather than to Article 28, and the proposal is therefore maintained in this form:

"Proposed addition to Article 27:

Any information or representation contained in the description, and any matter disclosed in the drawings, if any, of the international application as filed, that may be unrelated to or inconsistent with amended claims that may be presented to the international authorities or to the national authority of a particular country shall be considered nonprejudicial in evaluating the content and status of the application and any patent granted thereon provided that such amended claims are properly based on other parts or aspects of the disclosure of the international application as filed."

The background of this proposal is the following:

No matter what amendments are made in the description of an international application in the national phase (if a provision to that effect is adopted in the PCT), the original version of the international application will still be the key document in determining whether the applicant is entitled to the claims in their final form.

In the examining countries this will not give rise to any difficulties, because they have well established practices for determining whether claims are properly based on a disclosure which was prepared on assumptions that later have been found not to be tenable.

However, in some non-examining countries the existence of the original description as a key document may conceivably give rise to injustice to a patentee when his patent comes before the courts in a nullity or infringement suit. In this connection, it should be remembered that the PCT introduces rules which are likely to be gradually adopted by countries which up till the present time have not had any similar rules. There will therefore be a risk that it may be held against a patentee that the original version of the international application, as applied to the amended claims, clearly does not comply with the rules of the PCT, and this seeming inconsistency may wrongly be interpreted to mean that the claims are not properly based on the original disclosure of the international application. As an example, the international application may have been directed to a medicine and the description may have explained both the novel nature of the medicine and the therapeutic effect it has, and a method of making the medicine. Let us assume that in a designated, non-examining country medicines are not patentable, but methods of making them are. Of course, the applicant will then direct his national claims only to the method of making the medicine, and (if permitted) he will amend the description so that it also is directed to the method.

If such a patent comes before some out-of-the-way court which knows nothing about patent law, let alone

the PCT, the party interested in nullification of the patent may make a great point of showing that the international application says that "this invention relates to a medicine," thus a subject which is not patentable under the national law. He may try to show that, in the national application, the applicant has tried by twisting words to make the patent one for a process, while in fact, as is evident from the original version of the international application, the invention does relate to a medicine.

Also in less controversial fields there will be many cases where the original description of the international application asserts that "this is the invention" and "that is an essential feature of the invention," while the amended national version of (the description and) the claims says something different (though this should of course also be properly based on the original disclosure).

It is therefore believed that there is a need for a provision as proposed by the FICPI, which is intended to be nothing but a codification of the law as practiced in the examining countries. As pointed out in the discussions at the Geneva meeting, the words may not be exactly the right ones, but it is hoped that the meaning is clear and that a better wording can be found, if that proposed by the FICPI is considered to be deficient or too far-reaching in one direction or the other.

IV. *Possible loss of rights through erroneous findings in the international phase (Articles 11, 12, 14, 17, 24, and 25):* For the working of the PCT plan it is indispensable that the International Authorities and possibly the receiving Offices must be competent to decide on certain questions, *viz.*:

- (a) fulfillment of certain minimum requirements,
- (b) whether the international application is within the purview of the Treaty,
- (c) whether the application contains elements that would make it unfit for publication (Rule 3.2), and
- (d) whether, for search or examination purposes, the application relates to a plurality of inventions.

The Authorities may err in making these decisions. However, if provision is made for review or appeal with delaying effect, the PCT would no longer be operative.

The only possible remedy therefore will be to provide for review by each designated State upon removing the case from the international procedure.

Provisions along these lines are contained in the PCT/III/5 Draft.

Nevertheless, the questions here involved gave rise to much discussion and many suggestions at the Geneva meeting.

In particular, it was pointed out by the Dutch Delegation that the checking as to whether the international application contains matter excluded under the Regulations should preferably be made by the Searching Authority rather than by the receiving Office (Article 14(1)(a)(vi)).

It was pointed out by the Italian Delegation that the power of the International Searching Authority to decide on the question of unity of invention

(Article 17(3)) might result in injustice to the applicant. This question will be dealt with separately in a subsequent section of this Report.

It was pointed out by the United States of America Delegation that the remedy accorded to applicants by Article 25 is not entirely satisfactory and that amendment is therefore necessary to ensure that the applicant should always be entitled to preserve his priority in the national phase, if an erroneous finding has been made in the international phase. It was pointed out (as far as the United States of America Delegation remembered) that Article 25 might be interpreted to amount to reinstatement of the application, which under the laws of some countries would involve the risk of intervening rights.

The FICPI is of opinion that the question should be considered whether improvements could be made to the text in the light of the various interventions on this complex of problems and submits for consideration a set of amendments which is based on the following main points of view:

- (i) The FICPI agrees with the Dutch Delegation that checking of compliance with Rule 3.2 (matter excluded under the Treaty) by the receiving Office would mean an unnecessary complication. The receiving Office would have to read every international application received by it from A to Z with quite an amount of attention and expert knowledge. This, however, is what the Searching Authority has to do in any case and therefore constitutes duplication of work. It is true that under Rule 25.5 any receiving Office may delegate its duty to check to the Searching Authority. It seems to be preferable, however, that it should be expressly provided in the Treaty that the checking as to matter excluded shall always be done by the Searching Authority.
- (ii) The same applies to checking of "purview" under Article 11(1)(iii).
- (iii) One reason for the fear that Article 25 may be considered an insufficient remedy for applicants may be that the expression "the application should be considered withdrawn" is used to describe the consequences of the applicant's failure to comply with various findings that he may find erroneous. It is therefore proposed that the expression "rejected from international processing" be used instead (as it is considered less ominous).
- (iv) It is proposed that Article 25 be amended so as expressly to provide that, if a designated Office decided that the findings according to which the application is considered rejected from international processing are erroneous, the applicant's priority should be preserved without reservation, as far as that State is concerned.
- (v) To make it perfectly clear that Article 25 is not to be interpreted as a reinstatement procedure, it is proposed to limit Article 24 to irrevocable withdrawal, and to deal with

rejection from international processing only in Article 25.

- (vi) On principle, the FICPI is not adverse to the United States of America proposal (PCT/III/13) to shorten the time limit under Article 22 in the case of the review procedure of Article 25, but it is a question whether this is really necessary or practical.
- (vii) According to the United States of America proposal (PCT/III/13), Article 20 should be amended by adding the following at the end: "In the event that the Searching Authority declares under Article 17(2) that it will not establish an international search report, the International Bureau shall communicate the international application promptly thereafter to each designated Office."

It is questioned whether this is a practical proposition. There may be cases where the applicant acquiesces in the decision of the Searching Authority not to establish a search report (or other decisions of rejection from international processing). Moreover, there will be many cases where the applicant has no intention of continuing the procedure before some of the designated Offices. It therefore seems preferable, as provided in the PCT/III Draft, Article 25(1), that copies of the file should be sent by the International Bureau only at the request of the applicant and only to specified designated Offices.

Based on these premises, the proposals of the FICPI are the following:

Article 11: Cancel paragraph (1)(iii).

Article 12: Paragraph (3), line 4: cancel "withdrawn" and substitute "rejected from international processing."

Article 14: Cancel paragraph (1)(a)(vi).

Article 14: Paragraph (1)(b), lines 4 and 5: cancel "withdrawn" and substitute "rejected from international processing."

Article 14: Paragraph (4), line 3: cancel "withdrawn" and substitute "rejected from international processing."

Article 17: Paragraph (2)(a): amend by adding – "with the effect that the international application shall be considered rejected from international processing."

Article 17: Paragraph (2)(b): amend by adding – "and the international application shall not be considered rejected from international processing as far as such other claims are concerned."

Article 17: Add a new subparagraph (2)(c) as follows:

"(2)(c) If the Searching Authority finds that the international application, while being searchable in its entirety or in respect of certain claims, obviously contains matter excluded under the Regulations, an international search report shall be established as provided in Article 18, or in subparagraph (2)(b) of the present article, and when transmitting this international search report to the applicant, the Searching Authority shall at the same time invite the applicant to correct the

international application within the prescribed time limit, failing which the application shall be considered rejected from international processing."

Article 24: Amend to read as follows:

"(1) The effect of the international application provided for in Article 11(2) shall cease in the designated State if and as of the date on which the applicant withdraws his international application or the designation of that State.

(2) Any Contracting State may provide in its domestic law that the effect provided for in Article 11(2) shall cease in that State if the applicant has not complied with any requirement provided for under Article 22."

Article 25: Amend to read as follows:

"(1) Where the international application is to be considered rejected from international processing by virtue of Articles 12(3), 14(1)(b), 14(4), 14(5), 17(2)(a) or partly rejected from international processing by virtue of Article 17(2)(b), the International Bureau shall promptly send, at the request of the applicant, copies of the file to any of the designated Offices named by the applicant. The request shall be presented within the prescribed time limit.

(2) Each designated Office shall, provided that the national fee has been paid and the appropriate translation (as required) has been furnished within the prescribed time limit, decide whether the findings which caused the international application to be considered wholly or partly rejected from international processing were justified under the provisions of this Treaty and the Regulations or in the case of Article 12(3) whether it wishes to excuse the delay on account of *vis major* and shall, if it decides that said findings were not so justified, or said delay was so excusable, accord to the international application the status of a regular national application in the State of that Office as of the international filing date."

V. *International procedure in respect of unity of invention (Articles 17 and 34):* Unity of invention is not only an extremely intricate problem, but also a highly controversial issue. Probably, the interpretations of unity of invention, by the various examining national Offices, by the various divisions within each Office, and by various examiners within each division, are more diversified than the interpretations of any other aspect of patent law.

In non-examining countries the situation seems to be that little attention has been paid to the question of unity of invention. The general approach seems to have been that the courts have full freedom to determine, from a comparison of the disclosure of a patent with the prior art, what the invention is.

As was to be expected, the question of unity of invention under the international procedure gave rise to some discussion at the Geneva meeting. Particularly, it was pointed out by the Italian Delegation that the power of the International Searching Authority to decide on the question of unity of invention (Article 17(3)) might result in injustice to

the applicant, because the decision of the Searching Authority is non-appealable.

The question will be examined below whether it would not be possible to find a solution which would not only remove the danger of injustice to applicants, but which would at the same time secure a more smooth operation of the international procedures under the PCT.

First, some attention should be given to the concept of unity of invention as such. Under current practices of the various examining countries this concept has three main aspects, to be referred to under A, B and C below. For each of these aspects some of the approaches of various national Patent Offices will be listed:

A. *Unity as between different categories of invention (process, apparatus, product, use)*

Some approaches:

- (a) Only one category in one application.
- (b) Only two categories in one application (rules being provided specifying which pairs of categories can thus be incorporated in one application).
- (c) Unity denied if inventions of different categories can be separately used (e.g., if apparatus can be used for carrying out processes other than that claimed, or a process can be carried out by apparatus other than that claimed).

(d) Unity denied if inventions of different categories are differently classifiable.

(e) Unity approved for any number of categories if the inventive idea on which they are based is the same.

B. *Unity as between features that can be used together (such as features incorporated in one embodiment or one manner of carrying out the invention)*

Some approaches:

(a) Unity denied if features can be used separately.

(b) Unity approved (even if features can be used separately), if features produce a novel combination effect, as contrasted with mere aggregation.

(c) Unity approved (even if features can be used separately), if features are closely operatively associated, as disclosed.

(d) Unity approved (even if features can be used separately and even if features are not very closely operatively associated) if features are (from a practical point of view) suitable for use together and are claimed in the form of dependent claims.

(e) Unity denied unless one (subsidiary) feature is logically subordinated to another (main) feature and serves to solve a subsidiary problem which is logically subordinated to the main problem to be solved by the main feature.

C. *Unity as between features that cannot be used together (features of different embodiments of the invention or different ways of carrying out the invention)*

Some approaches:

(a) Unity denied unless embodiments linked together by a generic claim.

(b) Same criterion as sub C (a), but supplemented by any one of the *criteriae* B (a) - (e) as regards the relationship of generic claim and claims specific to each embodiment.

As will be seen, the approaches are not only extremely diversified, but many of them are directly contradictory. As an example, it is by no means unusual under present practices that where similar applications are filed in different countries the objection of non-unity of invention is not raised in one of these countries, while in another the objection may be raised that the application relates to, say, 24 independent inventions.

In Rule 13 of the PCT, no indication of the approach to be adopted has been made, apart from a maximum requirement as far as aspect A is concerned. If more detailed rules were to be given, they would be binding on the national Offices as maximum requirements under Article 27. Presumably, it would be extremely difficult to obtain agreement on such more detailed rules, seeing that the question of unity of invention is intimately associated with the interpretation of the scope of a patent under the laws of the various countries.

Another point to be considered is that for many of the approaches listed above it will be impossible to decide on the question of unity without at the same time evaluating the validity of some of the claims of the international application (which is outside the competence of the Searching Authority).

As an example, it is to be assumed that most international applications will disclose various embodiments of an invention and will contain both at least one claim generic to all embodiments and claims specific to each of the embodiments. For applications of this nature, the approach to unity of invention list sub C(a) above is believed to be practically universal in all examining countries (representing in fact the only rule upon which all national examining Offices seem to agree).

Whether in such a case the claims comply with the requirement of unity of invention will depend on the validity of the generic claim or claims, that is, a question on which the Searching Authority under the PCT has to remain absolutely neutral. In fact, in such a case the Searching Authority would even be powerless if it had the feeling that the applicant had deliberately drawn up clearly invalid generic claims in order to obtain a search for several inventions at the price of a search for one invention. This is, of course, a procedure of which the FICPI would strongly disapprove, but the possibility that it might occur cannot be excluded. On the other hand, there will be many cases where the applicant believes himself to be entitled to generic claims, but where he will realize on receipt of the search report (and only then) that he is in fact not entitled to any generic claims.

To remove the difficulties, it is proposed that the power (and obligation) of the International Searching Authority and also of the International Preliminary

Examining Authority to *decide* on the issue of unity of invention should be abolished and replaced by a fee system that would ensure that on an average the International Authorities would get a reasonable fee for their services, and the applicants would not be tempted to draw up unreasonably broad or unreasonably numerous claims or unreasonably lengthy descriptions.

Assuming, for example, that if a proper additional search fee for searching one additional invention amounted to U, then, instead of calculating additional search fees per additional invention, additional search fees could be calculated on the number of pages of description, the number of categories of invention claimed, and the number of independent and dependent claims, e.g., as shown below (the example to be considered as non-committal):

For each page of description in excess of ten:
1/20 U

For each category in excess of two: 1/4 U

Within each category, for each independent claim:
1/2 U

For each dependent claim in excess of ten: 1/20 U

Adopting such a system would not necessarily mean that the Searching Authority and the Examining Authority could not render a non-binding opinion on the question of unity of invention.

The proposed amendments to the PCT to adopt the system outlined above would be as follows:

Article 17: Cancel paragraphs 3(a) and (b) and substitute:

“3(a) If the Searching Authority finds that the applicant has not paid any additional search fees prescribed by the Regulations, the Searching Authority shall invite the applicant to pay such additional search fees within the prescribed time limit.

(b) If the applicant does not comply with the invitation within the prescribed time limit, the Searching Authority notify the applicant and the International Bureau that no international search report will be established, with the consequence that the application shall be considered rejected from international processing.”

Rule 39: Add a new paragraph 39.6:

“39.6 Unity of invention

Where it is found possible by the Searching Authority to form an opinion on the requirement of unity of invention without having to evaluate the validity of a claim or claims, this opinion should be expressed in the search report.”

What has been said above about the difficulties in respect of unity of invention before the Searching Authority also applies to the procedure before the Preliminary Examining Authority, with the slight modification that the Preliminary Examining Authority may express a non-binding opinion on the validity of the claims where this may be required in order to form an opinion on compliance with the requirement of unity (but still may not *decide* on validity). It is therefore proposed that, in the international preliminary examining phase, additional

examination fees should be calculated on substantially the same principles as proposed for additional searching fees. The corresponding amendments proposed to the PCT Draft are as follows:

Article 34: Cancel paragraph 3 and substitute the following:

“3. If the Preliminary Examining Authority finds that the applicant has not paid any additional examination fees prescribed by the regulations, the Preliminary Examining Authority shall invite the applicant to pay such additional examination fees within the prescribed time limit.”

Rule 65: Add a new subparagraph 65.9 as follows:

“65.9 Unity of Invention

If the Preliminary Examining Authority finds that the claims do not comply with the requirement of unity of invention, this should be stated in the preliminary examination report. Where such finding is based on an evaluation of the validity of certain claims, this should be expressly stated in the preliminary examination report.”

To illustrate the proposed system of dealing with unity of invention in the preliminary examination stage, the situation will again be considered where the unity of invention between certain claims specific to different embodiments depends on the validity of a generic claim. The Preliminary Examining Authority may render an unfavorable opinion on the generic claim. In that case the preliminary examination report should state that, subject to the opinion rendered on the generic claim, the specific claims are considered not to comply with the requirement of unity of invention.

The applicant, having found that he has not succeeded in convincing the Preliminary Examining Authority of the validity of the generic claim may choose to divide his application in the national stage. On the other hand, if he is still of opinion that his generic claim is valid, he may assert it in the national stage and refrain from dividing the application.

VI. *Alternative proposal for the international procedure in respect of unity of invention:* An alternative proposal was made by the FICPI at the Geneva meeting. This proposal will be repeated below with some slight modifications:

Article 17: Paragraph (3)(a)(ii) to be amended so as to read: “to pay additional fees.”

Article 17: Add a new paragraph (3)(c), as follows:

“(3)(c) If the applicant complies with the invitation within the prescribed time limit by paying additional fees, he may at the same time contest the opinion of the Searching Authority. If the applicant does not so contest the opinion of the Searching Authority the international search report shall contain a statement to the effect that the objection of non-unity of invention has been raised. If the applicant contests the opinion of the Searching Authority, then, unless the Searching Authority upon review of the case withdraws its finding of non-unity of invention and repays the additional fees, the search report shall contain a statement to the effect that the objection of non-unity of invention has been raised and contested.”

[Article 17: *Add a new paragraph (3)(d) as follows:*

“(3)(d) If the applicant is not satisfied with the decision of the Searching Authority under paragraph 3(c), he may apply to the Grievance Committee* for recovery of the additional fees paid by him.”]

By this proposal the checking of unity of invention by the International Searching Authority under Article 17 is reduced to a mere matter of fees. However, if the objection of non-unity of invention has been raised, this should be mentioned in the search report unless the Searching Authority is persuaded by the applicant that it was wrong in its finding. If the applicant contests the opinion of the Searching Authority in respect of unity of invention, but the Searching Authority maintains its opinion, it should be mentioned in the search report that the applicant has contested the objection of non-unity of invention. As a possibility, the applicant might have recourse to a Grievance Committee under the Advisory Committee to recover additional fees. A proposal for this has been included (in brackets because it is hardly a very practical proposition). On the other hand, we would of course welcome it if a Grievance Committee were set up to which international organizations could apply if they found that the decisions of a certain Searching Authority in respect of non-unity of invention were generally too strict (and of course also in other matters of general interest).

VII. *Tentative proposal for guidelines for the determination of unity or non-unity of invention:* Notwithstanding the difficulty of defining the concept of unity of invention, it would be desirable if agreement could be reached on guidelines somewhat more precise than those set forth in Rule 13 of the PCT/III Draft.

Rules 13.1 and 13.2 would appear on the whole to be satisfactory. It is true that Rule 13.2 if construed in a limitative sense may be felt (particularly by applicants) to be rather arbitrary. No doubt, applicants would prefer something on the lines of the definition of the new French Patent Law. On the other hand, it is a fact that rules substantially corresponding to Rule 13.2 of the PCT are in existence in some countries (particularly Switzerland) and have been adopted in the text of the Strasbourg Convention. Moreover, it is a fact that Rule 13.2 is more lenient than rules (or practices) existing in some countries (e.g., United States of America and the Soviet Union). It is therefore believed that Rule 13.2 is a reasonable compromise, with the reservation that since it is stricter than the rules existing in many countries, *it should not be practiced by the International Searching Authority in a limitative sense.*

As regards Rule 13.3, paragraph (a) seems to open up the possibility of rather arbitrary decisions, seeing that it leaves the international and national authorities free to deny unity on any grounds other than that specified. On the other hand, both paragraph (a) and paragraph (b) will hardly be acceptable to the several countries where claims must always be written in

dependent form, because the national practices would have to be too radically changed.

Paragraph (c) seems to be somewhat too strict. There may – and, in fact, will be – cases where two features, though pertaining to different fields, can only be used in combination, as disclosed in the international application. From the point of view of the applicant, division would be clearly undesirable in such a case, and from the point of view of the general public division would make for confusion rather than clarity.

Based on these considerations and the analysis in the above section entitled “International procedure in respect of unity of invention,” the following version of Rule 13.3 is submitted for consideration:

Rule 13.3:

“(a) Claims directed to different features disclosed in combination in the international application (features of one mode of carrying out the invention) shall be considered to fulfill the requirement of unity of invention, if such features in their combination constitute a particularly suitable mode of carrying out the invention *unless* the features in question are directly suitable for use independently of one another and pertain to fields generally regarded as unrelated to each other.

(b) The national law of any State may provide that claims as specified in paragraph (a) shall be written in the form of claims which are all dependent, either directly or through one or more other dependent claims, on a single master claim.

(c) Subject to the provisions of paragraph (a), claims directed to different modes of carrying out an invention shall be considered to fulfill the requirement of unity of invention, if the international application contains a presumptively valid claim generic to the said different modes of carrying out the invention.

(d) The national law of any State may provide that claims to different modes of carrying out an invention as specified in paragraph (c) shall be written in the form of claims which are all dependent, either directly or through other dependent claims, on a claim or claims generic to the said modes of carrying out the invention.”

VIII. *Article 21: It is proposed that a new paragraph (2)(b) be added, as follows:*

“(2)(b) At the request of the applicant, international publication of an international application may be effected earlier than provided for in paragraph (2)(a).”

In some cases an applicant may be interested in earlier publication, e.g., to obtain access to the simplified procedure under Article 22(1)(i) as above proposed or to secure provisional protection under Article 29(1). There seems to be no reason why earlier publication should not be effected if the applicant so desires. It may be mentioned that the new Nordic patent laws provide for earlier publication at the request of the applicant.

Regulations: At the Geneva meeting there was little discussion of the Regulations as such, but several Delegations announced their intention to submit their

* Committee to be established under Article 50(2)(vii).

observations in writing. The FICPI presents the following points for consideration.

IX. *Rule 6.1(a)(iii): It is proposed that this rule be redrafted, as follows:*

“6.1(a)(iii) Explain the invention, as claimed, in such terms that the inventive result achieved by the invention as compared with the prior art, and the manner in which this inventive result is achieved, can be understood.”

The background to this proposal is:

(a) In many cases there was in fact no technical problem to be solved, but the inventor simply made a non-obvious technical innovation or improvement of considerable merit without being inspired by the existence of a problem.

(b) In the majority of cases the “problem to be solved” is nothing but a legal fiction based on a comparison of the invention and prior art, which was entirely unknown to the inventor and was revealed only by a novelty search.

(c) It is true that, for example, in Western Germany where the doctrine of the “problem to be solved” is particularly developed, this doctrine is applied according to well established theories with considerable acumen, flexibility of mind and common sense. However, that will not necessarily be so in countries with different or less developed patent practices.

The more objective concept of the “inventive result” therefore seems to be preferable. Where there was in fact a technical problem to be solved, this can easily be deduced from a description of the inventive result. The same applies to cases where it may be necessary for the purposes of legal analysis to operate with the legal fiction of a “technical problem.”

(d) The proposed amendment is of course particularly important if no provision for amendment of the description is adopted in the PCT.

X. *Proposal to transfer part of the Regulations to the Administrative Instructions:* The question is submitted for consideration whether some of the rules could not with advantage be transferred to the Administrative Instructions. More particularly, reference is made to Rule 11 (Physical requirements of application). If it is found that some of these requirements give rise to trouble of an entirely practical nature, there seems to be no reason why an improvement should await a decision of the Assembly. It may be mentioned, as an example, that the question of line spacing (Rule 11.10(c)) has been thoroughly examined and tried out in the Nordic countries. The original idea was to prescribe single spaced typing, but after a considerable amount of experimentation it was found that 1½ spacing was preferable for several reasons, from the point of view of both the applicants and the Patent Office. If, in the practical operation of the PCT, there should be the same experience, it seems practical that such small matters could be adjusted by the Director General.

(Original: English)

INTERNATIONAL CHAMBER OF COMMERCE
(ICC)

Introduction

1. From the beginning of the studies undertaken and promoted and the frequent consultations organized by the United International Bureaux for the Protection of Intellectual Property (BIRPI) with a view to the establishment of a Patent Cooperation Treaty (PCT), the ICC has keenly followed the progress of the work and participated in it. Throughout this period the ICC has taken a most positive approach towards the initiative and has supported the objectives of the Plan. Its general attitude was confirmed in a Resolution, adopted by the Executive Committee of the ICC on December 2, 1968 (Annex), which was included in the papers distributed by BIRPI on the occasion of the Geneva Conference of the Committee of Experts (December 2 to 10, 1968) as document PCT/III/20.

2. During the various stages of the development of the Draft Treaty, the ICC has studied its various aspects on the basis of successive analytical reports made by a special Working Party, and through full consultation with the National Committees of the ICC and discussions in the Commission on International Protection of Industrial Property it arrived at opinions which were expressed by the ICC Delegation at the Geneva Conferences. In doing so the ICC has been guided by the consideration that its positive approach to the Plan necessitated a constructive contribution to the solution of the problems involved, and, consequently it has limited its contribution to proposals which in its opinion were realistic in that they approved the original concepts of meeting the needs of international business within the framework of the original objectives.

3. It is with the utmost satisfaction that the ICC concludes that the present documents issued by BIRPI, and intended as basic documents for the Diplomatic Conference to be held from May 25 to June 19, 1970 (PCT/DC/1 to 5, July 11, 1969), reflect the acceptance of its proposals.

Were it not that the new Draft Treaty contains some novel stipulations and presents some alternatives, the ICC could have limited its reactions to supporting the Plan as it stood. In dealing with these new issues the ICC has followed the same procedure and positive approach as indicated above.

4. In order to set its comments in the proper perspective, this Report, before dealing with the individual issues, continues with a more generic discussion of the basic objectives in so far as they bear on the opinions to be expressed with respect to these issues in the third part thereof.

General Comments

1. The basic objective of the PCT is to find a solution, albeit partial, for the duplication of work in the examination of patent applications filed in a number of countries for one and the same invention. The principal solution proposed to achieve this objective resides in the cooperation between a number of national Administrations and the International Patent Institute (IIB) by providing for a documentary search and possibly a preliminary report on

patentability to be put at the disposal of the applicant and other national Administrations where the particular patent application may have to be prosecuted.

2. If this system works properly it may effect a reduction of work in the national Administrations, thus assisting in their attempts to cope with the ever-increasing number of applications to be prosecuted. Such an effect will also be salutary to the business interests involved. A condition for success, however, is that the work done in the "international phase" will be of such a quality that the national offices, subsequently dealing with the national patent applications emerging from that "international phase," will be able to accept the report established by the Searching and Preliminary Examining Authorities without having to repeat that work.

Undoubtedly this will be easier to achieve with respect to the search for prior art than with respect to the preliminary opinion on patentability because of the present lack of harmonization of the criteria for patentability.

Consequently the ICC, although in full support of the former, has abstained and still abstains from voicing an opinion on the desirability of the latter, incorporated in Chapter II of the PCT. It may be added that throughout business circles as represented in the ICC, opinions are divided as to the potential feasibility and desirability of the contents of the said Chapter.

3. Assuming that the international search will in due course have the effects outlined above, it follows also that the costs of national prosecution of applications filed through the PCT, as incurred by the national Administrations practicing examination of prior art, will diminish in relation to the expense necessary for dealing with other applications. The ICC submits that it is only fair and equitable that at least part of such financial advantage should accrue to the applicant under the PCT. The consequence of this principal approach is that the additional costs of the "international phase" need not and should not be borne exclusively by the PCT applicant, but should be partly met by subsidiary payments by the participating countries in relation to the respective financial advantages accruing to them. In this connection it may be pointed out that countries practicing the purely administrative form of grant benefit as well from the availability of the search report; in fact it compensates partly for the absence of facilities in their national Administrations.

4. It has been said that a "*trouville*" of the PCT resides in the absence of any need to harmonize the national laws of the participating countries, apart from some formal amendments necessary to incorporate the PCT system in such laws. This, to the ICC, seems a dangerous truism caused by the misconstruction of a basic PCT principle, *viz.*, the consideration that decisions on patentability are not within the realm of the PCT, but are left to the respective national Administrations. It might induce governments to assume that their national laws need only be amended in a formal way, as distinct from changes in material law, and consequently to resist any such changes even

if the PCT principles should logically lead thereto. If such an attitude results in the way being left open to signatory States to make all kinds of reservations, many of the attractions now offered to the applicant would tend to disappear.

5. The main PCT objective which would suffer is the one embodied in Article 11(3), introducing the principle of an international filing. The common *dépôt*, having to fulfill the criteria defined in the Treaty only, is in the opinion of the ICC the essential instrument for guaranteeing international cooperation in searching and examination. Any other scheme would necessitate a degree of worldwide harmonization of national laws, which at present would appear to be chimeric. Consequently the ICC insists that the principle of assimilation of the common *dépôt* to national applications should not suffer any erosion.

In this context it should also be considered that such an erosion, once accepted with respect to the particular desires of any country, will not stop there. The principle of assimilation has far-reaching consequences in a number of countries, for example, in those where the full protection is established by the act of filing, and it may be anticipated that, once the principle is affected, other countries will insist on having similar reservations introduced into the Treaty.

Moreover, any such reservation reduces the effect of Article 11(3) to a prolongation of the period of priority, and it is not without importance to repeat here that the term of priority as indicated in Article 4(C)(1) of the Paris Union Convention is specifically defined in such a manner as to exclude any derogation therefrom by a special arrangement concluded under Article 15 (Lisbon text) thereof, or by unilateral legislation.

6. The ICC feels that the international publication of the international application will serve to inform the business world at large about new inventions and about the fact that applicants tend to protect such inventions, which publication will in due course become of primary importance.

Moreover, the possibility is by no means excluded that, after the international publication has taken place, the applicant will decide not to proceed with the national applications in some or all of the designated States. In that case, the international publication would tend the other way, and many interested parties would watch the outcome of the procedure in a number of designated countries where the applicants do not fulfill the requirements of Article 22 (or, as the case may be, Article 39). In such an eventuality the public is led astray by the international publication.

A possible remedy for this defect might be to prescribe that national Administrations will notify the International Bureau of the fact that the applicant has failed to proceed nationally under Article 22 in the designated States. Subsequently, the Bureau would make this information available to the public.

Specific recommendations

1. *Fees*

In document PCT/DC/2, paragraphs 73 to 90, inclusive, BIRPI has made an analysis of the estimated

cost of the PCT route. The ICC has arrived at the conclusion that the PCT "savings" as outlined are over-optimistic, and moreover that in particular modern industries with adequate professional facilities at their disposal will benefit less than is assumed on the basis of the average sample used in the BIRPI calculation. In fact, that sector of industry must be regarded as likely to avail itself of the PCT route provided the costs will not be prohibitive, as it is responsible for the majority of the inventions which, at present, are filed in many countries. Consequently, an average sample is less suitable as a yardstick to anticipate the use to be made of the PCT.

Moreover, it is only reasonable to expect that before long European countries will succeed in accomplishing a common grant procedure. In consideration thereof, and also of the fact that duplication in filing and prosecution mainly occurs in many European industrialized countries, the PCT "savings" will be reduced again.

Under these circumstances the ICC urges that the financing of the PCT be considered in such a manner as to minimize the fees required for the "international phase," and in this connection specific reference is made to the proposal put forward in II.3, above.

2. *Article 27(5)*

The last sentence of this paragraph: "Thus it is also understood that the effective date of any international application for prior art purposes (as distinguished from priority purposes) in each Contracting State is governed by the national law of that State and not by the provisions of Article 11(3) or any other provision of this Treaty" not only derogates from the principle laid down in Article 11(3), with the unacceptable effects outlined under II.5 above, but in addition it creates the wrong impression that it is a logical consequence of what precedes. The first part of Article 27(5) deals with the freedom of any Contracting State to adhere to its own choice of criteria for patentability, and this can be fully maintained without trying to discriminate between the effects of an international application and those of a national application filed with a national Administration. Here the ICC has to point out the sort of dialectical error to which reference has already been made under II.4 above.

3. *Article 4(4)*

This particular section deals with those States in which designation of the inventor is not required, as distinct from those where this is required at the moment of filing and for which Article 4(1)(iii) has been written. It has, however, been overlooked that a third category exists comprising those States where such designation is required, but at a stage subsequent to filing. Consequently, the ICC proposes amending the section by adding "or not be required at the moment of filing."

4. *Rule 6.4*

The ICC declares itself in favor of Alternative A. Moreover, it is queried whether Alternative B is not based on a misunderstanding of the effects of Article 27(1), which will force any Contracting State to accept the claim rules of the Treaty; in the

framework of these rules the "prohibition of multiple dependencies" does not seem to serve any useful purpose.

5. *Rule 13.2*

The ICC declares itself in favor of Alternative A, which, as distinct from the other alternative, follows logically from the concept of unity as defined in Rule 13.1, and which in consequence of Article 27(1) is binding on the Contracting States. However, in order to avoid the impression that Rule 13.2 may be construed as restricting the definition given in Rule 13.1, it is proposed to start the text of the former with the word "Anyhow...".

6. *Rule 47.3*

This Rule foresees the possibility of designated Offices requiring the international application to be communicated to them either in the language as published or in the language in which it has been filed under Rule 48.3(b) (being different from the languages for publication), or in both. In cases where the filing took place in a language under Rule 48.3(b), the International Searching Authority will be responsible for the translation. However, if, as may be anticipated, the designated Offices opt for receiving the copy in translation only and the applicant spots a mistake in such translation, the question that arises is what right has he to insist on reliance on the original (record) copy. Consequently, in order to avoid any ambiguity, the ICC proposes to amend Rule 47.3 by adding the following sentence: "In any case, the applicant shall be entitled to submit to the designated Office a copy of the record copy, and in that case such copy shall have preference over any translation thereof."

7. *Article 60(2)(a)(i)*

One of the few attractions for the applicant to follow the route provided for under Chapter II is the possibility of extending the period of international procedure to 25 months, according to Article 39, which provides that a State elected by the applicant under Chapter II of the Treaty shall not require a national fee and a translation of the international application before the expiry of that period. It has been argued by some governmental authorities that this will unduly delay processing of national applications since the international application will not be available for search purposes until at least 25 months after its priority date. The present documents provide in Article 60 the right for each elected State to require a translation to be filed according to Article 22. The ICC urges that this provision should be rejected, especially since national authorities should be satisfied with the international publication after 18 months. Such publication would be freely available to the States to identify possibly conflicting applications.

RESOLUTION

International Cooperation Concerning Patents

The International Chamber of Commerce, aware of the growth of research and of the huge investments this implies, reiterates its opinion that only through an adequate system for the protection of inventions can

economic expansion be furthered and, at the same time, the general standard of living be raised.

In view of the increasing number of patent applications and the administrative and financial problems which, as a result, face both national administrations and business circles, the ICC affirms that it is in favor of the closest possible cooperation among States as concerns the procedures for the granting of patents.

In this connection, the ICC welcomes the efforts undertaken by the United International Bureaux for the Protection of Intellectual Property (BIRPI) with a view to simplifying the patent application procedures, in the framework of their plan for a patent cooperation treaty.

The ICC will continue to cooperate with BIRPI as fully as possible in order to work out an arrangement which will be satisfactory both to the national administrations dealing with industrial property and to the business circles concerned.

(Original: English/French)

UNION OF INDUSTRIES OF THE EUROPEAN ECONOMIC COMMUNITY (UNICE)

1. UNICE, which groups the central industrial federations of the six EEC countries, has closely followed the PCT Plan preliminary work. Its representatives participated actively in several meetings to which they were invited by BIRPI and put forward a large number of proposals. UNICE wishes to thank BIRPI for the possibilities for consultation extended to it.

With a view to the Diplomatic Conference to which the PCT Plan will be submitted, UNICE would like to make the following points:

General remarks

2. Within a national framework alone, it is difficult to solve the problems raised by the patent systems of different countries.

The discovery of new technologies and the development of technologies already known have caused a gigantic amount of scientific and technical documentation to accumulate. This avalanche of documents continues to grow and the inventions described therein are increasingly complicated. Examination of this documentation in order to determine prior art and the patentability of inventions for which patents are requested has become one of the big problems for Patent Offices, which virtually cannot solve it on a national scale.

In addition, the activities of patent-holding firms are less and less restricted to their country of origin.

Owing to the expansion of international commercial traffic and the tendency of firms to set up in various countries, the markets of these firms are continually growing, which also increases the number of countries in which they seek protection for their inventions.

The result is that identical patent requests are often made in several countries; these requests are then the subject of documentary search and examination in each of those countries. The same work is thus done several times.

Taking this situation into account, UNICE considers it indispensable to achieve closer international cooperation as regards patents.

3. UNICE is pleased to note that the PCT plan submitted to the Conference represents a first step in that direction. It is aware that, owing to the large number of participating countries, it will hardly be possible to find a solution to all the problems that arise. This first step towards international cooperation must therefore be quickly followed by further steps.

4. Industry fundamentally wishes the PCT plan to contribute to it an international search of high quality into the state of the art, i.e., an exhaustive search bearing on the whole of world scientific and technical documentation.

The PCT plan, contrary to the wishes of industry, which has asked for documentary search to be effected by one sole body, provides for several "International Authorities" to undertake it. UNICE fears that in the absence of an effective, centralized control of the various International Authorities, international documentary search will not offer the guarantees of quality and uniformity that appear indispensable to industry.

5. Failing uniform prior conditions for patentability in national patent methods, Phase II of the PCT may, at the present time, be only of very relative use. However, the possibility is not excluded that joint experiments may gradually be carried out as regards international cooperation in the patents field, which could not but be beneficial for the subsequent placing of Phase II of the PCT.

6. Since the PCT Plan is optional, its success will finally depend on the use applicants make of it. Obtaining international search of high, uniform quality seems to us to be the essential condition for such use. Furthermore, to attract applicants, the PCT route should be more economical than direct national filing. However, despite the optimistic evaluations put forward by BIRPI in document PCT/DC/2, UNICE considers, after having made inquiries among its members, that it will not be more economical, at least for a while. The absence of financial advantages is therefore liable to turn some of the possible users away from the PCT route.

Special remarks concerning Documents PCT/DC/4 and PCT/DC/5

7. Designation of the inventor (Article 4)

UNICE would prefer not to have the inventor designated at the time of filing the international application, contrary to the provisions of Article 4. It considers it more logical to carry out this designation in countries whose legislation calls for it, at the commencement of the national procedure, for the following reasons

Leaving aside those countries where the application must be filed by the inventor, there are few countries where the application must comprise designation of the inventor upon filing. It seems that it would be possible to get these countries to accept our proposal, which is much simpler to apply than are the present PCT provisions.

In some countries the inventor may even ask not to be designated.

In some countries, designation of the inventor is accompanied by formalities compliance with which may be required by the national Offices of the designated countries, even within the scope of the PCT Plan.

National Offices continue to be competent for the rectification procedure which exists in various States as regards the designation of the inventor.

8. *Dependent claims (Rule 6.4)*

UNICE is in favor of Alternative A, which is better suited to industrial requirements and which entails some coordination of national legislations, whereas Alternative B does not.

9. *International Search, the "Belgian route" (Article 15(5))*

Industry attaches great importance to the principle that all the States that adhere to the PCT would provide in their legislation for applicants to have the right to obtain "an international-type search" on their national patent applications. This procedure, which is also called "the Belgian route," enables an applicant to obtain an opinion on the state of the art in the shortest possible time and with the minimum of formalities.

But, in its present wording, Article 15(5) provides for no obligation upon signatory countries to open this route; it leaves them complete freedom in this respect. According to UNICE, this clause cannot be justified by the argument that an agreement between a PCT member State and the authority responsible for the international search represents a condition prior to the "Belgian route." In effect, such an agreement has merely to settle certain administrative questions. Therefore it should not constitute an obstacle to the obligation upon States that adhere to the PCT to accept the "Belgian route" in principle in their legislations.

10. *Unity of invention (Rule 13)*

UNICE favors Alternative A, which appears more flexible. However, Rule 13.2 should specify that the two possibilities mentioned therein are only examples of unity of invention. Taking this observation into account, the first sentence of Rule 13.2 might be worded as follows: "Rule 13.1 shall be construed as permitting, in particular, any of the following two possibilities:..."

11. *National requirements (Article 27)*

UNICE considers that the principle laid down in Article 11(3), by virtue of which any international application has, in each designated State, the effect of a regular national application, constitutes one of the fundamental principles of the PCT plan.

It is therefore totally opposed to any derogation from this principle and in particular to Article 27(5), which flatly contradicts it and, in fact, transforms the international filing into a mere priority right.

12. *Reservations (Article 60)*

UNICE requests the abolition of the reservation which may be made by member States under Article 60(2)(a)(i). Under this clause, member States of Chapter II which had made this reservation could

require applicants to supply a copy and a translation of the international application within 20 months, even if they had elected these countries.

UNICE wishes all member States to be subject to uniform time limits.

13. *Translation of the international application (Rules 47.3 and 48.3)*

International applications that are not filed in one of the five languages approved for publication are to be translated into English under the responsibility of the International Searching Authority (Rule 48.3). This translation is communicated, on request, by the International Bureau to the designated Offices (Rule 47.3). In this case, the rules provide for no remedy if the translation is incorrect.

UNICE is of the opinion that the translation of the international application into English is purely for publication purposes; it proposes therefore that it should be specified that in all cases the original text of the application shall be the only authentic text.

14. *System of information concerning pursuit of applications in designated States*

UNICE would particularly like to see BIRPI set up an information system enabling third parties to know rapidly in which countries, designated or elected in the international application, the latter is maintained after expiry of the periods provided for in Articles 22 and 39, and those in which it ceases to have effect by virtue of the application, in particular, of Articles 24 and 37(4).

(Original: French)

PCT/DC/10

April 15, 1970 (Originals indicated in each case)

CAMEROON, UNITED STATES OF AMERICA

Observations on the Drafts *

CAMEROON

Articles 1 and 57 of the Treaty: Nothing in the present Treaty can be construed as limiting the rights provided for under the Paris Convention and, consequently, those provided for under the Libreville Agreement, of September 13, 1962, relating to the creation of an African and Malagasy Industrial Property Office (JORFC 63. p. 37 suppl.), concluded on the basis of Article 15 of the Paris Convention, or Article 19 of the said Convention as revised at Stockholm on July 14, 1967.

Rules 13 and 40 of the Regulations: It should be noted that the notion of the requirement of unity of invention as prescribed in paragraph 1 of Article 7 of [Annex I on Patents to] the Libreville Agreement referred to above is distinctly narrower in scope: the application is limited to a single main subject, including the matters of detail composing it and such applications thereof as have been indicated.

The possibility of dividing applications provided for in paragraph 3 of Article 13 of [the said Annex I to] the Libreville Agreement, and governed by

* «Drafts» means the texts appearing in documents PCT/PCD/4 and 5.

Articles 26 and 27 of the Regulations concerning Patents of July 20, 1962 (JORFC 1965 p. 973), does not exist in the international phase.

Articles 20 to 28 of the Treaty: It should be noted that, under the present legislation on patents in the Federal Republic of Cameroon (the Libreville Agreement and the Regulations referred to above), the competent authority cannot, before granting a patent, examine the application as to substance, that is, as to whether the claimed invention is novel or industrially applicable, although failure to satisfy such criteria involves nullity of the patent. Patents are granted without prior examination at the risk of the applicants and without guarantee either of the actual existence, novelty or merit of the invention, or of the exactness of the description (paragraph 1 of Article 11 of Annex I of the Agreement). The authority merely examines the documents submitted as to their compliance with the formal requirements.

(Original: French)

UNITED STATES OF AMERICA

The United States approves a treaty along the lines of the 1969 Draft Patent Cooperation Treaty presented in PCT/DC/4 and 5. We consider the philosophy and the underlying concepts of the treaty to be sound. We continue to favor the reduction of unnecessary handling and administrative provisions to the extent possible. In our view the principle that the treaty should not require changes in substantive national law of any member country remains vital.

We recognize that the proposed treaty is not the ultimate solution to international patent problems and that further steps in this direction may some day lead to further harmonization of national patent laws.

There are certain points in the treaty which are still of considerable concern but which, we are confident, can be resolved during negotiations. In this spirit the following observations and suggestions are made.

Article 16(Rule 42): It is suggested that, for a transitional period of five years, the start-up operations under the treaty, the individual contracts between the International Bureau and the Searching Authorities may extend the time limits beyond those set forth in Rule 42. The definite time period for the production of search reports, presently set forth in Rule 42, may be desirable after the treaty has been operational for a reasonable period.

As a prospective Searching Authority, and in view of its long range plans for the reduction of overall processing time, the United States Patent Office foresees that it may be able to meet the time limits of Rule 42 shortly after implementation of the treaty. However, without a sound basis upon which to estimate the number of applications which would be filed under the PCT, the United States Patent Office as a prospective Searching Authority would be reluctant to commit itself to an inflexible time period for producing search reports. Therefore, at least initially, the International Bureau may require a degree of flexibility in negotiating contracts with potential Searching Authorities under Article 16.

Partial Refund: As presented on page 20 of PCT/WGR/17 in the Report of the Preparatory Study

Group Meeting on the Rules, March 9 to 19, 1970, a refund is suggested in all cases where the international search report on a later application can be based on the results of an international search conducted on an earlier international application. To this end, new Rule 16.3 which has been suggested along the lines of present Rule 41.1 is broader in that it concerns all Searching Authority agreements under Article 16(3)(b). While the basic concept of refunding all or part of the fee in such circumstances is sound, it is believed that a mandatory provision in the treaty might raise procedural and accounting problems which would offset any savings realized in using the prior search. Therefore, the United States would prefer that the question of refunds be left to the option of the Searching Authority for inclusion in its agreement if it wished.

Article 17: If the international application is found to be lacking in unity of invention under Rule 13, we recommend that, where in the opinion of the Searching Authority processing of the application can be expedited, it should search only those claims which are directed to the general inventive concept first mentioned in the claims (i.e., the main invention) and at the same time invite the applicant to pay additional fees for the remaining inventions claimed. This proposal, designed to facilitate the processing of PCT applications, was made by the United States at the March meeting on the Rules and appears as an Appendix to the Report of that meeting in document PCT/WGR/17. The proposal is believed to be in the best interest of prospective Searching Authorities since it will permit them to send out an immediate report on the main invention together with the invitation to pay additional fees for additional searching. If further searching is not requested, this report then becomes the search report which will be communicated to designated States and published by the International Bureau. In cases where additional searching is requested, the report would be enlarged to cover those other inventions for which additional fees were paid.

We would therefore still support in principle the proposed revision of Article 17 appearing in the Appendix to the Report (PCT/WGR/17).

Rule 6: We support in principle Rule 6 as it is presented in PCT/WGR/17, subject to the agreed editorial changes. The revision of Rule 6 was proposed and generally agreed upon at the March meeting and in view of the deletion of Rule 6.4 (Alternative B) should be advantageous to applicants since it will assure them that, if the dependent form of their claims is proper under the treaty, it will be an acceptable format in each designated State.

Rule 13: We support in principle Rule 13 as it appears in PCT/WGR/17 but suggest that the expression "[in particular]" be deleted from the introductory portion of Rule 13.2. The expression may be misleading to the extent that it suggests that alternatives other than either 13.2(i) or 13.2(ii) may be available.

Rule 34: We support the minimum documentation provisions as presented in PCT/WGR/17 but would recommend that the draft of Rule 34 be studied by

BIRPI with a view to making editorial changes to shorten the proposal without altering its substance.

We support the Study Group proposal (item No. 19, page 49 of the Report) that published patent documents of Contracting States, other than the "minimum documentation" Contracting States presently appearing in Rule 34, be included in the minimum documentation to the extent that such patent documents:

1. are in the English, French or German language;
2. do not claim a priority filing in any other country, and
3. are sorted out and transmitted to the International Searching Authorities by the Contracting State.

This proposal would increase the effectiveness of those Searching Authorities which might not otherwise procure this documentation. It should place no additional burden on a Searching Authority since it is understood that the proposal would be implemented only where a country other than a minimum documentation country issuing such documents has sorted out and transmitted them to the Searching Authorities. Sorting out non-priority claiming patents would reduce the number of documents to a manageable quantity and would eliminate the need for sorting by the Searching Authorities.

Rule 44: We support the proposal requiring Searching Authorities to forward copies of each cited reference to the applicant as set forth in Rule 44.3 on page 32 of the Report of the March meeting. It is important that the applicant receive the copies of the references with the search report in order to make amendments, and to determine whether or not to proceed in one or more given designated States. Moreover, a treaty procedure for supplying copies with the search report would save time and eliminate the necessity of correspondence by applicants requesting the cited documents. We would not be in favor of a treaty requirement that the Searching Authorities send cited documents to the *designated Offices*. Many designated Offices would probably prefer not to receive all of the cited documents since in many cases their search files would already contain the documents and it would be expensive for the designated Office to sort out duplicate documents. Moreover, where a designated State selectively orders copies of cited documents, the necessity for individual handling may increase the cost and impose additional manpower requirements for the processing of these orders.

In order to simplify the procedures under the treaty, and to avoid establishing additional lines of communication between Searching Authorities and designated States, a better solution might be to have the Searching Authority furnish copies of the references with the search report sent to the International Bureau. The International Bureau could then provide, upon request from a designated State, copies of any or all of the references cited in a particular case.

Therefore, we suggest that the Searching Authority send copies of the cited documents to both the International Bureau and the applicant along with the

search reports, and that the International Bureau make available, on demand and at the expense of the requesting designated Offices, copies of these references.

Rule 88: We support the addition of Rule 81 to the Regulations listed under the unanimity provision of Rule 88.1. Since Rules 5 and 6 are concerned with substantive matters which are basic to the national laws of a number of potential Contracting States, it is considered that changes or modifications in these Rules should be protected by a vote of unanimity.

Subject to the foregoing comments, we support the present wording of the Draft as an appropriate instrument for carrying out the aims of the initial proposal recommended to BIRPI by the Executive Committee of the Paris Union in September 1966.

(Original: English)

PCT/DC/11 May 20, 1970 (Original: English)
BIRPI

Draft of the Treaty and Alternative Suggestions

Introduction

1. It is recalled that the "Preparatory Study Group on the Draft Patent Cooperation Treaty Regulations" which met at Geneva in March 1970 (hereinafter referred to as "the Study Group") suggested a number of changes not only in the Draft PCT Regulations of July 11, 1969, but – by way of a consequence of changes in that Draft – also in the Draft Treaty of the same date. The report of the Study Group (PCT/WGR/17) was transmitted in March 1970 to all Governments and Organizations invited to the Diplomatic Conference. Further copies of that report will be available at the Diplomatic Conference.

2. It appeared to BIRPI that the suggested changes, for the drafting of which the Study Group had only a limited time at its disposal, could, in certain cases, be stated in clearer language and that some of them called for further, consequential changes. Furthermore, on the basis of the discussions of the Study Group as well as the comments received from a number of Governments and non-governmental Organizations, and as a result of further reflection on the part of BIRPI some other possible changes appeared to be worth while submitting to the Diplomatic Conference.

3. With the consent of the host Government, BIRPI hereby submits all these possible changes to the Diplomatic Conference. In the present document, they are all clearly indicated as "Alternatives" since it will naturally depend on the Diplomatic Conference, and the Diplomatic Conference alone, whether, and in what cases, it prefers to base its discussions on those Alternatives rather than the Drafts of July 11, 1969 (hereinafter referred to as "the 1969 Drafts").

4. In order to allow easier comparison between the 1969 Draft and the proposed Alternatives, the present document contains the following features:

- (i) The entire text of the 1969 Draft (that is, the Draft Treaty as appearing in document PCT/DC/4) is reproduced in the present

document (on odd-number pages),¹ whereas the possible Alternatives appear on the pages opposite the text of the 1969 Draft. Thus, the Alternatives appear on even-number pages.²

- (ii) Words, letters and numbers not appearing in the 1969 Draft are underlined. If the proposed change consists of the omission of words, letters or numbers, the words preceding and following those omitted are underlined.
- (iii) When the proposed change is substantive and is not among the changes suggested by the Study Group, the reader's attention is drawn to such change by a vertical line in the margin. However, there is no such line when the proposed change is merely consequential upon a change suggested by the Study Group, or when it is merely a change to establish consistency, or if it is non-substantive, i.e., formal.
- (iv) The main proposed changes are briefly commented upon in the following paragraphs.

Main changes appearing as alternatives

5. *Article 2:* The following item numbers refer to the numbers used in the proposed Alternatives:

Items (ii) and (iii): The words "acting for" are needed to cover a regional Office, since a regional Office is not the Office of any one State but the Office which acts for it (as well as for other States).

Items (vi) to (ix): These items deal with the various kinds of applications. First, it appeared to contribute towards clarity to distinguish between applications filed under the Patent Cooperation Treaty and other applications since the other applications include regional applications, which, in a sense, are also international. Consequently, item (vi) makes it clear that, for the purposes of the Patent Cooperation Treaty, "international application" means a PCT application only. Furthermore, it appeared that, with only very few exceptions, whenever non-PCT applications are meant, then both national and regional applications are meant. Item (vii) is dictated by this consideration. Nevertheless, in a few cases, only regional applications are meant, and item (viii) takes care of that situation. Finally, there are cases where all kinds of applications (PCT, regional, national) are meant, and item (ix) was inserted to cover those cases.

Items (x) and (xi): The Study Group proposed the definition of the notion of "regional patent." However, upon closer examination, it appeared that, with only very few exceptions, whenever the expression "patent" is used, both regional and national patents are meant. This is the reason for the new items (x) and (xi) and for deleting Article 44(1) of the 1969 Draft.

Item (xii): It is stated in Article 43 of the 1969 Draft that "patent" means both patent and inventor's certificate. It appeared that the fact should be

adverted to much sooner than two-thirds of the way through the Treaty since the word "patent" is used many times in articles preceding Article 43. That is the reason for proposing item (xii) and deleting Article 43 of the 1969 Draft.

Items (xiii) and (xiv): A closer examination of the texts revealed that these clarifications might be desirable.

Item (xv): As in the case of item (xii), it appeared to be preferable to transfer the content of Article 44(2) of the 1969 Draft to the beginning of the text. That is the reason for proposing item (xv) and deleting Article 44(2) of the 1969 Draft.

6. *Article 3:* The new paragraph (3) was recommended by the Study Group as paragraph (4). The Study Group's text has not been changed but it is in a slightly different place.

7. *Article 4:* Subject to purely formal changes, the proposed addition to paragraph (1)(ii) is the same as that agreed upon by the Study Group.

8. The proposed change in paragraph (3) is consequential upon the changes in the definitions and Article 45 (Alternative).

9. *Article 8:* The change proposed in paragraph (2)(a) is intended to make it clear that a priority claim may be based on an application for an inventor's certificate as well as on an application for a patent.

10. Paragraphs (b) and (c) are intended to take care of the problem pointed out by the Federal Republic of Germany in its written observations (see document PCT/DC/7, pages 12 to 14) and to make sure that these provisions are in conformity with Article 4 of the Paris Convention.

11. *Article 9:* The proposed change in paragraph (2) would mean that persons who are neither residents nor nationals of a Paris Union country could not be authorized by the Assembly to file international applications. There seems to be a strong trend in favor of such a solution.

12. *Article 18:* The change proposed in paragraph (2) is based on a suggestion by Israel (see document PCT/DC/7, page 23). The intention was certainly always the same as what is now expressed by the proposed change; otherwise the time limits under Rule 42 would make no sense.

13. *Article 19:* The change proposed in paragraph (1) is a mere clarification in reply to a question raised in the Study Group.

14. *Article 20:* The change proposed in paragraph (1)(a) implements in a particular case the general understanding noted in the Study Group (see document PCT/WGR/17, paragraph 27).

15. *Article 24:* The change proposed in paragraph (1) is intended to take care of a proposal made by Japan (see document PCT/DC/7, page 26) and parallels the principle laid down in Article 11(3): not only the filing, but also the withdrawal, of an international application has the same effect as the filing and the withdrawal, respectively, of a national application.

¹ *Editor's Note:* In the present volume, the text of the 1969 Draft appears in the left-hand column of the pages of even number from page 282 to page 362.

² *Editor's Note:* In the present volume, the Alternatives appear in the right-hand column of the pages of even number from page 282 to page 362.

16. *Article 27:* The change proposed in paragraph (2)(i) corresponds to a proposal by the Study Group.

17. The change proposed in paragraph (3) should make it clearer that the purpose of that provision is such that in a country in which applications must be filed by the inventor the international application, at least for the purposes of that country, must show the inventor as the applicant. The provision in the 1969 Draft seems to be too broad since qualification for filing may depend also on other circumstances – particularly nationality or domicile – which, however, are regulated by the Treaty itself and are not left to the national law.

18. The change proposed in paragraph (7) corresponds to a proposal by the Study Group.

19. *Article 28:* The change proposed in paragraph (1) corresponds to a proposal by the Study Group.

20. The change proposed in paragraph (2) is intended to take care of a suggestion by the United Kingdom (see document PCT/DC/8, page 28).

21. *Article 30:* The change proposed in paragraph (4) is intended to express more clearly the intention – believed to be implicit also in the 1969 Draft – that a national Office may not publish an international application before the stated period, for example, it may not publish it in the 14th month from the priority date on the basis of a copy it has received under Article 13.

22. *Article 33:* The change proposed in paragraph (3) is identical with the change suggested by the Study Group.

23. *Article 35:* The change proposed in paragraph (2) is necessitated by the changes proposed by the Study Group in Rule 70.

24. *Article 38:* The change proposed in paragraph (1) parallels the change proposed in Article 30(4).

25. *Article 41:* The change proposed in paragraph (1) is based on a suggestion by the Study Group.

26. The change proposed in paragraph (2) parallels the change proposed in Article 28(2).

27. *Article 43:* See the observations made in connection with Article 2(xii).

28. *Article 44:* See the observations made in connection with Article 2(vii) to (xi) and (xv).

29. *Article 45:* The changes proposed are consequential upon the suggested new definitions in Article 2.

30. *Article without number after Article 45:* The change proposed is based on a suggestion by the Study Group.

31. *Article 46:* The change proposed consists of the omission of the word “national” before the word “patent.” It follows from the proposed changes in Article 2(Definitions).

32. *Article 54:* It is proposed to tie the criterion to the 1969 statistics. This would allow identification of the country meant when the Treaty is accepted. Other

changes follow from the changes proposed in Article 2 (Definitions).

33. *Article 58:* It is proposed to tie the criteria to the 1969 statistics. This would allow identification of the countries meant when the Treaty is accepted. Other changes follow from the changes proposed in Article 2(Definitions).

PCT/DC/11/Add.1 May 22, 1970 (Original: English)
BIRPI

Addendum and Corrigendum to Document PCT/DC/11

I. Addendum

Document PCT/DC/11, Article 30(1)(b) should read as follows:

“(b) The provisions of subparagraph (a) shall not apply to *any transmittal to the competent International Searching Authority*, to transmittals provided for under *Article 13*, and to communications *provided* for under *Article 20*.”

II. Corrigendum

Editor’s Note: *See the footnote to the March 1970 Draft (PCT/DC/11) on page 282 of this volume.*

PCT/DC/12 May 20, 1970 (Original: English)
BIRPI

Draft of the Regulations and Alternative Suggestions

Introduction

1. It is recalled that the “Preparatory Study Group on the Draft Patent Cooperation Treaty Regulations” which met at Geneva in March 1970 (hereinafter referred to as the Study Group) suggested a number of changes in the Draft PCT Regulations of July 11, 1969. The report of the Study Group (PCT/WGR/17) was transmitted in March 1970 to all Governments and Organizations invited to the Diplomatic Conference. Further copies of that report will be available at the Diplomatic Conference.

2. It appeared to BIRPI that the suggested changes, for the drafting of which the Study Group had only a limited time at its disposal, could, in certain cases, be stated in clearer language and that some of them called for further, consequential changes. Furthermore, on the basis of the discussions of the Study Group as well as the comments received from a number of Governments and non-governmental Organizations, and as a result of further reflection on the part of BIRPI, some other possible changes appeared to be worth while submitting to the Diplomatic Conference.

3. With the consent of the host Government, BIRPI hereby submits all these possible changes to the Diplomatic Conference. In the present document, they are clearly indicated as “Alternatives” since it will naturally depend on the Diplomatic Conference, and the Diplomatic Conference alone, whether, and in

what cases, it prefers to base its discussions on those Alternatives rather than the Drafts of July 11, 1969 (hereinafter referred to as “the 1969 Drafts”).

4. In order to allow easier comparison between the 1969 Drafts and the proposed Alternatives, the present document contains the following features:

- (i) The entire text of the 1969 Draft (that is, the Draft Regulations as appearing in document PCT/DC/5) is reproduced in the present document (on the odd-number pages),¹ whereas the possible Alternatives appear on the pages opposite the text of the 1969 Draft. Thus the Alternatives appear on the even-number pages.¹
- (ii) Words, letters and numbers not appearing in the 1969 Draft are underlined. If the proposed change consists of the omission of words, letters or numbers, the words preceding and following those omitted are underlined.
- (iii) When the proposed change is substantive and is not among the changes suggested by the Study Group, the reader’s attention is drawn to such change by a vertical line in the margin. However, there is no such line when the proposed change is merely consequential upon a change suggested by the Study Group or suggested in the Draft Treaty (see document PCT/DC/12), or when it is merely a change to establish consistency, or if it is non-substantive, i.e., formal.
- (iv) The main proposed changes marked with the vertical line referred to above are briefly commented upon in the following paragraphs.

Main changes proposed in addition to those proposed by the Study Group

5. *Rule 4.16:* This Rule, the essence of which was proposed in the Study Group by Japan, has been redrafted to give more flexibility to the applicant: under the proposed change, he could mix translation and transliteration, and the obligation to translate (Rule 4.15(b) in the report of the Study Group) has been omitted.

6. *Rule 11.7:* It is suggested that sheets should be numbered at the bottom of each sheet.

7. *Rule 12.1:* The last proviso of this Rule is based on a proposal which was discussed by the Study Group without being adopted. It seems to deserve further consideration.

8. *Rule 29.2:* The Study Group discussed, without arriving at a concrete proposal, the question whether the fact that an international application ceased to have effect in certain cases in any designated State should be a matter of public record in the International Bureau. This Rule, as well as Rules 48.6 and 51.4, propose to answer the question in the affirmative and attempt to regulate it with all its consequences.

9. *Rule 32.1:* The Study Group discussed the question to whom withdrawals should be addressed

and within what time limits. This Rule as well as Rule 75.1 propose to regulate that question.

10. *Rule 33.1(c):* The change proposed in this Rule is consequential upon changes in certain provisions of Article 2 (Definitions).

11. *Rule 33.3:* The last sentence of this Rule parallels Rule 34.1(f) (Alternative).

12. *Rule 34.1(c)(vi):* This proposal is based on a recommendation by the Study Group (see document PCT/WGR/17, paragraphs 19 to 21).

13. *Rule 40.2(c):* The last sentence is intended to close what seems to be an inadvertent loophole in the 1969 Draft.

14. *Rule 46.3:* The proposed change is intended to close what seems to be an inadvertent loophole in the 1969 Draft.

15. *Rule 48.3(b):* The question of translations under this Rule and Rule 47.3 was discussed in the Study Group and reserved for further study (see document PCT/WGR/17, paragraph 31). The suggested change represents the result arrived at by BIRPI after such a study.

16. *Rule 48.6:* See the observations under paragraph 8, above.

17. *Rule 51.4:* See the observations under paragraph 8, above.

18. *Rule 61.1(b) and (c):* Same observation as under paragraph 14, above.

19. *Rule 64:* The last sentence of this Rule parallels the last sentence of Rule 33.3 (Alternative).

20. *Rule 70.17(b):* Same observation as under paragraph 14, above.

21. *Rule 75.1:* See the observations under paragraph 9, above.

22. *Rule 76.3:* Same observation as under paragraph 14, above.

23. *Rule 76bis:* Same observation as under paragraph 14, above.

24. *Rules 78.1(a) and 78.2:* The suggested changes are intended to differentiate between elections before and after the 19th month from the priority date because, if the election is made after the 19th month, the time limits for amendments must be those under Chapter I since the time limits for delaying national examination or processing are also governed, in such a case, by the time limit applicable under Chapter I.

PCT/DC/12/Add.1 May 22, 1970 (Original: English)
BIRPI

Addendum and Corrigendum to Document PCT/DC/12

I. Addendum

Document PCT/DC/12, Rule 92.3 should read as follows:

“92.3 Mailings by National Offices and Intergovernmental Organizations

Any document or letter emanating from or by a national Office or an intergovernmental organization and constituting an event from the

¹ *Editor’s Note:* In the present volume, the text of the 1969 Draft appears in the left-hand column of the pages of even number from page 364 to page 514.

date of which any time limit under the Treaty or these Regulations commences to run shall be sent by registered air mail, provided that surface mail may be used instead of air mail in cases where surface mail normally arrives at its destination within two days from mailing or where airmail service is not available.”

II. *Corrigendum*

Editor's Note: *See the footnote to the March 1970 Draft (PCT/DC/12) on page 364 of this volume.*

PCT/DC/13 May 20, 1970 (Original: English)
SWEDEN

Observations on the Drafts*

General

The PCT plan constitutes a good foundation for international cooperation on the widest possible basis in the field of patents.

1. In the main, the PCT plan allows the participating countries to maintain their present national legislation. This is a considerable advantage, which makes it possible for the individual countries quickly to accede to the Treaty, whereby the advantages of the Plan can be utilized by the applicants and the national Patent Offices within the near future. In this connection it could be an advantage if the Plan were drawn up with considerable flexibility, to allow further examination on the national level of applications which have passed the international stage. It is of great importance to the success of the Plan that countries should be able to accede to the Treaty without risking a binding decision on the international level which may lead to patent rights which are unacceptable from a national point of view. On the other hand, countries can utilize the potential economies of the Plan as the PCT search and examination gradually gains confidence. It is of value to applicants that the PCT reports will not prevent continued pleading on the national level. Despite the fact that it must be a condition of the Plan that it is optional for the applicants to go the international way, the Plan could therefore be expected to be utilized to such an extent that the intended profits would be obtained.

2. However, it may be questioned whether the 1969 version of the Plan does not go further in the matter of flexibility than the considerations mentioned above dictate. When the PCT Plan was originally drawn up, an important aim was to achieve economies in the examining work of Patent Offices. Therefore the examining for patentability constituted an important feature of the Plan. However, during the preparations for the Plan it has been claimed – mainly by European industrial circles – that interest primarily centers on the search phase. The second phase of the Plan – international preliminary examination – has met with considerable reserve. The result has been that the examination to be carried out under the PCT

Plan has been given a much more preliminary character than originally intended and that accession to the second phase of the Plan has become optional for the participating countries. As far as the Swedish Patent Office is concerned, substantial relief in the workload can be achieved only if both phases of the PCT Plan are adopted and if the majority of the big industrial countries accede to both phases.

3. The argument that examination in accordance with the second phase of the Plan would have limited value in that the rules for patentability at present vary in the different countries does not, in the Swedish opinion, seem to be convincing. The criteria for patentability which have been drawn up in the proposal are such that the Convention countries must be able to accept them in spite of the fact that divergences may exist in special respects – for example, in the area of patentability. Nor should it be ignored that an important advantage of the PCT Plan lies in the fact that in the long run it will contribute to harmonization of patent legislation and practice in the appraisal of patentability. This aspect of the Plan would largely be lost if both phases are not utilized to a considerable extent.

4. The Swedish Patent Office has a system of obligatory complete examination. It is the Swedish opinion that a system of obligatory examination implies such great advantages for both the patent applicant and third parties that the system should not be abandoned without very good reason. The PCT Plan makes it easier for countries with obligatory examination to maintain this system.

5. It is also apparent that utilization of the PCT system will be encouraged if applicants can go to the Patent Office in their home country and receive international search and examination. Thus applications can be worded in the applicants' own language just as if they were applying for a national patent, and contact with the authorities would also be made easier in other ways. The majority of applications at present burdening national Patent Offices come from original applications in the large industrial countries. It has hitherto been assumed that, besides the International Patent Institute in The Hague, at least the Patent Offices in the United States of America, Japan, West Germany and the USSR would function as Searching and Examining Authorities within the framework of the PCT Plan. However, during the preparatory discussions it was pointed out from the Swedish side – with reference to the cooperation expected under the new Nordic patent legislation – that it was desirable to keep the door open for active participation by a Nordic Searching and Examining Authority. The present Draft Convention takes account of the possibility of such participation.

Points of view and suggestions on individual articles

Article 12: Under the terms of Article 12, international applications shall be made in triplicate with a “home copy,” a “record copy” and a “search copy.” “Record copies” are to be sent to BIRPI. The importance of “record copies” seems to have been exaggerated and has led to complicated routines in the Plan (Rule 22) to ensure that “record copies” are sent

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

to BIRPI within the stipulated time without the applicant's losing any rights. It should again be considered whether "record copies" are really necessary to the Plan or whether they can be dispensed with.

Article 16: As far as the choice of the Searching Authority goes, it may seem strange that this must be decided by the receiving country since in principle international search is supposed to be of equal value irrespective of which of the Searching Authorities approved by the terms of the Plan is consulted. Naturally, in the interest of their planning, the various Searching Authorities must be able to forecast which applications they can be expected to receive. But this does not necessarily lead to the receiving country's determining the Searching Authority. In any case applicants from countries with no internationally approved Searching Authority ought to be able to choose the approved Searching Authority which they prefer. If a proposal of this nature wins general approval, Article 16(2) and the corresponding Rule 35.2 will have to be revised in the light of this proposal.

Article 17: Under the terms of Article 17(2), the International Searching Authority can refuse search if the application is for an invention which the Searching Authority is not required to search or if the application is so deficient that no search can take place. In such cases the application is transferred without a search report to the national Offices. Under the terms of Article 17(3), the International Searching Authority decides whether the conditions for unity of invention (Rule 13) have been fulfilled. If this is not the case, and the applicant refuses to limit his application, he still has the right to transfer the entire application – regardless of whether it has been completely searched – to the national Patent Office. Admittedly, in such cases these Offices may demand a special fee for the unsearched part of an application. It is assumed that the national Patent Offices may themselves determine the amount. The provision in Article 17 and the provision regarding the duty of national Patent Offices to reconsider decisions reached by the receiving Offices (Article 25) will counteract the economies for the national Patent Offices which were originally intended. This is especially so with regard to Patent Offices which now have a comparatively large number of foreign applications. It may also be added that the possibility of transferring non-searched applications to the national stage may lessen the value of the plan for developing countries.

Article 20: A practical problem is the question how the designated Patent Offices and applicants are to gain access to publications referred to in the search reports. It is deemed advisable that copies of publications referred to be appended to the search report.

Article 27: Under the terms of Article 11(3), an international application shall have the effect of a regular national application as of the international filing date in the countries covered by the application. However, a deviation from this principle is possible under the terms of Article 27(5) if there is a question of using an international application for prior art

purposes. Under Nordic legislation an application becomes anticipatory from the date of application and, if an applicant invokes priority, the date of priority is equated with the date of application in this respect. In a country utilizing the exception in Article 27(5), an applicant using the PCT route will be in a worse situation than an applicant who files nationally in the country in question. In the Swedish view, therefore, the provision in Article 27(5), last sentence, should be deleted.

Articles 28 and 41: After the issuance of both the international search report and the preliminary examination report, the applicant has the right to amend his application before it is transferred to the national stage (Articles 28 and 41). According to document PCT/DC/2, paragraph 53, this will give the applicant an opportunity of adapting his application to the various legislations in the countries covered by his international application. It seems unnecessary to formulate such generous rules as those in Articles 28 and 41 in order to achieve this aim. The only limitation imposed on the applicant by these Articles is that the amendments made must not go beyond the disclosure in the international application as filed. It may lead to considerably more work for the national Patent Offices if the applicant utilizes these provisions with other intentions than those foreseen in the said paragraph 53. Articles 28 and 41 should, in the Swedish view, be formulated to allow only amendments necessitated by the national legislation in the respective country.

Article 29: Under the terms of Article 11(3), international applications published after 18 months and covering Sweden would, in Sweden, have an anticipatory effect on later national applications, even if the international application is not continued in the national stage. According to paragraph 47 of document PCT/DC/3, the aim of Article 29(1) is to limit the anticipatory effect to such international applications as are actually transferred to the national Patent Offices. However, it is difficult to interpret Article 29(1) in this sense, since the Article relates only to a special condition for allowing the applicant to enjoy provisional protection for a published application.

Article 30: Prior to its publication an application and information concerning it shall be regarded as confidential. However, the Treaty allows the countries covered by the international application to publish the international application number, the date of application, the name of the applicant and the country in which the international application has been filed. But this information is of little use to a third party unless, at the same time, he knows the title of the invention and its class in the classification system. Publication of these data cannot be regarded as a violation of the secrecy to which the applicant is entitled. The provision should therefore be amended to include the publication of the title and class of the invention as well. On the Swedish initiative, this question has also been raised in connection with the proposal for a European patent system.

Article 34: Under the terms of Article 34(2)(b) and Rule 66.1, the applicant is entitled in Phase II to

amend his application before the preliminary examination report is established. The Articles of the Treaty do not contain any stipulation (cf. Article 36) that the preliminary examination report sent to the national Patent Office shall include the claims on the basis of which the report has been drafted. A stipulation of this nature is given only in the Regulations (Rule 70.12). However, for phase I, the Treaty itself (Article 20(2)) contains an express stipulation to the effect that amendments made in the application together with the search report shall be communicated to the national Patent Offices. A similar stipulation should also be included in Chapter II of the Treaty. It is of basic importance that the national Patent Offices should have the guarantee that they will always be informed of the patent claims on which the preliminary examination report is based.

The Regulations

Rule 6: On the question of dependent claims Alternative A is preferred.

Rule 13: On the question of unity of invention Alternative A is preferred; in the Swedish view the phrase "specially adapted" in Rule 13.1(i) should be retained in this context. The number of claims in each category should be limited by deleting the phrase "at least." In this way a simpler rule for deciding unity of invention will be obtained, namely, that inventions belonging to the same category must be capable of coverage by a single generic patent claim. Compare also Rule 13.3, which indicates this principle by stating a certain exception to its application.

Rule 43: Under the terms of the PCT Plan, the search report shall not contain any explanations. It must also give a broad picture of the state of the art. The resulting examining work at the national Patent Offices may thereby become quite burdensome. By isolating search from examination of patentability, the practical result may be that the search report contains references to a number of publications which have little connection with the invention concerned when the application reaches the national stage. Admittedly, publications may be cited with reference to the patent claims to which they are especially relevant. It may also be indicated which parts of a reference are relevant in the particular case (Rule 43). In the Swedish view, the Rule should be amended to include in the report a statement as to which references are to be considered of primary interest from the point of view of novelty of the invention.

Rule 48: The importance of the Plan from an informative point of view would considerably increase if not only the abstracts but also the patent claims – in the first place, the main patent claims – were also to be published in English when filed in another language. Admittedly, the Plan assumes a certain check on the acceptable quality of the abstracts. However, for the applicant himself there is a greater incentive to formulate patent claims that clearly state the invention referred to. There will be no legal consequences should the abstract of the international application be misleading. From this point of view the patent claims, together with any drawings which may exist, give more exact information regarding the contents of the application.

PCT/DC/14 May 22, 1970 (Original: English)
BIRPI

Suggestions for Possible Alternatives for Article 17(3) and Rules 40 and 43.7

1. On the basis of the suggestions made by the Delegation of the United States in the Preparatory Study Group on the Draft Patent Cooperation Treaty Regulations (Geneva, March 1970) reproduced as an Appendix to the report of that Group (document PCT/WGR/17), BIRPI presents herein the draft texts which, it is believed, would implement the intent of those suggestions.

2. The changes in Article 17(3) would be as follows:

"(a) If, in the opinion of the International Searching Authority, the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant to pay additional fees. *The International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims ("main invention") and, provided the required additional fees have been paid within the prescribed time limit, on those parts of the international application which relate to inventions in respect of which the said fees were paid.*

(b) The national law of any designated State may provide that, *where the national Office of that State finds the invitation referred to in subparagraph (a) of the International Searching Authority justified and where the applicant did not pay all additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.*

(c) Omit."

3. *The changes in Rule 40 would be as follows:*

"40.1 Invitation to Pay

The invitation to pay additional fees provided for in Article 17(3)(a) shall specify the reasons for which the international application is not considered as complying with the requirement of unity of invention and shall indicate the amount to be paid.

40.2 As in document PCT/DC/12, page 140.

40.3 As in document PCT/DC/12, page 140, but change "Article 17(3)(c)" to "Article 17(3)(a)."

40.4 Omit.

40.5 Omit."

4. *The changes in Rule 43.7 would be as follows:*

"43.7 Remarks Concerning Unity of Invention

If the applicant paid additional fees for the international search, the international search report shall so indicate. Furthermore, where the international search was *made* on the main invention only (Article 17(3)(a)), the international search report shall indicate what parts of the

international application were and what parts were not searched.”

PCT/DC/15 May 23, 1970 (Original: English)
INTERNATIONAL FEDERATION OF
INVENTORS ASSOCIATIONS (IFIA)

Observations on the Drafts*

On a proposal presented by the Delegation of the United States of America, the Executive Committee of the International Union for the Protection of Industrial Property unanimously adopted, on September 29, 1966, the recommendation which started BIRPI's work on the Patent Cooperation Treaty Plan. In the recommendation it was stated:

“that a resolution of the difficulties attendant upon duplications in filings and examination would result in more economical, quicker, and more effective protection for inventions throughout the world, thus benefiting inventors, the general public and governments.”

It was a bold and far-reaching statement, going straight to the fundamental aims of the patent system: benefiting *inventors*, the *general public* and *governments* – the inventor, for whom the patent system supplies the legal protection for his intellectual achievements, the general public, which demands that the patent system should be shaped and handled to promote inventiveness and technical development, and governments, which require that the system be designed and operated to fulfill these objectives in the most efficient and economic way.

What has come out of the work on the PCT Plan during the past years? After a number of consultations with Committees of Experts the Plan has passed through a series of versions and in 1969 it reached the final stage (PCT/DC), and is now being prepared for the diplomatic conference. This Plan is now stated to have the following two principal aims (PCT/DC/2, 3 and 4):

“One is to save effort-time, work, money – both for the applicant and for the national Offices in cases where patents are sought for the same invention in a number of countries.

The other is to increase the likelihood of granting strong patents in countries not having all the facilities necessary for a thorough search and examination. By ‘strong’ patents is meant patents likely to withstand challenge in the courts.”

The modified wording of the declared aims of the present PCT version corresponds to real changes in the attitude. The applicant, who is now mentioned instead of the inventor, may be either the inventor or the industry exploiting his invention. In fact, the successive versions of the PCT Plan have become less and less favorable to the inventor and more and more adapted to suit industry.

As for the working conditions of the national Patent Offices, with all due respect to their important

missions, these Offices cannot be the fundamental object of a patent system. The patent laws and the operating rules for Patent Offices should be subordinated to the general public interest of having a patent system so devised and operated as to promote inventiveness and technical development. Yet the present Plan has been streamlined to fit the Patent Offices, often at the expense of the applicant. (The other aim, improving the quality of patents in countries not having adequate facilities of their own, is certainly a good thing, and does not seem to have met any strong opposition).

How have these changes in the PCT attitude come about? They are no doubt due to the composition of the Committee of Experts which BIRPI has consulted during the preparation of the PCT Plan.

The expert delegations have for the most part been composed of Patent Office staff, patent agents, lawyers and representatives of established major industries. Inventors were represented on the Expert Committee in the middle of 1968 thanks to the ready and cooperative action of BIRPI, but being new and alone they had little chance to make their views understood and accepted among the compact majority of other interests. University scientists and young innovation based industries have had no representation at all. The same also applies to the as yet uncreated industries which are so often talked about as an important element in the continuous renewal of the industrial set-up in all progressive countries. As far as is known to us, no investigation has been made into the probable effects of the PCT on the creation and growth of such industries. Government representatives with practical experience of state-supported technical research and development, who could speak for the public interest in the promotion of such activities, also seem to have been missing from most of the delegations.

This is an unfortunate development, which may lead the future patent system astray. The patent system is in itself one of the best inventions for promoting technical progress, and the principles of a new international patent system are far too important to be shaped according to the present strength and vociferation of the parties concerned by the letter of the law, nor by the action of pressure groups. The decisions of today may be vital to the role of the patent in technical progress for many years to come but international conventions are unwieldy and to amend their decisions is a complicated matter and takes a long time.

This situation places a great responsibility on the delegates to the diplomatic conference, and especially on the governments and their representatives, who have to safeguard the community interest of a patent system which promotes inventiveness and supplies the inventor with legal protection for his intellectual achievements. If they find that the Plan does not fulfill its original aims in a satisfactory way, they must make a real effort to convert it to a more balanced Plan.

Article 21: International publication. Compulsory publication of patent applications in the pre-grant stage is not one of the principal objects of the PCT.

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

Neither does the suggested publication time – 18 months after the priority date – fit very well into the PCT timetable with its 20-month limit for Phase I and 25-month limit for Phase II. Early publication of patent applications has on the whole not been acceptable to all countries participating in the PCT work. If such a provision were to be included in the PCT, it must therefore be flexible enough also to satisfy the publishing principles of these countries.

The 18-month publication is thus a controversial question on which the PCT should preferably abstain from taking a definite position in the present premature situation, especially as early publication is not a necessary element in the PCT patent application route.

Early publication of patent applications, if effected within such a short time as 18 months, will indubitably have detrimental effects on the working conditions of the different innovation-active groups in the community (the inventive and developing work of the major established industries possibly excepted) as they often need a longer secrecy period before the invention idea is released. Apart from the inventors these groups, however, have not been represented on the PCT Committee of Experts.

The demand for compulsory publication of international applications after 18 months comes from seven European countries which have adopted this principle in their national patent laws. This has been done so recently that its practical consequences are only now beginning to become apparent, and the complaints from innovation-active circles are growing. The effects of the 18-month period on invention development work, as well as the threat it implies to the efficiency of inventiveness in a country, are accounted for in a separate memorandum (Appendix), which also deals with other aspects concerning the introduction of the 18-month period. In connection with this memorandum on the inventor aspects of the 18-month provision, IFIA will here restrict itself to summing up some notable facts in connection with the introduction of this provision in the above-mentioned countries.

The 18-month publication period was introduced in order to improve the situation for the producing industries. It would have meant a considerable improvement in this respect if the length of the period had been set at, say, 36 months instead of 18.

The burden of the reform was to be carried by the inventors and other innovation-active groups. In spite of this uneven apportionment of advantages and disadvantages, the inventors had no representatives in any of the national committees proposing this new principle in the patent law, whereas the producing industries were represented in most of them.

No inquiry or investigation was made concerning the practical working conditions and the timetables of inventors and other innovation-active groups, and their need for secrecy and patent protection during the early stages of development work. No analysis was made of what effects a short secrecy period of 18 months would have on the innovation activities of these groups.

A too short secrecy period may force the inventor to abstain from filing a patent application during the first part of the development work on his invention, which in countries with patent laws based on the “first-to-file” principle will leave him without legal protection for his intellectual property during that time. These countries thereby impose a handicap on their inventors compared with the inventors of the “first-to-invent” countries.

The origin of the figure 18 for the length of the secrecy period is obscure. The committees seem to have attributed the introduction of this figure to each other, and to have accepted it for the sake of uniformity.

It is evident that the length chosen for the secrecy period has not been thoroughly investigated from all angles, and that sufficient experience of its consequences in practice are not yet available. It may therefore prove desirable in the future to amend this period in view of the fundamental objects of the patent system to provide adequate legal protection for the inventor and stimulate inventive activity in the country.

In any case it is too early for the introduction of the 18-month provision in its present form as an international standard. Already on the national scale an ill-considered decision may block natural progress for many years ahead, and on the international level a regulation once it has been made may be virtually impossible to amend due to unwieldy official requirements (*N.B.* the difficulties in amending the length of the priority period in the Paris Convention). An international regulation fixing the length of the secrecy period ought therefore to be preceded by thorough investigations and consultations with all parties concerned. That has not been done in this case.

In view of the divided opinions on early publication and the proper time limit for the publication of international applications it seemed natural that the PCT Plan should introduce no standard period of its own, but put forward the first national publication in any of the designated countries (yet not before 18 months). This principle was applied in Article 21 of the “1968 Draft” and maintained during all expert group meetings on that Draft except the last one in April 1969.

At that meeting the text of Article 21 was changed to the wording presented in the “1969 Draft.” Here publication after 18 months is made compulsory, except where all the designated countries have declared that they do not wish international publication. Such declarations have been made possible by an additional paragraph in Article 60. Commenting on these changes from the “1968 Draft” to the “1969 Draft” BIRPI writes: “The result, in practice, may thus be the same under both Drafts, although arrived at by different routes.”

No reason has been given for this last-minute change in Article 21, which in view of the BIRPI comment appears to be quite unnecessary. For the future development and harmonization of patent laws however, the version of the “1969 Draft” seems very

dangerous indeed, since it introduces the 18 months period as virtually an accepted international standard. The fixing of this period in the PCT implies in practice undue pressure on all countries not having early publication in their national patent laws – that is to say, most of the expected PCT countries – to accept the 18-month publication period in order to harmonize their laws with the PCT.

Naturally this does not at present bother the “first-to-invent” countries but if 18 months publication becomes a world standard the pressure may also eventually reach them.

In view of the insufficient investigation of the background of the 18-month period and the lack of experience of its effects in practice, it seems very unwise, for all parties concerned, to introduce it as a world standard at the present moment. The door must be kept open for all possible solutions of the publication problem, to be based on more and better analyzed facts.

IFIA therefore strongly urges that Article 21 be given the text of the “1968 Draft” instead of the “1969 Draft,” and that Article 60 be amended accordingly.

Naming of the inventor

One of the basic objects of the patent system is to provide legal protection for the inventor’s intellectual property, his invention idea. In most countries the patent is the only juridical means available to him for such protection. It is natural therefore that the inventor – with very rare exceptions – desires to have his name connected with the patent for his invention.

The Paris Convention also prescribes that the inventor shall have the right to be mentioned. To make this provision workable in practice, however, the inventor must be informed by the applicant, the patent application being secret for at least one and a half years. This would be automatically achieved by the provision in the “1968 Draft” to the effect that the inventor shall be named (Article 4(1)(iii)) and that, if the applicant is not the inventor, the request shall:

“indicate who is the inventor by specifying his name and address, and ...

contain a statement to the effect that the applicant is a successor in title of the inventor at least for the purpose of filing the international application.” (Rule 5.6)

During the expert meetings on the “1968 Draft” this fundamental inventor’s right was whittled down to a harmless phrase in the “1969 Draft” by adding a new paragraph in Article 4 stating:

“Failure to indicate the name and other prescribed data concerning the inventor shall have no consequence in any designated State according to the national law of which an indication of the inventor’s identity would not, generally or under the circumstances of the particular case, be required in a national application.”

Not even this has satisfied the big industrial organizations. It is interesting to study the Observations from certain interested circles (PCT/WGR/14), where naming of the inventor is regarded as a mere formality causing a lot of petty troubles, and one which should be put off as long as

possible. If their goal is reached, the first international patent application system with a chance of becoming a practical reality – namely, the PCT – would operate in most cases entirely without the inventor behind the invention but merely with those who exploit it.

In our opinion no patent application ought to be written without stating from whom the invention idea emanates, and the most appropriate time to designate this person is the moment when his idea is described in an application. Postponing the mention of his name for 20 or 25 months will only increase the risk that the invention may be attributed to the wrong person.

In the “1969 Draft” the provision in Rule 5.6 of the “1968 Draft” obliging the applicant to state his right to the inventor’s intellectual achievement has been dropped. Instead the following paragraph has appeared (Rule 4.6(c)):

“The request may, *for different designated States, indicate different persons as inventors*. In such a case, the request shall contain a separate statement for each designated State or group of States in which a particular person, or the same person, is to be considered the inventor, or in which particular persons, or the same persons, are to be considered the inventors.”

The first sentence – as italicized – shows in a flash how far the technicalities of the PCT have wandered from one of the fundamental principles of the patent system: the protection of the true inventor! It is embarrassing that such a thing should appear in print in an international treaty.

It was said in one of the discussions on this matter in the Expert Committee that, as long as the national laws of some countries prescribe the indication of different persons as inventors, the PCT must provide the means for it. If it were not so, this paragraph would not be necessary. However, as far as IFIA has been able to find out, there are no such law prescriptions in the countries participating in the PCT work. The procedure of stating different inventors in different countries seems to be only a bad habit. Consequently this paragraph could be dropped. We therefore propose that the provisions on the naming of the inventor should be accepted in the “1968 Draft” version, and that paragraphs Article 4(4) and Rule 4.6(c) in the “1969 Draft” be deleted.

Choice of receiving Office and Searching Authority

In the opinion of IFIA it is essential that an applicant should have the right to file his international application in whichever country within the PCT he may choose, merely on the basis of what he thinks will be most useful to him, and that he should not be bound to file in his home country. For national patent applications it is a fundamental principle that residents and non-residents of a country shall have the same right to file an application with the Patent Office of the said country, and the same principle should be applied also to international applications.

The fact that some countries have special laws forbidding their residents to spread information abroad about inventions which may be of military interest before they have been examined by the Patent Office or some other authority of the country is quite another

thing. Such laws may apply to national and international applications alike.

If the above-mentioned principle is accepted, it will also satisfy the demand that the applicant shall have the right to choose that Searching Authority and Examining Authority which in his special case and in his own opinion suits him best.

Fees

One of the aims of the proposed Treaty is to save time, work and money for the national Offices. This means that the Office cost for a patent granted by the PCT route will be generally lower than the cost for a patent derived from a national application. As most Patent Offices are operated on a self-cost principle, this would imply lower fees for the PCT-route patents than for nationally derived patents, in the application stage as well as in the case of renewal fees. Maintaining the same national fees for both routes would mean putting a tax on the modern time, work and money-saving application handling system and subsidizing the old uneconomic system.

From the applicants' point of view the fees for a patent along the PCT route have become so numerous and so high that they may seriously diminish its attractiveness and practical use.

The PCT foresees the possibility that national Offices may voluntarily decide to give a rebate on national fees in consideration of the savings they would make and in order to make the use of the international application more attractive to the applicant (PCT/DC/2, paragraph 65). So far not a single country has shown any intention of introducing such a rebate. This may be understandable due to the fact that the rebate would be enjoyed to a large extent by non-residents. The only practical solution appears to be that BIRPI should take the initiative to make such rebates equal for all PCT countries. If that is unattainable, it might be possible to form an inner circle of countries mutually giving the rebate to each other's residents.

Memorandum

*Compulsory "making public" of patent applications after 18 months in some European Countries**

The Patent Offices in countries with examining patent systems have for many years suffered from an increasing proportion of patent applications that have not reached the stage where they could be rejected or accepted for public inspection. The average time lag before an application is accessible to the public in several countries thus exceeds five years, and in extreme cases the application may be undisclosed during the major part of the whole patent term. Among other disadvantages this has meant increasing uncertainty for industries planning to start

manufacturing a new product as to what was free for use and what could be expected to be protected by patent.

The idea of restricting the secrecy period for a patent application was taken up by Patent Offices as a means of eliminating some of the drawbacks of the slow handling procedure. Publication of the applications within a certain time was also expected to facilitate the novelty search within the Patent Offices. In view of the present situation the principle of introducing a time limit at which a patent application should be laid open to public inspection, irrespective of whether its examination in the Patent Office has been completed or not, has not met with much serious opposition.

On the other hand the proper length of this time limit is a point on which conflicting interests run in different directions. These interests can be divided into two main groups, roughly consisting of inventors, scientists, and industrial enterprises actively engaged in invention developing work, on the one hand, and established producing industries, on the other hand.

The following remarks are limited to the question of the proper length of the secrecy period and do not deal with the principle itself of introducing such a period.

The innovation-active groups

From the innovation-active side two fundamental points are raised.

Firstly, a secrecy period is needed for consolidation of the invention idea and the completion of its possible applications. An invention is very seldom complete and ready for sale at the moment when the inventor has conceived the idea. It usually needs a lot of research and development work, such as experiments, constructive calculations, models, testing, etc., before its practical usefulness and value can be judged. During the development process the invention idea usually is modified and generalized; it may be found applicable to technical fields other than that which originally inspired the inventor, and – often at a rather late phase of the development work – new practical design modes may be developed, which finally make the invention technically useful and valuable.

It is obvious that a private inventor during such development period does not want his idea to be known to other inventors and competitors, who might be induced to start development work on the same idea. And he is especially anxious not to put industries on the track of his invention as they have the necessary personnel, technical and financial resources to investigate all possible applications of the idea, to enable them to precede the inventor in arriving at modifications which make the invention practically exploitable.

The necessary length of the secrecy period naturally varies with different inventors and different types of inventions. For small inventions the inventor may have no need for a secrecy period, or only for a short one, and the same goes for inventions where the inventor wishes to sell the idea as soon as possible, leaving the development work to the buyer. In such

* The word «making-public» is used in this article as a common denominator for the following two patent terms, involving different effects as a bar to novelty for later patent applications:

(a) «laid open to public inspection» meaning that it is made possible to study the documents in the Patent Office (and have copies made of them);

(b) «publication» referring to mass reproduction of the documents through printing or other methods with the same juridical effects.

cases the inventor himself is usually eager to get as much publicity as possible, hoping to find interested buyers for the invention. However, there is no doubt that for a considerable number of inventors a secrecy period which is not too short is essential for the successful execution of their inventions. This is particularly relevant to the more significant inventions based on new principles or the opening up of new technologies or fields.

The second point concerns the legal protection. Patenting is the protection offered by the law to the inventor for his intellectual property and his invention achievements. He needs it to protect him from other inventors and also to be secure when discussing the invention with experts and when using designers, workshops, laboratories, etc., for such parts of the development work as he cannot himself accomplish. The patent also makes it possible for him to market his invention in order to recuperate the money he has invested in the development work and obtain a fair remuneration for the contribution his invention affords to technological progress in industry.

In the United States of America, which has a patent law based on the "first-to-invent" principle, the inventor has a latent protection for his invention idea from the day he starts to develop it. This protection costs him practically nothing in the early stages of his development work, and thus he can start this work without turning to the Patent Office.

In most other countries, where the patent law is based on the "first-to-file" principle, the patent right goes to the person who first files a patent application. This principle naturally constitutes a strong inducement for the inventor to apply for patent protection as soon as possible, and in fact many inventors file an application immediately after having conceived the invention idea. For important inventions, which need a long and thorough development, this usually only starts the patent process, as the work will involve modifications, improvements and practical applications which the inventor may also desire to protect. However, patent applications are costly, especially when they have to be duplicated in many countries. In practice therefore the inventor must compromise by abstaining from patenting some of his improvements. This priority year soon passes, and he often also has to cede his priority rights and file most of his foreign applications at later dates. This can be done as long as his application is not made public in any country. Up to recently this was possible without very serious consequences by postponing applications in a few countries with non-examining patent systems and early publication of patents.

Planning a patent policy within the limits of available financial resources with a minimum of risk-taking, while retaining possibilities for additional applications later on, is one of the most difficult problems for the inventor. The more his development work proceeds, the more facts become available leading to a realistic patent policy. Often the best selection of countries in which complementary applications should be filed is made in cooperation with the industry which will exploit the invention,

although by this time the priority year has usually long since expired.

Acquiring adequate patent protection may thus be a very complicated task for an inventor even without the hampering effect of a short "making-public" period. The consequences of the early "making-public" will be commented on later on.

The problems and needs of the private inventor described above also apply to the university scientist who happens to find a useful and valuable invention idea in his research work, as well as to the innovation-active enterprises, handicraft and other small industries which form the breeding ground for the continuous renewal of industrial products.

The producing industries

The primary motive from the producing industries' point of view for a compulsory early "making-public" of patent applications has been the desire to shorten the period of uncertainty as to what may probably be protected by patent. An investigation into what patent objections could be expected before starting the manufacture of a new product would then consist of a study of published patents together with patent applications laid open to public inspection. The practical procedure would be simplified if the patent applications were also published. On the other hand the applications, if published at a very early stage, when no search had yet been made, would in fact give no information as to what eventually has a chance of being patented, and many applications would later be rejected or abandoned and hence never lead to any patent protection at all.

Secondly, the patent material is valuable as technical documentation. Published patents are an excellent source of such documentation and early publication of applications may expand the material and bring it more up to date. However, as mentioned above, the patent applications, especially in the early stages, will not give the same comprehensive and formalized novelty information as the approved patents. This has caused some discussion as to what would be the best time for publication of patent applications for the purpose of technical documentation. Publication of the applications at a later stage, when the novelty search has been made, would give more concrete information about what is technically novel, whereas earlier publication gives information about the latest introductions but also a large amount of material in a less easily assimilated form.

An additional result will be achieved if the "making-public" period for the patent applications is made short enough. It will then also disclose information on new invention ideas which the inventor has started working on but not yet consolidated, and hints of new fields which he has opened on the frontier of technology. Keeping an eye on applications laid open to public inspection, or, simpler still if it is made possible, on the continuous flow of published applications, might thus be an easy way to acquire new ideas for development work without having to originate them oneself. By quick action and with sufficient resources it might even be possible to

run ahead of the inventor and pick some of the fruits of his ideas.

Now this undoubtedly is not the real object of technical documentation and it has not been officially cited as a motive for early publication. But it may all the same be attractive to certain circles, and the more risk there is of it will certainly cause many inventors to abstain from filing patent applications in the early stages of their development work.

The introduction of compulsory "making public" after 18 months and some of its consequences to the innovation-active groups

Revised patent laws containing a compulsory provision that the patent applications should be laid open to public inspection after 18 months came into force in the Netherlands in 1964, in Denmark, Finland, Norway, Sweden and the Federal Republic of Germany in 1968, and in France in 1969.

This provision implies that the secrecy for the inventor as a matter of principle is broken after 18 months. In practice, however, very few persons or companies may take the trouble to study his particular application, as this would involve a visit to the Patent Office or ordering copies to be made while knowing nothing about it except his name and the title of the invention. Of course in other cases someone having a hint of what he is working on may be watching and waiting for his application to be laid open. Another possibility is that some big industrial concerns or research institutions may systematically order copies of all patent applications classified in some (or all) technical patent classes when they are laid open, translate them if necessary, and use the material in the planning of their research and development work.

In regard to the patent situation the laying open to public inspection implies a novelty bar to later applications on the same invention in a number of countries, i.e., the seven countries named above and some others. This means that in these countries a patent applied for after the date of laying open could not withstand challenge in the courts. In other countries, the most important of which are Great Britain, the USA and Canada, it is still possible to obtain "strong" patents.

The "making-public" of the patent application after eighteen months could be carried a step further by publishing the applications or parts of them disclosing the inventions, by printing or other equivalent reproduction methods. This is at present done in only one of the seven countries concerned (Federal Republic of Germany), but it is planned in some of the others.

The publication of the applications will destroy the secrecy for the inventor not only in principle but also, very effectively, in practice. As for the patent situation, it will be impossible to obtain further patents in practically the whole world.

What shall an inventor in one of these seven countries do, when he has an invention idea of the kind that necessitates more than 18 months – a rather short period in this connection – for the development work up to the stage where he can accept that it should be laid open to the public? As all the countries

concerned are "first-to-file" countries, he will have to abstain from the legal protection that the patent law was meant to give him, and start his development work in secrecy with all the extra burden and risk of leakage or espionage this implies.

The day will soon come when he must turn for help with certain parts of his development work to outside people, such as scientists, designers, workshops, laboratories, etc. Now his caution is strained and he finds it necessary to file some basic patent applications in his home country, hoping that 18 months later he will have no need for further secrecy. If, as often happens, this hope proves too optimistic, he may in the 17th month find it necessary to withdraw his patent application in order to prevent it from being publicly known, thus spoiling the protection he has relied upon in his contacts with outside people.

Aside from the secrecy problem, the 18-month "making-public" period adds another complication to the patent policy problem of the inventor. As already said, the inventor – especially when his invention is covered by a series of patent applications – will usually postpone the secondary applications in foreign countries until a much later time than the priority year, in order to obtain more facts before deciding in what countries the invention has a chance of being exploited. Sometimes the selection of those countries is even postponed until he can learn the requirements of the company which is to take up the exploitation. The "making-public" after 18 months may force him to make these decisions at a much earlier stage and on very incomplete facts. This will certainly in many cases induce him "for safety's sake" to throw in some last-minute applications, which later on may turn out to be unjustified. Nevertheless, when he reaches the exploitation stage, he will probably wish that he still had a chance to add some applications, which then turn out to be desirable.

In practice, the dividing line between those wishing to have the 18-month secrecy period or longer does not run between industry and inventors but within industry itself, depending on whether the producing or the developing side within the industry in question has a predominating influence. It is well known that several companies, e.g., the pharmaceutical industry, have desired a longer secrecy period. However, the publicity problem is not so grave for industries as they have greater possibilities than the private inventor of keeping the whole development work within their own premises, deferring the patent applications until a suitable moment, although inevitably it will increase the risk of industrial espionage.

What is the source of the magic figure of 18 months?

Early "making-public" of patent applications was a new principle in the patent laws of the seven countries previously referred to. The reason for it was to improve the situation for the producing industries, and it would have meant a considerable improvement even if the shortened secrecy period had been set at, say, 36 months instead of 18.

The burden of the reform fell on the inventors and other innovation-active groups. For them it only made extra difficulties, as they could already, according to previous laws if they found it desirable, have their patent application laid open to the public at any earlier time.

In consideration of the uneven apportionment of advantages and disadvantages, it seems unfortunate – and not very fair from the community's point of view – that the established industries were represented in most of the national committees appointed to investigate and prepare the revision of the patent laws, whereas the inventors had no representative at all in any of the committees. Hence the requisite for a balanced discussion, in which both sides had a chance to present their reasons and practical experiences in order to arrive at a proper length of time with due regard to their justified needs, has been missing in the committees. Not surprisingly the deliberations in the committees resulted in the proposal for the shortest possible secrecy period.

It is also surprising that the committees have not themselves made, or tried to initiate, any inquiry or investigation concerning the practical working conditions of the inventors and their need for protection against unwarranted outsiders in the early stages of the creative work.

On the whole it has been very difficult to find the origin of the figure 18 as representing the suitable number of months for the secrecy period. The committee for revision of the patent law in the Netherlands proposed, in their preliminary report in 1956, that the patent applications should be published eight months after the search had been done, which was expected to take 18 months, i.e., a secrecy period of 18 + 8 from the filing date. In a comment on this report made by members of the Netherlands Patent Office, it was suggested that theory and practice in the Scandinavian countries and the Federal Republic of Germany be studied before deciding on the question. The committees of the Scandinavian countries in turn referred in their preliminary report in 1961 to a newly submitted proposal of 18 months in the Netherlands and to tendencies within the Common Market to restrict the secrecy period to the same number of months. And in the public discussions of the patent law revision in Germany the 18-month period was generally called the "Swedish proposal."

The committees thus seem to have attributed the introduction of the 18 months idea to each other in a vicious circle, all claiming to follow the others for the sake of uniformity. Certainly standardizing is a desirable thing, although it must always be borne in mind that at the same time it implies a bar to future changes. A proposed standard ought therefore to be well analyzed and prepared before introduction, to make sure that it will function satisfactorily for a reasonably long time ahead. Obviously this has not been done in the present case. Therefore it is urgent that the proper length of the secrecy period be reconsidered as soon as possible before it spreads to even more countries. The new length of the period ought to be based on a comprehensive analysis of its effects in practice for all parties concerned.

Summing up

A provision saying that all patent applications shall be laid open to public inspection after a secrecy period of 18 months has recently been introduced in the patent laws of 7 European countries (the Netherlands, Denmark, Finland, Norway, Sweden, Federal Republic of Germany and France). This provision represented a new principle in their patent laws, and the chosen length of the secrecy period – 18 months – has proved to involve injurious effects on the innovation-active groups of the community, that is to say, the inventors, the scientists, the inventive invention-breeding industries, and many handicraft men and small industries.

1. For a considerable proportion of inventions – including especially more significant inventions based on new principles or opening up new technical fields – the inventor needs a longer secrecy period than 18 months for a successful execution of his invention. In order not to put other inventors or industries with more personnel, technical and financial resources on his trail, the inventor will have to abstain from the legal protection which the patent law was meant to give him, and try to carry out the earlier stages of his development work without any patent protection.

2. After having filed a patent application in one country it is possible – by renouncing the priority date – to file corresponding applications in other countries as long as the first application is secret. According to the shortened secrecy period this application will be laid open to public inspection after 18 months, which in a number of countries will have the effect that patent applications after the said date will not give valid patents. The bar against applications in further countries will be still more effective if the first patent application is published by printing or any other equivalent procedure, in which case further applications are impossible in practically all countries. The new secrecy period of only 18 months therefore often necessitates a decision as to which additional countries the invention should be patented in at a premature stage of the development work, when sufficient facts for the decision are not yet available, which gives less valuable patent protection at a higher cost.

3. Although the provision for the secrecy period in the respective patent laws only lays down that the patent application shall be laid open to public inspection after 18 months, one Patent Office (Germany) has already started printing them and Patent Offices in some of the other countries are planning to follow the example. This implies that the knowledge of the invention at the said date will be spread more quickly and cheaply to a much larger number of persons and companies, and that thereafter it will be impossible to extend the patent protection to any other country.

4. The motive for introducing the new principle of an 18-month secrecy period was to improve the situation for the producing industries, and it would have meant a considerable improvement even if the shortened secrecy period had been set at, say, 36 months instead of 18. The burden of the reform fell on the innovation-active groups. In spite of this

uneven apportionment of advantages and disadvantages, which has made the length of the secrecy period a controversial question, the producing industries were represented in most of the national committees preparing the revision of the patent law, whereas the inventors had no representative at all in any of the committees.

5. No inquiry or investigation has been made concerning the practical working conditions and timetables of the inventors and other innovation-active groups, and their need for secrecy and patent protection during the early stages of the developing work. The main grounds for choosing the figure 18 seem to have been the casual reasons that this figure had been discussed in other countries, and there was a desire to introduce a common standard.

6. The patent laws in the seven countries having accepted the 18 months secrecy period are all based on the "first-to-file" principle, which means that the inventor has no legal protection for his intellectual achievements until he has filed a patent application. This automatically brings his idea to the attention of other inventors and industrial development departments 18 months later, with all the detrimental effects this may have on his current development work and on his prospects of reaping the fruits of his idea. Thereby these countries have imposed a handicap on their inventors compared to the inventors in "first-to-invent" countries (e.g., the United States of America, Canada), where the inventors may postpone their patent applications without losing their legal protection. In the present competition between different regional markets for the lead in the technical development field, such a handicap may prove harmful, not only to the individual inventors but also to the community endeavors to stimulate and facilitate inventor activities in their countries.

Western Europe has happened to get on to the wrong trail and should try without delay to find a better one. A new figure for the proper length of the secrecy period ought to be set, based on an analysis of its effects in practice on all parties concerned.

PCT/DC/16 May 25, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Article 8

It is proposed that Article 8 be revised to clearly indicate that in a case of a claim for priority, the provisions of the Paris Union are controlling and that the national law of the designated State would control only where the sole basis for the priority claim is an earlier filed national application in that same State or earlier filed international application designating only that same State.

Accordingly, it is proposed that the introductory clause of paragraph (2)(a): "Subject to the provisions of paragraphs (b) and (c)" should be deleted and in paragraphs (b) and (c) the following introductory clause should be added: "Subject to the provisions of paragraph (2)(a) ..."

Comment: Article 8 was revised in the negotiating draft of PCT/DC/4 as the result of representations at

the December 1968 Committee of Experts meeting. The purpose of the change was apparently to accommodate the "self-designation" and the "repeated designation" problem discussed at that meeting. As understood by the United States, the problem arises because the laws of many countries do not permit an applicant to claim the priority of an earlier filed domestic application. At that meeting, there did seem to be agreement that the Paris Convention permits an applicant under appropriate circumstances to claim the priority of an earlier filed foreign application but not a domestic application.

The United States agrees that the right of an applicant in a particular State to claim the priority of an earlier filed application in that State is solely a matter of the local law of that State. Applying that principle to PCT filings, the United States agrees that where an applicant attempts to claim the priority of a national application filed in a State designated in the PCT application, the recognition of the validity of the designation of that State and the effect of the priority claim is properly a matter for the national law of that State. We suggest only that paragraph 2(a) of Article 8 be revised to restate the supremacy of the Paris Convention and to avoid the suggestion inherent in the present wording of paragraph 2(a) that rights under the Paris Convention may be diminished by the PCT.

We propose the same change with regard to paragraph 2(c). Here, however, the effect is more fundamental. We believe that only where the applicant filing a PCT application must, for a claim of priority, rely upon the national filing effect of a prior PCT application designating a particular State which is also designated in the application being considered, that State may likewise govern in its domestic law the claim of priority and the effect of the second designation.

To illustrate:

PCT application number 1 designates *only* State A. PCT application 2 designates States A and B and claims the priority of PCT application 1. The claim of priority with respect to State A and the effect of the designation of State A in the second application is a matter for the domestic law of State A.

However, if both PCT application 1 and PCT application 2 designate A and B, the claim of priority must be controlled by the provisions of the Paris Convention. By virtue of Article 11(3), the first PCT application has the effect of a national filing in State A and in State B. Both of these filings are simultaneous first filings under Article 4.A(2) of the Paris Convention. Thus, State A must recognize the first PCT application as giving rise to a right of priority since it is equivalent to a regular national filing in State B. Similarly, B must recognize the claim of priority as one based on a national filing in A by virtue of the "multilateral Treaty," i.e., the PCT.

Accordingly, if Article 8(2)(c) is to be consistent with the Paris Convention, it can be applied in the case where the first filed PCT application designated *one State only*. If that State is also designated in a later PCT application claiming the priority of the first, that

State, but no others, may refuse to recognize the claim of priority.

PCT/DC/17 May 25, 1970 (Original: French)
SWITZERLAND

Proposals concerning Article 11 and Rules 5, 6 and 8

Article 11(3): This provision states that any international application fulfilling the requirements of paragraph (1) of that Article shall have the effect of a regular national filing in each designated State as of the international filing date. This is one of the fundamental Articles of the Treaty. The last part of Article 27(5), however, stipulates that “the effective date of any international application for prior art purposes in each Contracting State is governed by the national law of that State and not by the provisions of Article 11(3).” This part of Article 27(5) is a grave exception to the fundamental principles of the Treaty. We therefore propose that the last sentence of Article 27(5) be deleted and, to avoid any doubts concerning the scope of the principle set forth in Article 11(3), that the said Article be completed by the addition of the following sentence: “The international filing date shall be equivalent to the effective national filing date in each designated State.”

Rule 5.1(a)(vi): In most cases, the use or industrial manufacture of an invention is obvious and requires no special explanation such as is envisaged in Rule 5.1(a)(vi). We therefore propose to substitute for item 5.1(a)(vi) the following text: “indicate the way in which the subject of the invention can be made and used in industry, if such indications cannot be implied from those indications mentioned in the preceding items of paragraph (a).”

Rule 6.4: According to Rule 6.4(a), any claim which includes all the features of more than one other claim shall contain a reference to the other claims (for example: device according to claims 1, 2 and 3, characterized by . . .).

According to paragraph (b) of the same Rule, any dependent claim which refers to more than one other claim shall refer to such claims in the alternative only (for example: process according to claims 1 or 2 or 3, characterized by ...).

Whereas paragraph (a) permits of multiple dependency in the form of an addition, according to paragraph (d) such dependency is permissible only in the form of an alternative. There is therefore a contradiction which could be removed by altering the wording of one of the two paragraphs. Acting on the assumption that nothing should be changed in paragraph (d), we propose that paragraph (a) be drafted as follows:

“Any claim which includes all the characteristics of a preceding claim (claim in dependent form, hereinafter referred to as ‘dependent claim’) shall do so by a reference, if possible at the beginning, to the preceding claim and shall then state the additional features claimed. A series of dependent claims, each of which is

dependent upon the preceding claim, shall be permitted.”

Example

1. Device, characterized by feature A.
2. Device according to claim 1, characterized by feature B (this device includes features A and B).
3. Device according to claim 2, characterized by feature C (this device includes features A, B and C).

Rule 8.1(b): The use of the English language as a basis for the number of words in an abstract which is not in fact drafted in English is not practical.

Instead of fixing the volume in terms of a number of words, it is proposed that it be fixed from one-half to one page in accordance with the requirements of Rule 11.

PCT/DC/18 May 25, 1970 (Original: English)
SOVIET UNION

Proposals concerning a Preamble and Articles 1, 2 and 4

Preamble. There should be a Preamble, and it should read as follows:

“The Contracting States,

Wishing to make a contribution to stimulation of progress in science and technology;

Wishing to improve the cooperation among the States through securing the legal protection of inventions in a number of States party to the Treaty;

Wishing to save the efforts for applicants and national Offices in those cases where an application for the protection of invention is filed in a number of States party to the Treaty;

Desiring to facilitate and accelerate the access of general public to the information concerning the results of inventors’ activity throughout the world;

Desiring in every possible way to reduce the duplication of intellectual labor for the processing of applications in the national Offices;

Seeking perfection of procedural questions of the legal protection of inventions on the principles of the Stockholm Act of the International Paris Convention for the Protection of Industrial Property;

Agreed as follows: ...”

Article 1, paragraph (1), should read as follows:

“(1) The States party to this Treaty (hereinafter called “the Contracting States”) constitute a Union for cooperation in the filing, searching, and examination, of applications for protection of inventions, to be known as the International Patent Cooperation Union.”

Article 2 should be amended to read as follows:

“For the purposes of this Treaty and the Regulations:

“(i) *national Office* means the government authority of a Contracting State entrusted with the task of granting patents or patents and inventors’ certificates; where several States have entrusted an international authority with the task of granting patents or patents and inventors’ certificates and

the Contracting State is one of these States, “national Office” means also such international authority;

“... ”

“(v) *patent and inventor’s certificate* mean legal institutions which, for the purposes of this Treaty, are the main form of protection of inventions;

“(vii) *priority document* means the certified copy of a national application for the grant of patent or inventor’s certificate.

“... ”

Observation: Former (v) becomes (vi), whereas former (vii) becomes (viii).

Article 4, paragraph (4), should read as follows:

“(4) The name and other data concerning the inventor shall be indicated in the request in any case.”

PCT/DC/19 May 25, 1970 (Original: French)
FRANCE

Observations on the Drafts*

The observation by the Delegation of France to the Washington Diplomatic Conference concerning the drafts of the Patent Cooperation Treaty and the Regulations under the Treaty which were issued by the International Bureaux under reference PCT/DC/4 and 5 are set forth below. The Delegation of France has noted that its proposals are in accord with the proposals for amendments already presented by a number of countries, including the Federal Republic of Germany, Italy and the Netherlands.

The Delegation of France reserves the right to present other observations on the drafts of the Treaty and the Regulations during the Diplomatic Conference and to propose on that occasion the amendments which in its view would require to be made to these texts.

Naming the inventor. The compulsory naming of the inventor in the request at the time of filing the international application (Article 4(1)(iii)) seems inadvisable and may even create difficulties. On the one hand, naming the inventor may not be an obligation in some countries and, on the other hand, it is likely to give rise to difficulties when the inventor cannot be named for *de facto* reasons (e.g.: collective inventions) or *de jure* reasons (e.g.: disputes concerning ownership of the invention).

It therefore seems necessary to allow for the possibility of leaving the naming of the inventor to the national phase. The indication of the name of the inventor should not therefore be required until the expiration of the time limit of 20 months provided for in Article 22, and that Article should be modified accordingly, as should Rule 4.

The Delegation of France therefore proposes the following amendments to the above-mentioned provisions:

Article 4

(1)(iii) Delete the words “the inventor.”

“(4) The request may also contain, where necessary, the name of the inventor and the prescribed indications concerning his identity. If such particulars are not mentioned in the request, they may be communicated at a later date to the designated Offices as provided in Article 22. Failure to mention such particulars in the request or to effect such communication within the time limit prescribed in Article 22 shall have no consequence in those designated States according to the national law of which an indication of the inventor’s identity is not, generally or under the circumstances of the particular case, required in a national application.”

Article 22

“(1) The applicant ... thereof, *communicate, where necessary, the name of the inventor and other prescribed data concerning his identity if such indications have not already been given in the said application, and pay the national fee (if any) ... priority date.*”

(2) No change.

(3) No change.

Rule 4

4.1(a)(iii) “indications concerning the applicant and the agent (if any)”

4.1(b)(iv)[new] “*indications concerning the inventor*”

“4.6 The Inventor

If the request contains indications concerning the inventor:

(a) *it shall indicate the name and address of the inventor or, if there are several inventors, of each of them.*”

(b) No change.

(c) No change.

Article 8: Claiming Priority

For the reasons stated by the Government of the Federal Republic of Germany (PCT/DC/7), which it seems pointless to repeat here, the Delegation of France considers that it would be advisable to regulate in the Treaty the conditions and effects of claiming the priority of an earlier national or international application filed or having effect in one or more designated States.

For that purpose, it would appear that Article 8 should be modified as follows:

Paragraphs (1) and (2)(a): No change.

Paragraph (2)(b)

“Where the priority of one or more national applications filed in a designated State is claimed in an international application containing the designation of that State, such national applications must be withdrawn within a time limit fixed by the national law of the said State. If withdrawal is not effected within such time limit, the designation of the said State shall be considered not to have been made.”

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

Paragraph (2)(c)

“Where the priority of one or more international applications is claimed in a later international application designating States already designated in the earlier application, the earlier designation of those States shall be withdrawn within one month from the filing date of the later international application. If withdrawal is not effected within that time limit, the designation of the said States in the later application shall be considered not to have been made.”

Article 13: Availability of Copy of the International Application to Designated Offices

It should be noted that an Office which does not know that it has been designated cannot make the request provided for in Article 13(1). The present wording, which is confusing, should be modified in order to show that the request is made prior to the designation (cf. Rule 31). The Delegation of France proposes that Article 13(1) should be amended to read:

“(1) Any *national Office* may ask the International Bureau to transmit to it a copy of the international application containing the designation, prior to the communication provided for in Article 20.”

PCT/DC/20 May 25, 1970 (Original: English)
ISRAEL

Proposals concerning Article 1 and a new Chapter (Chapter IIIbis)

In Article 1, after “patent application” *add* “and informing about patents and technical information contained therein.”

Before Chapter IV, add, as Chapter IIIbis: INFORMATION CENTERS, the following text:

“Every International Searching Authority shall, upon demand made to it in a form prescribed in the regulations and upon payment of a fee prescribed, give information pertaining to:

- (a) patents issued and still valid in any country member of the Union;
- (b) technical information concerning any of the subject matter included in patents;
- (c) the name of the owner of the rights of any patent in any territory and conditions for licensing the patent in each country, if available;
- (d) any know-how published in connection with a patent.

The obligation to supply the information as prescribed will only apply three years after the assembly will so decide.”

PCT/DC/21 May 25, 1970 (Original: French)
FRANCE

Observations on the Drafts*

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

International Search

In its present wording, paragraph (4) of Article 15 is a partial repeat of paragraph (2) and fails to indicate how the International Searching Authority can attain its objective. Furthermore, the Delegation of France is of the opinion that the possibility should be avoided of allowing this paragraph to be construed as permitting a search restricted solely to the minimum documentation prescribed under Rule 34.

The following amendments should therefore be made to Article 15:

“(1) Each international application shall be the subject of international search.”

(Delete the rest of the sentence.)

(2) No change.

“(3) International search shall be made on the basis of the claims, *with due regard to the description and the drawings.*”

(4) In carrying out the international search, the competent Authority referred to in Article 16 shall consult the documentation in its possession, which shall include at least the documentation specified in the Regulations.”

(5) No change.

The International Searching Authority

In view of the functions of the Committee for Technical Cooperation provided for in Article 52, it would be extremely useful if the Assembly could seek the Committee’s advice on the occasion of the appointment of a national or international body as International Searching Authority as provided in Article 16 (this remark also applies, *mutatis mutandis*, to International Preliminary Examining Authorities as provided in Article 32).

One might think that the Committee, in implementation of Article 52(5), could address such advice on its own initiative. It seems preferable, however, to make express provision therefor in Article 16. The following sentence would then be added to the end of paragraph (3)(e) of Article 16:

“(3)(e) ... *The Assembly shall also seek the advice of the Committee for Technical Cooperation provided for in Article 52.*”

National Requirements

A number of countries have already said that they were not in favor of the text proposed for paragraph (5) of Article 27. The Delegation of France entirely agrees with the attitude of those countries in this respect and considers, like them, that the last sentence of Article 27(5) is at variance with Article 11(3), which states that any international application fulfilling the requirements of paragraph (1) *shall have all the effects of a regular national application* in each designated State *as of* the international filing date.

Article 11(3) therefore establishes a total assimilation of the international filing to the national filing in the designated States, which means that the international application must have all the effects, *without exception*, of a regular national application. In particular, the “effective” date of any international application for the purposes of prior art in each

Contracting State must be that provided by the national law of that State *for regular national applications*.

The wording of the last sentence of Article 27(5), by giving States the right to fix another “effective date” (for example, the date of the transmittal provided for in Article 22) for prior art purposes, would cancel the effects of Article 11(3) and transform the international filing into a mere priority right.

As a result, applicants might be induced to abandon the PCT route in countries discriminating in this way between international and national filings.

It would therefore seem essential to delete this exception to the basic rule of the PCT, not only from the strictly legal point of view but also for the success itself of the PCT plan.

Withdrawal of Demand or Election

The purpose of the amendment proposed for Article 37(4) is to fix *in principle* that, in cases of withdrawal of the demand for preliminary examination or of the election, the international application should be treated as if the demand for preliminary examination or the election had not been made. Thus, if the withdrawal is effected before the expiration of the time limit prescribed in Article 22, it should have no effect on the validity of the international application and the designations, provided the applicant observes the provisions of Chapter I of the Treaty and, in particular, those of Article 22. If the withdrawal is effected after the expiration of that time limit, the international application should be considered withdrawn, unless more liberal provisions are provided in the national law.

Furthermore, it seems preferable, as proposed for Article 8, to avoid as far as possible the need for Contracting States to adopt special legislative provisions for the application of the PCT.

With this intention, the Delegation of France proposes the following amendment to Article 37(4):

“(a) If withdrawal of the demand for international preliminary examination or of the election of a State is effected prior to the expiration of the applicable time limit under Article 22 and provided the provisions of the said Article are observed, such withdrawal shall not be considered to be withdrawal of the international application or of the designation of that State.

(b) If withdrawal is effected after the expiration of that time limit, such withdrawal shall, unless the national law of the elected State provides otherwise, be considered to be withdrawal of the international application or of the designation of that State.”

Regional Patents and Regional Patent Treaties

The Netherlands Government has made a proposal for amendment to Article 44 (PCT/WGR/5) with which the Delegation of France is in agreement on substance. The latter reserves the right to clarify its position in this respect at the Diplomatic Conference.

Committee for Technical Cooperation

Documentation search has been organized in the Treaty – at least, for the immediate future – on the principle of decentralization of search bodies.

As already indicated by the Italian authorities (PCT/WGR/5), the Delegation of France considers, however, that the solution of a centralized search, which seems the best solution, should be examined now. It is therefore of the opinion that one of the tasks of the Committee for Technical Cooperation should be, in accordance with the aim fixed for that Committee in paragraph (3) of Article 52, to commence the study of such a solution in the light of the experience to be gained from the application of the Treaty.

With this aim in view, it is suggested that the following amendment might be made to Article 52(3):

(3)(a) “The aim of the Committee...” (no change).

(i) No change.

(ii) No change.

“(b) The Committee shall also examine the conditions in which a centralized search could be made by one single body. It shall report on this matter to the Executive Committee.”

The Description: (Rule 5.1(a)(vi))

While it is generally accepted that an invention, to be patentable, must have an industrial character or be industrially applicable, this condition is a requirement of substantive law.

Consequently, just as the definition of “non-patentable” inventions is given in Rule 39 only for the purposes of documentation search, the definition of industrial application should be given only for the purposes of preliminary examination (Article 33).

The Delegation of France proposes therefore to make *item (vi) of Rule 5.1(a) entirely optional* for the applicant; this item should incidentally refer only to the general notion of “industrial application” without providing any exact and restrictive definition, so as to bring it into line, at the same time, with Article 33.

It should be noted further that, in a great many cases, the industrial character or industrial application of the invention is obvious and requires no special explanations under a separate heading.

The following text could therefore be substituted for item 5.1(a)(vi):

“(vi) contingently, indicate the possibilities of industrial application of the invention.”

PCT/DC/22
AUSTRALIA

May 26, 1970 (Original: English)

Proposal concerning Article 6

In Article 6, omit the words “subject to later amendments.” Comment: The meaning of the words proposed to be omitted is not clear and could be interpreted as an invitation to an applicant to defer an accurate definition of the invention to some later date.

PCT/DC/23 May 26, 1970 (Original: English)
POLAND

Proposals concerning Articles 9 and 27, and Rules 4, 5, 44, 64, 70 and 71

Amend Article 9(1) to read as follows:

“(1) The international application may be filed by any resident or national of a Contracting State who, according to the provisions of the Paris Convention and the national law of the Contracting State of his nationality or residence, has the right to file an application in any of the Contracting States.”

Comment: The above amendment will facilitate the application of the provision of the Treaty in various legal systems of the Contracting States.

Delete the last sentence of Article 27(5).

Comment: The Polish Delegation is of the opinion that the decision included in this statement allows too much freedom in dealing with international application by individual Patent Offices, introduces uncertainty in mutual relations and is in disagreement with the aims of the Treaty.

Delete Rule 4.6(c).

Comment: The Delegation of Poland does not see sufficient reasons to indicate in the international application different persons as inventors for different designated States. In principle this is a matter of fact that a particular person is the inventor and it does not depend on the State which grants a patent.

Add new provisions to Rule 4.10, reading as follows:

“(e) Where the priorities of several earlier applications are claimed, the request shall contain the statement indicating consecutive numbers of the patent claims of the international application for which the particular priority dates are claimed in the international application. For one claim, only one priority date can be claimed.

(f) If, according to the national law of the designated State, the statement referred to in paragraph (e) is not required, the lack of such statement has no effect in that State.”

Comment: The Polish Delegation is of the opinion that the statement, made by the applicant, indicating for which of the particular claims the particular priority dates are claimed prevents difficulties and obscurity during the examination of applications.

Add new provisions to Rule 5.1(a), reading as follows:

“(iii) contain a critical analysis of the background art and define, on that base, the aim of the invention;

(iv) define the technical problem which is solved by the invention;”

Item (iii) of Rule 5.1(a) should become item (v) and should read as follows:

“(v) disclose the invention, as claimed, in such terms that the solution of the technical problem can be understood and state the advantageous effects of the invention with reference to the background art;”

Items (iv), (v) and (vi) of Rule 5.1(a) should become items (vi), (vii) and (viii).

Comment: The Polish Delegation is of the opinion that the critical analysis of the background art, statement of the aim of invention and statement of the technical problem which is solved by the invention, help to understand the invention, make the examining of the application more effective and cause inventions to be more useful.

Rule 44.3 should read as follows:

“*Copies of Cited Documents*

(a) On specific request, the International Searching Authority shall send to the applicant, or designated Office or elected Office a copy of any document cited in the international search report and indicated by the applicant or the Offices. The specific request shall be filed to the International Searching Authority not later than 7 years from the date of international application.

(b) The International Searching Authority may require that the interested applicant or designated Office or elected Office pay to it the cost of preparing and mailing of the copies. The level of the cost of preparing of the copies shall be established in the agreement, referred to in Article 16(3)(b), concluded between the International Searching Authorities and the International Bureau.”

Rule 71.2 should read as follows:

“*Copies of Cited Documents*

“(a) On specific request, the International Preliminary Examination Authority shall send to the applicant or elected Office a copy of any document cited in the international preliminary examination report and indicated by the applicant or elected Office, which has not been cited in the international search report. The specific request shall be furnished to the International Searching Authority not later than 7 years from the date of the international application.

(b) The International Preliminary Examination Authority may require that the interested applicant or elected Office pay to it the cost of preparing and mailing of the copies. The level of the cost of preparing of the copies shall be established in the agreement, referred to in Article 16(3)(b), concluded between the International Preliminary Examination Authority and the International Bureau.”

Comment:

1. One of the aims of the PCT program is to provide facilities for granting “strong” patents in those of the Contracting States which, for example, do not possess extensive collections of patents and other technical documents and have not a sufficient number of experts for searching and examination of patent applications.

The Polish Delegation is of the opinion that the international searching and also the international preliminary examination are not sufficient for reaching that aim, though they are useful. A “strong” patent is one which is granted upon all relevant

provisions of the national law of the Contracting State (see Article 27(5) of the Draft Treaty).

Therefore, according to the opinion of the Polish Delegation, the PCT plan should provide additional facilities for the national phase of the examination of patent applications. The availability of copies of documents cited in the international searching reports and the international preliminary examination reports appears to be one of those facilities.

Where the document cited in the said reports is not available, the burdensome doubt concerning the patentability of the invention will exist. That doubt does not constitute any advantage either for the applicant or for the Contracting State.

2. The Polish Delegation wishes to express its conviction that the manpower and organization problems which may arise in the International Searching Authorities or in the International Preliminary Examining Authorities because the copies of the cited documents are to be sent can be overcome.

Practically, many of the documents cited in the reports will be in the possession of the national Office or will be easily obtainable by their own means.

We hope that the specific requests sent to the International Authorities will constitute a small amount of the cited document, but important for interested Offices or applicants.

3. The Polish Delegation has considered the new Rules 44.3 and 71.2 proposed by the Study Group in Geneva (March 9 to 20, 1970) and is of the opinion that those proposals are insufficient and do not meet the present suggestions of the Polish Delegation.

Rule 64.2 should read as follows:

“Earlier Non-written Disclosures

In cases where making available to the public occurred by means of an oral disclosure, use or exhibition before the relevant date as defined in Rule 64.1(b) and the date of that disclosure is indicated in a written disclosure which has been made available to the public after the relevant date, the disclosure shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such non-written disclosure in the manner provided for in Rule 70.10.”

Rule 70.10 should read as follows:

“Earlier Non-written Disclosures

Any disclosure referred to in the report by virtue of Rule 64.2 shall be mentioned by indicating the fact that it is an earlier non-written disclosure, as well as the date on which the written disclosure referring to the earlier nonwritten disclosure was made available to the public and the date on which the earlier non-written disclosure occurred in public.”

Comment: The Polish Delegation is of the opinion that Rule 64.2 is analogous to Rule 33.2 and, from the point of view of harmonizing the Regulations, Rule 64.2 should be amended accordingly.

PCT/DC/24 May 26, 1970 (Original: English)
INTERNATIONAL PATENT INSTITUTE

Observations concerning Article 16

As demonstrated by the explanatory notes on Articles 16 and 32 of the Draft of the Patent Cooperation Treaty, the question is not solved as to whether there should be one or several International Searching Authorities, and one or several International Preliminary Examining Authorities.

In this connection, it should be recalled that the interested circles and a great number of States have shown their preference for an international search and a preliminary examination carried out by a single international body placed under the authority of member States and open with equal rights to all the signatories of the PCT. Though it has appeared that such a system of centralization combined if necessary with a technical deconcentration can be technically achieved,¹ such a solution was not acceptable for other reasons. Nevertheless centralization was considered as a desirable aim at least in the distant future. This view is reflected in BIRPI document PCT/DC/2, paragraph 27 *et seq.*

Many delegations, when they were invited to formulate general observations, noticed that Articles 16 and 32 and Rules 35 and 59 of the PCT (PCT/DC/4 and 5) correspond to the institution of a decentralized system, the only question open being the identification of the authorities to be vested with those functions.

In order to harmonize the principle formulated in BIRPI documents and the Articles proposed to the Conference, it would be preferable to make an allusion to the aim of the Treaty even if it cannot be achieved in the near future. By doing so satisfaction would be given to many delegations. It is obvious that the Assembly should be given the task of appointing national Offices as Searching Authorities provided they have the technical qualifications required by the Treaty. At the same time reference should be made to the *Institut International des Brevets* (International Patent Institute) in The Hague.

PCT/DC/25 May 26, 1970 (Original: English)
UNITED KINGDOM

Proposals concerning Articles 11, 12, 22, 28, 33, 34, 35, 41, 44 and 57

In Article 11(3), delete the words: “fulfilling the requirements of paragraph (1).”

In Article 12, delete paragraph (3)(b).

In Article 22(3), add: “or intergovernmental authority” *after the words* “Contracting State.”

The same amendment is considered necessary in Articles 24(2), 28(3), 39(1)(b) and (3), and 41(3).

¹ The production of the IIB in 1971 will rise to 30,000 searches and the yearly increase of the potential amounts by 6,000. It is planned to create in the near future decentralized agencies in Italy and Spain.

In Articles 28 and 41, add to paragraph (2) the words: “unless the national law of the designated (elected) State so allows.”

Article 33(1) should refer to “the main objectives.”

Article 34(2)(c) should read: “The applicant ... unless such Authority considers that ...”

Article 34(3)(a) and 4(a) should read: “If the International Preliminary Examining Authority considers that ...”

In Article 34(4)(a), add a new item (iii), reading as follows:

“(iii) The international application contains claims which have not been searched.”

Article 35(2) should read as follows: “Subject to the provisions of paragraph (3), the international preliminary examination report shall (a) state, in relation to each claim, whether it appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in Article 33(1) to (4), and shall cite the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require and (b) include such other observations as the Regulations provide for.”

Article 35(3)(a) should read as follows: “If, at the time ... report, the International Preliminary Examining Authority considers that any of ... It shall not contain any statement or observation as provided in paragraph (2).”

Article 35(3)(b) should read as follows: “... the statement and observations ... it shall contain the statement and observations as provided in paragraph (2).”

Article 44(2) should read as follows: “References in this Treaty and the Regulations to the national law of a designated or elected State shall be construed as including references to an international treaty providing for the grant of regional patents and to which the said State is a party.”

In Article 57, add a new paragraph (3), reading as follows: “The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property shall apply to this Treaty.”

PCT/DC/26 May 26, 1970 (Original: English)
UNITED KINGDOM

Proposals concerning Rules 6, 13, 46, 70 and 91

Rule 6.4(b) should read as follows:

“Any dependent claim, when considered in relation to a particular claim to which it refers, shall be construed as including all the limitations contained in that claim.”

In Rule 13.2, the square brackets should be deleted.

Rule 46.1 should read as follows:

“The time limit referred to in Article 19 shall be two months from the date of transmittal of the international search report to the International Bureau and to the applicant by the International Searching Authority, if said date is not earlier than the expiry of 15 months from the priority date;

otherwise the time limit referred to in Article 19 shall expire at the end of 17 months from the priority date.”

In Rule 70.8, delete subparagraphs (ii) and (iii).

In Rule 91.1, paragraphs (d)(ii) and (iii) should read as follows:

“(ii) of the International Searching Authority, if the error is in any other part of the international application, and the request for rectification is presented prior to the notification of a declaration under Article 17(2)(a) or the establishment of the international search report.

(iii) of the International Preliminary Examining Authority, if the error is in any paper submitted to that Authority, and the request for rectification is presented prior to establishment of the international preliminary examination report.”

PCT/DC/27 May 26, 1970 (Original: English)
JAPAN

Proposal concerning Article 29

For the purpose of protecting the applicant’s right in connection with the international application, it is proposed that a provision to the following effect should be inserted in Article 29(1): “A State that does not provide for reservation by PCT Article 60(3)(a) must guarantee to the applicant a right to provisional protection by stipulating it in the national legislation.”

Comment: By the current text of the Draft, when a State with no provision in the national legislation for the right of provisional protection for the applicant does not also provide reservation by PCT Article 60(3)(a) (reservation for international publication after the expiration of 18 months from the priority date), an international applicant will have to have his application published to the world (international publication) in the language of the international publication after the expiration of 18 months from the priority date without any protection in any State. And this, we think, would be detrimental to the interest of such applicant.

PCT/DC/28 May 26, 1970 (Original: English)
AUSTRALIA

Proposal concerning Article 14

Article 14(4) should be replaced by the following two paragraphs:

“(4) If, after having accorded an international filing date to the international application, the receiving Office finds at any time that the application should not have been accorded a filing date for reasons of residence or nationality (Article 11(1)(i)), it shall inform the International Bureau.

(5) Upon receiving the information referred to in paragraph (4), the International Bureau shall inform each designated State, and each State so informed shall have the right to deem such an application void.”

Comment: The existing paragraph (4) is thought to be unduly harsh in respect of the remaining matters listed under Article 11(1) which should be readily obvious upon the examination required by the receiving Office.

PCT/DC/29 May 26, 1970 (Original: English)
NETHERLANDS

Proposal concerning Article 11

Article 27(5), last sentence, is seriously undermining the fundamental principle of Article 11(3) and therefore the provision seems not only to be contradictory to the spirit of the Treaty, but open also the possibility of interfering seriously with the interests of applicants which the present Treaty is intended to serve. A number of delegations, amongst which the Netherlands Delegation, propose the deletion of Article 27(5), last sentence.

In addition to that proposal, the Delegation of the Netherlands proposes to add to paragraph (3) of Article 11 the following: "which shall be considered to be the actual filing date in each designated State."

This addition to paragraph (3) of Article 11 would exclude any doubt about the principle of that Article, with respect also to other questions than those dealt with in the last sentence of Article 27(5).

PCT/DC/30 May 26, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Article 29

It is proposed that, in Article 29, paragraphs (2) and (3) be omitted and that, in paragraph (1), the words "subject to the provisions of paragraphs (2) and (3)" be omitted.

PCT/DC/31 May 26, 1970 (Original: English)
CANADA

Proposals concerning Articles 16 and 52

The Canadian Delegation, as its opening statement indicated, considers it desirable that the Treaty should make clear that multiple International Searching Authorities are a temporary solution to the searching problem and that a single International Searching Authority is the ultimate solution.

It accordingly proposes that the first phrase of *Article 16(2)* read as follows:

"If, pending the establishment of a single International Searching Authority, there are several International Searching Authorities ...";

that, in *Article 52(3)*, the following subparagraph be inserted after subparagraph (i):

"(ii) to the constitution of a single International Searching Authority";

that subparagraph (ii) be renumbered as (iii), and that, in the first line, "where" be changed to "*so long as*."

PCT/DC/32 May 26, 1970 (Original: English)
AUSTRIA, BELGIUM, DENMARK, FRANCE,
GERMANY (FEDERAL REPUBLIC), IRELAND,
ITALY, NETHERLANDS, SPAIN, SWEDEN,
SWITZERLAND, UNITED KINGDOM

Proposal concerning Article 27

Delete the last sentence of Article 27(5).

PCT/DC/33 May 26, 1970 (Original: English)
ARGENTINA

Proposal concerning Articles 13, 14, 18 and 19

In Article 13(2), omit "after the expiration of one year from the priority date."

The Argentine Delegation considers inconvenient the extension of the terms in which the designated Offices can analyze the international patent applications.

This interest is referred not only to the object of such application but also affects the national applications that could be delayed because of the international application.

The Argentine Delegation does not believe a delay of 12 months to be necessary and considers it would not affect the stipulations of the Paris Convention.

In Article 14, add as paragraph (5):

"The withdrawal of the application *forfeits* the date of the filing of the international deposit."

This proposal is meant to represent the spirit which inspired the Article. However, its importance requires an explicit mention.

In Article 18, add as paragraph (4):

"The designated Offices may require a translation from the applicant and legislate on the responsibilities which originate from the mistakes that it may contain."

In Article 19(2), add:

"The amendments shall not go beyond the disclosure in the international application as filed, in accordance with the legislation of the designated Offices."

This proposal is founded on the comments on paragraph (2) in the Spanish version of PCT/DC/4.

PCT/DC/34 May 26, 1970 (Original: English)
BRAZIL

Proposals concerning Articles 14 and 16 and Rule 43

In Article 14(2), add the following words: "without by so doing changing the original international filing date."

In Article 16(3), insert as a new subparagraph, between subparagraphs (c) and (d), the following text:

"Any Contracting Party whose national Office fulfills the minimum requirements, specially as to manpower and documentation, may be the seat of an International Searching Authority."

In Rule 43.5(a), add the following sentence: “Whenever the report is to be transmitted to an applicant or designated Office of a developing country it shall also contain the relevant transcripts of such documents.”

Rule 43.5(c) should read as follows: “Citations and transcripts which are not relevant to all the claims shall be made in relation to the claim or claims to which they are relevant.”

In Rule 43.5(d), add the following sentence: “This provision shall not apply whenever the international search report is to be transmitted to an applicant or a designated Office of a developing country.”

Comments on the changes proposed in Rule 43

The citations of the documents considered to be relevant are not sufficient for the designated Offices in developing countries to assess with any degree of certainty the accuracy of the report. Therefore, whenever the international search report is to be transmitted to an applicant or to a designated Office in a developing country, it should include, in addition to the mere citation, transcripts of the documents considered to be relevant. This would be of considerable help to the applicant, who would be better informed in case he needed to modify his claims, and it would also benefit the Office in the developing country through the constant improvement and up-dating of their records.

PCT/DC/34 Rev. and PCT/DC/34 Rev. Corr.

May 27, 1970 (Original: English)
ALGERIA, ARGENTINA, BRAZIL, IVORY
COAST, MADAGASCAR, TOGO

Proposal concerning Article 16

In Article 16(3), insert, as a new subparagraph, between subparagraphs (a) and (b), the following text:

“Any Contracting Party whose national Office fulfills the minimum requirements, specially as to manpower and documentation, may be designated as seat of an International Searching Authority.”

PCT/DC/35 May 27, 1970 (Original: English)
AUSTRALIA

Proposals concerning Articles 19 and 29

In Article 19(1), replace the word “amend” by “propose amendments to.”

Comment: Since the International Bureau will not have the facilities to check allowability of amendments as to clarity or compliance with paragraph (2), the status of such amendments can only be that of a proposal, until finally checked or allowed in the national phase.

In Article 19, add, as a new paragraph, the following text:

“(3) Where proposed amendments have the effect of broadening the scope of the claims so that the result of the search may no longer represent a true statement of the prior art, a designated State

shall have the right to charge a fee for carrying out a fresh search.”

Comment: It is hoped that in the case of international applications, national Offices would be able, because of the search provided, to reduce the amount of fees payable. It would be inequitable if, having made such a provision, the result of a search was destroyed.

In Article 29, add, as a new paragraph, the following text:

“(4) The national law of any designated State may provide that the effects provided for in paragraph (1) shall be applicable only from such time as the international publication in the prescribed form is received in that State.”

Comment: The Article as drafted appears to apply the principle that third parties should not be subject to rights in respect of unavailable or untranslated documents. The proposed new paragraph is a logical extension of this principle.

PCT/DC/36 May 26, 1970 (Original: English)
PACIFIC INDUSTRIAL PROPERTY
ASSOCIATION (PIPA)

Observations on the Drafts *

The Pacific Industrial Property Association has carefully studied the Drafts of the Patent Cooperation Treaty and Regulations as reflected in PCT/DC/4 and PCT/DC/5 and has also considered the report of the preparatory study group on these Drafts which met in Geneva from March 9 to 20, 1970, as set forth in PCT/WGR/17.

Taken as a whole and particularly if modified according to the amendments agreed upon by the working group, the Drafts constitute a satisfactory arrangement for international cooperation in the granting of patents and, with the exceptions with respect to which we comment below, we support the Drafts with the proposed modifications. In the following, we state certain of the issues left unresolved and suggest solutions which we feel would be satisfactory.

Article 3(4) (proposed in PCT/ WGR/17) and Rule 8 deal with the substantive effect of the abstract accompanying the international application. We fully support the proposal of Article 3(4) adopted by the working group in strengthening the understanding that the abstract is for information purposes only and shall have no effect on the scope of protection sought by the applicant under the Treaty.

Article 4 and Rule 4.6 raise the question whether the inventor must be named at the time of filing of the international application. Considerable feeling has been expressed in foreign circles that naming of the inventor should not be required until the international application has reached the designated Offices. We feel that the solution set forth in the existing Drafts is preferable. If the national filing effect of Article 11(3) is to be admitted in countries such as the United States and Japan in which naming of the inventor is required,

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

elimination of this information in the international application would not be acceptable. Obviously, and as provided in the present Drafts, the effects of naming or failing to name the inventor at this stage should, however, be determined by the national laws of the designated countries.

Article 6 and Rule 6.1 involve the question whether or not more than one claim should be permitted for the same invention. The Drafts answer this question in the affirmative and we support them in this regard, noting only that change in Japanese law will be advisable before Japan can adhere to the Treaty.

Article 6 and Rule 6.4 raise the question of dependent claims and attempt to protect the applicant for an international application from different requirements in different designated countries. The solution proposed in PCT/WGR/17 (permitting dependent and multiple dependent claims with the latter claims permitted only if the dependency is in the alternative) represents a satisfactory approach. However, we question the desirability of permitting claims of any type (i.e., single or multiple dependent claims) to depend upon multiple dependent claims. We feel that the complications inherent in such a practice should be avoided by a suitable further limitation in Rule 6.4.

Article 17 and Rule 13 concern the related question of unity of invention. Alternative A of Rule 13 modified as set forth in PCT/WGR/17 is favorable to the applicant and represents a satisfactory solution to this problem. For this reason, we support it. The whole issue is really a question of fees and of the number of applications which must be filed to obtain protection for closely related inventions. Any solution which will tend to reduce fees and make the national practices in this area more uniform is most desirable.

Article 9(2) raises the question whether the Assembly should be permitted to allow non-Paris Union members to file international applications. We feel that the benefits of this Treaty should be extended only to nationals or residents of States which, though not Contracting States, are members of the Paris Union. This would ensure reciprocity in national filing rights and encourage member States to join the Paris Union.

Articles 11(3) and 27(5) involve the question whether incidental and/or unclaimed disclosure appearing in international applicants should be effective in a designated State as prior art as of the international application date, regardless of contrary substantive law in such designated State. We believe that this issue should be resolved in a way which does not contravene national substantive law. United States of America law does not discriminate among those using the United States of America patent system, whether they be United States of America or foreign nationals. (A foreign national obtains the same rights as a United States of America national whenever the United States of America application is actually filed in the United States of America). We note that if the foreign applicant desires the defensive effect of an actual filing date in the United States of America earlier than the 20th month after his priority date, Article 23(2) of the Treaty furnishes an opportunity for earlier processing in the United States of America without

sacrificing the operation of the Treaty in other designated countries. Seen from the practical viewpoint of patent users, this issue has perhaps been overemphasized. Whatever resolution of the issue is adopted, it would seem to be a benefit to both foreign and domestic users of the United States of America patent system about as often as it is a detriment.

Article 13 and Rule 31 raise the question whether a designation fee paid by the applicant should be higher for those countries which request early transmittal of copies of the international application. The present Drafts permit contracting countries to place blanket orders for copies of all international applications in which the country is designated. Such early copies are justified only when the designated country, for its own purposes and with respect to specific applications, wishes earlier information than is normally provided under the Treaty. We feel that the cost of such earlier copies should be borne by the national Offices requesting them, and that it is unfair to tax all applicants designating a particular country for the cost of a multitude of copies of applications which may be of no practical use to the countries which receive them.

Article 15(3) and Rule 33.3, particularly as proposed to be modified by the working group, raise the question of the scope and orientation of the international search. Much of the attraction of the availability of the international search at an early date resides in the promise implicit in the Drafts that the search will cover all subject matter which is claimed or reasonably could be claimed in the international application as amended. We would be concerned if the international search were to be limited to the subject matter originally claimed in the international application as filed.

Article 15(4) and Rule 34 (amended as proposed by the working group) dealing with documentation raise the question of whether the provisions for the preparation and inclusion of translated abstracts of Japanese and Russian language documents are sufficient. The proposed solution for including such documents at a fixed time and only after English language abstracts are available does not appear to us to be sufficient. We feel that the Treaty should include mechanisms for ensuring the timely availability, the quality and the uniformity of such abstracts. Otherwise, Japanese or Russian language documents may be included in the documentation at the whim of independent or private abstracting services and whether or not the abstract which becomes available accurately reflects the contents of the document.

Article 18(1) and Rule 42 involve the question whether the time limit for the international search should be fixed absolutely. We recognize the difficulty, where there are multiple searching authorities with different case loads, in determining the time required for searching until some working experience has been gained under the Treaty. Only then will the impact of PCT applications be known. On the other hand, we cannot overemphasize the importance to applicants of having the search report and references at hand in sufficient time to permit

careful amendment of their PCT application during the international phase. The problem may be somewhat alleviated by Rule 44.3 of PCT/WGR/17 providing for the transmittal of copies of the references to the applicant along with the search report. However, we also advocate that provisions be included in the Treaty for guaranteeing to applicants sufficient time to make amendments during the international phase and preferably prior to international publication.

PCT/DC/37 May 27, 1970 (Original: English)
INTERNATIONAL ASSOCIATION FOR THE
PROTECTION OF INDUSTRIAL PROPERTY
(AIPPI)

Observations on the Drafts* (Addendum to document PCT/DC/9)

Our Association is the oldest international private organization of scholars, lawyers and expert practitioners in the field of patents, trademarks and other industrial property rights. Its activities have expanded over three-quarters of a century. It now includes nearly 4,000 members representing 33 National Groups in as many countries, and also individual members from another 20 countries.

AIPPI has been for all these years the active promoter of progressive development and harmonization of industrial property protection throughout the world. The successive revisions and improvements of the Paris Convention have for many years been based on resolutions adopted at meetings and congresses of this Association.

In view of all this, it is perhaps unnecessary to indicate the great interest our Association takes in the Patent Cooperation Treaty submitted to this Conference. Our members are deeply involved in the problems of the international protection of inventions and are anxious that the system of international cooperation embodied in the proposed Treaty should succeed.

There are, of course, doubts: doubts arising from the plurality of Searching Authorities rather than a single central searching organization; doubts as to whether the time schedule provided for in the Draft for the issue of the search report, for amendments, etc., might not be in serious difficulty; doubts as to whether the principal advantage offered by the PCT of giving to the applicant an appreciably longer time in order to make up his mind about foreign filings will actually help in view of the relative inflexibility of the original specification, the limited possibility of amendments, etc.

As presented, the Draft Treaty is finding favor in the eyes of a number of national Patent Offices and government representatives, but the real point is whether the Treaty will find favor with the ultimate customer to whom it is directed, i.e., the inventor and applicant for foreign patents, or whether this customer may not prefer to "go national," bearing in mind the

above doubts, the costs, the time, and the effort required for compliance with the new Treaty.

The PCT at its best is not an ideal system. It is a step, however, toward the desirable goal of international cooperation, which must be supplemented by further efforts at harmonization of law. The PCT may indeed founder under the weight of its own complication, its built-in international bureaucracy superimposed on existing national bureaucracies. Our Association pleads for efforts to minimize this danger by allowing for some flexibility through private individual handling. The previous Drafts have given such a chance to the system, but this has been eliminated presumably under pressure of government representatives.

We are referring particularly to Articles 12 and 20.

Article 12 originally provided for an option to an applicant, *if he wished* and he so requested, to obtain the record copy of the international application from the receiving Office, and forward it himself or through his agent to the International Bureau. This was important in permitting the applicant to maintain control of his application and to deal directly with the Bureau without having to rely on action by the receiving Office. The present text of Article 12 no longer provides for such option. Only Rule 22.2 provides for the possibility of such an option being granted, but this is hedged in with numerous conditions:

(a) The receiving Office must issue regulations allowing this option to the applicant.

(b) The International Bureau must be advised by the receiving Office that provision has been made to that effect in the national regulations.

(c) The applicant must exercise such option through a written notice, which he must file together with the international application. If he fails to comply with this requirement, he no longer enjoys the option.

(d) The applicant must indicate whether he will collect the record copy at the receiving Office himself or whether he wishes it to be mailed to him. Complex problems arise in connection with this, as set out in Rule 22.2(d).

(e) If the receiving Office fails to comply with the applicant's declaration and request, then the applicant must transmit a provisional record copy to the International Bureau, and must pay a special fee of \$25.00 for this.

Thus, everything is done to make the option of the applicant to transmit the international application to the Bureau as difficult as possible. It would have been so much simpler to provide that the applicant may present an extra copy of the international application to the receiving Office to be certified by that Office so that he can transmit it directly to the Bureau.

The right and responsibility of the applicant to handle his own transmittal of the record copy to the Bureau is eliminated and the inflexibility of action by the receiving Office only is imposed. Thus, the applicant is exposed to the following dangers:

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

(1) that the receiving Office may fail to have the record copy reach the Bureau before the expiration of the 13th month;

(2) that the notification by the International Bureau may not reach him in time so that he may act under Rule 22.1(b);

(3) that the application may be deemed withdrawn under Article 12(3)(a).

Equally serious is the absence of an option for the applicant to communicate the international application to each designated Office under Article 20. After the applicant has received his search report and has perhaps amended the claims of the international application, the communication of the international application to the designated Offices is taken out of his hands but it is just at that moment that the applicant must have the option, if he wishes, to make the communication himself. He may decide to drop the application; he may decide to communicate different international applications; he may file in certain of the originally designated countries; he may file at the same time a translation of his international application in countries where this may be called for by the national Office; or file amendments of description and claims; and generally expedite the application in foreign countries.

Instead, the International Bureau assumes the responsibility and task of such communication, and this involves the following functions by the Bureau (Rule 47)

- (a) preparing the necessary copies;
- (b) determining from requests received by national Offices which country requires what copies, how many copies, copies on sheets only one side of which has been used, etc.;
- (c) waiting for amendment of claims or declaration by the applicant with respect to amendment;
- (d) translation of search report and declaration of Searching Authority;
- (e) determining how the claims shall be set out after receipt of amendments (Rule 46);
- (f) notifying the applicant to what national Offices communication of the application is being made and the date of such communication;
- (g) supplying translation of the international application (if not in the five languages of the international publication) if requested by a national Office.

The International Bureau could be relieved of all these duties, tasks and responsibilities if there was an option for the applicant to communicate the application himself or through his agent under Article 20. The Government representatives have determined to deny this option to the applicant and yet the only possible objection is simply ensuring the authenticity of the international application, which could very easily be done by provision for appropriate certification.

To repeat again, the question is whether the applicant will prefer to rely on this inflexible procedure rather than entrust the matter to his

attorney, once the international phase has been completed to the point of communication to the designated Offices, and we must bear in mind that the customers of the PCT should be not only the large industrial concerns but also the medium size and small industries and individual inventors who have traditionally relied on personal responsibility and initiative.

PCT/DC/38 May 27, 1970
EUROPEAN INDUSTRIAL RESEARCH
MANAGEMENT ASSOCIATION (EIRMA)

Observations on the Drafts *

Editor's Note: *These observations were submitted in French only. There is no English translation.*

PCT/DC/39 May 27, 1970 (Original: English)
NETHERLANDS

Proposals concerning Articles 58, 63, 64 and 65

Article 58 (Entry into Force of the Treaty) should read as follows:

“(1) Subject to the provisions of paragraph (2) and Article 61, this Treaty and the Regulations annexed hereto shall enter into force three months after *the conditions enumerated in point (i) or in point (ii) have been fulfilled:*

- (i) the number of States having taken action as provided in Article 57 is not less than five and among such States there are at least three in each of which, according to the latest available yearly statistics, the number of applications for patents has exceeded 40,000;
- (ii) among the States having taken action as provided in Article 57 there are at least seven each of which, according to the latest available yearly statistics, is a State whose nationals or residents have filed at least 1,000 patent applications in one foreign country, or a State whose national Office has received at least 10,000 patent applications from nationals or residents of foreign countries.

(2) *As regards any State which subsequently becomes a party to this Treaty in accordance with the provisions of Article 57, paragraph (1), this Treaty and the Regulations shall enter into force three months after the date thereof.*

(3) If, at the time this Treaty enters into force by virtue of the provisions of paragraph (1), there are States which have declared, as provided in Article 60(1), that they are not bound by the provisions of Chapter II, the provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall become applicable only if among the States not having made such a declaration there are at least three which fulfill at least one of the three requirements specified in paragraph (1)(i) or (ii). Should the

* «Drafts» means the texts appearing in documents PCT/DC/4 and 5.

latter condition be fulfilled by reason only that one or more additional States have become party to this Treaty *after its entry into force*, the provisions of Chapter II shall become applicable when the last State required to fulfill *one of the requirements specified above* becomes bound by paragraph (2) of this Article.”

Comments:

re paragraph (1): This text is to be preferred to the original one, since point (ii) contains not a set, but an alternative.

re paragraph (2): Here it is a question of wording Article 59 in a more usual way. In order to arrive at a logical sequence of the provisions concerning entry into force of the Treaty, it would appear preferable to incorporate this text as a new paragraph (2) in Article 58. In this way the general provisions concerning entry into force of the Treaty come first and are followed by the more specific provisions concerning entry into force of Chapter II of the Treaty.

re paragraph (3): The additions to the second sentence of the original paragraph (2) are intended to clarify the text by making a sharp distinction, as regards the entry into force of Chapter II, between the moment of entry into force of the Treaty (as regulated in the first sentence) and the situation thereafter.

As Article 59 has been incorporated in Article 58, the following articles should be renumbered.

Article 63(old) (Signature and Languages) should read as follows:

“(1)(a) This Treaty shall be signed in a single copy in the English and French languages, *both texts being equally authentic.*”

(b) [unchanged]

Comment: In view of the large number of languages that will be used in connection with this Treaty, it would seem desirable to provide which text or texts should be authoritative in case of a difference of opinion in respect of the interpretation of the Treaty. Since the Treaty has already been drawn up in the English and French languages, it has seemed most expedient to make the English and French texts the authentic ones by adding the words “*both texts being equally authentic*” at the end of paragraph (1)(a).

The provision contained in paragraph (2) of this Article is of more importance for the manner in which a State can become party to the Treaty. This provision should therefore be added as a new paragraph (2) to Article 57. The present paragraph (a) of Article 57 then becomes paragraph (3).

Article 64(old) (Depositary Functions) should read as follows:

“(1) The *original* of this Treaty shall be deposited with the Director General.”

(2) [unchanged]

(3) [unchanged]

(4) [unchanged]

Comment re paragraph (1): In order that a clear distinction may be made between the original copy of the Treaty and the certified true copies, it is preferable to speak of an “original copy” instead of a “signed copy.”

Article 65(old) (Notifications) should read as follows:

“The Director-General shall notify the Governments of all States members of the International Union for the Protection of Industrial Property of:

(a) any signature with or without reservation as to ratification;

(b) the deposit of any instrument of ratification or accession;

(c) the date of entry into force of this Treaty in accordance with Article 58, paragraph (1), and the date from which Chapter II of this Treaty is to be applied in accordance with Article 58, paragraph (2) (old);

(d) any declaration made in pursuance of the provisions of Article 60 (old), paragraphs (1), (2), (3), and (4)(a);

(e) the withdrawal of any declaration carried out in pursuance of the provisions of Article 60 (old), paragraph (4)(b);

(f) any notification received in pursuance of the provisions of Article 61(old) and the date on which denunciation takes effect.”

Comment re Article 65: It is of importance both for the contracting parties and for the depositary to know what facts have to be notified. It is therefore desirable that these facts should be comprehensively enumerated.

PCT/DC/40 May 27, 1970 (Original: English)
UNITED KINGDOM

Proposal concerning Article 8

Article 8(1) should read as follows:

“The international application ... the priority of one or more earlier applications, whether they be national applications filed in any country party to the Paris Convention for the Protection of Industrial Property or international applications.”

PCT/DC/41 May 27, 1970 (Original: English)
ISRAEL

Proposals concerning Articles 29 and 31

In Article 28(1), after “designated State provides for” add “first compulsory national publication of national applications whether examined or not.”

Article 31(2) should read as follows:

“A demand for international preliminary examination may be made

(a) by an applicant who elected a State member of this Treaty which requires that every international application designated to it be accompanied by such examination;

(b) by an applicant who is a resident or national of a Contracting State bound by this Chapter.”

In Article 31(4), after “the applicant intends” add “or is required.”

PCT/DC/42 May 27, 1970 (Original: French)
ARGENTINA, PORTUGAL

Proposals concerning Articles 15 and 20

Article 15(5) should read as follows:

“A search similar to an international search (“an international-type search”) shall be carried out on a national application filed with the national Office of a Contracting State by the International Searching Authority referred to in Article 16 which would be competent for an international search if the application were an international application filed with that Office, either at the request of the said Office or, where the law of such State so permits, at the request of the applicant.”

Article 20(3) should read as follows:

“At the request of the designated Office, the International Searching Authority shall send to it copies of the publications cited in the search report.”

PCT/DC/43 May 27, 1970 (Original: English)
JAPAN

Proposal concerning Rule 16

In Rule 16.3(Alternative), the word “shall” should be replaced by the word “may.”

Comment: The Japanese Delegation is of the opinion that the whole Rule 16.3 should be deleted and the matter should be left to each International Searching Authority.

However, in case the said Rule might be adopted, the above amendment is proposed.

It is considered that the decisions on the search fee should be left to each International Searching Authority and that the effectiveness of such provision is doubtful since the cases envisaged would be very rare and the practice of such partial refund would cause administrative difficulties.

PCT/DC/44 May 27, 1970 (Original: English)
JAPAN

Proposals concerning Rule 18

Add to the end of Rules 18.3 and 18.4: “and all the applicants are nationals of the Paris Union country or countries or nationals having their domiciles or establishments in the Paris Union country or countries.”

Comment: The present text may mean the violation of the principle of reciprocity and also may give rise to the possibility of recognizing the right of priority under Article 4 of the Paris Convention to nationals of the non-member countries of the said Convention, which does not seem quite reasonable.

To illustrate by an example: a national application filed by joint applicants, A (a national of a member country of the Paris Union), B and C (both nationals of countries which are not members of the Paris Convention), normally would not be valid and could not be used as a basis for priority. Nevertheless, if

they file an international application instead of a national application, the inclusion of the applicant A gives them the right to file an international application under Rule 18.3 or 18.4. Designated Offices would be obliged to accept it as their regular national application under Article 11(3) of the PCT Treaty, even though they would not accept it if it were a national application. Furthermore, this international application could be used as a basis for priority under Article 11(4) of the PCT Treaty. All the Paris Union member countries, even if they are not Contracting States of the PCT Treaty, would be obliged to recognize this priority as valid.

This would mean that these Rules would violate the principle of reciprocity and leave the way open for a person who does not enjoy the benefits of the Paris Convention to do so.

PCT/DC/45 May 27, 1970 (Original: English)
BRAZIL

Proposals concerning Article 52 and Rule 86

Article 52(2) and (3) should read as follows:

“(2)(a) [No change]

(b) The Director General, *at his own initiative or upon request of the Committee*, shall invite representatives of international organizations concerned with technical cooperation and representatives of interested non-governmental organizations to participate in the discussions of interest to them.

(3) *The aim of the Committee shall be:*

(a) *the constant improvement of the services provided for under this Treaty.*

(b) *secure, where there are several International Searching Authorities and several International Preliminary Examining Authorities, the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports.*

(c) *to grant technical cooperation upon request on a non-reimbursable basis to the developing Contracting States. Such technical cooperation shall consist inter alia of training programmes, of advice in improvement and modernization of methods of work of the national Offices and, whenever necessary, of the supply of equipment for the purpose of demonstration.*

(i) *The technical cooperation granted by the Union shall be financed from a special fund included in the budget of the Union.*

(ii) *The Director General shall provide the necessary administrative arrangements within the structure of the Committee to carry out its responsibilities in the field of technical cooperation.”*

Add to Rule 86.1(a), as item (vi), the following text:

“(vi) *a weekly list, to be published as of the first issue, of all the patents which become public domain in any country, identified at least by their number, country of origin, country*

where it has become public domain, abstract and, whenever feasible, the technical know-how and licensing agreements which accompany them.”

Comment: The Gazette should become a more comprehensive source of information for developing countries. It should include as of its first issue all elements that allow for the perfect identification of patents in the public domain as well as of the know-how that accompanies them.

PCT/DC/46 May 28, 1970 (Original: French)
ALGERIA, ARGENTINA, BRAZIL, IVORY
COAST, MADAGASCAR, TOGO, UGANDA,
UNITED ARAB REPUBLIC, URUGUAY,
YUGOSLAVIA

Proposal concerning Article 13

Article 13 should read as follows:

“(1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application containing its designation, prior to the communication provided for in Article 20.

(2) The applicant shall have the right to transmit, or have transmitted by the International Bureau, the copy of the international application before the expiration of 12 months from the priority date.”

PCT/DC/47 May 27, 1970 (Original: English)
WORKING GROUP I

Report concerning Article 8

1. Working Group I of Main Committee I met on May 27 to consider various proposals submitted for Article 8 of the Draft Treaty.

2. The following States were represented: Canada (observer), France, Germany (Federal Republic), Japan (observer), Netherlands, Soviet Union, Togo, United Kingdom, United States of America, Uruguay. Mr. E. Armitage (United Kingdom) was elected Chairman.

3. The following conclusions were reached

(a) Paragraph (1)

It is recommended that the United Kingdom proposal in PCT/DC/40 be adopted, taking into account the drafting change made in PCT/DC/11, page 28.

(b) Paragraph (2)(a)

It is recommended that the alternative text on page 28 of PCT/DC/11 be adopted.

(c) Paragraph (2)(b)

There was no clear consensus in favor of either leaving the whole question to national law as on page 29 of PCT/DC/11, or regulating it in a uniform manner as proposed in the Alternative on page 28 of PCT/DC/11, or as in the French proposal in PCT/DC/19. A substantial majority of the Working Group, however, was in favor of adopting the first sentence of the alternative text, whereby all

Contracting States will recognize the designation of themselves even in the case where there is a priority based on a national application in the same State. However, as regards the second sentence of the alternative draft, the Working Group recommends that this be changed to read as follows: “subject to drafting: –”. However, the conditions for, and the effect of, the priority claim in that State shall be a matter for the national law of that State.

(d) Paragraph (2)(c)

The Working Group considers that this paragraph does not need to deal with cases where priority is based on an earlier international application designating more than one State since, in this situation, priority for each State designated in the later application is regulated by Article 4 of the Paris Convention and hence is dealt with under paragraph (2)(a). Paragraph (2)(c) needs, however, to deal with the case where priority is based on an earlier international application designating only one State, this case being analogous to the case dealt with in paragraph (2)(b). The Working Group therefore recommends that paragraph (2)(c) be referred to the Drafting Committee for redrafting to limit it in scope accordingly and to adopt a solution analogous to that in paragraph (2)(b).

(e) The United States proposal in PCT/DC/16, which refers to the text on page 29 of PCT/DC/11, was considered in relation to the alternative paragraph (2) on page 28. The Working Group agreed that it was unnecessary to make any such amendment to the text recommended above.

PCT/DC/48 May 28, 1970 (Original: English)
JAPAN

Proposal concerning Rule 44

Rule 44.3 should read as follows:

“On the specific request of the applicant, a copy of each of the documents cited in the international search report shall be sent to the applicant by or under the responsibility of the International Searching Authority together with that report. The applicant may be required to pay the cost of preparing and mailing the copies.”

Comment: It is considered that the said transmittal would not necessarily be conducted by the International Searching Authority itself and the applicant would be satisfied with the responsibility of the said Authority to send copies he wants regardless of the origin.

PCT/DC/49 May 28, 1970 (Original: English)
ISRAEL

Proposal concerning Article 53

Add to Article 53(4) the following text:

“In fixing fees and charges for countries and nationals of countries, the Assembly may give special consideration to the level of economic development reached by the countries concerned.”

PCT/DC/50 May 29, 1970 (Original: French)
FRANCE

Proposals concerning Articles 4 and 22

In Article 4(1)(iii), delete the words “the inventor.”

Article 4(1)(iv) should read as follows:

“(iv) the name of the inventor and other prescribed data concerning the inventor in cases where the law of at least one of the designated States requires that such data be furnished at the time of filing a national application.

In other cases, the name of and other prescribed data concerning the inventor may be communicated later to the designated Offices as provided in Article 22.

Failure to indicate such data concerning the inventor shall have no consequence in any designated State according to the national law of which the said data are not required.

Failure to indicate such data concerning the inventor in the request shall have no consequence in any designated State according to the national law of which the said data are not required at the time of filing a national application.”

Article 4(1)(v) should read as former Article 4(1)(iv).

Article 22(1) should read as follows:

“(1) The applicant ... thereof, communicate, where necessary, the name of the inventor and other prescribed data concerning his identity, if such data have not already been indicated in the said application, and pay the national fee (if any) ... priority date.”

PCT/DC/51 May 29, 1970 (Original: English)
ARGENTINA

Proposals concerning Articles 28, 33, 47, 50, 54 and 56

Article 28(1) should read as follows:

“(1) The designated Office has the authority to give the applicant the opportunity to amend the claims.”

Comment: The Argentine Delegation considers that it is a national right to accept and, in this case, establish the limits of this acceptance. The opposite could mean a denaturalization of the priorities given by the system.

The last sentence of Article 33(4) should read as follows:

“(4) However, the word industry’ shall have the effect and meaning which is given to it by the legislation of the State of the designated Office.”

Comment: In accordance with the spirit of the Treaty, the determination of the objective of what is patentable is made obvious.

In Article 50(6)(a), delete the words: “Subject to the provisions of Articles 47(2)(b), 54(3) and 56(2)(b),” so that Article 50(6)(a) would then read as follows:

“(6)(a) The decisions of the Assembly shall require two-thirds of the votes cast.”

Comment: At the same time, the provisions in Articles 47(2)(b), 54(3) and 56(2)(b) should be deleted.

PCT/DC/52 May 29, 1970 (Original: English)
BRAZIL

Proposal concerning Rule 47

In Rule 47.1(d) delete the words: “when it so requires.”

PCT/DC/53 May 29, 1970 (Original: English)
AUSTRIA

Proposal concerning Rule 36

In Rule 36.1(i), replace “150” by “100.”

Comment: The reasons are stated in the document containing the observations of Austria (PCT/DC/7).

PCT/DC/54 May 29, 1970 (Original: French)
ARGENTINA

Proposal concerning Article 22

In Article 22(1), “20 months” should be replaced by “12 months.”

Comment: The purpose of this proposal is to reduce the time limit referred to in Article 23. The Delegation of Argentina considers that the restriction provided for in the Paris Convention should not be extended, either for the application in question or for applications invoking the priority of that application.

PCT/DC/55 May 28, 1970 (Original: French)
SWITZERLAND

Proposals concerning Articles 21, 30 and 60

As to Articles 21(2)(a) and 60(3):

The international application is not published when it “contains the designation only of such States as have made the declaration that, as far as they are concerned, international publication of international applications is not required” (Article 60(3)). The international application will nevertheless be published “at the request of the applicant” (Article 60(3)(c)(i)) or “when a national application or a patent based on the international application is published by the national Office” (Article 60(3)(c)(ii)). This is not a satisfactory situation. It leads to inequality of treatment of applicants and legal insecurity. In our view, publication of all international applications after 18 months is one of the advantages of the Treaty.

Furthermore, in order to trace those applications which would not be published – applications which would probably be few in number – a highly complex system of notification and supervision would have to be established. We propose therefore that Article 60(3) and the reference to that Article in Article 21(2)(a) be deleted.

As to Article 30(2)(a)

Under this provision, access to international applications by the authorities would not be allowed. It may, however, be necessary for the courts to consult such applications, if, for example, the applicant is not the owner of the rights. We propose, therefore, that the following sentence be added to this paragraph:

“The provisions of the national law regarding legal assistance to the judicial authorities shall be reserved.”

PCT/DC/56 May 29, 1970 (Original: English)
AUSTRIA

Proposal concerning Article 30

Complete Article 30(2)(b) by adding at the end: “and the title of the invention.”

PCT/DC/57 May 29, 1970 (Original: French)
SWITZERLAND

Proposals concerning Article 63

In Article 63(1)(a), add the words, “both texts being equally authentic”; and in Article 63(1)(b) add the following sentence: “In case of differences of opinion on the interpretation of the various texts, the French and English texts shall prevail.”

Comment: The Delegation of Switzerland considers that it would be advisable to define the legal scope of this Article along the lines of the texts adopted at Stockholm, in particular, the Paris Convention and the Convention establishing WIPO.

PCT/DC/58 May 29, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposals concerning Articles 50, 54, 55, 57, 58, 59, 63 and 64

Article 50(6)(a) should read as follows:

“Subject to the provisions of Articles 47(2)(b), 54(2)(b) and (3) and 56(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.”

Comment: The purpose of the above amendment, together with the amendment proposed for subparagraph (2)(b) of Article 54, is to provide that amendment of the Regulations, except pursuant to Article 54(3), shall require three-fourths of the votes cast in the Assembly, rather than two-thirds as provided in PCT/DC/11.

Article 54(2)(b) should read as follows:

“Subject to the provisions of paragraph (3), adoption of amendments shall require three-fourths of the votes cast.”

Comment: See also proposed amendment to Article 50, subparagraph (6)(a).

**Article 55(4) should read as follows:*

“Articles 50(5), (9) and (10), 51(4) to (9), 52, and 53, may be amended either at a revision conference or pursuant to the provisions of Article 56.”

Article 57(1) should read as follows:

“Any State member of the International Union for the Protection of Industrial Property may become party to this Treaty by:

- (i) signature followed by the deposit of an instrument of ratification, or
- (ii) deposit of an instrument of accession.”

Comment: The above amendment deletes subparagraph (1)(i) whereby a State could become party to the Treaty by signature only and requires that signature be followed by the deposit of an instrument of ratification in order for a State to become a party. It seems likely that under the formulation in PCT/DC/4 every signatory will indicate that his signature is subject to ratification. The option provided in subparagraph (1)(i) of PCT/DC/11 would then serve no useful purpose. Including a provision for deposit of ratification as a requirement for signatories to become party to the Treaty would make it unnecessary for a signatory to write a statement on the Treaty indicating that his signature is subject to ratification.

**Article 58(2) should read as follows:*

“The provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall, however, not become applicable until the date when three States, each of which fulfills at least one of the three requirements specified in paragraph (1)(i) or (ii), shall have become party to the Treaty without a declaration excepting Chapter II as permitted by Article 60(1), such date not to be earlier than the initial entry into force date provided in paragraph (1).”

**Article 59 should read as follows:*

“Any State which does not become a party to this Treaty and the Regulations upon entry into force under Article 58 shall become bound by this Treaty and the Regulations three months after the date on which such State has taken action as provided in Article 57.”

**Article 63(1)(a) should read as follows:*

“This Treaty shall be signed in a single original in the English and French languages.”

**Article 64(1) should read as follows:*

“The signed original of this Treaty shall be deposited with the Director General *when it is no longer open for signature.*”

PCT/DC/59 May 30, 1970 (Original: English)
POLAND

Proposals concerning Rule 4

* Nonsubstantive changes – for consideration by the Drafting Committee.

Rule 4.10(e) – as proposed in document PCT/DC/23 – should read as follows:

“4.10(e) If the priorities of several earlier applications are claimed, it is strongly recommended that the request shall contain the statement indicating consecutive numbers of the patent claims of the international application for which the particular priority dates are claimed in the international application.”

Rule 4.10(f) – as proposed in document PCT/DC/23 – should be omitted.

PCT/DC/60 May 30, 1970 (Original: French)
SWITZERLAND

Proposals concerning Rules 11 and 13

Rule 11.7(b) should read as follows:

“The numbers shall be placed *at the top* of the sheet ...”

Rule 11.8(a) should read as follows:

“Every fifth line of each sheet of the description and of each sheet of the claims shall be numbered.”

Rule 13.2 should read as follows:

“Rule 13.1 shall be construed as permitting any one, or a combination, of the following possibilities:

- (i) in addition to an independent claim for a given product, at least one independent claim for at least one process for the manufacture of that product;
- (ii) in addition to an independent claim for a given product, at least one independent claim for at least one use of that product;
- (iii) in addition to an independent claim for a given process, at least one independent claim for at least one apparatus or means specially designed for carrying out that process.”

Comment: The provisions in Rule 13.2 concerning the possibility of including claims of different categories in the same international application should be less restrictive.

A combination under (i) and (ii) corresponds to that provided for under the present Rule 13.2(ii), Alternative A. As for the combination under (i) and (iii) (product, manufacturing process, means for carrying out), we are of the opinion that it satisfies the requirements of Rule 13.1 because, if unity of invention exists both for (i) and for (iii), it is logical that it should exist in the combination of (i) and (iii). In our view, the guidelines under Rule 13.5(b) are better respected in the case of the combination of (i) and (iii) than in the case of the combination, admitted in Rule 13.2(i), Alternative A, of a claim for a product and a claim for the use of the said product, since the manufacturing process and the means for carrying it out belong in general to the same field, whereas a product and the use of that product relate, in most cases, to different fields.

PCT/DC/61 May 30, 1970 (Original: English)
UNITED KINGDOM

Proposals concerning Article 56

In Article 56(3)(b), after the words “enters into force”, insert the words: “or which become members thereof at a subsequent date.”

Delete Article 56(3)(c).

Comment: These amendments are proposed in order to bring Article 56(3) more clearly into line with Article 17(3) of the Stockholm Act of the Paris Convention.

PCT/DC/62 May 30, 1970 (Original: English)
BRAZIL, PORTUGAL

Proposal concerning Article 63

Article 63(1)(b) should read as follows:

“Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Japanese, *Portuguese*, Russian, and Spanish languages, and such other languages as the Assembly may designate.”

PCT/DC/63 May 30, 1970 (Original: English)
AUSTRALIA

Proposal concerning Article 53

In Article 53(5)(b), omit the words: “and other pertinent factors.”

Comment: It is thought that the criterion on which contributions are to be calculated should be completely defined and not subject to an omnibus clause which would commit governments to contributions on a basis that cannot be foreseen.

PCT/DC/64 June 1, 1970 (Original: French)
ARGENTINA, PORTUGAL

Proposal concerning Article 52

In Article 52(2)(a), replace “double” by “more than double.”

In Article 52(5), insert, after “direct,” the words “to the Assembly.”

Add, at the end of Article 52(6), the following sentence:

“Until the Executive Committee is established, references made to it in this paragraph shall be construed as references to the Assembly.”

Omit Article 52(7), and renumber Article 52(8) as Article 52(7).

PCT/DC/65 June 1, 1970 (Original: French)
YUGOSLAVIA

Proposals concerning Articles 50, 51, 52, 53 and 54

Article 50

1. *In paragraph (6), after subparagraphs (a) and (b) add a new subparagraph (c) worded as follows:*

“(c) If the number of delegates abstaining when a vote is taken in the Assembly exceeds one-half of the delegates present, the vote shall be null and void.”

Comment: The Delegation of Yugoslavia considers that the present wording of paragraph (6) makes it possible for a proposed motion to be adopted by a small minority of the delegates present in the Assembly and, for that reason, it proposes a new paragraph (c).

2. *In paragraph (9), substitute the word “twenty” for the word “forty.”*

Comment: The Delegation of Yugoslavia is of the opinion that it would be preferable to establish the Executive Committee as soon as the number of Contracting States exceeds twenty member countries of the Union.

3. In view of the importance of the role of the Executive Committee and the fact that separate Articles have been reserved for the Assembly, the International Bureau and the Committee for Technical Cooperation, the Delegation of Yugoslavia considers that it would be necessary to provide a new Article 51 for the Executive Committee, which would follow the Article devoted to the Assembly.

The Delegation of Yugoslavia reserves the right to propose to Main Committee II of the Conference and to its Drafting Committee the text of the new Article 51.

Article 51

Considering that in several paragraphs of Article 51(3), (4), (7), 8(c) and in other Articles of the Draft Treaty reference is made to the competence of the Director General, and in view of the importance of his role in connection with the application of the provisions of the Treaty, the Delegation of Yugoslavia proposes a new Article devoted to the responsibilities and duties of the Director General.

The Delegation of Yugoslavia believes that this would be in line with the thinking of the drafters of Chapter IV of the Treaty.

Article 52

1. *In paragraph (2)(a), add after “The Assembly” the words “paying due regard to a proportional representation of all regions.”*

Comment: In making this proposal, the Delegation of Yugoslavia wishes to express the view that it is necessary for the Assembly to pay special regard to the developing countries.

2. *At the end of paragraph (2)(a), add a new sentence worded as follows:*

“The remaining members of the Committee may not be nationals of States in which the headquarters of the International Searching or Preliminary Examining Authorities are located.”

3. *Substitute the following text for the beginning of paragraph (5):*

“The Committee may address its advice to the Assembly and its recommendations direct to the Executive Committee, to the International Bureau and to the Director General, ...”

Article 53

1. *In paragraph (5)(d), substitute “shall decide” for “may decide.”*

Comment: The Delegation of Yugoslavia considers that, whenever the financial situation of the Union makes reimbursement possible, the Assembly must decide that all contributions should be reimbursed.

2. *Add the following words at the end of paragraph (7)(b): “on the basis of the number of applications in the preceding year.”*

3. *Add the following words at the end of paragraph (7)(d): “and the number of international applications in the preceding year.”*

Comment: The last two proposals by the Delegation of Yugoslavia are in entire conformity with the principle expressed in paragraph 5(b) of the same Article.

Article 54

Add a new paragraph at the end of Article 54, worded as follows:

“(5) In the event of divergence between the texts of the Treaty and the Regulations, the text of the Treaty shall prevail.”

PCT/DC/66 June 1, 1970 (Original: English)
JAPAN

Proposal concerning Article 54

The following provision should be added to Article 54 as a new paragraph (5):

“(5) The Regulations are annexed to this Treaty but do not form an integral part thereof.”

PCT/DC/67 June 1, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Rule 22

In Rule 22.2(e), delete the words “and pay a special fee to that Bureau” and the last two sentences.

PCT/DC/68 June 1, 1970 (Original: French)
ARGENTINA, PORTUGAL

Proposals concerning Articles 15 and 61

Article 15(5) should read as follows:

“(a) If the national law of the Contracting State with whose national Office a national application is filed so permits, the applicant who files such a national application may, subject to the conditions provided for in such law, request that a search similar to an international search (“an international-type search”) be carried out on such application.

(b) If the national law of the Contracting State so permits, the national Office of or acting for such State may subject any national application filed with it to an international-type search.

(c) The international-type search shall be carried out by the International Searching Authority referred to in Article 16 which would be competent for an international search if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Searching Authority is not equipped to handle, the search will be carried out on a translation prepared by the applicant in any language prescribed for international applications. The national application shall be presented in the form prescribed for international applications.”

Add at the end of Article 61(1) the following sentence:

“This provision also applies to requests for international type search.”

PCT/DC/69 June 1, 1970 (Original: French)
ITALY

Proposals concerning Article 58

Article 58(1)(i) should be deleted.

In Article 58(1)(ii), replace “seven” by “ten.”

PCT/DC/70 June 1, 1970 (Original: French)
PORTUGAL

Proposal concerning Article 47

Article 47(2)(b) should read as follows:

“Such decisions shall be made in the Assembly or through consultation by correspondence. In the latter case, decisions must be unanimous.”

PCT/DC/71 June 1, 1970 (Original: English)
ARGENTINA

Proposals concerning Rules 17, 22, 36, 45, 47 and 52

In Rule 17.1(a), replace “16 months” by “12 months.”

In Rule 22, all time limits mentioned should be 12 months.

Rule 36.1(i) should read as follows:

“the national Office or intergovernmental organization must have an adequate number of employees, with sufficient technical qualifications to carry out searches, in relation to the number of patents it is foreseen to examine;”

Add to the end of Rule 45.1 the following words: “and into the language of the designated Offices.”

Add at the end of Rule 47.3 the following words: “and into the language of the designated Offices.”

Delete Rule 52.1(c).

PCT/DC/72 June 1, 1970 (Original: English)
SWEDEN

Proposal concerning Rule 43

In Rule 43.5, add a new subparagraph after subparagraph (b) worded as follows:

“Citations of particular relevance shall be specially indicated.”

Comment: An obligation to indicate citations of particular relevance would improve the quality of the search and counteract an excessive citing of references. The absence of any prescribed limit on the number of citations might otherwise result in unnecessary work and expense for applicants, third parties and designated countries.

PCT/DC/73 June 1, 1970 (Original: English)
DENMARK, FINLAND, NORWAY, SWEDEN

Proposal concerning Rule 48

In Rule 48.3(c), insert on the fourth line before the words “and the abstract” the words “the independent patent claims.”

PCT/DC/74 June 1, 1970 (Original: French)
ITALY

Proposal concerning Rule 13

In Rule 13.2, add a new subparagraph (iii) drafted in the following terms:

“in addition to an independent claim for a given product, the inclusion in the same international application of one independent claim for a process specially adapted for the manufacture of the said product, and the inclusion in the same international application of one independent claim for one apparatus or means specifically designed for carrying out the said process.”

Comment: This paragraph, which parallels paragraph 13.2(i) (referring particularly to chemical inventions), is designed for inventions of another kind and responds to a need which may frequently arise in relation to the requirements of Article 5 and Rule 5.

PCT/DC/75 June 1, 1970 (Original: English)
AUSTRALIA

Proposal concerning Rule 33

Add the following new subparagraph to Rule 33.3:

“(c) Where for any reason a search is not based strictly on the wording of the claims, the international search report shall contain a statement defining precisely the scope of the invention searched.”

PCT/DC/76 June 1, 1970 (Original: French)
FRANCE, ITALY

Proposal concerning Article 54

Substitute the following text for the last part of Article 54(3)(a)(ii):

“(ii) ... where such Authority is an intergovernmental organization, if, among the Contracting States, members of that organization, that State *authorized for the purpose by the competent body of the said intergovernmental organization* does not dissent.”

Comment: As the purpose of the above provision is to allow an intergovernmental organization acting as International Searching or Preliminary Examining Authority to dissent if it so desires through the medium of one of the Contracting States, member of the intergovernmental organization, it would be advisable to leave it to the competent bodies of that organization to appoint the Contracting State which will be authorized to dissent on behalf of the said intergovernmental organization.

PCT/DC/77 June 1, 1970 (Original: English)
AUSTRALIA

Proposal concerning Rule 81

Rule 81.3(c) should read as follows:

“Replies must be either positive or negative. Proposals for amendment or observations shall not be regarded as votes.”

PCT/DC/78 June 1, 1970 (Original: English)
JAPAN

Proposal concerning Articles 57, 60 and 65

As a procedure for becoming party to the Treaty, “acceptance” should be added to the provisions of Article 57 and other related Articles (Articles 60(4) and 65).

PCT/DC/79 June 1, 1970 (Original: English)
WORKING GROUP ON ARTICLE 52(3)

Report concerning Article 52

1. The Working Group [on Article 52(3)] established by Main Committee II met on June 1, 1970, under the chairmanship of Mr. Borggård (Sweden).

2. The Delegations taking part in the work of the Group were those of Algeria, Canada, Germany (Federal Republic), United Kingdom, United States of America and Sweden, as well as the Delegation of Austria in the capacity of observer.

3. The Working Group adopted the following text, which it submits to Main Committee II:

“(3) The aim of the Committee shall be to contribute, by advice and recommendations:

- (i) to the constant improvement of the services provided for under this Treaty,
- (ii) to the securing, as long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports, and
- (iii) *on the invitation of the Assembly or the Executive Committee, to the solution of the technical problems specifically involved in the formation of a single International Searching Authority.*”

4. The Delegate of Canada stated that he reserved his position until he had consulted his Delegation.

5. The Delegate of France also reserved his position.

PCT/DC/80 June 1, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Rule 88

The United States of America recommends the addition of Rule 5 (The Description) and Rule 6 (The Claims) to Rule 88.1, these additions to be numbered (i) and (ii) and present items (i) to (vi) to be renumbered (iii) to (viii).

PCT/DC/81 June 2, 1970 (Original: French)
YUGOSLAVIA

Proposals concerning Article 50 and a new Article 50bis

A new Article, numbered 50bis, and entitled “Executive Committee” should be inserted. It should read as follows:

“(1) When the Assembly has established an Executive Committee, that Committee will be subject to the provisions set forth hereinafter.

(2)(a) The Executive Committee shall consist of States elected by the Assembly from among States members of the Assembly. Furthermore, the State on whose territory the Organization has its headquarters shall, subject to the provisions of Article 53(8)(b), have an *ex officio* seat on the Committee.

(b) The Government of each State member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(3) The number of States members of the Executive Committee shall correspond to one-fourth of the number of States members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution.

(5)(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be re-elected but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

(6)(a) The Executive Committee shall:

- (i) prepare the draft agenda of the Assembly;
- (ii) submit proposals to the Assembly in respect of the draft program and triennial budget of the Union prepared by the Director General;
- (iii) approve, within the limits of the program and triennial budget, the specific yearly budgets and programs prepared by the Director General;
- (iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
- (v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;
- (vi) perform such other functions as are allocated to it under this Treaty, in particular, under Article 50(9).

(7)(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.

(b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(8)(a) Each State member of the Executive Committee shall have one vote.

(b) One-half of the members of the Executive Committee shall constitute a quorum.

(c) Decisions shall be made by a simple majority of the votes cast.

(d) Abstentions shall not be considered as votes.

(e) A delegate may represent, and vote in the name of, one State only.

(9) States of the Union not members of the Executive Committee shall be admitted to its meetings as observers, as well as any intergovernmental organization appointed as

International Searching or Preliminary Examining Authority.

(10) The Executive Committee shall adopt its own rules of procedure."

In Article 50(8), delete the words "and, once established, to the Executive Committee."

In Article 50(10)(b), delete the words "while the Executive Committee shall meet once in every calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the Coordination Committee of the Organization."

Delete Article 50(10)(d).

PCT/DC/82 June 2, 1970 (Original: English)
JAPAN

Proposal concerning Article 54

Article 54(5) should read as follows:

"Without prejudice to the provisions of Articles 58 and 59, the Treaty and the Regulations may be treated together or separately in the national procedure for the purpose of ratification or accession according to the constitutional system of each State."

PCT/DC/83 June 3, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Rule 42

It is recommended that for the first 5 years after implementation of the Treaty, the International Bureau and Searching Authorities may agree on longer time limits for producing search reports than those presently set forth in Rule 42. It is therefore proposed that an additional paragraph be added to *Rule 42* as follows:

"For a transitional period of 5 years after this Treaty has entered into force, time limits for the agreement with any International Searching Authority may be individually negotiated."

PCT/DC/84 June 3, 1970 (Original: French)
BELGIUM, FRANCE, ITALY, MONACO,
NETHERLANDS, SWITZERLAND, UNITED
KINGDOM

Proposal concerning Article 16

1. The Director General of the International Patent Institute (IIB) drew the attention of Main Committee I to the fact that the term "intergovernmental organization" appears in the provision relating to the appointment of International Searching Authorities referred to in Article 16(3)(b) of the Draft Treaty, without being more explicit on the subject of such organization.

He stated the disadvantages of using such a term which, if the text of the Treaty were to remain unchanged, might be interpreted as referring to any

intergovernmental organization irrespective of its mission or competence.

He said that his concern was to avoid any dispute on this subject when the Treaty became operational.

For those reasons, he suggested that a phrase should be inserted, specifying that the tasks of the intergovernmental organizations referred to should include the making of documentary search reports – on the novelty of inventions which are the subject of patent applications – similar to international search reports.

Several Delegations having supported this view and no opposition having been expressed, the Chairman of Main Committee I noted that the suggestion made by the Director General of IIB was adopted. He asked the Drafting Committee to prepare a text taking this suggestion into account.

2. Apart from the above point, the Director General of IIB noted that the Draft Treaty submitted to the Conference made no mention of the intergovernmental organization of which he was the head.

He recalled, in this connection, the discussions that had taken place during the debate on the various aspects of the problems arising with regard to international search – in particular, on that pertaining to the appointment of the authorities which might be entrusted with such a search – both in the committees of experts convened in Geneva by BIRPI to discuss the Draft Treaty and in the course of the consideration of Chapter I by Main Committee I.

He also referred to the statements made on several occasions in Geneva by the First Deputy Director of BIRPI, and in Washington by the Secretary General of the Conference, concerning the importance of the role which IIB would be called upon to play in the international patent cooperation established under the Treaty. He finally remarked that a statement would be made or a proposal for a resolution would be submitted to the Conference by the States members of IIB in order to make up for the shortcoming referred to in this paragraph of the explanatory statement.

However, upon further study of the matter, it seemed to him that another solution, that is to say, the insertion of a simple phrase in the body of the text of Article 16(1) – the wording of which would in any case have to be modified to take account of the decision of Main Committee I – would be preferable, because of its great simplicity, to a statement.

Consequently, after expressing their agreement on this new suggestion, the Delegations of Belgium, France, Italy, Monaco, the Netherlands, Switzerland, and the United Kingdom, have decided to submit to Main Committee I a text in which IIB will be mentioned. They felt, however, that any such mention in the body of the Article could only be contemplated in a text including the modification adopted by Main Committee I.

These Delegations would like, however, to stress that their proposal is not intended to go back on the decision of the Chairman of Main Committee I to refer to the Drafting Committee the task of drafting the text

of the new Article, which would be worded as follows:

“International search shall be carried out by an International Searching Authority, which may be either a national Office¹ or an intergovernmental organization such as the International Patent Institute,² whose tasks include the making of documentary search reports – on the novelty of inventions which are the subject of patent applications – similar to international search reports.”

PCT/DC/85 June 3, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Rule 49

Delete the last sentence of Rule 49.2.

PCT/DC/86 June 3, 1970 (Original: English)
AUSTRIA, FRANCE, JAPAN, NETHERLANDS,
SWITZERLAND, ZAMBIA

Proposal for a new Article (Article 62bis)

A new Article should be inserted after Article 62 reading as follows:

“(1) Any dispute between two or more States of the Union concerning the interpretation or application of this Treaty and the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other States of the Union.

(2) Each State may, at the time it signs this Treaty or deposits its instrument of ratification or accession, declare that it does not consider itself bound by the provisions of paragraph (1). With regard to any dispute between such State and any other State of the Union, the provisions of paragraph (1) shall not apply.

(3) Any State having made a declaration in accordance with the provisions of paragraph (2) may, at any time, withdraw its declaration by notification addressed to the Director General.”

¹ The term “national Office” is defined in Article 2(i) as an Office or an intergovernmental authority granting patents and inventors’ certificates.

² The reference to “IIB” in no way excludes the possibility for other intergovernmental organizations (regional organizations) which might be created also to be chosen to carry out international search.

PCT/DC/87 June 3, 1970 (Original: French)
MAIN COMMITTEE II

Suggestion concerning Article 60

Main Committee II requests Main Committee I to consider Article 60(2) at the same time as Articles 39 and 40, in view of the close connection between these provisions.

PCT/DC/88 June 3, 1970 (Original: English)
SECRETARIAT

Proposals concerning Article 20 and Rules 44 and 71

On the basis of the discussion of June 3, 1970, it is proposed to amend the proposal contained in document PCT/DC/42 concerning *Article 20(3)* to read as follows:

“At the request of the designated Office or the applicant, the International Searching Authority shall send to the said Office or the applicant copies of the publications cited in the search report as provided in the Regulations.”

Furthermore, it is proposed to add to *Rules 44.3 and 71.2*, as appearing in document PCT/DC/23, the following new subparagraphs:

“(c) Any International Searching Authority not wishing to send the copies directly to any designated or elected Office shall send a copy to the International Bureau and the International Bureau shall then proceed as provided in subparagraphs (a) and (b).

(d) Any International Searching Authority may perform the above obligations through another agency responsible to it.”

Analogous changes to be inserted in Chapter II of the Treaty and in Rule 71.

PCT/DC/89 June 3, 1970 (Original: English)
ISRAEL

Proposal concerning Rules 44 and 71

Add to Rules 44.3 and 71.2, as proposed in document PCT/DC/23, the following new subparagraph:

“(c) At the request of the applicant or any designated or elected Office, or at the request of any International Searching Authority, the copy referred to in subparagraphs (a) and (b) above shall be sent to the International Bureau and the International Bureau shall then proceed as provided in subparagraphs (a) and (b).”

PCT/DC/90 June 3, 1970 (Original: French)
WORKING GROUP III

Report concerning Article 53

1. The Working Group set up to study Article 53(5) and (7) held three meetings on June 2 and 3, 1970, the first of which was chaired by Miss Nilsen (United States of America) and the other two by Mr. Benson (United States of America).

2. The following Delegations were appointed to serve on the Working Group: Algeria, Australia, Brazil, Germany (Federal Republic), Italy, Japan, Poland, Union of Soviet Socialist Republics, United Kingdom, United States of America, Zambia. The Delegation of Austria took part in the work of the Group in the capacity of observer.

3. The Working Group submits to Main Committee II the following proposal:

“(5)(a) [No change]

(b) The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year. *The contribution of any State cannot, however, exceed twenty per cent of the total of all contributions.*

(c) [No change (that is, reinstate the same text as in document PCT/DC/11).]

(d) [No change]

(e) [No change]

(7)(a) [No change]

(b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly *on the basis of principles similar to those provided for in paragraph (5)(b).*

(c) [No change]

(d) [No change]”

4. The Delegation of Germany (Federal Republic) stated that it reserved its position.

PCT/DC/91 June 3, 1970 (Original: French)
SECRETARIAT

Proposal concerning Article 58

It is proposed to replace Article 58(1) by the following text:

“(1)(a) Subject to the provisions of paragraph (2) and Article 61, this Treaty and the Regulations annexed hereto shall enter into force three months after the number of States having taken action as provided in Article 57 is not less than eight* and among such States there are at least four* which fulfill any of the following conditions:

(i) the number of applications for patents, inventors' certificates and utility certificates filed in the State has exceeded 40,000 according to the official statistics for 1969,

(ii) the nationals or residents of the State have filed at least [1,000] [500]** applications for patents, inventors' certificates and utility certificates in one foreign country according to the official statistics for 1969,

(iii) the national Office of the State has received at least [10,000] [5,000]** applications for patents, inventors' certificates and utility models from nationals or residents of foreign countries according to the official statistics for 1969.

(b) For the purposes of this paragraph, Article 2(vii), (ix) and (xii) shall not apply.”

Observations:

*1. In the meeting of June 3, 1970, the Secretariat proposed 7 (and not 8) countries, 2 without the statistical limits and 5 with the statistical limits. In the meantime, several Delegations have approached the Secretariat suggesting a 4 + 4 distribution rather than a 5 + 2 distribution since this would establish equality between the two groups of countries.

**2. In the meeting of June 3, 1970, the Delegation of Yugoslavia asked that for the 1,000 and 10,000 figures lower figures be proposed. Several Delegations have, in the meantime, suggested to the Secretariat that the lower figures should be 500 and 5,000, respectively.

3. The Secretariat confirms what it said in the above mentioned meeting, namely, that it believes that it is important that not only States having a relatively high number of applications going or coming from abroad but also other States, particularly developing countries, should be enabled to be among the States causing the entry into force of the Treaty. In the above proposal, the number of such States would be 4.

PCT/DC/92 June 3, 1970 (Original: French)
PORTUGAL

Proposal concerning Article 62bis

In Article 62bis, proposed in document PCT/DC/86, insert, after the word “accession,” the words “or at any other later time.”

PCT/DC/93 June 4, 1970 (Original: English)
WORKING GROUP ON RULE 88

Report concerning Rule 88

1. The Working Group set up by Main Committee II on Rule 88 held a meeting on June 3, 1970, under the chairmanship of Mr. Borggård (Sweden). It was composed of the Delegations of the following States: France, Germany (Federal Republic), Portugal, Sweden, United Kingdom and United States of America. The Delegation of Canada took part in the work of the Group in the capacity of observer.

2. Having considered the proposal by the Delegation of the United States of America (document PCT/DC/80) the Working Group unanimously proposes the following text of the new Rule 88.2:

“Rule 88.2 Requirement of Unanimity During Transitional Period

Amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment during the first five years after the entry into force of the Treaty:

- (i) Rule 5 (The Description),
- (ii) Rule 6 (The Claims),
- (iii) the present paragraph.”

(The old Rule 88.2 becomes 88.3. The old Rule 88.3 becomes 88.4).

PCT/DC/94 June 4, 1970 (Original: English)
CANADA

Proposals concerning Rule 47

Rule 47.1(a) should read as follows:

“The communication provided for in Article 20 shall, *subject to Rule 47.4*, be effected by the International Bureau.”

Add to Rule 47 the following new subrule:

“The communication provided for in Article 20 shall be effected by the applicant instead of by the International Bureau if the applicant, at the time of submitting amendments or a declaration that it does not wish to make amendments or, in any case, before expiry of the time limit provided in Rule 46.1, notifies the International Bureau that it wishes to effect the communication. Promptly after such notification, the International Bureau shall furnish to the applicant the documents required for the communication.”

PCT/DC/95 June 4, 1970 (Original: English)
FRANCE, NETHERLANDS

Proposal concerning Article 44

Article 44 should read as follows:

“(1) Any treaty providing for the grant of regional patents (Regional Patent Treaty) may provide that international applications designating a State party to both the Regional Patent Treaty and the present Treaty may be filed for the grant of a regional patent.

(2) If, for the purpose of obtaining a patent in any Contracting State, the applicant is entitled to file a regional application, the national law of such State may provide that any designation of such State in the international application shall have the effect of a request to obtain a regional patent for that State.”

PCT/DC/96 June 4, 1970 (Original: English)
CANADA, NETHERLANDS

Proposal concerning Rule 52

Rule 52.1(a) should read as follows:

“In any designated State in which processing or examination starts without special request, the applicant shall, if he so wishes, exercise the right under Article 28 *not later than one month after he has fulfilled the requirements of Article 22(1) or two months after the transmittal of the international search report or the declaration referred to in Article 17(2)(a) as mentioned in Rule 44.1, whichever period expires later*. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.”

Comment: The last lines of paragraph (b) have to be adapted to the amended paragraph (a).

PCT/DC/97 June 5, 1970 (Original: French)
FRANCE

Proposal concerning Article 2

Article 2 (Alternative) should be modified as follows:

(xii) Add "utility certificate"

(xvi) (new) "Searching Authority" means the Authority responsible for the international search in accordance with Chapter I of this Treaty."

(xvii) (new) "Examining Authority" means the Authority responsible for the international preliminary examination in accordance with Chapter II of this Treaty."

(xviii) (old xvi) [No change]

Comment: This proposal consists in placing among the definitions appearing in Article 2 of the Treaty abbreviated expressions for the designation of the Authorities responsible or international search and international preliminary examination as they are now defined in Articles 16 and 32. It is presented in order to simplify the text of the Treaty and the Regulations.

The purely formal modifications which, in consequence, would have to be made in the provisions of the Treaty and the Regulations could be entrusted to the Drafting Committee.

The amendment proposed to item (xii) is intended to correct an omission which has occurred in the relevant definition.

PCT/DC/98 June 5, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Articles 2 and 23

Article 2 should read as follows:

"For the purposes of this Treaty and the Regulations and unless expressly stated otherwise,

(i) *national Office* means the government authority of a Contracting State entrusted with the task of granting patents. References to national Offices shall be construed to include the inter-governmental authority entrusted with the task of granting regional patents, provided that at least one of the States having so entrusted the intergovernmental authority is a Contracting State;

(ii) *As in (ii) on page 12 of PCT/DC/11;*

(iii) *As in (iii) on page 12 of PCT/DC/11;*

(iv) *As in (iv) on page 13 of PCT/DC/4;*

(v) *As in (v) on pages 12 and 14 of PCT/DC/11;*

(vi) *applications* means applications for protection of inventions and references to applications shall be construed as including references to applications for patents of inventions, utility models, patents of addition, inventors' certificates, inventors' certificates of addition, utility certificates, and utility certificates of addition;

(vii) *As in (vi) on page 14 of PCT/DC/11;*

(viii) references to national applications shall be construed as including references to an application for a national patent and an application for a regional patent;

(ix) references to *patents* shall be construed as including references to patents of invention, inventors' certificates, patents of addition, and inventors' certificates of addition, subject to the provisions of Article 4(3) and 45;

(x) references to *patents* shall be construed as including references to both a national patent and a regional patent, unless the expression "national patent" or "regional patent" is used;

(xi) *regional patent* means a patent granted on an application filed with an authority having the power to grant patents effective in more than one State;

(xii) references to *national law* shall be construed as including references to the national law of a Contracting State and to any international treaty providing for the filing of regional applications or the grant of regional patents;

(xiii) *As in 2(xvi) on page 14bis of PCT/DC/11;*

(xiv) *As in 2(xvii) on page 14bis of PCT/DC/11;*

(xv) *As in 2(xviii) on page 14bis of PCT/DC/11;*

(xvi) *As in 2(xix) on page 14bis of PCT/DC/11;*

(xvii) *As in 2(xx) on page 14bis of PCT/DC/11.*"
Article 43 should be deleted.

PCT/DC/99 June 5, 1970 (Original: English)
SOVIET UNION

Proposal concerning Rule 34

Add to the first sentence of Rule 34.1(e):

"... provided, however, that those classes of patent documents of Japan and the Soviet Union for which the English abstracts become generally available before the date of entry into force of this Treaty may not be excluded from the documentation of any International Searching Authority without the consent of the Assembly.

In case of an interruption of the availability of English abstracts the International Searching Authorities shall take appropriate measures to provide for prompt restoration of abstracting services."

[The second sentence of paragraph (e) follows]

PCT/DC/100 June 6, 1970 (Original: English)
CANADA

Proposal concerning Rule 47

Revise Rule 47.1(a) to read:

"The communication provided for in Article 20 shall, *subject to Rule 47.4*, be effected by the International Bureau."

Add after Rule 47.1(d) the following paragraph:

"(e) Where any designated Office has waived the requirement under Article 20, the

communication which would otherwise be made to such designated Office shall be made to the applicant at the time of the notice provided for in paragraph (c).”

Add at the end of the Rule the following clause:

“47.4 The communication provided for in Article 20 shall be effected by the applicant instead of by the International Bureau if the applicant, at or before the time of submitting amendments or a declaration that he does not wish to make amendments and, in any case, before expiry of the time limit provided in Rule 46.1, notifies the International Bureau that he wishes to effect the communication. Promptly after such notification, the International Bureau shall furnish to the applicant the documents required for the communication.”

PCT/DC/101 June 6, 1970 (Original: French)
POLAND

Proposal concerning Rules 64 and 70

Editor’s Note: *This document, in its French version, is a corrigendum to the French text of document PCT/DC/23. It does not affect the English version of document PCT/DC/23.*

PCT/DC/102 June 7, 1970 (Original: English)
WORKING GROUP VII

Report concerning Article 2

1. Working Group VII, established by Main Committee I [to study Article 2], met on June 6, 1970, under the chairmanship of Mr. Braderman (United States of America). It consisted of the Delegations of the following States: Algeria, France, Romania, Soviet Union, United States of America. The Delegation of Japan took part in the work of the Group in the capacity of observer.

2. The Working Group has studied the draft of Article 2, as appearing in documents PCT/DC/11, presented by BIRPI, and the amendments proposed by the Delegations of France (PCT/DC/97), the Soviet Union (PCT/DC/18), and the United States of America (PCT/DC/98).

3. On the basis of the decisions of the Working Group it is suggested that Article 2 read as follows:

ARTICLE 2

Abbreviated Expressions

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise

- (i) “*application*” means an application for the protection of an invention; references to an “*application*” shall be construed as references to applications for patents of invention, inventors’ certificates, utility certificates, utility models, patents of addition, inventors’ certificates of addition, and utility certificates of addition;

- (ii) references to a “*patent*” shall be construed as references to patents of invention, inventors’ certificates, utility certificates, utility models, patents of addition, inventors’ certificates of addition, and utility certificates of addition;
- (iii) “*national patent*” means a patent granted by a national authority;
- (iv) “*regional patent*” means a patent granted by an intergovernmental authority having the power to grant patents effective in more than one State;
- (v) “*regional application*” means an application for a regional patent;
- (vi) references to a “*national application*” shall be construed as references to applications for national and regional patents;
- (vii) “*international application*” means an application filed under this Treaty;
- (viii) references to an “*application*” shall be construed as references to international applications and national applications;
- (ix) references to a “*patent*” shall be construed as references to national patents and regional patents;
- (x) references to “*national law*” shall be construed as references both to the national law of a Contracting State and any treaty providing for the filing of regional applications or the granting of regional patents;
- (xi) “*priority date*,” ... [as in document PCT/DC/11, pages 13 and 15]
- (xii) “*national Office*” means the government authority of a Contracting State entrusted with the granting of patents; references to a “*national Office*” shall be construed as referring also to any intergovernmental authority which several States have entrusted with the task of granting regional patents, provided that at least one of those States is a Contracting State;
- (xiii) “*designated Office*” means the national Office of or acting for the State designated by the applicant under Chapter I of this Treaty;
- (xiv) “*elected Office*” means the national Office of or acting for the State elected by the applicant under Chapter II of this Treaty;
- (xv) “*receiving Office*” means the national Office or the intergovernmental organization with which the international application has been filed;
- (xvi) “*Union*” ... [as in document PCT/DC/11, page 15]
- (xvii) “*Assembly*” ... [ditto]
- (xviii) “*Organization*” ... [ditto]
- (xix) “*International Bureau*” ... [ditto]
- (xx) “*Director General*” ... [ditto]

PCT/DC/103 June 7, 1970 (Original: English)
WORKING GROUP VI

Report on Rules 47 and 52

1. The Working Group [set up to study Rules 47 and 52] met on June 6, 1970, under the chairmanship of Mr. van Dam (Netherlands). It consisted of the Delegations of the following States: Austria, Brazil, Canada, Netherlands, United Kingdom. The Delegations of Japan and Portugal took part in the work of the Group in the capacity of observers.

2. The Working Group has studied Rules 47.1, 47.4 and 52, with particular reference to the proposals for amendments presented by the Delegation of Canada in documents PCT/DC/94 and 100, and the Delegations of Canada and the Netherlands in document 96.

3. The Working Group presents the following suggestions.

4. *As to Rule 47.* Approve the Rule (Alternative) as appearing in document PCT/DC/12, but add a new paragraph to Rule 47.1, reading as follows:

“(e) Where any designated Office has waived the requirement provided under Article 20, the copy of the documents which otherwise would have been sent to that Office shall, on the request of the applicant, be sent to him at the time of the notice referred to in paragraph (c).”

5. *As to Rule 52.1(a),* it is suggested that it should read as follows:

“In any designated State in which processing or examination starts without special request, the applicant shall, if he so wishes, exercise the right under Article 28 within one month from the fulfillment of the requirements under Article 22, provided that, if the communication under Rule 47.1 has not been effected by the expiration of the time limit applicable under Article 22, he shall exercise the said right not later than four months after such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.”

6. *As to Rule 52.1(b),* it is suggested that the last two words (“Article 22”) be replaced by “paragraph (a).” (*N.B.* Paragraph (c) has already been omitted.)

PCT/DC/104 June 8, 1970 (Original: French)
ROMANIA

Proposals concerning a Preamble, Articles 1, 13, 16, 17, 50, 52 and 58, and Rules 22, 34, 44, 88 and 89

Preamble

The Preamble should read as follows:

“The Contracting Parties,

Desiring to contribute to better understanding and cooperation among States for their mutual benefit on the basis of respect for their sovereignty and equality,

Recognizing the importance of using the results of science and modern technology for the development of their national economy and social progress,

Desiring, in order to encourage creative activity, to promote the widest protection of inventions throughout the world,

Desiring, through international cooperation, to assist the efforts of national Patent Offices in granting patents on the basis of search and examination carried out with competence by modern methods,

Have agreed as follows: ...”

Introductory Provisions

Article 1 should be completed by a new paragraph reading as follows:

“(3) No provision of this Treaty shall be interpreted as restricting the rights under national laws concerning the grant of patents.”

Article 13 should be completed by a new paragraph reading as follows:

“(3) Any applicant may ask the International Bureau also to transmit, prior to the communication provided for under Article 20, copies of the international application to all designated States which have not availed themselves of the faculty provided for under Article 13(1).”

Article 16(2) should read as follows:

“If there are several International Searching Authorities, each receiving Office shall specify, separately for each application, the Authority which will carry out the search.”

Article 17(2)(a)(ii) should be deleted.

Article 50(9) should read as follows:

“The composition of the Executive Committee shall be determined by the General Assembly, provided that at least one-half of the total number of members are elected among those States whose Patent Offices carry out examinations for novelty, and that due regard is paid to a corresponding geographical distribution of the members of the Union established by this Treaty. The details concerning the procedure for electing members, the tasks, the organization and functioning of the Executive Committee shall be fixed by the General Assembly in the conditions prescribed under Article 50(6)(a).”

Article 52(2)(a) should read as follows:

“The Assembly shall determine the composition of the Committee and appoint its members, provided that the total number of the members shall be at least three times the number of the International Searching or Preliminary Examining Authorities.”

Article 52(8) should be completed by the following text:

“... shall be governed by the Assembly having regard to the following main criteria:

(a) each of the International Searching Authorities shall be *ex officio* member of the Committee;

(b) at least one-half of the total number of the members of the Committee shall be elected among those States whose Patent Offices carry out examination for novelty;

(c) the composition of the Committee shall correspond to the geographical distribution of the members of the Union established by the Treaty.”

Article 58(1) should read as follows:

“This Treaty and the Regulations annexed hereto shall enter into force three months after the conditions set forth in Article 57 have been fulfilled by the quorum of States members of the Paris Union for the Protection of Industrial Property, among whom there is at least one State whose Office fulfills the conditions relating to the number of persons carrying out examinations, and which has at its disposal the minimum documentation to become an International Searching Authority.”

As to Rule 22.2(e)

We propose to retain the penalty provided for non-transmittal of the international application to the International Bureau within a period of 13 months, by stipulating that the said penalty should be paid by the receiving Office which is at fault.

As to Rule 34.1(a)

We propose that the following corrections be made to this text:

“Germany since 1920 and the Federal Republic of Germany since 1949.” We propose, however, that the list of States whose documentation is referred to should be completed by other States of German, French or English language, such as: Austria, Belgium, Canada and the German Democratic Republic, respectively.

As to Rule 44.1

We propose to add a new paragraph to Rule 44.1, worded as follows: “Each designated Office may ask the International Searching Authority to transmit to it copies of the documents cited in the international search report.”

As to Rule 88.2

We propose to add a new paragraph, worded as follows: “Any amendment of the provisions of this Rule shall bind only those States which accept the amended texts.”

As to Rule 89.2(b)

We propose that the instructions be amended after prior consultation with all the receiving Offices and International Searching and Preliminary Examining Authorities.

There is nowadays a generalized awareness that social development, understood as the raising of cultural conditions and of the standard of living of men throughout the world, is the surest way of eliminating tensions and avoiding conflicts that threaten mankind itself.

Social development is a direct consequence of economic development. This is well understood and clearly expressed in the Charter of the United Nations, which in its preamble affirms the common determination to promote social progress and better conditions of life for all peoples within a more ample freedom, proposing to this end to establish an international mechanism.

In the most recent decades, however, industrial development became more dependent on technology, until we arrived at the present situation, which is characterized by the fact that this invisible input contributes to the growth of production in a manner even more decisive than the fixed capital itself and labor. This growing importance of technology and the fast rate of creation of technical knowledge indispensable to the industrial, economic and social development characterize our present technological revolution; today social development depends directly on technology.

But it is more difficult for the developing countries to create technology indispensable to their social progress than to generate the capital needed for industrial investment. In other words, the technological gap is a greater obstacle than the resources gap in the developmental process.

There are two ways to close the technological gap:

- creation of technology;
- transfer of technology.

Creation and transfer are complementary and both play important roles.

However, as the importance of innovation in the industrial process grows, the capability of developing countries, in the field of technology creation with a view to closing the gap, is reduced. Thus, the developing countries have a growing dependence on the process of transfer of technology, which has different aspects:

- transfer of academic technology;
- transfer of non-patented technology;
- transfer of patented technology.

The transfer of academic technology is carried out through mechanisms such as technical literature, scholarships for post-graduation studies, lectures, etc. Generally speaking, academic technology has a theoretical character. It has no immediate influence on the process of industrial development.

The non-patented technology, on the contrary, may have a direct influence on the industrial process. The transfer of nonpatented technology takes place through such mechanisms as technical on-the-job training, contracting of skilled people to perform specific tasks, technical assistance to provide know-how, etc.

The transfer of patented technology, which has a direct influence on the evolution of industry, is carried

PCT/DC/105 June 6, 1970 (Original: English)
BRAZIL

Statement entitled “General Observations concerning the Role of Patents in the Process of Transfer of Technology”

out through contracts between the owners of the patents and their users. Those contracts are regulated by the national laws on industrial property of the countries concerned.

Generally, patents are accompanied by technical assistance, which means that the transfer of patented technology requires – also – a certain amount of non-patented technology.

The Concept of Patents

The theory of industrial property, as formulated in the XVIIIth and XIXth centuries in the industrialized countries of Europe – France in particular – is based on the natural right, of a moral character, that the inventor has over the creations resulting from his efforts and intelligence. It is a right analogous to property rights.

This theory links the concept of patent to the person of the inventor. It fails, however, to account for the importance of an essential aspect of the patent, which is not only the monopoly rights on the utilization of an invention, but also the divulgation of the invention. In fact, if the current theory of industrial property was restricted to the rights of the inventor concerning his intellectual creations, there would be no obligation to make public the invention and the concept of patent would lose its meaning.

Divulgation is the act through which the inventor permits the collectivity to benefit from the invention, and, in this manner, the inventor gains the right of monopoly, reflected in the patent.

The spreading of technical knowledge has a growing importance for the process of industrial development. As a consequence, the concept of patent cannot continue to be the simple transplanting of the natural property rights to the field of intellectual creation of a technological type.

There is yet another order of considerations, as far as criticism to the theory of personal rights of the inventor is concerned. More and more patents are granted to corporations, which obviously are not inventors, as such. However, our era accepts that when a scientist agrees to be paid for services rendered, by contract, with a view to creating inventions and technological innovations, he is willingly alienating through this act the results of his creative efforts and abilities.

Therefore, one may state that a patent of invention has two aspects:

- the invention as such;
- the spreading of the invention, that is, technical information.

Invention as such depends on persons such as individual researchers or research teams, while technical information depends on corporations which own the patent. In this context, the patents become an instrument for the commercial exploitation of the technical information as an economic asset, since it permits the control of its supply.

Patents are mechanisms which contribute to bringing about inventions and to spreading technical information. In the first case, the most important factor is the wage policy within the corporations and

the research institutions. As to the second, it is linked to the interest of the corporations which own the information (that is, the patents) in obtaining, through the sale of patent rights, an additional benefit from the investment made for the generation of this information, that is, made in research and development activities.

The Technological Gap

We all know that the economies of the most advanced countries are passing through structural changes, as the importance of technology in the productive system increases. The main characteristics of these changes are the diminishing relative participation of the primary sector (agriculture, extractive activities, etc.), and even of the secondary sector (manufacturing), and the increase of the participation of the tertiary sector (services, management, etc.) in the formation of the national product.

The growth of the tertiary sector is particularly fast in the field of technological services due to, *inter alia*, intellectual self-induction and cross-fertilization, which facilitates the formation of cadres of experts, more and more numerous and sophisticated.

Meanwhile, the developing countries face increasingly complicated problems linked to the devaluation in the international market of their main sources of wealth, i.e., raw materials, agricultural commodities and semi-manufactured products. This fact brings negative consequences on the internal formation of capital and contributes to the inflation which characterizes underdeveloped economies. Technological progress is directly affected by that process: on the one hand, firms, pressed by serious financial crises, use all their available resources, including those normally destined for research and development, in order to face their chronic need of working capital. On the other hand, Governments, pressed by social problems, must direct their scarce available resources to their basic needs, diminishing the importance of stimulating technological innovation.

Meanwhile, universities are not asked to produce enough experts because, since firms are more worried with financial problems than with technological improvement, the latter do not demand a significant number of skilled personnel and are not able to carry out attractive wage policies for experts.

For all these reasons, the relative speed of technological progress of the underdeveloped world is negative when compared with the developed world and the technological gap tends to increase indefinitely.

This situation can only be corrected through the improvement for the developing countries of the conditions which regulate the acquisition of technology from more advanced countries.

We hope the modifications to some articles of the Patent Cooperation Treaty we are proposing may contribute to the attainment of these aims.

PCT/DC/106 June 8, 1970 (Original: English)
WORKING GROUP IV

Report concerning Articles 11, 27 and 60

1. The Working Group [on Articles 11, 27 and 60] met on June 3, 4, 6 (twice) and 8, 1970, under the chairmanship of Mr. Robinson (Canada). It consisted of the representatives of the following States: Argentina, Australia, Canada, France, Germany (Federal Republic), Israel, Netherlands, Soviet Union, Switzerland, United Kingdom, United States of America, Zambia.

2. The Working Group studied the questions involved with reference to a number of proposals, particularly those of the Netherlands (PCT/DC/29) and a joint proposal by 12 Delegations (PCT/DC/32).

3. As a result of its extensive discussions, the Working Group proposes the following amendments to Articles 11(3), 27(5) and 60, these amendments to be considered and taken together as a group rather than individually.

4. The amendments are the following:

(a) *Article 11(3)*

“*Subject to Article 60(4), any international application fulfilling the requirements of paragraph (1) shall have the effect of a regular national application in each designated State as of the international filing date, which shall be considered to be the actual filing date in each designated State.*”

(b) *Article 27(5): Delete last sentence.*

(c) *Article 60: Insert new paragraph (4) reading as follows:*

“(4)(a) Any State whose national law provides for prior art effect of its patents as from a date before publication, but does not equate for prior art purposes the priority date claimed under the Paris Convention to the actual filing date in that State, may declare that the filing outside that State of an international application designating that State is not equated to an actual filing in that State for prior art purposes.

(b) Any State making a declaration under subparagraph (a) shall to that extent not be bound by the provisions of Article 11(3).

(c) Any State making a declaration under subparagraph (a) shall, at the same time, state in writing the date from which, and the conditions under which, the prior art effect of any international application designating that State becomes effective in that State. This statement may be modified at any time by notification addressed to the Director General.”

(d) Paragraph (4) of the Draft in PCT/DC/11 to be renumbered as paragraph (5) but otherwise unchanged.

(e) Paragraph (5) of the Draft in PCT/DC/11 to be renumbered as paragraph (6) and to read as follows:

“(6) No reservations to this Treaty other than the reservations under paragraphs (1) to (4) are permitted.”

5. Certain Delegations expressed reservations as to the time at which the declarations under Article 60(4)(a) could be made and as to the freedom to modify the statement under Article 60(4)(c).

PCT/DC/107 June 9, 1970 (Original: English)
WORKING GROUP V

Report concerning Article 31

1. The Working Group [on Article 31] met on June 5, 6, 8 and 9, 1970, under the chairmanship of Mr. Fergusson (United Kingdom). It consisted of the representatives of the following States: Austria, Brazil, France, Germany (Federal Republic), Israel, Ivory Coast, Japan, United Kingdom, United States of America.

2. The Working Group studied several proposals for amendment of Article 31 and related provisions of the Treaty and the Regulations presented by the Delegation of Israel (documents PCT/DC/41, PCT/DC/WG.V/1 to 4).

3. As a result of its extensive discussions, the Working Group proposed several amendments to Articles 31 and 32 and to Rule 59.

4. The following amendments were proposed to Article 31:

Article 31

(1) No change.

(2)(a) Present paragraph (2), but delete “only.”

(b) The Assembly may decide to allow applicants who are neither residents nor nationals of Contracting States bound by Chapter II but who are residents or nationals of a Contracting State to make demands for international preliminary examination.

(3) No change.

(4) Add: “A demand made under paragraph (2)(b) may only elect States bound by Chapter II who declare that they are prepared to be so elected.”

5. The following amendments were proposed to Article 32:

Article 32

(1) No change.

(2) The provisions of Article 16(2) apply *mutatis mutandis* in respect of International Preliminary Examining Authorities competent for the examination of applications falling under Article 31(2)(a).

(3) The Assembly shall specify the International Preliminary Examining Authority competent for examining applications falling under Article 31(2)(b).

(4) The provisions of Article 16(3) apply *mutatis mutandis* in respect of International Preliminary Examining Authorities in all cases.

6. The following amendments were proposed to Rule 59:

Rule 59

59.1 No change.

“59.2 In specifying the International Preliminary Examining Authority under Article 32(3), the Assembly shall give preference to the receiving Office, provided it has been appointed as an International Preliminary Examining Authority under Article 32, or to any other International Preliminary Examining Authority recommended by the receiving Office.”

PCT/DC/108 and 108/Corr.

June 10, 1970 (Original: English)

DRAFTING COMMITTEE OF MAIN
COMMITTEE II

Proposals for Articles 50 to 65 and Rules 84 to 95

Editor's Note: *The text proposed in this document is essentially the same as the text adopted by the Plenary of the Diplomatic Conference (see the odd-number pages from page 283 to page 515 below). It has not been reproduced in this volume.*

PCT/DC/109 and 109/Corr.

June 10, 1970 (Original: French)

WORKING GROUP II

Report on the Preamble and on Articles 1, 56bis, 56ter and 56quater

1. Working Group II met under the chairmanship of Mr. Oniga (Brazil) on May 27 and June 3, 4, 5, 6, 8 and 10, 1970. It consisted of the Delegations of the following States: Argentina, Brazil, France, Germany (Federal Republic), Israel, Japan, Soviet Union, Sweden, United States of America, Yugoslavia and Zambia, as well as the representative of the International Patent Institute at The Hague. The Delegations of some other States took part in all or some of the meetings of the Working Group in the capacity of observers.
2. The Working Group considered the problems raised in documents PCT/DC/20 (proposals of the Delegation of Israel) and PCT/DC/45 (proposals of the Delegation of Brazil).
3. The Working Group submits to Main Committees I and II the following proposals:

A

Preamble

Insert in the Preamble the following paragraph:

“The Contracting States

...

In order to foster the economic development of developing nations through the adoption of measures designed to increase the efficiency of their patent systems, whether national or regional, to provide their economies with better information on the availability of technological solutions applicable to their special needs, and to facilitate the assimilation of the expanding volume of modern technology in order to accelerate and sustain the growth of their national economy, ...”

B

Article 1

Paragraph (1) of this Article should read as follows:

“The States party to this Treaty (hereinafter called ‘the Contracting States’) constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions and for the rendering of other technical services, to be known as the International Patent Cooperation Union.”

C

Insert a new Chapter reading as follows:

CHAPTER IV
OTHER TECHNICAL SERVICES

Article 56bis
Patent Information Services

(1) The International Bureau may provide technical and any other pertinent information available to it on the basis of published documents, primarily patents and published applications.

(2) The International Bureau may perform these services either directly or through one or more International Searching Authorities or other national or international specialized institutions with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge (technology), including available published knowhow.

(4) The services shall be available to Governments of Contracting States and their nationals and residents. The Assembly may decide to extend these services to others.

(5)(a) Services to Governments of Contracting States shall be furnished at cost, provided that, when the Government is that of a Contracting State which is a developing country, the service shall be furnished below cost if the difference may be covered from profit made on services furnished to others than Governments of Contracting States or from the sources of income referred to in Article 56ter(4).

(b) The costs referred to in subparagraph (a) are to be understood as costs over and above those normally incident to the performance of the services of a national Office or the obligations of an International Searching Authority.

(6) The details concerning the implementation of the provisions of this Article shall be governed by decision of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

(7) The Assembly shall, when it considers it necessary, recommend methods of providing financing supplementary to those referred to in paragraph (5).

Article 56ter
Technical Assistance

(1) The Assembly shall establish a Committee for Technical Assistance (hereinafter referred to as 'the Committee').

(2)(a) The members of the Committee shall be elected among the States members of the Union, with due regard to the representation of developing countries.

(b) The Director General shall, at his own initiative or upon request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

(3)(a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries to set up their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

(4) The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly agencies of the United Nations and the Specialized Agencies connected with the United Nations, concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

Article 56quater

Relations with Other Provisions of the Treaty

Nothing in this Chapter shall affect the financial provisions of the rest of this Treaty, which are not applicable to the present Chapter or to its implementation.

PCT/DC/110 June 11, 1970 (Original: English)
BRAZIL

Proposal concerning Rule 86

Rule 86.1 should be completed by a new item (vi), reading as follows:

“a weekly list, to be published as of the first issue and until a World Patent Index comes into being, of all the patents which become public domain in any country, identified at least by their number, their country and their title.”

Comment: The Gazette should become a more comprehensive source of information for the Contracting States. It should include as of its first issue all elements that allow for the perfect identification of patents in the public domain.

PCT/DC/111 June 11, 1970 (Original: French)
ALGERIA

Proposal concerning Article 57

Three different alternatives are proposed for Article 57(3):

Alternative I. *Delete Article 57(3).*

Alternative II. *Article 57(3) is included in the number of Articles which may be subject to express reservations by the States party to the Treaty.*

Alternative III. *No change in the existing text, but a new paragraph (4) would be added in the following terms:*

“(4) However, paragraph (3) of this Article shall not entail for any State party to this Treaty the recognition or tacit acceptance of any legal implications that might arise from such declarations or notifications.”

PCT/DC/112 June 11, 1970 (Original: English)
DRAFTING COMMITTEE OF MAIN
COMMITTEE I

Proposals for Articles 1 to 49

Editor's Note: The text proposed in this document is essentially the same as the text adopted by the Plenary of the Diplomatic Conference (see the odd-number pages from page 283 to page 515, below). It has not been reproduced in this volume.

PCT/DC/113 June 11, 1970 (Original: English)
DRAFTING COMMITTEE OF MAIN
COMMITTEE I

Proposals for Rules 1 to 83

Editor's Note: The text proposed in this document is essentially the same as the text adopted by the Plenary of the Diplomatic Conference (see the odd-number pages from page 283 to page 515, below). It has not been reproduced in this volume.

PCT/DC/114 June 12, 1970 (Original: English)
DRAFTING COMMITTEE OF MAIN
COMMITTEE I

Proposals concerning the Preamble (new) and Articles 50 (new), 51(new) and 52(new)

Editor's Note: The text proposed in this document is essentially the same as the text adopted by the Plenary of the Diplomatic Conference (see the odd-number pages from page 283 to page 515, below). It has not been reproduced in this volume.

PCT/DC/115 June 12, 1970 (Original: English)
MAIN COMMITTEE I

Proposal concerning Article 36

It is proposed that Article 36 be completed as follows:

“(4) The provisions of Article 20(3) shall apply, *mutatis mutandis*, to copies of any document which is cited in the international preliminary examination report and which was not cited in the international search report.”

Observation: See Rule 71.2.

PCT/DC/116 June 12, 1970 (Original: English)
DRAFTING COMMITTEE OF MAIN
COMMITTEE I

Proposals concerning Rules 5 and 54

Editor’s Note: *The text proposed in this document is essentially the same as the text adopted by the Plenary of the Diplomatic Conference (see the odd-number pages from page 283 to page 515, below). It has not been reproduced in this volume.*

PCT/DC/117 June 12, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal concerning Article 15

Article 15(5)(b) should read as follows:

“Except for those applications with respect to which the applicant has filed an international application directed to essentially the same subject matter or has asked for an international-type search on a national application filed in a Contracting State directed to essentially the same subject matter, any Contracting State which does not normally subject national applications to searches of the minimum documentation may require that all national applications filed with it be subjected to an international-type search.”

PCT/DC/118 June 12, 1970 (Original: French)
DRAFTING GROUP ON ARTICLE 57(4)

Report concerning Article 57(4)

1. The Drafting Group set up by Main Committee II to deal with Article 57(4) met on June 12, 1970. It was composed of the Delegations of the following States: Algeria, France, the Soviet Union and the United Kingdom.

2. The Drafting Group submits the following text to Main Committee II:

“(4) Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which the Treaty is made applicable by another Contracting State by virtue of the said paragraph.”

3. The Delegation of the United Kingdom reserved its position on the substance of the proposed text.

PCT/DC/119 June 14, 1970 (Original: English)
SECRETARIAT

Note by the Secretariat to the General Drafting Committee concerning certain Articles and certain Rules

Editor’s Note: *This Note listed some minor corrections in the texts to be presented to the Plenary of the Diplomatic Conference. Since they have been incorporated in the text adopted by the said Plenary (see the odd-number pages from 283 to 515, below), the separate document in which they are listed has not been reproduced in this volume.*

PCT/DC/120 June 15, 1970 (Original: English)
SECRETARIAT

Corrigendum and Addenda to Document PCT/DC/119

Editor’s Note: *This corrigendum and these addenda are all of a minor formal nature. Since they have been incorporated in the text adopted by the Plenary of the Diplomatic Conference (see the odd-number pages from page 283 to page 515, below), the separate document in which they are listed has not been reproduced in this volume.*

PCT/DC/121 June 16, 1970 (Original: English)
GENERAL DRAFTING COMMITTEE

Proposals of the General Drafting Committee concerning certain Articles and certain Rules

Editor’s Note: *The proposals listed in this document are all of a minor formal nature. Since they have been incorporated in the text adopted by the Plenary of the Diplomatic Conference (see the odd-number pages from page 283 to page 515, below), the separate document in which they are listed has not been reproduced in this volume.*

PCT/DC/122 June 16, 1970 (Original: French)
CREDENTIALS COMMITTEE

Report by the Credentials Committee to the Plenary of the Diplomatic Conference

1. The Credentials Committee established in accordance with Rule 11 of the Rules of Procedure met on May 30 and June 16, 1970, under the chairmanship of Mr. B. Yoshino (Japan), Chairman of the Committee, and on June 12, 1970, under the chairmanship of Mr. T. Lorenz (Austria), Vice-Chairman of the Committee. The Committee was composed of the Delegations of the following States: Austria, Denmark, Dominican Republic, Iran, Ireland, Israel, Japan, Madagascar, Poland, Portugal, Uganda, United States of America.

2. In accordance with Rule 10(1) of the Rules of Procedure, the Committee examined the credentials, full powers, letters and other documents referred to in Rules 6 and 7 of the Rules of Procedure which had

been communicated to the Secretary General of the Conference.

3. It was understood that where credentials conferred a general right of representation or participation it was for the head of the delegation to determine whether this implied all the prerogatives deriving therefrom, up to and including the right to sign.

4. The Credentials Committee submits the following report to the Plenary:

Member States of the Paris Union

5. The Committee recognized documents received from the Delegations of the States listed below as valid credentials and full powers, subject to paragraph 3 of this report: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Central African Republic, Congo (Popular Republic), Denmark, Finland, France, Germany (Federal Republic), Holy See, Hungary, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Luxembourg, Madagascar, Malta, Monaco, Netherlands, Niger, Norway, Philippines, Poland, Portugal, Romania, South Africa, Soviet Union, Spain, Sweden, Switzerland, Togo, Uganda, United Arab Republic, United Kingdom, United States of America, Uruguay, Yugoslavia, Zambia.

6. The Committee noted that the documents presented by the Delegations of the following States advised that they were attending in the capacity of observers: Mexico, Trinidad and Tobago, Turkey.

Non-Member States of the Paris Union (Observers)

7. The Committee noted that letters of appointment in conformity with Rule 7 of the Rules of Procedure had been presented by the Delegations of the following non-Member States (Observers): Barbados, Bolivia, Burundi, Chile, China (Republic of), Costa Rica, Ghana, Guatemala, Jamaica, Korea (Republic of), Laos, Libya, Malaysia, Nicaragua, Rwanda, Saudi Arabia, Thailand.

Intergovernmental and International Non governmental Organizations (Observers)

8. The Committee recognized that the letters of appointment presented by all the intergovernmental and international nongovernmental organizations represented at the Conference were valid and in due form.

PCT/DC/123 June 16, 1970 (Original: English)
SECRETARIAT

Draft Treaty

Editor's Note: *This document contains the text of the Treaty adopted by the General Drafting Committee and presented to the Plenary of the Diplomatic Conference. Since it is practically identical with the text adopted by the said Plenary and reproduced on the odd-number pages from page 283 to page 363, below, it has not been reproduced in this volume.*

PCT/DC/124 June 16, 1970 (Original: English)
SECRETARIAT

Draft Regulations

Editor's Note: *This document contains the text of the Regulations adopted by the General Drafting Committee and presented to the Plenary of the Diplomatic Conference. Since it is practically identical with the text adopted by the said Plenary and reproduced on the odd-number pages from page 365 to page 515, below, it has not been reproduced in this volume.*

PCT/DC/125 June 16, 1970 (Original: English)
UNITED STATES OF AMERICA

Proposal for a Final Act of the Conference

Note by the Host Government

1. As is customary at large Diplomatic Conferences, it is proposed to open a Final Act for signature. The Final Act does not contain any obligations for Governments but merely notes that a Diplomatic Conference was held and refers to the preparatory work for the Conference. Consequently, all Delegations participating in the Conference may sign it.

2. The Final Act will be presented for signature at the same time as the Treaty, that is, on Friday, June 19, 1970. However, any Delegation which is planning to leave Washington before June 19 may, if it wishes; make arrangements with the Secretary of the Credentials Committee to sign the Final Act before its departure.

3. The text of the Final Act, drafted along the lines of the Final Act signed at Stockholm, is attached hereto.

[DRAFT]
FINAL ACT

In accordance with decisions of the Executive Committee of the Paris Union for the Protection of Industrial Property in September 1966 and of the Conference of Representatives of that Union in December 1967, preparations by member States of the Paris Union and by the United International Bureaux for the Protection of Intellectual Property, and on invitation of the Government of the United States of America, the Washington Diplomatic Conference on the Patent Cooperation Treaty was held from May 25 to June 19, 1970.

The Conference adopted the Patent Cooperation Treaty, which was then opened for signature at Washington on June 19, 1970.

IN WITNESS WHEREOF, the undersigned, being Delegates of the States invited to the Conference, have signed this Final Act.

DONE at Washington, on June 19, 1970, in the English and French languages, the original to be deposited with the Director General of the World Intellectual Property Organization.

PCT/DC/126 June 16, 1970 (Original: English)
ALGERIA, GERMANY (FEDERAL REPUBLIC),
JAPAN, SOVIET UNION, SWEDEN

Proposal for a Resolution

It is proposed that the Conference adopt the following Resolution concerning preparatory measures for the entry into force of the Patent Cooperation Treaty:

“The Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970,

Considering the desirability of preparing the application of the Patent Cooperation Treaty pending the entry into force of the Treaty,

1. Invites the Assembly and the Executive Committee of the International (Paris) Union for the Protection of Industrial Property and the Director General of the World Intellectual Property Organization to adopt, direct and supervise the measures necessary for the preparation of the entry into force of the Treaty.

2. Recommends that such measures include:

(a) the setting up of an Interim Committee for Technical Assistance, which should prepare the establishment of the Committee for Technical Assistance referred to in Article 51 of the Treaty;

(b) the setting up of an Interim Committee for Technical Cooperation, which should prepare the establishment of the Committee for Technical Cooperation referred to in Article 56 of the Treaty and advise the prospective International Searching and Preliminary Examining Authorities on the questions which will require solution when the Treaty enters into force;

(c) the setting of an Interim Advisory Committee for Administrative Questions, which should study and recommend measures on the questions which will require solutions by the national Offices and the International Bureau when the Treaty enters into force.

3. Expresses the desire that the organizations of inventors, industries, and the patent profession be associated, as in the preparation of the Treaty, in the preparatory work referred to in the present Resolution.”

PCT/DC/127 June 17, 1970 (Original: English)
GENERAL DRAFTING COMMITTEE

Report

The General Drafting Committee submits to the Plenary Conference the texts of the Treaty and the Regulations, in so far as the English version is concerned, as they appear in documents PCT/DC/123 and 124, and, in so far as the French version is

concerned, as they appear in the said documents subject to the modifications appearing in the French version of the present document (PCT/DC/127).

PCT/DC/128, PCT/DC/128 Rev. and PCT/DC/128 Rev. Corr. June 18, July 6 and August 7, 1970 (Original: English)
PLENARY OF THE DIPLOMATIC CONFERENCE

Patent Cooperation Treaty

Editor's Note: *These documents contain the text of the Treaty as adopted by the Diplomatic Conference on June 17, 1970, and opened for signature on June 19, 1970. This text is reproduced on the odd-number pages from page 283 to page 363, below.*

PCT/DC/129 and PCT/DC/129 Rev.

June 19 and July 6, 1970 (Original: English)
PLENARY OF THE DIPLOMATIC CONFERENCE

Regulations Under the Patent Cooperation Treaty

Editor's Note: *These documents contain the text of the Regulations as adopted by the Diplomatic Conference on June 17, 1970, and attached to the Treaty when opened for signature on June 19, 1970. This text is reproduced on the odd-number pages from page 365 to page 515, below.*

PCT/DC/130 June 18, 1970 (Original: English)
PLENARY OF THE DIPLOMATIC CONFERENCE

Resolution Concerning Preparatory Measures for the Entry Into Force of the Patent Cooperation Treaty

Editor's Note: This document contains the text of the Resolution as adopted by the Diplomatic Conference on June 17, 1970. This text is reproduced on page 169 of this volume.

PCT/DC/131 June 19, 1970 (Original: French)
CREDENTIALS COMMITTEE

Additional Report of the Credentials Committee to the Plenary of the Conference

1. The Credentials Committee held its fourth session on June 19, 1970, under the chairmanship of Mr. B. Yoshino (Japan).

2. The Committee decided to make the following additions to its first report (document PCT/DC/122):

- (a) add *Cameroon* to paragraph 5;
- (b) add *Peru* to paragraph 7.

JULY 1969 DRAFT (PCT/DC/4)

MARCH 1970 DRAFT (PCT/DC/11)*

Patent Cooperation Treaty

[No Preamble]

Patent Cooperation Treaty

[No Preamble]

INTRODUCTORY PROVISIONS

**Article 1
Establishment of a Union**

(1) The States party to this Treaty (hereinafter called "the Contracting States") constitute a Union for cooperation in the filing, searching, and examination, of patent applications, to be known as the International Patent Cooperation Union.

(2) No provision of this Treaty shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to that Convention.

**Article 2
Definitions**

For the purposes of this Treaty and the Regulations:

(i) *national Office* means the government authority of a Contracting State entrusted with the task of granting patents; where several States have entrusted an international authority with the task of granting patents and the Contracting State is one of these States, "national Office" means also such international authority;

(ii) *designated Office* means the national Office of the State designated by the applicant under Chapter I of this Treaty;

(iii) *elected Office* means the national Office of the State elected by the applicant under Chapter II of this Treaty;

(iv) *receiving Office* means the national Office or the intergovernmental organization with which the international application has been filed;

INTRODUCTORY PROVISIONS

**Article 1 (Alternative)
Establishment of a Union**

[no change]

**Article 2 (Alternative)
Definitions**

"For the purposes of this Treaty and the Regulations *and unless expressly stated otherwise,*

(i) *national Office* means *both* the government authority of a Contracting State entrusted with the task of granting patents *and the intergovernmental authority entrusted with the task of granting regional patents, provided that at least one of the States having so entrusted the intergovernmental authority is a Contracting State;*

(ii) *designated Office* means the national Office *of or acting for* the State designated by the applicant under Chapter I of this Treaty;

(iii) *elected Office* means the national Office *of or acting for* the State elected by the applicant under Chapter II of this Treaty;

(iv) *receiving Office* means... [no change]

* **Editor's Note:** Words, letters and numbers that are italicized or printed in small capital letters in this draft but do not appear as such in the July 1969 Draft (PCT/DC/4) signal either an addition of material or a deletion of adjacent material.

Corrigenda appearing in document PCT/DC/11/Add. 1 have been introduced into the text of this draft.

Patent Cooperation Treaty

The Contracting States,

Desiring to make a contribution to the progress of science and technology,

Desiring to perfect the legal protection of inventions,

Desiring to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries,

Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions,

Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology,

Convinced that cooperation among nations will greatly facilitate the attainment of these aims,

Have concluded the present Treaty.

INTRODUCTORY PROVISIONS

Article 1

Establishment of a Union

(1) The States party to this Treaty (hereinafter called “the Contracting States”) constitute a Union for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The Union shall be known as the International Patent Cooperation Union.

(2) No provision of this Treaty shall be interpreted as diminishing the rights under the Paris Convention for the Protection of Industrial Property of any national or resident of any country party to that Convention.

Article 2

Definitions

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise:

(i) “application” means an application for the protection of an invention; references to an “application” shall be construed as references to applications for patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;

(ii) references to a “patent” shall be construed as references to patents for inventions, inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition;

(iii) “national patent” means a patent granted by a national authority;

(iv) “regional patent” means a patent granted by a national or an intergovernmental authority having the power to grant patents effective in more than one State;

JULY 1969 DRAFT (PCT/DC/4)

(v) *priority date*, for the purposes of computing time limits, means:

(a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;

(b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;

(c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;

(vi) *Organization* means the World Intellectual Property Organization;

(vii) *International Bureau* means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(viii) *Director General* means the Director General of the Organization and, as long as BIRPI subsists, the Director of BIRPI;

(ix) *Union* means the International Patent Cooperation Union;

(x) *Assembly* means the Assembly of the Union.

Article 43
Inventors' Certificates

Subject to the provisions of Articles 4(3) and 45, references in this Treaty to patents shall be construed as including references to inventors' certificates.

MARCH 1970 DRAFT (PCT/DC/11)

(v) *priority date* means for the purposes of computing time limits:

(a) [no change]

(b) [no change]

(c) [no change]

(vi) INTERNATIONAL APPLICATION means an application filed under this Treaty;

(vii) NATIONAL APPLICATION means both an application for a national patent, national utility certificate or national utility model and an application for a regional patent;

(viii) REGIONAL APPLICATION means an application for a regional patent;

(ix) APPLICATION means both a national application and an international application;

(x) REGIONAL means effective in more than one State;

(xi) PATENT means both national patent and regional patent, unless the expression "national patent" or "regional patent" is used;

(xii) PATENT means both patent and inventor's certificate;

(xiii) PATENT includes patent of addition;

(xiv) PATENT OF ADDITION includes inventor's certificate of addition and utility certificate of addition;

(xv) NATIONAL LAW means both the national law of a Contracting State and any international treaty providing for the filing of regional applications or the grant of regional patents;

(xvi) *Organization*... [as in item (vi) of the 1969 Draft]

(xvii) *International Bureau*... [as in item (vii) of the 1969 Draft]

(xviii) *Director General*... [as in item (viii) of the 1969 Draft]

(xix) *Union*... [as in item (ix) of the 1969 Draft]

(xx) *Assembly*... [as in item (x) of the 1969 Draft]

Article 43 (Alternative)
Inventors' Certificates

OMIT THIS ARTICLE (See Article 2(xii)).

(v) “regional application” means an application for a regional patent;

(vi) references to a “national application” shall be construed as references to applications for national patents and regional patents, other than applications filed under this Treaty;

(vii) “international application” means an application filed under this Treaty;

(viii) references to an “application” shall be construed as references to international applications and national applications;

(ix) references to a “patent” shall be construed as references to national patents and regional patents;

(x) references to “national law” shall be construed as references to the national law of a Contracting State or, where a regional application or a regional patent is involved, to the treaty providing for the filing of regional applications or the granting of regional patents;

(xi) “priority date,” for the purposes of computing time limits, means:

(a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;

(b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;

(c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;

(xii) “national Office” means the government authority of a Contracting State entrusted with the granting of patents; references to a “national Office” shall be construed as referring also to any intergovernmental authority which several States have entrusted with the task of granting regional patents, provided that at least one of those States is a Contracting State, and provided that the said States have authorized that authority to assume the obligations and exercise the powers which this Treaty and the Regulations provide for in respect of national Offices;

(xiii) “designated Office” means the national Office of or acting for the State designated by the applicant under Chapter I of this Treaty;

(xiv) “elected Office” means the national Office of or acting for the State elected by the applicant under Chapter II of this Treaty;

(xv) “receiving Office” means the national Office or the intergovernmental organization with which the international application has been filed;

(xvi) “Union” means the International Patent Cooperation Union;

(xvii) “Assembly” means the Assembly of the Union;

(xviii) “Organization” means the World Intellectual Property Organization;

(xix) “International Bureau” means the International Bureau of the Organization and, as long as it subsists, the United International Bureaux for the Protection of Intellectual Property (BIRPI);

(xx) “Director General” means the Director General of the Organization and, as long as BIRPI subsists, the Director of BIRPI.

JULY 1969 DRAFT (PCT/DC/4)

MARCH 1970 DRAFT (PCT/DC/11)

Article 44
Regional Patents and Regional Patent Treaties

(1) References in this Treaty to national applications or national patents shall be construed as including references to patent applications filed and to patents granted, with effect in more than one State.

(2) References in this Treaty to national laws shall be construed as including references to international treaties providing for the filing of patent applications, or the grant of patents, with effect in more than one State.

Editor's Note: Articles 43 and 44 of the July 1969 Draft were omitted in the March 1970 Draft and their substance appears in Article 2 of the March 1970 Draft and of the Final Text of the Treaty.

CHAPTER I
INTERNATIONAL APPLICATION AND
INTERNATIONAL SEARCH

Article 3
The International Application

(1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.

(2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.

(3) The international application shall:

- (i) be in a prescribed language;
- (ii) comply with the prescribed physical requirements;
- (iii) comply with the prescribed requirement of unity of invention;
- (iv) be subject to the payment of the prescribed fees.

Article 44 (Alternative)
Regional Patents and Regional Patent Treaties

OMIT THIS ARTICLE (See Article 2(vii), (viii), (ix), (x), (xi) and (xv)).

CHAPTER I
INTERNATIONAL APPLICATION AND
INTERNATIONAL SEARCH

Article 3 (Alternative)
The International Application

(1) [no change]

(2) [no change]

(3) *The abstract merely serves the purpose of information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.*

(4) [Same as paragraph (3) in the 1969 Draft]

CHAPTER I
INTERNATIONAL APPLICATION AND INTERNATIONAL SEARCH

Article 3
The International Application

(1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.

(2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.

(3) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.

(4) The international application shall:

- (i) be in a prescribed language;
- (ii) comply with the prescribed physical requirements;
- (iii) comply with the prescribed requirement of unity of invention;
- (iv) be subject to the payment of the prescribed fees.

JULY 1969 DRAFT (PCT/DC/4)

MARCH 1970 DRAFT (PCT/DC/11)

Article 4
The Request

- (1) The request shall contain:
- (i) a petition to the effect that the international application be processed according to this Treaty;
 - (ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application (“designated States”);
 - (iii) the name of and other prescribed data concerning the applicant, the inventor, and the agent (if any);
 - (iv) the title of the invention.
- (2) Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.
- (3) Unless the applicant asks for another kind of protection under Article 45, designation shall mean that the desired protection consists of the grant of a national patent in the designated State.
- (4) Failure to indicate the name and other prescribed data concerning the inventor shall have no consequence in any designated State according to the national law of which an indication of the inventor’s identity would not, generally or under the circumstances of the particular case, be required in a national application.

Article 5
The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

Article 4 (Alternative)
The Request

- (1) The request shall contain:
- (i) [no change]
 - (ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application (“designated States”); *if for any designated State the applicant may obtain a regional patent instead of a national patent, and the applicant wishes to obtain a regional patent, the request or a separate notice filed within the prescribed time limit shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty;*
 - (iii) [no change]
 - (iv) [no change]
- (2) [no change]
- (3) Unless the applicant asks for *any of the other kinds of protection referred to in Article 45*, designation shall mean that the desired protection consists of the grant of a *patent by or for* the designated State. *For the purposes of this paragraph, Article 2(xii)(xiii) and (xiv) shall not apply.*
- (4) Failure to indicate the name and other prescribed data concerning the inventor shall have no consequence in any designated State according to the national law of which an indication of the inventor’s identity *is* not, generally or under the circumstances of the particular case, required in a national application.

Article 5 (Alternative)
The Description

[no change]

Article 4

The Request

- (1) The request shall contain:
- (i) a petition to the effect that the international application be processed according to this Treaty;
 - (ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application (“designated States”); if for any designated State a regional patent is available and the applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;
 - (iii) the name of and other prescribed data concerning the applicant and the agent (if any);
 - (iv) the title of the invention;
 - (v) the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.
- (2) Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.
- (3) Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(ii) shall not apply.
- (4) Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

Article 5

The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

JULY 1969 DRAFT (PCT/DC/4)

Article 6
The Claims

The claim or claims shall, subject to later amendments, define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7
The Drawings

(1) Subject to the provisions of paragraph (2)(ii), drawings shall be required when they are necessary for the understanding of the invention.

(2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:

(i) the applicant may include such drawings in the international application when filed,

(ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

Article 8
Claiming Priority

(1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier national applications filed in any country party to the Paris Convention for the Protection of Industrial Property, or of one or more earlier international applications.

(2)(a) Subject to the provisions of subparagraphs (b) and (c), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in the Paris Convention for the Protection of Industrial Property.

(b) Where the priority claim relates to one or more earlier national applications filed in a Contracting State and the international application contains a designation of the same State, the recognition of the validity of the designation of that State as well as the conditions for, and the effect of, the priority claim in that State shall be a matter for the national law of the said State.

(c) Where the priority claim relates to one or more earlier international applications and a State designated in the later international application is also designated in any of the earlier international applications, the recognition of the validity of the designation of that State in the later international application as well as the conditions for, and the effect of, the priority claim in that State shall be a matter for the national law of the said State.

MARCH 1970 DRAFT (PCT/DC/11)

Article 6 (Alternative)
The Claims

[no change]

Article 7 (Alternative)
The Drawings

[no change]

Article 8 (Alternative)
Claiming Priority

(1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier national applications filed in *or for* any country party to the Paris Convention for the Protection of Industrial Property, or of one or more earlier international applications.

(2)(a) Subject to the provisions of subparagraphs (b) and (c), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in *Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property*.

(b) *The international application for which the priority of one or more earlier national applications filed in a Contracting State is claimed may contain the designation of that State. Such designation shall, however, be considered withdrawn if the applicant does not withdraw the said national application or applications in or for the purposes of that State within a time limit fixed by the applicable national law.*

(c) *The later international application for which the priority of one or more earlier international applications is claimed may contain the designation of one or more Contracting States also designated in any of the earlier international applications. Such designation shall, however, be considered withdrawn for the purposes of any State if the applicant does not withdraw the said earlier international application or applications or the designation of that State in such application or applications within one month from the international filing date of the later international application.*

Article 6

The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7

The Drawings

(1) Subject to the provisions of paragraph (2)(ii), drawings shall be required when they are necessary for the understanding of the invention.

(2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:

(i) the applicant may include such drawings in the international application when filed,

(ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

Article 8

Claiming Priority

(1) The international application may contain a declaration, as prescribed in the Regulations, claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.

(2)(a) Subject to the provisions of subparagraph (b), the conditions for, and the effect of, any priority claim declared under paragraph (1) shall be as provided in Article 4 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property.

(b) The international application for which the priority of one or more earlier applications filed in or for a Contracting State is claimed may contain the designation of that State. Where, in the international application, the priority of one or more national applications filed in or for a designated State is claimed, or where the priority of an international application having designated only one State is claimed, the conditions for, and the effect of, the priority claim in that State shall be governed by the national law of that State.

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Article 9
The Applicant

(1) Any resident or national of a Contracting State may file an international application.

(2) The Assembly may decide to allow residents or nationals of specified States other than Contracting States to file international applications.

(3) The concepts of residence and nationality, and the application of those concepts in cases where there are several applicants or where the applicants are not the same for all the designated States, are defined in the Regulations.

Article 10
The Receiving Office

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Article 11
Filing Date and Effects of the International Application

(1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,

(ii) the application is in the prescribed language,

(iii) the application contains at least the following elements:

(a) an indication that the application is intended as an international application,

(b) the designation of at least one Contracting State,

(c) the name of the applicant, as prescribed,

(d) a part which on the face of it appears to be a description,

(e) a part which on the face of it appears to be a claim or claims.

(2)(a) If the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in paragraph (1), it shall, as provided in the Regulations, invite the applicant to file the required correction.

(b) If the applicant complies with the invitation, as provided by the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.

(3) Any international application fulfilling the requirements of paragraph (1) shall have the effect of a regular national application in each designated State as of the international filing date.

Article 9 (Alternative)
The Applicant

(1) [no change]

(2) The Assembly may decide to allow residents or nationals of *any State party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.*

(3) [no change]

Article 10 (Alternative)
The Receiving Office

[no change]

Article 11 (Alternative)
Filing Date and Effects of the International Application

(1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) [no change]

(ii) the *international* application is in the prescribed language,

(iii) the *international* application contains at least the following elements:

(a) an indication that *it* is intended as an international application,

(b) [no change]

(c) [no change]

(d) [no change]

(e) [no change]

(2)(a) [no change]

(b) If the applicant complies with the invitation, as provided *in* the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.

(3) [no change]

Article 9 **The Applicant**

(1) Any resident or national of a Contracting State may file an international application.

(2) The Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention for the Protection of Industrial Property which is not party to this Treaty to file international applications.

(3) The concepts of residence and nationality, and the application of those concepts in cases where there are several applicants or where the applicants are not the same for all the designated States, are defined in the Regulations.

Article 10 **The Receiving Office**

The international application shall be filed with the prescribed receiving Office, which will check and process it as provided in this Treaty and the Regulations.

Article 11 **Filing Date and Effects of the International Application**

(1) The receiving Office shall accord as the international filing date the date of receipt of the international application, provided that that Office has found that, at the time of receipt:

(i) the applicant does not obviously lack, for reasons of residence or nationality, the right to file an international application with the receiving Office,

(ii) the international application is in the prescribed language,

(iii) the international application contains at least the following elements:

(a) an indication that it is intended as an international application,

(b) the designation of at least one Contracting State,

(c) the name of the applicant, as prescribed,

(d) a part which on the face of it appears to be a description,

(e) a part which on the face of it appears to be a claim or claims.

(2)(a) If the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in paragraph (1), it shall, as provided in the Regulations, invite the applicant to file the required correction.

(b) If the applicant complies with the invitation, as provided in the Regulations, the receiving Office shall accord as the international filing date the date of receipt of the required correction.

(3) Subject to Article 64(4), any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) and accorded an international filing date shall have the effect of a regular national application in each designated State as of the international filing date, which date shall be considered to be the actual filing date in each designated State.

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(4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property [in the London, Lisbon, and Stockholm Acts: Article 4A(2)].

(4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of *Industrial Property*.

Article 12
Transmittal of the International Application to the International Bureau and the International Searching Authority

(1) One copy of the international application shall be kept by the receiving Office ("home copy"), one copy ("record copy") shall be transmitted to the International Bureau, and another copy ("search copy") shall be transmitted to the competent International Searching Authority referred to in Article 16, as provided in the Regulations.

(2) If there is any difference between any copies, the record copy shall be considered the true copy of the international application.

(3)(a) The international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

(b) Any finding of the International Bureau under subparagraph (a) shall be promptly notified by it to the applicant and the receiving Office.

Article 13
Availability of Copy of the International Application to Designated Offices

(1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in Article 20.

(2) Unless the applicant requests earlier transmittal, such copy shall be transmitted by the International Bureau as soon as possible after the expiration of one year from the priority date.

Article 12 (Alternative)
Transmittal of the International Application to the International Bureau and the International Searching Authority

(1) [no change]

(2) [no change]

(3) The *international* application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

(b) OMIT*

Article 13 (Alternative)
Availability of Copy of the International Application to Designated Offices

[no change]

* This provision already appears in Rule 24.2(b) of the 1969 Draft.

(4) Any international application fulfilling the requirements listed in items (i) to (iii) of paragraph (1) shall be equivalent to a regular national filing within the meaning of the Paris Convention for the Protection of Industrial Property.

Article 12
Transmittal of the International Application to the
International Bureau and the International Searching
Authority

(1) One copy of the international application shall be kept by the receiving Office (“home copy”), one copy (“record copy”) shall be transmitted to the International Bureau, and another copy (“search copy”) shall be transmitted to the competent International Searching Authority referred to in Article 16, as provided in the Regulations.

(2) The record copy shall be considered the true copy of the international application.

(3) The international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit.

Article 13
Availability of Copy of the International Application to
Designated Offices

(1) Any designated Office may ask the International Bureau to transmit to it a copy of the international application prior to the communication provided for in Article 20, and the International Bureau shall transmit such copy to the designated Office as soon as possible after the expiration of one year from the priority date.

(2)(a) The applicant may, at any time, transmit a copy of his international application to any designated Office.

(b) The applicant may, at any time, ask the International Bureau to transmit a copy of his international application to any designated Office, and the International Bureau shall transmit such copy to the designated Office as soon as possible.

(c) Any national Office may notify the International Bureau that it does not wish to receive copies as provided for in subparagraph (b), in which case that subparagraph shall not be applicable in respect of that Office.

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Article 14
Certain Defects in the International Application

(1)(a) The receiving Office shall check whether the international application contains any of the following defects, that is to say:

(i) it is not signed, as provided in the Regulations;

(ii) it does not contain the prescribed indications concerning the applicant;

(iii) it does not contain a title for the invention;

(iv) it does not contain an abstract;

(v) it does not comply to the extent provided in the Regulations with the prescribed physical requirements.

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which the application shall be considered withdrawn and the receiving Office shall so declare.

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does, the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, the reference to the said drawings shall be considered non-existent.

(3)(a) If the receiving Office finds that, within the prescribed time limits, the fees prescribed under Article 3(3)(iv) have not been paid, or no fee prescribed under Article 4(2) has been paid in respect of any of the designated States, the international application shall be considered withdrawn and the receiving Office shall so declare.

(b) If the receiving Office finds that the fee prescribed under Article 4(2) has been paid in respect of one or more (but less than all) designated States within the prescribed time limit, the designation of those States in respect of which it has not been paid within the prescribed time limit shall be considered withdrawn and the receiving Office shall so declare.

(4) If, after having accorded an international filing date to the international application, the receiving Office finds, within the prescribed time limit, that any of the requirements listed in items (i) to (iii) of Article 11(1) was not complied with at that date, the said application shall be considered withdrawn and the receiving Office shall so declare.

Article 15
The International Search

(1) Each international application shall be the subject of international search by the competent International Searching Authority referred to in Article 16.

Article 14 (Alternative)
Certain Defects in the International Application

(1)(a) [no change]

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which *that* application shall be considered withdrawn and the receiving Office shall so declare.

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does, the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, *any* reference to the said drawings shall be considered non-existent.

(3) [no change]

(4) [no change]

Article 15 (Alternative)
The International Search

[no change]

Article 14

Certain Defects in the International Application

(1)(a) The receiving Office shall check whether the international application contains any of the following defects, that is to say:

- (i) it is not signed as provided in the Regulations;
- (ii) it does not contain the prescribed indications concerning the applicant;
- (iii) it does not contain a title;
- (iv) it does not contain an abstract;
- (v) it does not comply to the extent provided in the Regulations with the prescribed physical requirements.

(b) If the receiving Office finds any of the said defects, it shall invite the applicant to correct the international application within the prescribed time limit, failing which that application shall be considered withdrawn and the receiving Office shall so declare.

(2) If the international application refers to drawings which, in fact, are not included in that application, the receiving Office shall notify the applicant accordingly and he may furnish them within the prescribed time limit and, if he does., the international filing date shall be the date on which the drawings are received by the receiving Office. Otherwise, any reference to the said drawings shall be considered non-existent.

(3)(a) If the receiving Office finds that, within the prescribed time limits, the fees prescribed under Article 3 (4)(iv) have not been paid, or no fee prescribed under Article 4(2) has been paid in respect of any of the designated States, the international application shall be considered withdrawn and the receiving Office shall so declare.

(b) If the receiving Office finds that the fee prescribed under Article 4(2) has been paid in respect of one or more (but less than all) designated States within the prescribed time limit, the designation of those States in respect of which it has not been paid within the prescribed time limit shall be considered withdrawn and the receiving Office shall so declare.

(4) If, after having accorded an international filing date to the international application, the receiving Office finds, within the prescribed time limit, that any of the requirements listed in items (i) to (iii) of Article 11(1) was not complied with at that date, the said application shall be considered withdrawn and the receiving Office shall so declare.

Article 15

The International Search

(1) Each international application shall be the subject of international search.

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(2) The objective of the international search is to discover relevant prior art.

(3) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).

(4) The International Searching Authority referred to in Article 16 shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentation specified in the Regulations.

(5) If the national law of the Contracting State with whose national Office a national application is filed so permits, the applicant who files such national application may, subject to the conditions provided for in such law, request that a search similar to an international search ("an international-type search") be carried out by the International Searching Authority referred to in Article 16 which would be competent for an international search if the application were an international application and were filed with that Office.

Article 16
The International Searching Authority

(1) International search shall be carried out by the International Searching Authority.

(2) If there are several International Searching Authorities, each receiving Office shall, in accordance with the provisions of the applicable agreement referred to in paragraph (3)(b), specify the International Searching Authority or Authorities competent for the searching of international applications filed with such Office.

(3)(a) International Searching Authorities shall be appointed by the Assembly.

Article 16 (Alternative)
The International Searching Authority

[no change]

(2) The objective of the international search is to discover relevant prior art.

(3) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any).

(4) The International Searching Authority referred to in Article 16 shall endeavor to discover as much of the relevant prior art as its facilities permit, and shall, in any case, consult the documentation specified in the Regulations.

(5)(a) If the national law of the Contracting State so permits, the applicant who files a national application with the national Office of or acting for such State may, subject to the conditions provided for in such law, request that a search similar to an international search (“international-type search”) be carried out on such application.

(b) If the national law of the Contracting State so permits, the national Office of or acting for such State may subject any national application filed with it to an international-type search.

(c) The international-type search shall be carried out by the International Searching Authority referred to in Article 16 which would be competent for an international search if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Searching Authority considers it is not equipped to handle, the international-type search shall be carried out on a translation prepared by the applicant in a language prescribed for international applications and which the International Searching Authority has undertaken to accept for international applications. The national application and the translation, when required, shall be presented in the form prescribed for international applications.

Article 16 **The International Searching Authority**

(1) International search shall be carried out by an International Searching Authority, which may be either a national Office or an intergovernmental organization, such as the International Patent Institute, whose tasks include the establishing of documentary search reports on prior art with respect to inventions which are the subject of applications.

(2) If, pending the establishment of a single International Searching Authority, there are several International Searching Authorities, each receiving Office shall, in accordance with the provisions of the applicable agreement referred to in paragraph (3)(b), specify the International Searching Authority or Authorities competent for the searching of international applications filed with such Office.

(3)(a) International Searching Authorities shall be appointed by the Assembly. Any national Office and any intergovernmental organization satisfying the requirements referred to in subparagraph (c) may be appointed as International Searching Authority.

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(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Office or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the Assembly shall hear the interested Office or organization.

Article 17
Procedure Before the International Searching
Authority

(1) Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) If, in the opinion of the International Searching Authority,

- (i) the international application relates to a subject matter which the International Searching Authority is not required, under the Regulations, to search, and in the particular case decides not to search, or
- (ii) the description, the claims, or the drawings, fail to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out,

the said Authority shall so declare and shall notify the applicant and the International Bureau that no international search report will be established.

(b) If any of the situations referred to in subparagraph (a) is found to exist in connection with certain claims only, the international search report shall so indicate in respect of such claims, whereas, for the other claims, the said report shall be established as provided in Article 18.

Article 17 (Alternative)
Procedure Before the International Searching
Authority

[no change]

(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Office or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the Assembly shall hear the interested Office or organization and seek the advice of the Committee for Technical Cooperation referred to in Article 56 once that Committee has been established.

Article 17

Procedure Before the International Searching Authority

(1) Procedure before the International Searching Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) If the International Searching Authority considers

- (i) that the international application relates to a subject matter which the International Searching Authority is not required, under the Regulations, to search, and in the particular case decides not to search, or
- (ii) that the description, the claims, or the drawings, fail to comply with the prescribed requirements to such an extent that a meaningful search could not be carried out,

the said Authority shall so declare and shall notify the applicant and the International Bureau that no international search report will be established.

(b) If any of the situations referred to in subparagraph (a) is found to exist in connection with certain claims only, the international search report shall so indicate in respect of such claims, whereas, for the other claims, the said report shall be established as provided in Article 18.

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(3)(a) If, in the opinion of the International Searching Authority, the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant, at his option, to restrict the claims so as to comply with the requirement, or to pay additional fees.

(b) The national law of any designated State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be searched shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

(c) If the applicant does not comply with the invitation referred to in subparagraph (a) within the prescribed time limit, the International Searching Authority shall establish an international search report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any designated State may provide that, where its national Office finds the invitation of the International Searching Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

Article 18

The International Search Report

(1) The international search report shall be established within the prescribed time limit and in the prescribed form.

(2) It shall be transmitted by the International Searching Authority to the applicant and the International Bureau.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be translated as provided in the Regulations. The translations shall be prepared by or under the responsibility of the International Bureau.

Article 19

Amendment of the Claims Before the International Bureau

(1) The applicant may, after having received the international search report, amend the claims of the international application by filing such amendments with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.

(2) The amendments shall not go beyond the disclosure in the international application as filed.

Article 18 (Alternative)

The International Search Report

(1) [no change]

(2) *The international search report shall, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau.*

(3) [no change]

Article 19 (Alternative)

Amendment of the Claims Before the International Bureau

(1) The applicant *shall*, after having received the international search report, *be entitled to one opportunity to amend* the claims of the international application by *filing amendments* with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.

(2) [no change]

(3)(a) If the International Searching Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it shall invite the applicant to pay additional fees. The International Searching Authority shall establish the international search report on those parts of the international application which relate to the invention first mentioned in the claims (“main invention”) and, provided the required additional fees have been paid within the prescribed time limit, on those parts of the international application which relate to inventions in respect of which the said fees were paid.

(b) The national law of any designated State may provide that, where the national Office of that State finds the invitation, referred to in subparagraph (a), of the International Searching Authority justified and where the applicant has not paid all additional fees, those parts of the international application which consequently have not been searched shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

Article 18 **The International Search Report**

(1) The international search report shall be established within the prescribed time limit and in the prescribed form.

(2) The international search report shall, as soon as it has been established, be transmitted by the International Searching Authority to the applicant and the International Bureau.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be translated as provided in the Regulations. The translations shall be prepared by or under the responsibility of the International Bureau

Article 19 **Amendment of the Claims Before the International Bureau**

(1) The applicant shall, after having received the international search report, be entitled to one opportunity to amend the claims of the international application by filing amendments with the International Bureau within the prescribed time limit. He may, at the same time, file a brief statement, as provided in the Regulations, explaining the amendments and indicating any impact that such amendments might have on the description and the drawings.

(2) The amendments shall not go beyond the disclosure in the international application as filed.

(3) If the national law of any designated State permits amendments to go beyond the said disclosure, failure to comply with paragraph (2) shall have no consequence in that State.

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Article 20
Communication to Designated Offices

(1)(a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b) or (3)(c)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement.

(b) The communication shall include the translation (as required) of the said report or declaration.

(2) If the claims have been amended by virtue of Article 19(1), the communication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments, and shall include the statement, if any, referred to in Article 19(1).

Article 21
International Publication

(1) The International Bureau shall publish international applications.

(2)(a) Subject to the exceptions provided for in subparagraph (b) and in Article 60(3), the international publication of the international application shall be effected promptly after the expiration of 18 months from the priority date of that application.

(b) The applicant may ask the International Bureau to publish his international application any time before the expiration of the time limit referred to in subparagraph (a). The International Bureau shall proceed accordingly, as provided in the Regulations.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be published as prescribed in the Regulations.

(4) The language and form of the international publication and other details are governed by the Regulations.

(5) There shall be no international publication if the application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

(6) If the international application contains expressions or drawings which, in the opinion of the International Bureau, are contrary to morality or public order, or if, in its opinion, the international application contains disparaging statements as defined in the Regulations, it may omit such expressions, drawings, and statements, from its publications, indicating the place and number of words or drawings omitted, and furnishing, upon request, individual copies of the passages omitted.

Article 20 (Alternative)
Communication to Designated Offices

(1)(a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b) or (3)(c)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement *in its entirety or in part*.

(b) [no change]

(2) [no change]

Article 21 (Alternative)
International Publication

(1) [no change]

(2) [no change]

(3) [no change]

(4) [no change]

(5) There shall be no international publication if the *international* application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

(6) [no change]

Article 20

Communication to Designated Offices

(1)(a) The international application, together with the international search report (including any indication referred to in Article 17(2)(b)) or the declaration referred to in Article 17(2)(a), shall be communicated to each designated Office, as provided in the Regulations, unless the designated Office waives such requirement in its entirety or in part.

(b) The communication shall include the translation (as prescribed) of the said report or declaration.

(2) If the claims have been amended by virtue of Article 19(1), the communication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments, and shall include the statement, if any, referred to in Article 19(1).

(3) At the request of the designated Office or the applicant, the International Searching Authority shall send to the said Office or the applicant, respectively, copies of the documents cited in the international search report, as provided in the Regulations.

Article 21

International Publication

(1) The International Bureau shall publish international applications.

(2)(a) Subject to the exceptions provided for in subparagraph (b) and in Article 64(3), the international publication of the international application shall be effected promptly after the expiration of 18 months from the priority date of that application.

(b) The applicant may ask the International Bureau to publish his international application any time before the expiration of the time limit referred to in subparagraph (a). The International Bureau shall proceed accordingly, as provided in the Regulations.

(3) The international search report or the declaration referred to in Article 17(2)(a) shall be published as prescribed in the Regulations.

(4) The language and form of the international publication and other details are governed by the Regulations.

(5) There shall be no international publication if the international application is withdrawn or is considered withdrawn before the technical preparations for publication have been completed.

(6) If the international application contains expressions or drawings which, in the opinion of the International Bureau, are contrary to morality or public order, or if, in its opinion, the international application contains disparaging statements as defined in the Regulations, it may omit such expressions, drawings, and statements, from its publications, indicating the place and number of words or drawings omitted, and furnishing, upon request, individual copies of the passages omitted.

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Article 22**Copy, Translation, and Fee, to Designated Offices**

(1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof (as required), and pay the national fee (if any), to each designated Office not later than at the expiration of 20 months from the priority date.

(2) Notwithstanding the provisions of paragraph (1), where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be two months from the date of the notification to the applicant of the said declaration.

(3) Any Contracting State may, for performing the acts referred to in paragraphs (1) or (2), fix time limits which expire later than the time limit provided for in those paragraphs.

Article 23**Delaying of National Procedure**

(1) No designated Office shall process or examine the international application prior to the expiration of the applicable time limit under Article 22.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process and examine the international application at any time.

Article 24**Possible Loss of Effect in Designated States**

(1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the international application provided for in Article 11(3) shall cease in any designated State:

(i) if the applicant withdraws his international application or the designation of that State;

(ii) if the international application is considered withdrawn by virtue of Articles 12(3), 14(1)(b), 14(3)(a), or 14(4), or if the designation of that State is considered withdrawn by virtue of Article 14(3)(b);

(iii) if the applicant fails to perform the acts referred to in Article 22 within the applicable time limit.

(2) Notwithstanding the provisions of paragraph (1), any designated State may maintain the effect provided for in Article 11(3) even where such effect is not required to be maintained by virtue of Article 25(2).

Article 22 (Alternative)**Copy, Translation, and Fee, to Designated Offices**

(1) [no change]

(2) Notwithstanding the provisions of paragraph (1), where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be two months from the date of the notification *sent* to the applicant of the said declaration.

(3) [no change]

Article 23 (Alternative)**Delaying of National Procedure**

(1) [no change]

(2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process *or* examine the international application at any time.

Article 24 (Alternative)**Possible Loss of Effect in Designated States**

(1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the international application provided for in Article 11(3) shall cease in any designated State *with the same consequences as the withdrawal of any national application in that State:*

(i) [no change]

(ii) [no change]

(iii) [no change]

(2) [no change]

Article 22
Copy, Translation, and Fee, to Designated Offices

(1) The applicant shall furnish a copy of the international application (unless the communication provided for in Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each designated Office not later than at the expiration of 20 months from the priority date. Where the national law of the designated State requires the indication of the name of and other prescribed data concerning the inventor but allows that these indications be furnished at a time later than that of the filing of a national application, the applicant shall, unless they were contained in the request, furnish the said indications to the national Office of or acting for that State not later than at the expiration of 20 months from the priority date.

(2) Notwithstanding the provisions of paragraph (1), where the International Searching Authority makes a declaration, under Article 17(2)(a), that no international search report will be established, the time limit for performing the acts referred to in paragraph (1) of this Article shall be two months from the date of the notification sent to the applicant of the said declaration.

(3) Any national law may, for performing the acts referred to in paragraphs (1) or (2), fix time limits which expire later than the time limit provided for in those paragraphs.

Article 23
Delaying of National Procedure

(1) No designated Office shall process or examine the international application prior to the expiration of the applicable time limit under Article 22.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may, on the express request of the applicant, process or examine the international application at any time.

Article 24
Possible Loss of Effect in Designated States

(1) Subject, in case (ii) below, to the provisions of Article 25, the effect of the international application provided for in Article 11(3) shall cease in any designated State with the same consequences as the withdrawal of any national application in that State:

(i) if the applicant withdraws his international application or the designation of that State;

(ii) if the international application is considered withdrawn by virtue of Articles 12(3), 14(1)(b), 14(3)(a), or 14(4), or if the designation of that State is considered withdrawn by virtue of Article 14(3)(b);

(iii) if the applicant fails to perform the acts referred to in Article 22 within the applicable time limit.

(2) Notwithstanding the provisions of paragraph (1), any designated Office may maintain the effect provided for in Article 11(3) even where such effect is not required to be maintained by virtue of Article 25(2).

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Article 25
Review By Designated Offices

(1)(a) Where the receiving Office has refused to accord an international filing date or has declared that the international application is considered withdrawn, or where the International Bureau has made a finding under Article 12(3), the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to any of the designated Offices named by the applicant.

(b) Where the receiving Office has declared that the designation of any given State is considered withdrawn, the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to the national Office of such State.

(c) The request under subparagraphs (a) or (b) shall be presented within the prescribed time limit.

(2)(a) Subject to the provisions of subparagraph (b), each designated Office shall, provided that the national fee (if any) has been paid and the appropriate translation (as required) has been furnished within the prescribed time limit, decide whether the refusal, declaration, or finding, referred to in paragraph (1) was justified under the provisions of this Treaty and the Regulations, and if it finds that the refusal or declaration was the result of an error in action or non-action on the part of the receiving Office, or that the finding was the result of an error in action or non-action on the part of the International Bureau, it shall, as far as effects in the State of the designated Office are concerned, treat the international application as if such error had not occurred.

(b) Where the record copy has reached the International Bureau after the expiration of the time limit prescribed under Article 12(3) on account of any error in action or nonaction on the part of the applicant, the provisions of subparagraph (a) shall apply only under the circumstances referred to in Article 48(2).

Article 26
Opportunity to Correct Before Designated Offices

No designated Office shall reject an international application on the grounds of non-compliance with the requirements of this Treaty and the Regulations without first giving the applicant the opportunity to correct the said application to the extent and according to the procedure provided by the national law for the same or comparable situations in respect of national applications.

Article 25 (Alternative)
Review By Designated Offices

[no change]

Article 26 (Alternative)
Opportunity to Correct Before Designated Offices

[no change]

Article 25
Review By Designated Offices

(1)(a) Where the receiving Office has refused to accord an international filing date or has declared that the international application is considered withdrawn, or where the International Bureau has made a finding under Article 12 (3), the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to any of the designated Offices named by the applicant.

(b) Where the receiving Office has declared that the designation of any given State is considered withdrawn, the International Bureau shall promptly send, at the request of the applicant, copies of any document in the file to the national Office of such State.

(c) The request under subparagraphs (a) or (b) shall be presented within the prescribed time limit.

(2)(a) Subject to the provisions of subparagraph (b), each designated Office shall, provided that the national fee (if any) has been paid and the appropriate translation (as prescribed) has been furnished within the prescribed time limit, decide whether the refusal, declaration, or finding, referred to in paragraph (1) was justified under the provisions of this Treaty and the Regulations, and, if it finds that the refusal or declaration was the result of an error or omission on the part of the receiving Office or that the finding was the result of an error or omission on the part of the International Bureau, it shall, as far as effects in the State of the designated Office are concerned, treat the international application as if such error or omission had not occurred.

(b) Where the record copy has reached the International Bureau after the expiration of the time limit prescribed under Article 12(3) on account of any error or omission on the part of the applicant, the provisions of subparagraph (a) shall apply only under the circumstances referred to in Article 48(2).

Article 26
Opportunity to Correct Before Designated Offices

No designated Office shall reject an international application on the grounds of non-compliance with the requirements of this Treaty and the Regulations without first giving the applicant the opportunity to correct the said application to the extent and according to the procedure provided by the national law for the same or comparable situations in respect of national applications.

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Article 27
National Requirements

(1) No designated State shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

(2) It is understood that the provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any designated State from requiring, once the processing of the international application has started in that State, the furnishing of documents not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.

(3) It is further understood that, where the applicant, for the purposes of any designated State, is a natural person who or a legal entity which according to the national law of that State is not qualified to file a national application, the international application may be rejected by the national Office of that State.

(4) It is further understood that where the national law of the designated State provides, in respect of the form or contents of national applications, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for by this Treaty and the Regulations in respect of international applications, the national Office, the courts and any other competent organs of such State may apply the former requirements, instead of the latter requirements, to international applications, except where the applicant insists that the requirements provided for by this Treaty and the Regulations be applied to his international application.

(5) It is further understood that nothing in this Treaty and the Regulations is intended to be construed as prescribing anything that would limit the freedom of each Contracting State to prescribe such substantive conditions of patentability as it desires and that, in particular, any provision in this Treaty and the Regulations concerning the definition of prior art is exclusively for the purposes of the international procedure and, consequently, any Contracting State is free to apply, when determining the patentability of an invention claimed in an international application, its national criteria of prior art and other conditions of patentability not constituting requirements as to the form and contents of applications. Thus it is also understood that the effective date of any international application for prior art purposes (as distinguished from priority purposes) in each Contracting State is governed by the national law of that State and not by the provisions of Article 11(3) or any other provision of this Treaty.

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Article 27 (Alternative)
National Requirements

(1) [no change]

(2) It is understood that the provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any designated State from requiring, once the processing of the international application has started in that State, the furnishing

(i) *when the applicant is a legal entity, of the name of an officer entitled to represent such legal entity,*

(ii) *of documents not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.*

(3) It is further understood that where the applicant, for the purposes of any designated State, *is not qualified according to the national law of that State to file a national application because he is not the inventor,* the international application may be rejected by the national Office of that State.

(4) [no change]

(5) [no change]

Article 27

National Requirements

(1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations.

(2) The provisions of paragraph (1) neither affect the application of the provisions of Article 7(2) nor preclude any national law from requiring, once the processing of the international application has started in the designated Office, the furnishing:

(i) when the applicant is a legal entity, of the name of an officer entitled to represent such legal entity,

(ii) of documents not part of the international application but which constitute proof of allegations or statements made in that application, including the confirmation of the international application by the signature of the applicant when that application, as filed, was signed by his representative or agent.

(3) Where the applicant, for the purposes of any designated State, is not qualified according to the national law of that State to file a national application because he is not the inventor, the international application may be rejected by the designated Office.

(4) Where the national law provides, in respect of the form or contents of national applications, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for by this Treaty and the Regulations in respect of international applications, the national Office, the courts and any other competent organs of or acting for the designated State may apply the former requirements, instead of the latter requirements, to international applications, except where the applicant insists that the requirements provided for by this Treaty and the Regulations be applied to his international application.

(5) Nothing in this Treaty and the Regulations is intended to be construed as prescribing anything that would limit the freedom of each Contracting State to prescribe such substantive conditions of patentability as it desires. In particular, any provision in this Treaty and the Regulations concerning the definition of prior art is exclusively for the purposes of the international procedure and, consequently, any Contracting State is free to apply, when determining the patentability of an invention claimed in an international application, the criteria of its national law in respect of prior art and other conditions of patentability not constituting requirements as to the form and contents of applications.

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(6) It is further understood that any designated State may require that the applicant furnish evidence in respect of any substantive condition of patentability prescribed by its national law.

(7) Finally, it is understood that nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security.

Article 28**Amendment of the Claims, the Description, and the Drawings, Before Designated Offices**

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit.

(2) The amendments shall not go beyond the disclosure in the international application as filed.

(3) Where the designated State requires a translation of the international application, the amendments shall be in the language of the translation.

Article 29**Effects of the International Publication**

(1) As far as the protection of any rights of the applicant in a designated State is concerned, the effects, in that State, of the international publication of an international application shall, subject to the provisions of paragraphs (2) and (3), be the same as those which the national law of the designated State provides for the compulsory national publication of unexamined national applications as such.

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(6) [no change]

(7) *It is further understood that any receiving Office or, once the processing of the international application has started in the designated State, the Office of or acting for that State, may apply the national law of its State as far as it relates to any requirement that the applicant be represented by an agent having the right to represent applicants before that Office and/or that the applicant have an address in that State for the purpose of receiving notifications.*

(8)* [no change]

Article 28 (Alternative)**Amendment of the Claims, the Description, and the Drawings, Before Designated Offices**

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit. *No designated Office shall grant a patent, utility certificate, or utility model, or refuse the grant of the said kinds of protection, before such time limit has expired except with the express consent of the applicant.*

(2) The amendments shall not go beyond the disclosure in the international application as filed *unless the national law of the designated State allows that they go beyond the said disclosure.*

(3) [no change]

Article 29 (Alternative)**Effects of the International Publication**

[no change]

* Paragraph (7) in the 1969 Draft.

(6) The national law may require that the applicant furnish evidence in respect of any substantive condition of patentability prescribed by such law.

(7) Any receiving Office or, once the processing of the international application has started in the designated Office, that Office may apply the national law as far as it relates to any requirement that the applicant be represented by an agent having the right to represent applicants before the said Office and/or that the applicant have an address in the designated State for the purpose of receiving notifications.

(8) Nothing in this Treaty and the Regulations is intended to be construed as limiting the freedom of any Contracting State to apply measures deemed necessary for the preservation of its national security or to limit, for the protection of the general economic interests of that State, the right of its own residents or nationals to file international applications.

Article 28

Amendment of the Claims, the Description, and the Drawings, Before Designated Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each designated Office within the prescribed time limit. No designated Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed unless the national law of the designated State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the designated State in all respects not provided for in this Treaty and the Regulations.

(4) Where the designated Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 29

Effects of the International Publication

(1) As far as the protection of any rights of the applicant in a designated State is concerned, the effects, in that State, of the international publication of an international application shall, subject to the provisions of paragraphs (2) to (4), be the same as those which the national law of the designated State provides for the compulsory national publication of unexamined national applications as such.

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(2) If the language in which the international publication has been effected is different from the language in which national publications are effected in the designated State, the national law of such State may provide that the effects provided for in paragraph (1) shall be applicable only from such time as:

(i) a translation into the latter language has been published as provided by the national law, or

(ii) a translation into the latter language has been made available to the public, by laying open for public inspection as provided by the national law, or

(iii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention claimed in the international application, or

(iv) both the acts described in (i) and (iii), or both the acts described in (ii) and (iii), have taken place.

(3) The national law of any designated State may provide that, where the international publication has been effected, on the request of the applicant, before the expiration of 18 months from the priority date, the effects provided for in paragraph (1) shall be applicable only from the expiration of 18 months from the priority date.

Article 30
Confidential Nature of the International
Application

(1)(a) Subject to the provisions of subparagraph (b), the International Bureau and the International Searching Authorities shall not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.

(b) The provisions of subparagraph (a) shall not apply to transmittals provided for under Articles 12(1) and 13 and communications under Article 20.

(2)(a) No national Office shall allow access to the international application by third parties, unless requested or authorized by the applicant, before the earliest of the following dates:

(i) date of the international publication of the international application,

(ii) date of the receipt of the communication of the international application under Article 20,

(iii) date of the receipt of a copy of the international application under Article 22.

Article 30 (Alternative)
Confidential Nature of the International
Application

(1) [no change]*

(2) [no change]

* **Editor's Note:** See document PCT/DC/11 /Add. 1 for an Addendum to this Article.

(2) If the language in which the international publication has been effected is different from the language in which publications under the national law are effected in the designated State, the said national law may provide that the effects provided for in paragraph (1) shall be applicable only from such time as:

(i) a translation into the latter language has been published as provided by the national law, or

(ii) a translation into the latter language has been made available to the public, by laying open for public inspection as provided by the national law, or

(iii) a translation into the latter language has been transmitted by the applicant to the actual or prospective unauthorized user of the invention claimed in the international application, or

(iv) both the acts described in (i) and (iii), or both the acts described in (ii) and (iii), have taken place.

(3) The national law of any designated State may provide that, where the international publication has been effected, on the request of the applicant, before the expiration of 18 months from the priority date, the effects provided for in paragraph (1) shall be applicable only from the expiration of 18 months from the priority date.

(4) The national law of any designated State may provide that the effects provided for in paragraph (1) shall be applicable only from the date on which a copy of the international application as published under Article 21 has been received in the national Office of or acting for such State. The said Office shall publish the date of receipt in its gazette as soon as possible.

Article 30

Confidential Nature of the International Application

(1)(a) Subject to the provisions of subparagraph (b), the International Bureau and the International Searching Authorities shall not allow access by any person or authority to the international application before the international publication of that application, unless requested or authorized by the applicant.

(b) The provisions of subparagraph (a) shall not apply to any transmittal to the competent International Searching Authority, to transmittals provided for under Article 13, and to communications provided for under Article 20.

(2)(a) No national Office shall allow access to the international application by third parties, unless requested or authorized by the applicant, before the earliest of the following dates:

(i) date of the international publication of the international application,

(ii) date of the receipt of the communication of the international application under Article 20,

(iii) date of the receipt of a copy of the international application under Article 22.

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(b) It is understood that the provisions of subparagraph (a) shall not prevent any national Office from informing third parties that it has been designated, or from publishing that fact. Such information or publication may, however, contain only the following data: identification of the receiving Office, name of the applicant, international filing date, and international application number.

(3) The provisions of paragraph (2)(a) shall apply to any receiving Office except as far as transmittals provided for under Article 12(1) are concerned.

(4) For the purposes of this Article, the term "access" covers any means by which third parties may acquire cognizance, including individual communication or general publication.

(3) [no change]

(4) For the purposes of this Article, the term "access" covers any means by which third parties may acquire cognizance, including individual communication *and* general publication, *provided, however, that no national Office shall generally publish an international application or its translation before the international publication or, if international publication has not taken place by the expiration of 20 months from the priority date, before the expiration of 20 months from the said priority date.*

CHAPTER II INTERNATIONAL PRELIMINARY EXAMINATION

Article 31 Demand for International Preliminary Examination

(1) On the demand of the applicant, his international application shall be the subject of an international preliminary examination as provided in the following provisions and the Regulations.

(2) Only an applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of, or acting for, such State, may make a demand for international preliminary examination.

(3) The demand for international preliminary examination shall be made separately from the international application. The demand shall contain the prescribed particulars and shall be in the prescribed language and form.

(4) The demand shall indicate the State or States in which the applicant intends to use the results of the international preliminary examination ("elected States"). Additional States may be elected later. Election may relate only to States already designated under Article 4. Only Contracting States bound by Chapter II of this Treaty may be elected.

(5) The demand shall be subject to the payment of the prescribed fees within the prescribed time limit.

CHAPTER II INTERNATIONAL PRELIMINARY EXAMINATION

Article 31 (Alternative) Demand for International Preliminary Examination

(1) [no change]

(2) [no change]

(3) [no change]

(4) The demand shall indicate the *Contracting* State or States in which the applicant intends to use the results of the international preliminary examination ("elected States"). Additional *Contracting* States may be elected later. Election may relate only to *Contracting* States already designated under Article 4. Only Contracting States bound by Chapter II of this Treaty may be elected.

(5) [no change]

(b) The provisions of subparagraph (a) shall not prevent any national Office from informing third parties that it has been designated, or from publishing that fact. Such information or publication may, however, contain only the following data: identification of the receiving Office, name of the applicant, international filing date, international application number, and title of the invention.

(c) The provisions of subparagraph (a) shall not prevent any designated Office from allowing access to the international application for the purposes of the judicial authorities.

(3) The provisions of paragraph (2)(a) shall apply to any receiving Office except as far as transmittals provided for under Article 12(1) are concerned.

(4) For the purposes of this Article, the term “access” covers any means by which third parties may acquire cognizance, including individual communication and general publication, provided, however, that no national Office shall generally publish an international application or its translation before the international publication or, if international publication has not taken place by the expiration of 20 months from the priority date, before the expiration of 20 months from the said priority date.

CHAPTER II INTERNATIONAL PRELIMINARY EXAMINATION

Article 31 Demand for International Preliminary Examination

(1) On the demand of the applicant, his international application shall be the subject of an international preliminary examination as provided in the following provisions and the Regulations.

(2)(a) Any applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of or acting for such State, may make a demand for international preliminary examination.

(b) The Assembly may decide to allow persons entitled to file international applications to make a demand for international preliminary examination even if they are residents or nationals of a State not party to this Treaty or not bound by Chapter II.

(3) The demand for international preliminary examination shall be made separately from the international application. The demand shall contain the prescribed particulars and shall be in the prescribed language and form.

(4)(a) The demand shall indicate the Contracting State or States in which the applicant intends to use the results of the international preliminary examination (“elected States”). Additional Contracting States may be elected later. Election may relate only to Contracting States already designated under Article 4.

(b) Applicants referred to in paragraph (2)(a) may elect any Contracting State bound by Chapter II. Applicants referred to in paragraph (2)(b) may elect only such Contracting States bound by Chapter II as have declared that they are prepared to be elected by such applicants.

(5) The demand shall be subject to the payment of the prescribed fees within the prescribed time limit.

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(6)(a) The demand shall be submitted to the competent International Preliminary Examining Authority referred to in Article 32.

(6) [no change]

(b) Any later election shall be submitted to the International Bureau.

(7) [no change]

(7) Each elected Office shall be notified of its election.

Article 32
The International Preliminary Examining Authority

Article 32 (Alternative)
The International Preliminary Examining Authority

(1) International preliminary examination shall be carried out by the International Preliminary Examining Authority.

[no change]

(2) The provisions of Article 16(2) and (3) shall apply, *mutatis mutandis*, in respect of International Preliminary Examining Authorities.

Article 33
The International Preliminary Examination

Article 33 (Alternative)
The International Preliminary Examination

(1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

(1) [no change]

(2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.

(2) [no change]

(3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not obvious to a person skilled in the art.

(3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not, *at the prescribed relevant date*, obvious to a person skilled in the art.

(4) [no change]

(4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense and shall include agriculture.

(5) [no change]

(5) It is understood that the criteria described above merely serve the purposes of international preliminary examination and that any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed invention is patentable or not.

(6)(a) The demand shall be submitted to the competent International Preliminary Examining Authority referred to in Article 32.

(b) Any later election shall be submitted to the International Bureau.

(7) Each elected Office shall be notified of its election.

Article 32

The International Preliminary Examining Authority

(1) International preliminary examination shall be carried out by the International Preliminary Examining Authority.

(2) In the case of demands referred to in Article 31(2)(a), the receiving Office, and, in the case of demands referred to in Article 31(2)(b), the Assembly, shall, in accordance with the applicable agreement between the interested International Preliminary Examining Authority or Authorities and the International Bureau, specify the International Preliminary Examining Authority or Authorities competent for the preliminary examination.

(3) The provisions of Article 16(3) shall apply, *mutatis mutandis*, in respect of International Preliminary Examining Authorities.

Article 33

The International Preliminary Examination

(1) The objective of the international preliminary examination is to formulate a preliminary and non-binding opinion on the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

(2) For the purposes of the international preliminary examination, a claimed invention shall be considered novel if it is not anticipated by the prior art as defined in the Regulations.

(3) For the purposes of the international preliminary examination, a claimed invention shall be considered to involve an inventive step if, having regard to the prior art as defined in the Regulations, it is not, at the prescribed relevant date, obvious to a person skilled in the art.

(4) For the purposes of the international preliminary examination, a claimed invention shall be considered industrially applicable if, according to its nature, it can be made or used (in the technological sense) in any kind of industry. "Industry" shall be understood in its broadest sense, as in the Paris Convention for the Protection of Industrial Property.

(5) The criteria described above merely serve the purposes of international preliminary examination. Any Contracting State may apply additional or different criteria for the purposes of deciding whether, in that State, the claimed invention is patentable or not.

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(6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

(6) [no change]

Article 34
Procedure Before the International Preliminary
Examining Authority

(1) Procedure before the International Preliminary Examining Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) The applicant shall have a right to communicate orally and in writing with the International Preliminary Examining Authority.

(b) The applicant shall have a right to amend the claims, the description, and the drawings, in the prescribed manner and within the prescribed time limit, before the international preliminary examination report is established. The amendment shall not go beyond the disclosure in the international application as filed.

(c) The applicant shall receive at least one written opinion from the International Preliminary Examining Authority unless, in the opinion of such Authority, all of the following conditions are fulfilled:

(i) the invention satisfies the criteria set forth in Article 33(1),

(ii) the international application complies with the requirements of this Treaty and the Regulations in so far as checked by that Authority,

(iii) no observations are intended to be made under Article 35(2), last sentence.

(d) The applicant may respond to the written opinion.

(3)(a) If, in the opinion of the International Preliminary Examining Authority, the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it may invite the applicant, at his option, to restrict the claims so as to comply with the requirement or to pay additional fees.

(b) The national law of any elected State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be the subject of international preliminary examination shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

Article 34 (Alternative)
Procedure Before the International Preliminary
Examining Authority

[no change]

(6) The international preliminary examination shall take into consideration all the documents cited in the international search report. It may take into consideration any additional documents considered to be relevant in the particular case.

Article 34
Procedure Before the International Preliminary Examining Authority

(1) Procedure before the International Preliminary Examining Authority shall be governed by the provisions of this Treaty, the Regulations, and the agreement which the International Bureau shall conclude, subject to this Treaty and the Regulations, with the said Authority.

(2)(a) The applicant shall have a right to communicate orally and in writing with the International Preliminary Examining Authority.

(b) The applicant shall have a right to amend the claims, the description, and the drawings, in the prescribed manner and within the prescribed time limit, before the international preliminary examination report is established. The amendment shall not go beyond the disclosure in the international application as filed.

(c) The applicant shall receive at least one written opinion from the International Preliminary Examining Authority unless such Authority considers that all of the following conditions are fulfilled:

(i) the invention satisfies the criteria set forth in Article 33(1),

(ii) the international application complies with the requirements of this Treaty and the Regulations in so far as checked by that Authority,

(iii) no observations are intended to be made under Article 35(2), last sentence.

(d) The applicant may respond to the written opinion.

(3)(a) If the International Preliminary Examining Authority considers that the international application does not comply with the requirement of unity of invention as set forth in the Regulations, it may invite the applicant, at his option, to restrict the claims so as to comply with the requirement or to pay additional fees.

(b) The national law of any elected State may provide that, where the applicant chooses to restrict the claims under subparagraph (a), those parts of the international application which, as a consequence of the restriction, are not to be the subject of international preliminary examination shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to the national Office of that State.

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(c) If the applicant does not comply with the invitation referred to in subparagraph (a) within the prescribed time limit, the International Preliminary Examining Authority shall establish an international preliminary examination report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any elected State may provide that, where its national Office finds the invitation of the International Preliminary Examining Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

(4)(a) If, in the opinion of the International Preliminary Examining Authority,

- (i) the international application relates to a subject matter on which the International Preliminary Examining Authority is not required, under the Regulations, to carry out an international preliminary examination, and in the particular case decides not to carry out such examination, or
- (ii) the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed on the novelty, inventive step (non-obviousness), or industrial applicability, of the claimed invention,

the said Authority shall not go into the questions referred to in Article 33(1) and shall inform the applicant of this opinion and the reasons therefor.

(b) If any of the situations referred to in subparagraph (a) is found to exist in, or in connection with, certain claims only, the provisions of that subparagraph shall apply only to the said claims.

Article 35

The International Preliminary Examination Report

(1) The international preliminary examination report shall be established within the prescribed time limit and in the prescribed form.

Article 35 (Alternative)

The International Preliminary Examination Report

(1) [no change]

(c) If the applicant does not comply with the invitation referred to in subparagraph (a) within the prescribed time limit, the International Preliminary Examining Authority shall establish an international preliminary examination report on those parts of the international application which relate to what appears to be the main invention and shall indicate the relevant facts in the said report. The national law of any elected State may provide that, where its national Office finds the invitation of the International Preliminary Examining Authority justified, those parts of the international application which do not relate to the main invention shall, as far as effects in that State are concerned, be considered withdrawn unless a special fee is paid by the applicant to that Office.

(4)(a) If the International Preliminary Examining Authority considers

- (i) that the international application relates to a subject matter on which the International Preliminary Examining Authority is not required, under the Regulations, to carry out an international preliminary examination, and in the particular case decides not to carry out such examination, or
- (ii) that the description, the claims, or the drawings, are so unclear, or the claims are so inadequately supported by the description, that no meaningful opinion can be formed on the novelty, inventive step (non-obviousness), or industrial applicability, of the claimed invention,

the said Authority shall not go into the questions referred to in Article 33(1) and shall inform the applicant of this opinion and the reasons therefor.

(b) If any of the situations referred to in subparagraph (a) is found to exist in, or in connection with, certain claims only, the provisions of that subparagraph shall apply only to the said claims.

Article 35

The International Preliminary Examination Report

(1) The international preliminary examination report shall be established within the prescribed time limit and in the prescribed form.

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(2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to the law of any country. It shall state, subject to the provisions of paragraph (3), in relation to each claim, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination in Article 33(1) to (4). The statement shall be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement may also be accompanied by such other observations as the Regulations provide for.

(3)(a) If, at the time of establishing the international preliminary examination report, in the opinion of the International Preliminary Examining Authority, any of the situations referred to in Article 34(4)(a) exists, that report shall state this opinion and the reasons therefor. It shall not contain any statement as provided in paragraph (2).

(b) If a situation under Article 34(4)(b) is found to exist, the international preliminary examination report shall, in relation to the claims in question, contain the statement as provided in subparagraph (a), whereas, in relation to the other claims, it shall contain the statement as provided in paragraph (2).

Article 36**Transmittal, Translation, and Communication, of the International Preliminary Examination Report**

(1) The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

(2)(a) The international preliminary examination report and its annexes shall be translated (as required) into the prescribed languages.

(b) Any translation of the said report shall be prepared by or under the responsibility of the International Bureau, whereas any translation of the said annexes shall be prepared by the applicant.

(3)(a) The international preliminary examination report, together with its translation (as required) and its annexes (in the original language), shall be communicated by the International Bureau to each elected Office.

(b) The required translation of the annexes shall be transmitted within the prescribed time limit by the applicant to the elected Offices.

Article 37**Withdrawal of Demand or Election**

(1) The applicant may withdraw any or all elections.

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(2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to the law of any country. It shall state, subject to the provisions of paragraph (3), in relation to each claim, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination in Article 33(1) to (4). The statement shall be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement *shall* also be accompanied by such other observations as the Regulations provide for.

(3)(a) [no change]

(b) [no change]

Article 36 (Alternative)**Transmittal, Translation, and Communication, of the International Preliminary Examination Report**

[no change]

Article 37 (Alternative)**Withdrawal of Demand or Election**

[no change]

(2) The international preliminary examination report shall not contain any statement on the question whether the claimed invention is or seems to be patentable or unpatentable according to any national law. It shall state, subject to the provisions of paragraph (3), in relation to each claim, whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined for the purposes of the international preliminary examination in Article 33(1) to (4). The statement shall be accompanied by the citation of the documents believed to support the stated conclusion with such explanations as the circumstances of the case may require. The statement shall also be accompanied by such other observations as the Regulations provide for.

(3)(a) If, at the time of establishing the international preliminary examination report, the International Preliminary Examining Authority considers that any of the situations referred to in Article 34(4)(a) exists, that report shall state this opinion and the reasons therefor. It shall not contain any statement as provided in paragraph (2).

(b) If a situation under Article 34(4)(b) is found to exist, the international preliminary examination report shall, in relation to the claims in question, contain the statement as provided in subparagraph (a), whereas, in relation to the other claims, it shall contain the statement as provided in paragraph (2).

Article 36 **Transmittal, Translation, and Communication, of the** **International Preliminary Examination Report**

(1) The international preliminary examination report, together with the prescribed annexes, shall be transmitted to the applicant and to the International Bureau.

(2)(a) The international preliminary examination report and its annexes shall be translated into the prescribed languages.

(b) Any translation of the said report shall be prepared by or under the responsibility of the International Bureau, whereas any translation of the said annexes shall be prepared by the applicant.

(3)(a) The international preliminary examination report, together with its translation (as prescribed) and its annexes (in the original language), shall be communicated by the International Bureau to each elected Office.

(b) The prescribed translation of the annexes shall be transmitted within the prescribed time limit by the applicant to the elected Offices.

(4) The provisions of Article 20 (3) shall apply, *mutatis mutandis*, to copies of any document which is cited in the international preliminary examination report and which was not cited in the international search report.

Article 37 **Withdrawal of Demand or Election**

(1) The applicant may withdraw any or all elections.

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(2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.

(3)(a) Any withdrawal shall be notified to the International Bureau.

(b) The elected Offices concerned and the International Preliminary Examining Authority concerned shall be notified accordingly by the International Bureau.

(4)(a) Subject to the provisions of subparagraph (b), withdrawal of the demand or of the election of a Contracting State shall, unless the national law of that State provides otherwise, be considered to be withdrawal of the international application as far as that State is concerned.

(b) Withdrawal of the demand or of the election shall not be considered to be withdrawal of the international application if such withdrawal is effected prior to the expiration of the applicable time limit under Article 22; however, any Contracting State may provide in its national law that the aforesaid shall apply only if its national Office has received, within the said time limit, a copy of the international application, together with a translation (as required), and the national fee.

Article 38
Confidential Nature of the International Preliminary Examination

(1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.

(2) Subject to the provisions of paragraph (1) and Articles 36(1) and (3) and 37(3)(b), neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, give information on the issuance or non-issuance of an international preliminary examination report and on the withdrawal or non-withdrawal of the demand or of any election.

Article 39
Copy, Translation, and Fee, to Elected Offices

(1)(a) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 22 shall not apply to such State and the applicant shall furnish a copy of the international application (unless the communication under Article 20 has already taken place) and a translation thereof (as required), and pay the national fee (if any), to each elected Office not later than at the expiration of 25 months from the priority date.

Article 38 (Alternative)
Confidential Nature of the International Preliminary Examination

(1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning, *and with the proviso*, of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.

(2) [no change]

Article 39 (Alternative)
Copy, Translation, and Fee, to Elected Offices

[no change]

(2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.

(3)(a) Any withdrawal shall be notified to the International Bureau.

(b) The elected Offices concerned and the International Preliminary Examining Authority concerned shall be notified accordingly by the International Bureau.

(4)(a) Subject to the provisions of subparagraph (b), withdrawal of the demand or of the election of a Contracting State shall, unless the national law of that State provides otherwise, be considered to be withdrawal of the international application as far as that State is concerned.

(b) Withdrawal of the demand or of the election shall not be considered to be withdrawal of the international application if such withdrawal is effected prior to the expiration of the applicable time limit under Article 22; however, any Contracting State may provide in its national law that the aforesaid shall apply only if its national Office has received, within the said time limit, a copy of the international application, together with a translation (as prescribed), and the national fee.

Article 38 **Confidential Nature of the International Preliminary Examination**

(1) Neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, allow access within the meaning, and with the proviso, of Article 30(4) to the file of the international preliminary examination by any person or authority at any time, except by the elected Offices once the international preliminary examination report has been established.

(2) Subject to the provisions of paragraph (1) and Articles 36(1) and (3) and 37(3)(b), neither the International Bureau nor the International Preliminary Examining Authority shall, unless requested or authorized by the applicant, give information on the issuance or non-issuance of an international preliminary examination report and on the withdrawal or nonwithdrawal of the demand or of any election.

Article 39 **Copy, Translation, and Fee, to Elected Offices**

(1)(a) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 22 shall not apply to such State and the applicant shall furnish a copy of the international application (unless the communication under Article 20 has already taken place) and a translation thereof (as prescribed), and pay the national fee (if any), to each elected Office not later than at the expiration of 25 months from the priority date.

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(b) Any Contracting State may, for performing the acts referred to in subparagraph (a), fix time limits which expire later than the time limit provided for in that subparagraph.

(2) The effect provided for in Article 11(3) shall cease in the elected State if the applicant fails to perform the acts referred to in paragraph (1)(a) within the time limit applicable under paragraph (1)(a) or (b).

(3) Any elected State may maintain the effect provided for in Article 11(3) even where the applicant does not comply with the requirements provided for in paragraph (1)(a) or (b).

Article 40
Delaying of National Examination and Other Processing

(1) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 23 shall not apply to such State and the national Office of that State shall not proceed, subject to the provisions of paragraph (2), to the examination and other processing of the international application prior to the expiration of the applicable time limit under Article 39.

(2) Notwithstanding the provisions of paragraph (1), any elected Office may, on the express request of the applicant, proceed to the examination and other processing of the international application at any time.

Article 41
Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit.

(2) The amendments shall not go beyond the disclosure in the international application as filed.

(3) Where an elected State requires a translation of the international application, the amendments shall be in the language of the translation.

Article 42
Results of National Examination In Elected Offices

No elected Office receiving the international preliminary examination report may require that the applicant furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

Article 40 (Alternative)
Delaying of National Examination and Other Processing

[no change]

Article 41 (Alternative)
Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit. *No elected Office shall grant a patent, utility certificate, or utility model, or refuse the grant of the said kinds of protection, before such time limit has expired except with the express consent of the applicant.*

(2) The amendments shall not go beyond the disclosure in the international application as filed, *unless the national law of the elected State allows that they go beyond the said disclosure.*

(3) [no change]

Article 42 (Alternative)
Results of National Examination In Elected Offices

[no change]

(b) Any national law may, for performing the acts referred to in subparagraph (a), fix time limits which expire later than the time limit provided for in that subparagraph.

(2) The effect provided for in Article 11(3) shall cease in the elected State with the same consequences as the withdrawal of any national application in that State if the applicant fails to perform the acts referred to in paragraph (1)(a) within the time limit applicable under paragraph (1)(a) or (b).

(3) Any elected Office may maintain the effect provided for in Article 11(3) even where the applicant does not comply with the requirements provided for in paragraph (1)(a) or (b).

Article 40

Delaying of National Examination and Other Processing

(1) If the election of any Contracting State has been effected prior to the expiration of the 19th month from the priority date, the provisions of Article 23 shall not apply to such State and the national Office of or acting for that State shall not proceed, subject to the provisions of paragraph (2), to the examination and other processing of the international application prior to the expiration of the applicable time limit under Article 39.

(2) Notwithstanding the provisions of paragraph (1), any elected Office may, on the express request of the applicant, proceed to the examination and other processing of the international application at any time.

Article 41

Amendment of the Claims, the Description, and the Drawings, Before Elected Offices

(1) The applicant shall be given the opportunity to amend the claims, the description, and the drawings, before each elected Office within the prescribed time limit. No elected Office shall grant a patent, or refuse the grant of a patent, before such time limit has expired, except with the express consent of the applicant.

(2) The amendments shall not go beyond the disclosure in the international application as filed, unless the national law of the elected State permits them to go beyond the said disclosure.

(3) The amendments shall be in accordance with the national law of the elected State in all respects not provided for in this Treaty and the Regulations.

(4) Where an elected Office requires a translation of the international application, the amendments shall be in the language of the translation.

Article 42

Results of National Examination in Elected Offices

No elected Office receiving the international preliminary examination report may require that the applicant furnish copies, or information on the contents, of any papers connected with the examination relating to the same international application in any other elected Office.

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CHAPTER III
COMMON PROVISIONS

Article 45
Seeking Protection Through Other Means Than the
Grant of a Patent

(1) In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, or patents of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned, of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent of addition, and the ensuing effect shall be governed by the applicant's choice.

(2) In respect of any designated or elected State whose law allows that an application, while being for the grant of one of the said kinds of protection, be also subsidiarily for the grant of another of the said kinds of protection, the applicant may so indicate, as prescribed in the Regulations, and the ensuing effect shall be governed by the applicant's indications.

CHAPTER III
COMMON PROVISIONS

Article 45 (Alternative)
Seeking Certain Kinds of Protection

In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, patents of addition, utility certificates of addition, or inventors' certificates of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned, of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent of addition, a utility certificate of addition, or an inventor's certificate of addition, and the ensuing effect shall be governed by the applicant's choice. For the purposes of this Article and any Rule thereunder, Article 2(xii), (xiii) and (xiv) shall not apply.

Article... [Alternative to Article 45(2)]
Seeking Two Kinds of Protection

In respect of any designated or elected State whose law allows that an application, while being for the grant of a patent or one of the other kinds of protection referred to in Article 45, be also for the grant of another of the said kinds of protection, the applicant may indicate, as prescribed in the Regulations, the two kinds of protection he is seeking, and the ensuing effect shall be governed by the applicant's indications.

Editor's Note: As to Articles 43 and 44, see pages 284 and 286.

CHAPTER III COMMON PROVISIONS

Article 43 **Seeking Certain Kinds of Protection**

In respect of any designated or elected State whose law provides for the grant of inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, or utility certificates of addition, the applicant may indicate, as prescribed in the Regulations, that his international application is for the grant, as far as that State is concerned, of an inventor's certificate, a utility certificate, or a utility model, rather than a patent, or that it is for the grant of a patent or certificate of addition, an inventor's certificate of addition, or a utility certificate of addition, and the ensuing effect shall be governed by the applicant's choice. For the purposes of this Article and any Rule thereunder, Article 2(ii) shall not apply.

Article 44 **Seeking Two Kinds of Protection**

In respect of any designated or elected State whose law permits an application, while being for the grant of a patent or one of the other kinds of protection referred to in Article 43, to be also for the grant of another of the said kinds of protection, the applicant may indicate, as prescribed in the Regulations, the two kinds of protection he is seeking, and the ensuing effect shall be governed by the applicant's indications. For the purposes of this Article, Article 2(ii) shall not apply.

Article 45 **Regional Patent Treaties**

(1) Any treaty providing for the grant of regional patents ("regional patent treaty"), and giving to all persons who, according to Article 9, are entitled to file international applications the right to file applications for such patents, may provide that international applications designating or electing a State party to both the regional patent treaty and the present Treaty may be filed as applications for such patents.

(2) The national law of the said designated or elected State may provide that any designation or election of such State in the international application shall have the effect of an indication of the wish to obtain a regional patent under the regional patent treaty.

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Article 46
Incorrect Translation of the International
Application

If, because of an incorrect translation of the international application, the scope of any national patent, utility model, or utility certificate, granted on that application, exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of the national patent, utility model, or utility certificate, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

Article 47
Time Limits

(1) The details for computing time limits referred to in this Treaty are governed by the Regulations.

(2)(a) All time limits fixed in Chapters I and II of this Treaty may, outside any revision under Article 55, be modified by a decision of the Contracting States.

(b) Such decisions shall be made in the Assembly or through consultation by correspondence and must be unanimous.

(c) The details of the procedure are governed by the Regulations.

Article 48
Delay in Meeting Certain Time Limits

(1) Where any time limit fixed in this Treaty or the Regulations is not met because of interruption in the mail service or unavoidable loss or delay in the mail, the time limit shall be deemed to be met in the cases and subject to the proof and other conditions prescribed in the Regulations.

(2)(a) Any Contracting State shall, as far as that State is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit.

(b) Any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in subparagraph (a), any delay in meeting any time limit.

Article 49
Right to Practice Before International Authorities

Any attorney, patent agent, or other person having the right to practice before the national Office or intergovernmental organization with which the international application was filed shall be entitled to practice before the International Bureau and the competent International Searching Authority and competent International Preliminary Examining Authority in respect of that application.

Article 46 (Alternative)
Incorrect Translation of the International
Application

If, because of an incorrect translation of the international application, the scope of *any patent*, utility model, or utility certificate granted on that application exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of *the patent*, utility model, or utility certificate, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

Article 47 (Alternative)
Time Limits

[no change]

Article 48 (Alternative)
Delay in Meeting Certain Time Limits

[no change]

Article 49 (Alternative)
Right to Practice Before International Authorities

[no change]

Article 46
Incorrect Translation of the International Application

If, because of an incorrect translation of the international application, the scope of any patent granted on that application exceeds the scope of the international application in its original language, the competent authorities of the Contracting State concerned may accordingly and retroactively limit the scope of the patent, and declare it null and void to the extent that its scope has exceeded the scope of the international application in its original language.

Article 47
Time Limits

(1) The details for computing time limits referred to in this Treaty are governed by the Regulations.

(2)(a) All time limits fixed in Chapters I and II of this Treaty may, outside any revision under Article 60, be modified by a decision of the Contracting States.

(b) Such decisions shall be made in the Assembly or through voting by correspondence and must be unanimous.

(c) The details of the procedure are governed by the Regulations.

Article 48
Delay in Meeting Certain Time Limits

(1) Where any time limit fixed in this Treaty or the Regulations is not met because of interruption in the mail service or unavoidable loss or delay in the mail, the time limit shall be deemed to be met in the cases and subject to the proof and other conditions prescribed in the Regulations.

(2)(a) Any Contracting State shall, as far as that State is concerned, excuse, for reasons admitted under its national law, any delay in meeting any time limit.

(b) Any Contracting State may, as far as that State is concerned, excuse, for reasons other than those referred to in subparagraph (a), any delay in meeting any time limit.

Article 49
Right to Practice Before International Authorities

Any attorney, patent agent, or other person, having the right to practice before the national Office with which the international application was filed, shall be entitled to practice before the International Bureau and the competent International Searching Authority and competent International Preliminary Examining Authority in respect of that application.

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Editor's Note: Chapter IV entitled "Technical Services" and consisting of Articles 50 to 52 did not appear in either the July 1969 Draft or the March 1970 Draft.

CHAPTER IV TECHNICAL SERVICES

Article 50 Patent Information Services

(1) The International Bureau may furnish services by providing technical and any other pertinent information available to it on the basis of published documents, primarily patents and published applications (referred to in this Article as “the information services”).

(2) The International Bureau may provide these information services either directly or through one or more International Searching Authorities or other national or international specialized institutions, with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge and technology, including available published know-how.

(4) The information services shall be available to Governments of Contracting States and their nationals and residents. The Assembly may decide to make these services available also to others.

(5)(a) Any service to Governments of Contracting States shall be furnished at cost, provided that, when the Government is that of a Contracting State which is a developing country, the service shall be furnished below cost if the difference can be covered from profit made on services furnished to others than Governments of Contracting States or from the sources referred to in Article 51(4).

(b) The cost referred to in subparagraph (a) is to be understood as cost over and above costs normally incident to the performance of the services of a national Office or the obligations of an International Searching Authority.

(6) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

(7) The Assembly shall, when it considers it necessary, recommend methods of providing financing supplementary to those referred to in paragraph (5).

Article 51 Technical Assistance

(1) The Assembly shall establish a Committee for Technical Assistance (referred to in this Article as “the Committee”).

(2)(a) The members of the Committee shall be elected among the Contracting States, with due regard to the representation of developing countries.

(b) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

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Editor's Note: Chapter IV entitled "Technical Services" and consisting of Articles 50 to 52 did not appear in either the July 1969 Draft or the March 1970 Draft.

CHAPTER IV
ADMINISTRATIVE PROVISIONS

Article 50
Assembly

(1)(a) The Assembly shall consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(2)(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) perform such tasks as are specifically assigned to it under other provisions of this Treaty;

(iii) give directions to the International Bureau concerning the preparation for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) determine the program and adopt the budget of the Union, and approve its final accounts;

(vi) adopt the financial regulations of the Union;

CHAPTER IV
ADMINISTRATIVE PROVISIONS

Article 50 (Alternative)
Assembly

[no change]

(3)(a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries in developing their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

(4) The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly the United Nations, the agencies of the United Nations, and the Specialized Agencies connected with the United Nations concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups as the Assembly may set up for that purpose.

Article 52

Relations with Other Provisions of the Treaty

Nothing in this Chapter shall affect the financial provisions contained in any other Chapter of this Treaty. Such provisions are not applicable to the present Chapter or to its implementation.

CHAPTER V

ADMINISTRATIVE PROVISIONS

Article 53

Assembly

(1)(a) The Assembly shall, subject to Article 57(8), consist of the Contracting States.

(b) The Government of each Contracting State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(2)(a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) perform such tasks as are specifically assigned to it under other provisions of this Treaty;

(iii) give directions to the International Bureau concerning the preparation for revision conferences;

(iv) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(v) review and approve the reports and activities of the Executive Committee established under paragraph (9), and give instructions to such Committee;

(vi) determine the program and adopt the triennial budget of the Union, and approve its final accounts;

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(vii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(viii) determine which States other than Contracting States and, subject to the provisions of paragraph (8), which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;

(ix) adopt its own rules of procedure;

(x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) A delegate may represent; and vote in the name of, one State only.

(4) Each Contracting State shall have one vote.

(5)(a) One-half of the Contracting States shall constitute a quorum.

(b) In the absence of the said quorum, the Assembly shall make decisions subject to the condition that, with the exception of decisions concerning its own procedure, the quorum and the required majority shall be attained through consultation by correspondence as provided in the Regulations.

(6)(a) Subject to the provisions of Articles 47(2)(b), 54(3) and 56(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.

(b) Abstentions shall not be considered as votes.

(7) In connection with matters of exclusive interest to States bound by Chapter II, any reference to Contracting States in paragraphs (4), (5), and (6), shall be considered as applying only to States bound by Chapter II.

(8) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to the Assembly and, once established, to the Executive Committee.

(9) When the number of Contracting States exceeds forty, the Assembly shall establish an Executive Committee to which it may delegate, for the intervals between the sessions of the Assembly, any or all of the functions referred to in paragraph (2)(a)(iii), (iv), (v), (vii) and (x).

- (vii) adopt the financial regulations of the Union;
 - (viii) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;
 - (ix) determine which States other than Contracting States and, subject to the provisions of paragraph (8), which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
 - (x) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (3) A delegate may represent, and vote in the name of, one State only.
- (4) Each Contracting State shall have one vote.
- (5)(a) One-half of the Contracting States shall constitute a quorum.
- (b) In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence as provided in the Regulations.
- (6)(a) Subject to the provisions of Articles 47(2)(b), 58(2)(b), 58(3) and 61(2)(b), the decisions of the Assembly shall require two-thirds of the votes cast.
- (b) Abstentions shall not be considered as votes.
- (7) In connection with matters of exclusive interest to States bound by Chapter II, any reference to Contracting States in paragraphs (4), (5), and (6), shall be considered as applying only to States bound by Chapter II.
- (8) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to the Assembly.
- (9) When the number of Contracting States exceeds forty, the Assembly shall establish an Executive Committee. Any reference to the Executive Committee in this Treaty and the Regulations shall be construed as references to such Committee once it has been established.

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(10)(a) Until the Executive Committee is established, the Assembly shall meet once in every calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the Coordination Committee of the Organization.

(b) Once the Executive Committee is established, the Assembly shall meet once only in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization, while the Executive Committee shall meet once in every calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the Coordination Committee of the Organization.

(c) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee (once established) or at the request of one-fourth of the Contracting States.

(d) The Executive Committee (once established) shall meet in extraordinary session upon convocation by the Director General, either on his own initiative, or at the request of the Chairman of the Executive Committee or of one-fourth of its members.

Editor's Note: Article 50 in both the July 1969 Draft and in the March 1970 Draft contained provisions relating to the Executive Committee. The Washington Conference extracted said provisions and along with the addition of new provisions created a separate Article 54 in the Final Text of the Treaty.

(10) Until the Executive Committee has been established, the Assembly shall approve, within the limits of the program and triennial budget, the annual programs and budgets prepared by the Director General.

(11)(a) Until the Executive Committee has been established, the Assembly shall meet once in every calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the Coordination Committee of the Organization.

(b) Once the Executive Committee has been established, the Assembly shall meet once only in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(c) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of the Executive Committee, or at the request of one-fourth of the Contracting States.

(12) The Assembly shall adopt its own rules of procedure.

Article 54 Executive Committee

(1) When the Assembly has established an Executive Committee, that Committee shall be subject to the provisions set forth hereinafter.

(2)(a) The Executive Committee shall, subject to Article 57(8), consist of States elected by the Assembly from among States members of the Assembly.

(b) The Government of each State member of the Executive Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(3) The number of States members of the Executive Committee shall correspond to one-fourth of the number of States members of the Assembly. In establishing the number of seats to be filled, remainders after division by four shall be disregarded.

(4) In electing the members of the Executive Committee, the Assembly shall have due regard to an equitable geographical distribution.

(5)(a) Each member of the Executive Committee shall serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly.

(b) Members of the Executive Committee may be reelected but only up to a maximum of two-thirds of such members.

(c) The Assembly shall establish the details of the rules governing the election and possible re-election of the members of the Executive Committee.

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Editor's Note: Article 50 in both the July 1969 Draft and in the March 1970 Draft contained provisions relating to the Executive Committee. The Washington Conference extracted said provisions and along with the addition of new provisions created a separate Article 54 in the Final Text of the Treaty.

Article 51
International Bureau

- (1) Administrative tasks concerning the Union shall be performed by the International Bureau.
- (2) The International Bureau shall provide the secretariat of the various organs of the Union.
- (3) The Director General shall be the chief executive of the Union and shall represent the Union.

Article 51 (Alternative)
International Bureau

[no change]

- (6)(a) The Executive Committee shall:
- (i) prepare the draft agenda of the Assembly;
 - (ii) submit proposals to the Assembly in respect of the draft program and triennial budget of the Union prepared by the Director General;
 - (iii) approve, within the limits of the program and triennial budget, the specific yearly budgets and programs prepared by the Director General;
 - (iv) submit, with appropriate comments, to the Assembly the periodical reports of the Director General and the yearly audit reports on the accounts;
 - (v) take all necessary measures to ensure the execution of the program of the Union by the Director General, in accordance with the decisions of the Assembly and having regard to circumstances arising between two ordinary sessions of the Assembly;
 - (vi) perform such other functions as are allocated to it under this Treaty.
- (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Executive Committee shall make its decisions after having heard the advice of the Coordination Committee of the Organization.
- (7)(a) The Executive Committee shall meet once a year in ordinary session upon convocation by the Director General, preferably during the same period and at the same place as the Coordination Committee of the Organization.
- (b) The Executive Committee shall meet in extraordinary session upon convocation by the Director General, either on his own initiative or at the request of its Chairman or one-fourth of its members.
- (8)(a) Each State member of the Executive Committee shall have one vote.
- (b) One-half of the members of the Executive Committee shall constitute a quorum.
- (c) Decisions shall be made by a simple majority of the votes cast.
- (d) Abstentions shall not be considered as votes.
- (e) A delegate may represent, and vote in the name of, one State only.
- (9) Contracting States not members of the Executive Committee shall be admitted to its meetings as observers, as well as any intergovernmental organization appointed as International Searching or Preliminary Examining Authority.
- (10) The Executive Committee shall adopt its own rules of procedure.

Article 55 **International Bureau**

- (1) Administrative tasks concerning the Union shall be performed by the International Bureau.
- (2) The International Bureau shall provide the secretariat of the various organs of the Union.
- (3) The Director General shall be the chief executive of the Union and shall represent the Union.

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(4) The draft program and budget of the Union, and the draft agenda of the Assembly, shall be prepared by the Director General.

(5) The International Bureau shall publish a Gazette and other publications provided for by the Assembly or under the Regulations.

(6) The Regulations shall specify the services that national Offices shall perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities in carrying out their tasks under this Treaty.

(7) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, and any committee or working group established under this Treaty or the Regulations. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies.

(8)(a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the revision conferences.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(9) The International Bureau shall carry out any other tasks assigned to it.

Article 52
Committee for Technical Cooperation

(1) The Assembly shall establish a Committee for Technical Cooperation (referred to in this Article as "the Committee").

(2)(a) The Assembly shall determine the composition of the Committee and appoint its members, provided that the total number of the members shall be at least double the number of the International Searching or Preliminary Examining Authorities and that each such Authority shall be *ex officio* member of the Committee.

(b) The Director General shall invite representatives of interested non-governmental organizations to participate in discussions of interest to them.

(3) The aim of the Committee shall be to contribute, by advice and recommendations:

(i) to the constant improvement of the services provided for under this Treaty,

Article 52 (Alternative)
Committee for Technical Cooperation

[no change]

(4) The International Bureau shall publish a Gazette and other publications provided for by the Regulations or required by the Assembly.

(5) The Regulations shall specify the services that national Offices shall perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities in carrying out their tasks under this Treaty.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the Executive Committee and any other committee or working group established under this Treaty or the Regulations. The Director General, or a staff member designated by him, shall be *ex officio* secretary of these bodies.

(7)(a) The International Bureau shall, in accordance with the directions of the Assembly and in cooperation with the Executive Committee, make the preparations for the revision conferences.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for revision conferences.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at revision conferences.

(8) The International Bureau shall carry out any other tasks assigned to it.

Article 56 **Committee for Technical Cooperation**

(1) The Assembly shall establish a Committee for Technical Cooperation (referred to in this Article as “the Committee”).

(2)(a) The Assembly shall determine the composition of the Committee and appoint its members, with due regard to an equitable representation of developing countries.

(b) The International Searching and Preliminary Examining Authorities shall be *ex officio* members of the Committee. In the case where such an Authority is the national Office of a Contracting State, that State shall not be additionally represented on the Committee.

(c) If the number of Contracting States so allows, the total number of members of the Committee shall be more than double the number of *ex officio* members.

(d) The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested organizations to participate in discussions of interest to them.

(3) The aim of the Committee shall be to contribute, by advice and recommendations:

(i) to the constant improvement of the services provided for under this Treaty,

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(ii) to the securing, where there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports.

(4) Any Contracting State and any interested intergovernmental or non-governmental organization may approach the Committee in writing on questions which fall within the competence of the Committee.

(5) The Committee may address its advice and recommendations direct to the Executive Committee, to all or some of the International Searching and Preliminary Examining Authorities, to the International Bureau, and/or to all or some of the receiving Offices.

(6) The Director General shall transmit to the Executive Committee the texts of all the advice and recommendations of the Committee. He may comment on such texts. The Executive Committee may express its views on any advice, recommendation, or other activity of the Committee, and may invite the Committee to study and report on questions falling within its competence.

(7) Until the Executive Committee is established, references in paragraphs (5) and (6) to the Executive Committee shall be construed as references to the Assembly.

(8) The details of the composition and procedure of the Committee shall be governed by the decisions of the Assembly.

Article 53
Finances

(1)(a) The Union shall have a budget.
(b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) Subject to the provisions of paragraph (5), the budget of the Union shall be financed from the following sources:

(i) fees and charges due for services rendered by the International Bureau in relation to the Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

Article 53 (Alternative)
Finances

(1) [no change]

(2) [no change]

(3) [no change]

(ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports, and

(iii) on the initiative of the Assembly or the Executive Committee, to the solution of the technical problems specifically involved in the establishment of a single International Searching Authority.

(4) Any Contracting State and any interested international organization may approach the Committee in writing on questions which fall within the competence of the Committee.

(5) The Committee may address its advice and recommendations to the Director General or, through him, to the Assembly, the Executive Committee, all or some of the International Searching and Preliminary Examining Authorities, and all or some of the receiving Offices.

(6)(a) In any case, the Director General shall transmit to the Executive Committee the texts of all the advice and recommendations of the Committee. He may comment on such texts.

(b) The Executive Committee may express its views on any advice, recommendation, or other activity of the Committee, and may invite the Committee to study and report on questions falling within its competence. The Executive Committee may submit to the Assembly, with appropriate comments, the advice, recommendations and report of the Committee.

(7) Until the Executive Committee has been established, references in paragraph (6) to the Executive Committee shall be construed as references to the Assembly.

(8) The details of the procedure of the Committee shall be governed by the decisions of the Assembly.

Article 57

Finances

(1)(a) The Union shall have a budget.

(b) The budget of the Union shall include the income and expenses proper to the Union and its contribution to the budget of expenses common to the Unions administered by the Organization.

(c) Expenses not attributable exclusively to the Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to the Unions. The share of the Union in such common expenses shall be in proportion to the interest the Union has in them.

(2) The budget of the Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) Subject to the provisions of paragraph (5), the budget of the Union shall be financed from the following sources:

(i) fees and charges due for services rendered by the International Bureau in relation to the Union;

(ii) sale of, or royalties on, the publications of the International Bureau concerning the Union;

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(iii) gifts, bequests, and subventions;
 (iv) rents, interests, and other miscellaneous income.

(4) The amounts of fees and charges due to the International Bureau and the prices of its publications shall be so fixed that they should, under normal circumstances, be sufficient to cover all the expenses of the International Bureau connected with the administration of this Treaty.

(5)(a) Should any financial year close with a deficit, the Contracting States shall, subject to the provisions of subparagraphs (b) and (c), pay contributions to cover such deficit.

(b) The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year and other pertinent factors.

(c) The Assembly may decide that any deficit or any part thereof be carried forward if other means of provisionally covering such deficit are secured.

(d) If the financial situation of the Union so permits, the Assembly may decide that any contributions paid under subparagraph (a) be reimbursed to the States which have paid them.

(e) A Contracting State which has not paid, within two years of the due date as established by the Assembly, its contribution under subparagraph (b) may not exercise its right to vote in any of the organs of the Union of which it is a member. However, any organ of the Union may allow such a State to continue to exercise its right to vote in that organ if, and as long as, it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(6) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(7)(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each Contracting State. If the fund becomes insufficient, the Assembly shall arrange to increase it. If part of the fund is no longer needed, it shall be reimbursed.

(b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly.

(c) The terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) Any reimbursement shall be proportionate to the amounts paid by each Contracting State, taking into account the dates at which they were paid.

(4) [no change]

(5)(a) [no change]

(b) [no change]

(c) [no change]

(d) If the financial situation of the Union so permits, the Assembly may decide that any contributions paid under subparagraph (a) be reimbursed to the *Contracting* States which have paid them.

(e) [no change]

(6) [no change]

(7) [no change]

- (iii) gifts, bequests, and subventions;
- (iv) rents, interests, and other miscellaneous income.

(4) The amounts of fees and charges due to the International Bureau and the prices of its publications shall be so fixed that they should, under normal circumstances, be sufficient to cover all the expenses of the International Bureau connected with the administration of this Treaty.

(5)(a) Should any financial year close with a deficit, the Contracting States shall, subject to the provisions of subparagraphs (b) and (c), pay contributions to cover such deficit.

(b) The amount of the contribution of each Contracting State shall be decided by the Assembly with due regard to the number of international applications which has emanated from each of them in the relevant year.

(c) If other means of provisionally covering any deficit or any part thereof are secured, the Assembly may decide that such deficit be carried forward and that the Contracting States should not be asked to pay contributions.

(d) If the financial situation of the Union so permits, the Assembly may decide that any contributions paid under subparagraph (a) be reimbursed to the Contracting States which have paid them.

(e) A Contracting State which has not paid, within two years of the due date as established by the Assembly, its contribution under subparagraph (b) may not exercise its right to vote in any of the organs of the Union. However, any organ of the Union may allow such a State to continue to exercise its right to vote in that organ so long as it is satisfied that the delay in payment is due to exceptional and unavoidable circumstances.

(6) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(7)(a) The Union shall have a working capital fund which shall be constituted by a single payment made by each Contracting State. If the fund becomes insufficient, the Assembly shall arrange to increase it. If part of the fund is no longer needed, it shall be reimbursed.

(b) The amount of the initial payment of each Contracting State to the said fund or of its participation in the increase thereof shall be decided by the Assembly on the basis of principles similar to those provided for under paragraph (5)(b).

(c) The terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) Any reimbursement shall be proportionate to the amounts paid by each Contracting State, taking into account the dates at which they were paid.

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(8)(a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an *ex officio* seat in the Assembly and, once it is established, on the Executive Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(9) The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

(8) [no change]

(9) [no change]

Article 54 Regulations

(1) The Regulations provide Rules:

(i) concerning matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed,

(ii) concerning any administrative requirements, matters, or procedures,

(iii) concerning any details useful in the implementation of the provisions of this Treaty.

(2)(a) The Assembly may amend the Regulations.

(b) Subject to the provisions of paragraph (3), amendments shall require the majority provided for in Article 50(6).

(3)(a) The Regulations specify the Rules which may be amended

(i) only by unanimous consent, or

(ii) only if none of the Contracting States whose national Office acts as an International Searching or Preliminary Examining Authority dissents, and, where such Authority is an intergovernmental organization, if, among the Contracting States members of that organization, that State in which the highest number of patent applications was filed, according to the latest available yearly statistics, does not dissent.

(b) Exclusion, for the future, of any such Rules from the applicable requirement shall require the fulfillment of the conditions referred to in subparagraph (a)(i) or (a)(ii), respectively.

(c) Inclusion, for the future, of any Rule in one or the other of the requirements referred to in subparagraph (a) shall require unanimous consent.

Article 54 (Alternative) Regulations

(1) [no change]

(2) [no change]

(3)(a) The Regulations specify the Rules which may be amended

(i) [no change]

(ii) only if none of the Contracting States whose national Office acts as an International Searching or Preliminary Examining Authority dissents, and, where such Authority is an intergovernmental organization, if, among the Contracting States members of that organization, that State in which the highest number of applications for *patents, inventors' certificates and utility certificates* was filed, according to the *official statistics for 1969*, does not dissent. *For the purposes of this paragraph, Article 2(vii), (ix) and (xii) shall not apply.*

(b) [no change]

(c) [no change]

(8)(a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an *ex officio* seat in the Assembly and on the Executive Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(9) The auditing of the accounts shall be effected by one or more of the Contracting States or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 58 Regulations

(1) The Regulations annexed to this Treaty provide Rules:

(i) concerning matters in respect of which this Treaty expressly refers to the Regulations or expressly provides that they are or shall be prescribed,

(ii) concerning any administrative requirements, matters, or procedures,

(iii) concerning any details useful in the implementation of the provisions of this Treaty.

(2)(a) The Assembly may amend the Regulations.

(b) Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast.

(3)(a) The Regulations specify the Rules which may be amended

(i) only by unanimous consent, or

(ii) only if none of the Contracting States whose national Office acts as an International Searching or Preliminary Examining Authority dissents, and, where such Authority is an intergovernmental organization, if the Contracting State member of that organization authorized for that purpose by the other member States within the competent body of such organization does not dissent.

(b) Exclusion, for the future, of any such Rules from the applicable requirement shall require the fulfillment of the conditions referred to in subparagraph (a)(i) or (a)(ii), respectively.

(c) Inclusion, for the future, of any Rule in one or the other of the requirements referred to in subparagraph (a) shall require unanimous consent.

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(4) The Regulations provide for the establishment, under the control of the Assembly, of Administrative Instructions by the Director General.

(4) [no change]

Editor's Note: Chapter VI of the Final Text of the Treaty entitled "Disputes" and consisting solely of Article 59 did not appear in either the July 1969 Draft or the March 1970 Draft.

Article 55
Revision of the Treaty

(1) This Treaty may be revised from time to time by a special conference of the Contracting States.

(2) The convocation of any revision conference shall be decided by the Assembly.

(3) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to any revision conference.

(4) Articles 50(5), (9) and (10), 51(4) to (9), 52, and 53, may also be amended according to the provisions of Article 56.

Article 56
Amendment of Certain Provisions of the Treaty

(1)(a) Proposals for the amendment of Articles 50(5), (9) and (10), 51(4) to (9), 52, and 53, may be initiated by any State member of the Assembly, by the Executive Committee (once established), or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2)(a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast.

Article 55 (Alternative)
Revision of the Treaty

[no change]

Article 56 (Alternative)
Amendment of Certain Provisions of the Treaty

[no change]

(4) The Regulations provide for the establishment, under the control of the Assembly, of Administrative Instructions by the Director General.

(5) In the case of conflict between the provisions of the Treaty and those of the Regulations, the provisions of the Treaty shall prevail.

CHAPTER VI DISPUTES

Article 59 Disputes

Subject to Article 64(5), any dispute between two or more Contracting States concerning the interpretation or application of this Treaty or the Regulations, not settled by negotiation, may, by any one of the States concerned, be brought before the International Court of Justice by application in conformity with the Statute of the Court, unless the States concerned agree on some other method of settlement. The Contracting State bringing the dispute before the Court shall inform the International Bureau; the International Bureau shall bring the matter to the attention of the other Contracting States.

CHAPTER VII REVISION AND AMENDMENT

Article 60 Revision of the Treaty

(1) This Treaty may be revised from time to time by a special conference of the Contracting States.

(2) The convocation of any revision conference shall be decided by the Assembly.

(3) Any intergovernmental organization appointed as International Searching or Preliminary Examining Authority shall be admitted as observer to any revision conference.

(4) Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be amended either by a revision conference or according to the provisions of Article 61.

Article 61 Amendment of Certain Provisions of the Treaty

(1)(a) Proposals for the amendment of Articles 53(5), (9) and (11), 54, 55(4) to (8), 56, and 57, may be initiated by any State member of the Assembly, by the Executive Committee, or by the Director General.

(b) Such proposals shall be communicated by the Director General to the Contracting States at least six months in advance of their consideration by the Assembly.

(2)(a) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly.

(b) Adoption shall require three-fourths of the votes cast.

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(3)(a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Assembly at the time it adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the States which are members of the Assembly at the time the amendment enters into force, provided that any amendment increasing the financial obligations of the Contracting States shall bind only those States which have notified their acceptance of such amendment.

(c) Any amendment accepted in accordance with the provisions of subparagraph (a) shall bind all States which become members of the Assembly after the date on which the amendment was adopted in accordance with the provisions of paragraph (2).

CHAPTER V FINAL PROVISIONS

Article 57 Becoming Party to the Treaty

(1) Any State member of the International Union for the Protection of Industrial Property may become party to this Treaty by:

- (i) signature without reservation as to ratification, or
- (ii) signature subject to ratification followed by the deposit of an instrument of ratification, or
- (iii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

Article 58 Entry into Force of the Treaty

(1) Subject to the provisions of paragraph (2) and Article 61, this Treaty and the Regulations annexed hereto shall enter into force three months after one of the following two sets of conditions is fulfilled:

- (i) the number of States having taken action as provided in Article 57 is not less than five and among such States there are at least three in each of which, according to the latest available yearly statistics, the number of applications for patents has exceeded 40,000;

CHAPTER V FINAL PROVISIONS

Article 57 (Alternative) Becoming Party to the Treaty

[no change]

Article 58 (Alternative) Entry into Force of the Treaty

(1)(a) Subject to the provisions of paragraph (2) and Article 61, this Treaty and the Regulations annexed hereto shall enter into force three months after one of the following two sets of conditions is fulfilled:

- (i) the number of States having taken action as provided in Article 57 is not less than five and among such States there are at least three in each of which, according to the *official statistics for 1969*, the number of applications for *patents, inventors' certificates and utility certificates* has exceeded 40,000;

(3)(a) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Assembly at the time it adopted the amendment.

(b) Any amendment to the said Articles thus accepted shall bind all the States which are members of the Assembly at the time the amendment enters into force, provided that any amendment increasing the financial obligations of the Contracting States shall bind only those States which have notified their acceptance of such amendment.

(c) Any amendment accepted in accordance with the provisions of subparagraph (a) shall bind all States which become members of the Assembly after the date on which the amendment entered into force in accordance with the provisions of subparagraph (a).

CHAPTER VIII FINAL PROVISIONS

Article 62 Becoming Party to the Treaty

(1) Any State member of the International Union for the Protection of Industrial Property may become party to this Treaty by:

- (i) signature followed by the deposit of an instrument of ratification, or
- (ii) deposit of an instrument of accession.

(2) Instruments of ratification or accession shall be deposited with the Director General.

(3) The provisions of Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property shall apply to this Treaty.

(4) Paragraph (3) shall in no way be understood as implying the recognition or tacit acceptance by a Contracting State of the factual situation concerning a territory to which this Treaty is made applicable by another Contracting State by virtue of the said paragraph.

Article 63 Entry into Force of the Treaty

(1)(a) Subject to the provisions of paragraph (3), this Treaty shall enter into force three months after eight States have deposited their instruments of ratification or accession, provided that at least four of those States each fulfill any of the following conditions:

- (i) the number of applications filed in the State has exceeded 40,000 according to the most recent annual statistics published by the International Bureau,

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(ii) among the States having taken action as provided in Article 57 there are at least seven each of which, according to the latest available yearly statistics, is a State whose nationals or residents have filed at least 1,000 patent applications in one foreign country, or a State whose national Office has received at least 10,000 patent applications from nationals or residents of foreign countries.

(2) If, at the time this Treaty enters into force by virtue of the provisions of paragraph (1), there are States which have declared, as provided in Article 60(1), that they are not bound by the provisions of Chapter II, the provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall become applicable only if among the States not having made such a declaration there are at least three which fulfill at least one of the three requirements specified in paragraph (1)(i) or (ii). Should the latter condition be fulfilled by reason only that one or more additional States have become party to this Treaty, the provisions of Chapter II shall become applicable when the last State required to fulfill the said condition becomes bound by this Treaty under Article 59.

Article 59**Effective Date of the Treaty for States Not Covered by Article 58**

Any State not covered by the provisions of Article 58 shall become bound by this Treaty and the Regulations three months after the date on which such State has taken action as provided in Article 57.

Editor's Note: The substance of Article 59 appearing in both the July 1969 Draft and the March 1970 Draft as a separate Article was incorporated into paragraph (2) of Article 63 of the Final Text of the Treaty.

**Article 60
Reservations**

(1)(a) Any State may declare that it shall not be bound by the provisions of Chapter II.

(b) States making a declaration under subparagraph (a) shall not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations.

(2)(a) Any State not having made a declaration under paragraph (1)(a) may declare that:

(i) it shall not be bound by the provisions of Article 39(1) with respect to the furnishing of a copy of the international application and a translation thereof (as required),

(ii) the obligation to delay national processing, as provided for under Article 40, shall not prevent publication, by or through its national Office, of the international application or a translation thereof, it being understood, however, that it is not exempted from the limitations provided for in Articles 30 and 38.

(b) States making such a declaration shall be bound accordingly.

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(ii) among the States having taken action as provided in Article 57 there are at least seven each of which, according to the *official statistics for 1969*, is a State whose nationals or residents have filed at least 1,000 applications *for patents, inventors' certificates and utility certificates* in one foreign country, or a State whose national Office has received at least 10,000 *of such* applications from nationals or residents of foreign countries.

(b) *For the purposes of this paragraph, Article 2(vii), (ix) and (xii) shall not apply.*

(2) [no change]

Article 59 (Alternative)**Effective Date of the Treaty for States Not Covered by Article 58**

[no change]

**Article 60 (Alternative)
Reservations**

(1) [no change]

(2) [no change]

(ii) the nationals or residents of the State have filed at least 1,000 applications in one foreign country according to the most recent annual statistics published by the International Bureau,

(iii) the national Office of the State has received at least 10,000 applications from nationals or residents of foreign countries according to the most recent annual statistics published by the International Bureau.

(b) For the purposes of this paragraph, the term “applications” does not include applications for utility models.

(2) Subject to the provisions of paragraph (3), any State which does not become party to this Treaty upon entry into force under paragraph (1) shall become bound by this Treaty three months after the date on which such State has deposited its instrument of ratification or accession.

(3) The provisions of Chapter II and the corresponding provisions of the Regulations annexed to this Treaty shall become applicable, however, only on the date on which three States each of which fulfill at least one of the three requirements specified in paragraph (1) have become party to this Treaty without declaring, as provided in Article 64(1), that they do not intend to be bound by the provisions of Chapter II. That date shall not, however, be prior to that of the initial entry into force under paragraph (1).

Article 64 Reservations

(1)(a) Any State may declare that it shall not be bound by the provisions of Chapter II.

(b) States making a declaration under subparagraph (a) shall not be bound by the provisions of Chapter II and the corresponding provisions of the Regulations.

(2)(a) Any State not having made a declaration under paragraph (1)(a) may declare that:

(i) it shall not be bound by the provisions of Article 39(1) with respect to the furnishing of a copy of the international application and a translation thereof (as prescribed),

(ii) the obligation to delay national processing, as provided for under Article 40, shall not prevent publication, by or through its national Office, of the international application or a translation thereof, it being understood, however, that it is not exempted from the limitations provided for in Articles 30 and 38.

(b) States making such a declaration shall be bound accordingly.

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(3)(a) Any State may declare that, as far as it is concerned, international publication of international applications is not required.

(b) Where, at the expiration of 18 months from the priority date, the international application contains the designation only of such States as have made declarations under subparagraph (a), the international application shall not be published by virtue of Article 21(2).

(c) Where the provisions of subparagraph (b) apply, the international application shall nevertheless be published by the International Bureau:

(i) at the request of the applicant, as provided in the Regulations,

(ii) when a national application or a patent based on the international application is published by or on behalf of the national Office of any designated State having made a declaration under subparagraph (a), promptly after such publication but not before the expiration of 18 months from the priority date.

(4)(a) Any declaration made under this Article shall be made in writing. It may be made at the time of signing this Treaty, at the time of depositing the instrument of ratification or accession, or at any later time by notification addressed to the Director General. In the last case, the declaration shall take effect six months after the day on which the Director General has received the notification, and shall not affect international applications filed prior to the expiration of the said six-month period.

(b) Any declaration made under this Article may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the day on which the Director General has received the notification and, in the case of the withdrawal of a declaration made under paragraph (3), shall not affect international applications filed prior to the expiration of the said three-month period.

(5) No reservations to this Treaty other than the reservations under paragraphs (1) to (3) are permitted.

(3)(a) [no change]

(b) [no change]

(c) Where the provisions of subparagraph (b) apply, the international application shall nevertheless be published by the International Bureau:

(i) [no change]

(ii) When a national application or a patent, *utility certificate or utility model* based on the international application is published by or on behalf of the national Office of any designated State having made a declaration under subparagraph (a), promptly after such publication but not before the expiration of 18 months from the priority date.

(4) [no change]

(5) [no change]

(3)(a) Any State may declare that, as far as it is concerned, international publication of international applications is not required.

(b) Where, at the expiration of 18 months from the priority date, the international application contains the designation only of such States as have made declarations under subparagraph (a), the international application shall not be published by virtue of Article 21(2).

(c) Where the provisions of subparagraph (b) apply, the international application shall nevertheless be published by the International Bureau:

(i) at the request of the applicant, as provided in the Regulations,

(ii) when a national application or a patent based on the international application is published by or on behalf of the national Office of any designated State having made a declaration under subparagraph (a), promptly after such publication but not before the expiration of 18 months from the priority date.

(4)(a) Any State whose national law provides for prior art effect of its patents as from a date before publication, but does not equate for prior art purposes the priority date claimed under the Paris Convention for the Protection of Industrial Property to the actual filing date in that State, may declare that the filing outside that State of an international application designating that State is not equated to an actual filing in that State for prior art purposes.

(b) Any State making a declaration under subparagraph (a) shall to that extent not be bound by the provisions of Article 11(3).

(c) Any State making a declaration under subparagraph (a) shall, at the same time, state in writing the date from which, and the conditions under which, the prior art effect of any international application designating that State becomes effective in that State. This statement may be modified at any time by notification addressed to the Director General.

(5) Each State may declare that it does not consider itself bound by Article 59. With regard to any dispute between any Contracting State having made such a declaration and any other Contracting State, the provisions of Article 59 shall not apply.

(6)(a) Any declaration made under this Article shall be made in writing. It may be made at the time of signing this Treaty, at the time of depositing the instrument of ratification or accession, or, except in the case referred to in paragraph (5), at any later time by notification addressed to the Director General. In the case of the said notification, the declaration shall take effect six months after the day on which the Director General has received the notification, and shall not affect international applications filed prior to the expiration of the said six-month period.

(b) Any declaration made under this Article may be withdrawn at any time by notification addressed to the Director General. Such withdrawal shall take effect three months after the day on which the Director General has received the notification and, in the case of the withdrawal of a declaration made under paragraph (3), shall not affect international applications filed prior to the expiration of the said three-month period.

(7) No reservations to this Treaty other than the reservations under paragraphs (1) to (5) are permitted.

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Article 61
Gradual Application

(1) If the agreement with any International Searching or Preliminary Examining Authority provides, transitionally, for limits on the number or kind of international applications that such Authority undertakes to process, the Assembly shall adopt the measures necessary for the gradual application of this Treaty and the Regulations in respect of given categories of international applications.

(2) The Assembly shall fix the dates from which, subject to the provision of paragraph (1), international applications may be filed and demands for international preliminary examination may be submitted. Such dates shall not be later than six months after this Treaty has entered into force according to the provisions of Article 58(1), or after Chapter II has become applicable under Article 58(2), respectively.

Article 62
Denunciation

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunciation shall take effect six months after receipt of the said notification by the Director General. It shall not affect the effects of the international application in the denouncing State if the international application was filed, and, where the denouncing State has been elected, the election was made, prior to the expiration of the said six-month period.

Article 63
Signature and Languages

(1)(a) This Treaty shall be signed in a single copy in the English and French languages.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Japanese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(2) This Treaty shall remain open for signature for six months.

Article 64
Depositary Functions

(1) The signed copy of this Treaty shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations annexed hereto to the Governments of all States members of the International Union for the Protection of Industrial Property and, on request, to the Government of any other State.

Article 61 (Alternative)
Gradual Application

[no change]

Article 62 (Alternative)
Denunciation

[no change]

Article 63 (Alternative)
Signature and Languages

[no change]

Article 64 (Alternative)
Depositary Functions

[no change]

Article 65

Gradual Application

(1) If the agreement with any International Searching or Preliminary Examining Authority provides, transitionally, for limits on the number or kind of international applications that such Authority undertakes to process, the Assembly shall adopt the measures necessary for the gradual application of this Treaty and the Regulations in respect of given categories of international applications. This provision shall also apply to requests for an international-type search under Article 15(5).

(2) The Assembly shall fix the dates from which, subject to the provision of paragraph (1), international applications may be filed and demands for international preliminary examination may be submitted. Such dates shall not be later than six months after this Treaty has entered into force according to the provisions of Article 63(1), or after Chapter II has become applicable under Article 63 (3), respectively.

Article 66

Denunciation

(1) Any Contracting State may denounce this Treaty by notification addressed to the Director General.

(2) Denunciation shall take effect six months after receipt of the said notification by the Director General. It shall not affect the effects of the international application in the denouncing State if the international application was filed, and, where the denouncing State has been elected, the election was made, prior to the expiration of the said six-month period.

Article 67

Signature and Languages

(1)(a) This Treaty shall be signed in a single original in the English and French languages, both texts being equally authentic.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in the German, Japanese, Portuguese, Russian and Spanish languages, and such other languages as the Assembly may designate.

(2) This Treaty shall remain open for signature at Washington until December 31, 1970.

Article 68

Depositary Functions

(1) The original of this Treaty, when no longer open for signature, shall be deposited with the Director General.

(2) The Director General shall transmit two copies, certified by him, of this Treaty and the Regulations annexed hereto to the Governments of all States party to the Paris Convention for the Protection of Industrial Property and, on request, to the Government of any other State.

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(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and the Regulations to the Governments of all Contracting States and, on request, to the Government of any other State.

Article 65
Notifications

The Director General shall notify the Governments of all States members of the International Union for the Protection of Industrial Property of signatures, deposits of instruments of ratification or accession, any declaration or notification made under Article 60, any denunciation, and the relevant dates under Articles 57 to 62.

Article 65 (Alternative)
Notifications

[no change]

(3) The Director General shall register this Treaty with the Secretariat of the United Nations.

(4) The Director General shall transmit two copies, certified by him, of any amendment to this Treaty and the Regulations to the Governments of all Contracting States and, on request, to the Government of any other State.

Article 69 **Notifications**

The Director General shall notify the Governments of all States party to the Paris Convention for the Protection of Industrial Property of:

- (i) signatures under Article 62,
- (ii) deposits of instruments of ratification or accession under Article 62,
- (iii) the date of entry into force of this Treaty and the date from which Chapter II is applicable in accordance with Article 63(3),
- (iv) any declarations made under Article 64(1) to (5),
- (v) withdrawals of any declarations made under Article 64(6)(b),
- (vi) denunciations received under Article 66, and
- (vii) any declarations made under Article 31(4).

Editor's Note: For the list of signatories, see page 76.

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**Regulations under the Draft
Patent Cooperation Treaty**

**Regulations under the Draft
Patent Cooperation Treaty**

PART A
INTRODUCTORY RULES

PART A
INTRODUCTORY RULES

**Rule 1
Abbreviated Expressions**

**Rule 1 (Alternative)
Abbreviated Expressions**

1.1 *Meaning of Abbreviated Expressions*

[no change]

(a) In these Regulations, the word "Treaty" means the Patent Cooperation Treaty.

(b) In these Regulations, the words "Chapter" and "Article" refer to the specified Chapter or Article of the Treaty.

**Rule 2
Interpretation of Certain Words**

**Rule 2 (Alternative)
Interpretation of Certain Words**

2.1 *"Applicant"*

[no change]

Whenever the word "applicant" is used, it shall be construed as meaning also the agent or other representative of the applicant, except where the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used, such as, in particular, where the provision refers to the residence or nationality of the applicant.

2.2 *"Agent"*

Whenever the word "agent" is used, it shall be construed as meaning any person who has the right to practice before international authorities as defined in Article 49 and, unless the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used, also the common representative referred to in Rule 4.8.

2.3 *"Signature"*

Whenever the word "signature" is used, it shall be understood that, if the national law of the receiving Office or the competent International Searching or Preliminary Examining Authority requires the use of a seal instead of a signature, the word, for the purposes of that Office or Authority, shall mean seal.

PART B
RULES CONCERNING CHAPTER I OF
THE TREATY

PART B
RULES CONCERNING CHAPTER I OF
THE TREATY

**Rule 3
The Request (Form)**

**Rule 3 (Alternative)
The Request (Form)**

3.1 *Printed Form*

3.1 [no change]

The request shall be made on a printed form.

* **Editor's Note:** Words, letters and numbers that are italicized or printed in small capital letters in this draft but do not appear as such in the July 1969 Draft (PCT/DC/5) signal either an addition of material or a deletion of adjacent material.

Corrigenda appearing in document PCT/DC/12/Add. 1 have been introduced into the text of this draft.

Regulations under the Patent Cooperation Treaty

PART A INTRODUCTORY RULES

Rule 1 Abbreviated Expressions

1.1 *Meaning of Abbreviated Expressions*

(a) In these Regulations, the word “Treaty” means the Patent Cooperation Treaty.

(b) In these Regulations, the words “Chapter” and “Article” refer to the specified Chapter or Article of the Treaty.

Rule 2 Interpretation of Certain Words

2.1 *“Applicant”*

Whenever the word “applicant” is used, it shall be construed as meaning also the agent or other representative of the applicant, except where the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used, such as, in particular, where the provision refers to the residence or nationality of the applicant.

2.2 *“Agent”*

Whenever the word “agent” is used, it shall be construed as meaning any person who has the right to practice before international authorities as defined in Article 49 and, unless the contrary clearly follows from the wording or the nature of the provision, or the context in which the word is used, also the common representative referred to in Rule 4.8.

2.3 *“Signature”*

Whenever the word “signature” is used, it shall be understood that, if the national law applied by the receiving Office or the competent International Searching or Preliminary Examining Authority requires the use of a seal instead of a signature, the word, for the purposes of that Office or Authority, shall mean seal.

PART B RULES CONCERNING CHAPTER I OF THE TREATY

Rule 3 The Request (Form)

3.1 *Printed Form*

The request shall be made on a printed form.

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3.2 *Availability of Forms*

Copies of the printed form shall be furnished free of charge by the receiving Offices to the applicants.

3.3 *Check List*

(a) The printed form shall contain a list which, when filled in, will show:

(i) the total number of sheets constituting the international application and the number of the sheets of each element of the international application (request, description, claims, drawings, abstract),

(ii) whether or not the international application as filed is accompanied by a power of attorney, a priority document, a receipt for the payment of fees, an international-type search report, a document in evidence of the fact that the applicant is the successor in title of the inventor, and any other document (to be specified in the check list).

(b) The list shall be filled in by the applicant, failing which the receiving Office shall fill it in and make the necessary annotations.

3.4 *Particulars*

Subject to Rule 3.3, particulars of the printed form shall be prescribed by the Administrative Instructions.

Rule 4
The Request (Contents)

4.1 *Mandatory and Optional Contents; Signature*

(a) The request shall contain:

- (i) a petition,
- (ii) the title of the invention,
- (iii) indications concerning the applicant, the inventor, and the agent, if there is an agent,
- (iv) the designation of States.

(b) The request may contain:

- (i) a priority claim,
 - (ii) a reference to any earlier international-type search,
 - (iii) choices of certain kinds of protection.
- (c) The request shall be signed.

3.2 *Availability of Forms*

Copies of the printed form shall be furnished free of charge to the applicants by the receiving Office, or, if the receiving Office so desires, by the International Bureau.

3.3 *Check List*

(a) The printed form shall contain a list which, when filled in, will show:

(i) [no change]

(ii) whether or not the international application as filed is accompanied by a power of attorney (*i.e.*, a document appointing an agent or a common representative), a priority document, a receipt for the fees paid or a check for the payment of the fees, an international-type search report, a document in evidence of the fact that the applicant is the successor in title of the inventor, and any other document (to be specified in the check list);

(iii) *the number of that figure of the drawings which the applicant suggests should accompany the abstract when the abstract is published on the front page of the pamphlet and in the Gazette. In exceptional cases, the applicant may suggest more than one figure.*

(b) The list shall be filled in by the applicant, failing which the receiving Office shall fill it in and make the necessary annotations, *except that the number referred to in subparagraph (a)(iii) shall not be filled in by the receiving Office.*

3.4 [no change]

Rule 4 (Alternative)
The Request (Contents)

4.1 *Mandatory and Optional Contents; Signature*

(a) [no change]

(b) The request may contain:

- (i) [no change]
- (ii) a reference to *any earlier international search or to any earlier international-type search,*
- (iii) [no change]
- (iv) *an indication that the applicant wishes to obtain a regional patent and the names of the designated States for which he wishes to obtain such a patent,*
- (v) *a reference to a parent application or parent patent or parent utility certificate.*

(c) [no change]

3.2 *Availability of Forms*

Copies of the printed form shall be furnished free of charge to the applicants by the receiving Office, or, if the receiving Office so desires, by the International Bureau.

3.3 *Check List*

(a) The printed form shall contain a list which, when filled in, will show:

(i) the total number of sheets constituting the international application and the number of the sheets of each element of the international application (request, description, claims, drawings, abstract);

(ii) whether or not the international application as filed is accompanied by a power of attorney (i.e., a document appointing an agent or a common representative), a priority document, a receipt for the fees paid or a check for the payment of the fees, an international or an international-type search report, a document in evidence of the fact that the applicant is the successor in title of the inventor, and any other document (to be specified in the check list);

(iii) the number of that figure of the drawings which the applicant suggests should accompany the abstract when the abstract is published on the front page of the pamphlet and in the Gazette; in exceptional cases, the applicant may suggest more than one figure.

(b) The list shall be filled in by the applicant, failing which the receiving Office shall fill it in and make the necessary annotations, except that the number referred to in paragraph (a)(iii) shall not be filled in by the receiving Office.

3.4 *Particulars*

Subject to Rule 3.3, particulars of the printed form shall be prescribed by the Administrative Instructions.

Rule 4 The Request (Contents)

4.1 *Mandatory and Optional Contents; Signature*

(a) The request shall contain:

(i) a petition,

(ii) the title of the invention,

(iii) indications concerning the applicant and the agent, if there is an agent,

(iv) the designation of States,

(v) indications concerning the inventor where the national law of at least one of the designated States requires that the name of the inventor be furnished at the time of filing a national application.

(b) The request shall, where applicable, contain:

(i) a priority claim,

(ii) a reference to any earlier international search or to any earlier international-type search,

(iii) choices of certain kinds of protection,

(iv) an indication that the applicant wishes to obtain a regional patent and the names of the designated States for which he wishes to obtain such a patent,

(v) a reference to a parent application or parent patent.

(c) The request may contain indications concerning the inventor where the national law of none of the designated States requires that the name of the inventor be furnished at the time of filing a national application.

(d) The request shall be signed.

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4.2 *The Petition*

The petition shall be to the following effect and shall preferably be worded as follows: "The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty."

4.3 *Title of the Invention*

The title of the invention shall be short (preferably from two to seven words when in English or translated into English) and precise.

4.4 *Names and Addresses*

(a) Names of natural persons shall be indicated by the person's given name(s) and family name.

(b) Names of legal entities shall be indicated by their full, official designations.

(c) Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and, in any case, shall consist of all the relevant administrative units up to, and including, the house number, if any. Where the national law of the designated State does not require the indication of the house number, failure to indicate such number shall have no effect in that State. It is recommended to indicate any telegraphic and teletype address and telephone number.

4.5 *The Applicant*

(a) The request shall indicate the name, address, nationality and residence of the applicant or, if there are several applicants, of each of them.

(b) The applicant's nationality shall be indicated by the name of the State of which he is a national.

(c) The applicant's residence shall be indicated by the name of the State of which he is a resident.

4.6 *The Inventor*

(a) The request shall indicate the name and address of the inventor or, if there are several inventors, of each of them.

(b) If the applicant is the inventor, the request, in lieu of the indication under paragraph (a), shall contain a statement to that effect or shall repeat the applicant's name in the space reserved for indicating the inventor.

(c) The request may, for different designated States, indicate different persons as inventors. In such a case, the request shall contain a separate statement for each designated State or group of States in which a particular person, or the same person, is to be considered the inventor, or in which particular persons, or the same persons, are to be considered the inventors.

4.7 *The Agent*

If an agent is designated, the request shall so indicate, and shall state the name and address of the agent.

4.2 [no change]

4.3 [no change]

4.4 *Names and Addresses*

(a) Names of natural persons shall be indicated by the *person's family name and given name (s), the family name being indicated before the given name(s).*

(b) [no change]

(c) [no change]

(d) *For each applicant, inventor or agent, only one address may be indicated.*

4.5 [no change]

4.6 [no change]

4.7 *The Agent*

If agents *are* designated, the request shall so indicate, and shall state *their* names and addresses.

4.2 *The Petition*

The petition shall be to the following effect and shall preferably be worded as follows: “The undersigned requests that the present international application be processed according to the Patent Cooperation Treaty.”

4.3 *Title of the Invention*

The title of the invention shall be short (preferably from two to seven words when in English or translated into English) and precise.

4.4 *Names and Addresses*

(a) Names of natural persons shall be indicated by the person’s family name and given name(s), the family name being indicated before the given name(s).

(b) Names of legal entities shall be indicated by their full, official designations.

(c) Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address and, in any case, shall consist of all the relevant administrative units up to, and including, the house number, if any. Where the national law of the designated State does not require the indication of the house number, failure to indicate such number shall have no effect in that State. It is recommended to indicate any telegraphic and teletype address and telephone number.

(d) For each applicant, inventor, or agent, only one address may be indicated.

4.5 *The Applicant*

(a) The request shall indicate the name, address, nationality and residence of the applicant or, if there are several applicants, of each of them.

(b) The applicant’s nationality shall be indicated by the name of the State of which he is a national.

(c) The applicant’s residence shall be indicated by the name of the State of which he is a resident.

4.6 *The Inventor*

(a) Where Rule 4.1(a)(v) applies, the request shall indicate the name and address of the inventor or, if there are several inventors, of each of them.

(b) If the applicant is the inventor, the request, in lieu of the indication under paragraph (a), shall contain a statement to that effect or shall repeat the applicant’s name in the space reserved for indicating the inventor.

(c) The request may, for different designated States, indicate different persons as inventors where, in this respect, the requirements of the national laws of the designated States are not the same. In such a case, the request shall contain a separate statement for each designated State or group of States in which a particular person, or the same person, is to be considered the inventor, or in which particular persons, or the same persons, are to be considered the inventors.

4.7 *The Agent*

If agents are designated, the request shall so indicate, and shall state their names and addresses.

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4.8 *Representation of Several Applicants Not Having a Common Agent*

(a) If there is more than one applicant and the request does not refer to an agent representing all the applicants ("a common agent"), the request shall designate one of the applicants who is entitled to file an international application according to Article 9 as their common representative.

(b) If there is more than one applicant and the request does not refer to an agent representing all the applicants and it does not comply with the requirement of designating one of the applicants as provided in paragraph (a), the applicant first named in the request who is entitled to file an international application according to Article 9 shall be considered the common representative.

4.9 *Designation of States*

Contracting States shall be designated in the request by their names.

4.10 *Priority Claim*

(a) The declaration referred to in Article 8(1) shall consist of a statement to the effect that the priority of an earlier application is claimed and shall indicate the country in which, the date on which, and the number under which, the said earlier application has been filed.

(b) If the request does not indicate the country in which and the date on which the earlier application was filed, the priority claim shall, for the purposes of the procedure under the Treaty, be considered not to have been made.

(c) If the application number of the earlier application is not indicated in the request but is furnished by the applicant to the International Bureau prior to the expiration of the 16th month from the priority date, it shall be considered by all designated States to have been furnished in time. If it is furnished after the expiration of that time limit, the International Bureau shall inform the applicant and the designated Offices of the date on which the said number was furnished to it. The International Bureau shall indicate that date in the international publication of the international application, or, if, at the time of the international publication, the said number has not been furnished to it, shall indicate that fact in the international publication.

(d) Where the priorities of several earlier applications are claimed, the provisions of paragraphs (a), (b) and (c) shall apply to each of them.

4.8 [no change]

4.9 *Designation of States*

(a) Contracting States shall be designated in the request by their names.

(b) *The time limit referred to in Article 4(1)(ii) shall expire at the same time as the time limit for the payment of the designation fee expires according to Rule 15.4(b).*

4.10 *Priority Claim*

(a) The declaration referred to in Article 8(1) shall be made in the request and shall consist of a statement to the effect that the priority of an earlier application is claimed and shall indicate:

- (i) *when the earlier application is not a regional or an international application, the country in which it was filed; when the earlier application is a regional or an international application, the country or countries for which it was filed,*
- (ii) *the date on which it was filed,*
- (iii) *the number under which it was filed, and,*
- (iv) *when the earlier application is a regional or an international application, the national Office or intergovernmental authority with which it was filed.*

(b) If the request, does not indicate both

- (i) *when the earlier application is not a regional or an international application, the country in which it was filed; when the earlier application is a regional or an international application, at least one country for which it was filed, and,*
- (ii) *the date on which it was filed,*

the priority claim shall, for the purposes of the procedure under the Treaty, be considered not to have been made.

(c) [no change]

(d) *If the filing date of the earlier application as indicated in the request precedes the international filing date by more than one year, the receiving Office, or, if the receiving Office has failed to do so, the International Bureau, shall invite the applicant to ask either for the cancellation of the declaration made under Article 8(1) or, if the date of the earlier application was indicated erroneously, for the correction of the date so indicated. If the applicant fails to act accordingly within 1 month from the date of the invitation, the declaration made under Article 8(1) shall be cancelled ex officio. The receiving Office effecting the correction or cancellation shall notify the applicant accordingly and, if copies of the international application have already been sent to the International Bureau and the International Searching Authority, that Bureau and that Authority. If the correction or cancellation is effected by the International Bureau, the latter shall notify the applicant and the International Searching Authority accordingly.*

(e) *Where the priorities of several earlier applications are claimed, the provisions of paragraphs (a) to (d) shall apply to each of them.*

4.8 *Representation of Several Applicants Not Having a Common Agent*

(a) If there is more than one applicant and the request does not refer to an agent representing all the applicants (“a common agent”), the request shall designate one of the applicants who is entitled to file an international application according to Article 9 as their common representative.

(b) If there is more than one applicant and the request does not refer to an agent representing all the applicants and it does not comply with the requirement of designating one of the applicants as provided in paragraph (a), the applicant first named in the request who is entitled to file an international application according to Article 9 shall be considered the common representative.

4.9 *Designation of States*

Contracting States shall be designated in the request by their names.

4.10 *Priority Claim*

(a) The declaration referred to in Article 8(1) shall be made in the request; it shall consist of a statement to the effect that the priority of an earlier application is claimed and shall indicate:

(i) when the earlier application is not a regional or an international application, the country in which it was filed; when the earlier application is a regional or an international application, the country or countries for which it was filed,

(ii) the date on which it was filed,

(iii) the number under which it was filed, and

(iv) when the earlier application is a regional or an international application, the national Office or intergovernmental organization with which it was filed.

(b) If the request does not indicate both

(i) when the earlier application is not a regional or an international application, the country in which it was filed; when the earlier application is a regional or an international application, at least one country for which it was filed, and

(ii) the date on which it was filed,

the priority claim shall, for the purposes of the procedure under the Treaty, be considered not to have been made.

(c) If the application number of the earlier application is not indicated in the request but is furnished by the applicant to the International Bureau prior to the expiration of the 16th month from the priority date, it shall be considered by all designated States to have been furnished in time. If it is furnished after the expiration of that time limit, the International Bureau shall inform the applicant and the designated Offices of the date on which the said number was furnished to it. The International Bureau shall indicate that date in the international publication of the international application, or, if, at the time of the international publication, the said number has not been furnished to it, shall indicate that fact in the international publication.

(d) If the filing date of the earlier application as indicated in the request precedes the international filing date by more than one year, the receiving Office, or, if the receiving Office has failed to do so, the International Bureau, shall invite the applicant to ask either for the cancellation of the declaration made under Article 8(1) or, if the date of the earlier application was indicated erroneously, for the correction of the date so indicated. If the applicant fails to act accordingly within 1 month from the date of the invitation, the declaration made under Article 8(1) shall be cancelled *ex officio*. The receiving Office effecting the correction or cancellation, shall notify the applicant accordingly and, if copies of the international application have already been sent to the International Bureau and the International Searching Authority, that Bureau and that Authority. If the correction or cancellation is effected by the International Bureau, the latter shall notify the applicant and the International Searching Authority accordingly.

(e) Where the priorities of several earlier applications are claimed, the provisions of paragraphs (a) to (d) shall apply to each of them.

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4.11 *Reference to Earlier International-Type Search*

If an international-type search has been requested on a national application under Article 15(5), the request may state that fact and identify the national application (or its translation, as the case may be) by country, date and number, and the request for the international-type search by date and, if available, number.

4.12 *Choice of Certain Kinds of Protection*

(a) If the applicant wishes his international application to be treated, in any designated State, as an application not for a patent but for the grant of an inventor's certificate, a utility certificate, a utility model, or a patent of addition, he may so specify in the request.

(b) Any such indication may immediately follow the name of the designated State.

(c) In the case provided for in Article 45(2), the applicant shall indicate both the kind of protection primarily sought and the kind of protection subsidiarily sought.

(d) If the request asks for a patent of addition in any State, it shall indicate the parent patent, or the national or international parent application, to which the patent of addition, if granted, will relate.

4.13 *Signature*

The request shall be signed by the applicant.

4.14 *No Additional Matter*

(a) The request shall contain no matter other than that specified in Rules 3.3 and 4.1 to 4.13.

(b) If the preceding provision is not complied with, the receiving Office shall *ex officio* delete the additional matter.

4.11 [no change]

4.12 *Choice of Certain Kinds of Protection*

(a) If the applicant wishes his international application to be treated, in any designated State, as an application not for a patent but for the grant of *any of the other kinds of protection specified in Article 45, he shall so indicate in the request. For the purposes of this paragraph, Article 2(xii), (xiii), and (xiv) shall not apply.*

(b) In the case provided for in Article 45(2)*, the applicant shall indicate *the two kinds of protection sought, or, if one of two kinds of protection is primarily sought, he shall indicate which kind is sought primarily and which kind is sought subsidiarily.***

4.13 IDENTIFICATION OF PARENT APPLICATION OR PARENT GRANT

If the applicant wishes his international application to be treated, in any designated State, as an application for a patent of addition, inventor's certificate of addition, or utility certificate of addition, he shall identify the parent application or the parent patent, parent inventor's certificate, or parent utility certificate to which the patent of addition, inventor's certificate of addition, or utility certificate of addition, if granted, relates. For the purposes of this paragraph, Article 2(xii), (xiii) and (xiv) shall not apply.

4.14 CONTINUATION OR CONTINUATION IN PART

If the applicant wishes his international application to be treated, in any designated State, as an application for a continuation or a continuation-in-part of an earlier application, he shall so indicate in the request and shall identify the parent application involved.

4.15*** *Signature*

The request shall be signed by the applicant.

4.16 TRANSLITERATION OR TRANSLATION OF CERTAIN WORDS

(a) *Where any name or address is written in characters other than those of the Latin alphabet, the same shall also be indicated in characters of the Latin alphabet either as a mere transliteration or through translation into English. The applicant shall decide which words will be merely transliterated and which words will be so translated.*

(b) *The name of any country written in characters other than those of the Latin alphabet shall also be indicated in English.*

* Reference is to the 1969 Draft.

** This paragraph corresponds to paragraph (c) in the 1969 Draft, whereas paragraphs (b) and (d) of the 1969 Draft are omitted. For paragraph (d) of the 1969 Draft, see new paragraph 4.13.

*** Rule 4.13 in the 1969 Draft.

4.11 *Reference to Earlier International or International-Type Search*

If an international or international-type search has been requested on an application under Article 15(5), the request may state that fact and identify the application (or its translation, as the case may be) by country, date and number, and the request for the said search by date and, if available, number.

4.12 *Choice of Certain Kinds of Protection*

(a) If the applicant wishes his international application to be treated, in any designated State, as an application not for a patent but for the grant of any of the other kinds of protection specified in Article 43, he shall so indicate in the request. For the purposes of this paragraph, Article 2(ii) shall not apply.

(b) In the case provided for in Article 44, the applicant shall indicate the two kinds of protection sought, or, if one of two kinds of protection is primarily sought, he shall indicate which kind is sought primarily and which kind is sought subsidiarily.

4.13 *Identification of Parent Application or Parent Grant*

If the applicant wishes his international application to be treated, in any designated State, as an application for a patent or certificate of addition, inventor's certificate of addition, or utility certificate of addition, he shall identify the parent application or the parent patent, parent inventor's certificate, or parent utility certificate to which the patent or certificate of addition, inventor's certificate of addition, or utility certificate of addition, if granted, relates. For the purposes of this paragraph, Article 2(ii) shall not apply.

4.14 *Continuation or Continuation-in-Part*

If the applicant wishes his international application to be treated, in any designated State, as an application for a continuation or a continuation-in-part of an earlier application, he shall so indicate in the request and shall identify the parent application involved.

4.15 *Signature*

The request shall be signed by the applicant.

4.16 *Transliteration or Translation of Certain Words*

(a) Where any name or address is written in characters other than those of the Latin alphabet, the same shall also be indicated in characters of the Latin alphabet either as a mere transliteration or through translation into English. The applicant shall decide which words will be merely transliterated and which words will be so translated.

(b) The name of any country written in characters other than those of the Latin alphabet shall also be indicated in English.

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4.17* *No Additional Matter*

(a) The request shall contain no matter other than that specified in *Rule 4.1 to 4.16*.

(b) *If the request contains matter other than that specified in Rule 4.1 to 4.16*, the receiving Office shall *ex officio* delete the additional matter.

Rule 5
The Description

5.1 *Manner of the Description*

(a) The description shall:

(i) specify the technical field to which the invention relates;

(ii) indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention, and, preferably, cite the documents reflecting such art;

(iii) disclose the invention, as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood, and state the advantageous effects, if any, of the invention with reference to the background art;

(iv) briefly describe the figures in the drawings, if any;

(v) set forth at least the best mode contemplated by the applicant for carrying out the invention claimed; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any; where the national law of the designated State does not require the description of the best mode but is satisfied with the description of any mode (whether it is the best contemplated or not), failure to describe the best mode contemplated shall have no effect in that State;

(vi) indicate the way in which the subject of the invention can be made and used in industry, or, if it can only be made or only be used, the way in which it can be made or used.

(b) The manner and order specified in paragraph (a) shall be followed except when, because of the nature of the invention, a different manner or a different order would result in a better understanding and a more economic presentation.

(c) Subject to the provisions of paragraph (b), each of the parts referred to in paragraph (a) shall preferably be preceded by an appropriate heading as suggested in the Administrative Instructions.

Rule 6
The Claims

6.1 *Number and Numbering of Claims*

(a) The number of the claims shall be reasonable in consideration of the nature of the invention claimed.

(b) If there are several claims, they shall be numbered consecutively in arabic numerals.

Rule 5 (Alternative)
The Description

5.1 *Manner of the Description*

(a) The description shall *commence by repeating the title of the invention as appearing in the request and shall:*

(i) to (v) [no change]

(vi) indicate the way in which the subject of the invention can be made and used in industry – “*industry*” *being understood in its broadest sense as in the Paris Convention for the Protection of Industrial Property – or, if it can only be used, the way in which it can be used.*

(b) [no change]

(c) [no change]

Rule 6 (Alternative)
The Claims

6.1 [no change]

* Rule 4.14 in the 1969 Draft.

4.17 *No Additional Matter*

(a) The request shall contain no matter other than that specified in Rules 4.1 to 4.16.

(b) If the request contains matter other than that specified in Rules 4.1 to 4.16, the receiving Office shall *ex officio* delete the additional matter.

Rule 5 The Description

5.1 *Manner of the Description*

(a) The description shall first state the title of the invention as appearing in the request and shall:

(i) specify the technical field to which the invention relates;

(ii) indicate the background art which, as far as known to the applicant, can be regarded as useful for the understanding, searching and examination of the invention, and, preferably, cite the documents reflecting such art;

(iii) disclose the invention, as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood, and state the advantageous effects, if any, of the invention with reference to the background art;

(iv) briefly describe the figures in the drawings, if any;

(v) set forth at least the best mode contemplated by the applicant for carrying out the invention claimed; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any; where the national law of the designated State does not require the description of the best mode but is satisfied with the description of any mode (whether it is the best contemplated or not), failure to describe the best mode contemplated shall have no effect in that State;

(vi) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is capable of exploitation in industry and the way in which it can be made and used, or, if it can only be used, the way in which it can be used; the term “industry” is to be understood in its broadest sense as in the Paris Convention for the Protection of Industrial Property.

(b) The manner and order specified in paragraph (a) shall be followed except when, because of the nature of the invention, a different manner or a different order would result in a better understanding and a more economic presentation.

(c) Subject to the provisions of paragraph (b), each of the parts referred to in paragraph (a) shall preferably be preceded by an appropriate heading as suggested in the Administrative Instructions.

Rule 6 The Claims

6.1 *Number and Numbering of Claims*

(a) The number of the claims shall be reasonable in consideration of the nature of the invention claimed.

(b) If there are several claims, they shall be numbered consecutively in arabic numerals.

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(c) The method of numbering in the case of the amendment of claims shall be governed by the Administrative Instructions.

6.2 *References to Other Parts of the Application*

(a) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: "as described in part ... of the description," or "as illustrated in figure ... of the drawings."

(b) Where the international application contains drawings, the technical features mentioned in the claims shall preferably be followed by illustrative references to the relevant figure of the drawings. The reference shall preferably consist of identification – by the appropriate number, letters, or symbol – of the relevant figure or the relevant part of such figure. The reference shall preferably be placed between parentheses. If reference to drawings does not particularly facilitate quicker understanding of the claim, it should not be made. Such references may be removed by a designated Office for the purposes of publication by such Office.

6.3 *Manner of Claiming*

(a) The definition of the matter for which protection is sought shall be in terms of the technical features of the invention.

(b) Whenever appropriate, claims shall contain:

(i) a statement indicating those technical features of the invention which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art,

(ii) a characterizing portion – preceded by the words "characterized in that," "characterized by," "wherein the improvement comprises," or any other words to the same effect – stating concisely the technical features which, in combination with the features stated under (i), it is desired to protect.

(c) Where the national law of the designated State does not require the manner of claiming provided for in paragraph (b), failure to use that manner of claiming shall have no effect in that State provided the manner of claiming actually used satisfies the national law of that State.

6.4 *Dependent Claims [Alternative A]*

(a) Any claim which includes all the features of one or more other claims ("dependent claim") shall contain a reference, preferably at the beginning, to the other claim or claims and shall then state the additional features claimed.

(b) Any dependent claim shall be construed as including all the limitations contained in the claim or claims to which it refers.

(c) All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most practical way possible.

6.4 *Dependent Claims [Alternative B]*

(a) [as in Alternative A]

(b) [as in Alternative A]

6.2 *References to Other Parts of the INTERNATIONAL Application*

(a) [no change]

(b) Where the international application contains drawings, the technical features mentioned in the claims shall preferably be followed by the reference signs relating to such features. When used, the reference signs shall preferably be placed between parentheses. If inclusion of reference signs does not particularly facilitate quicker understanding of a claim, it should not be made. Reference signs may be removed by a designated Office for the purpose of publication by such Office.

6.3 *Manner of Claiming*

(a) [no change]

(b) [no change]

(c) [no change]

6.4 *Dependent Claims*

(a) Any claim which includes all the features of one or more other claims (*claim in dependent form, hereinafter referred to as "dependent claim"*) shall do so by a reference, if possible at the beginning, to the other claim or claims and shall then state the additional features claimed.

(b) [no change]

(c) The method of numbering in the case of the amendment of claims shall be governed by the Administrative Instructions.

6.2 *References to Other Parts of the International Application*

(a) Claims shall not, except where absolutely necessary, rely, in respect of the technical features of the invention, on references to the description or drawings. In particular, they shall not rely on such references as: “as described in part ... of the description,” or “as illustrated in figure... of the drawings.”

(b) Where the international application contains drawings, the technical features mentioned in the claims shall preferably be followed by the reference signs relating to such features. When used, the reference signs shall preferably be placed between parentheses. If inclusion of reference signs does not particularly facilitate quicker understanding of a claim, it should not be made. Reference signs may be removed by a designated Office for the purposes of publication by such Office.

6.3 *Manner of Claiming*

(a) The definition of the matter for which protection is sought shall be in terms of the technical features of the invention.

(b) Whenever appropriate, claims shall contain:

(i) a statement indicating those technical features of the invention which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art,

(ii) a characterizing portion – preceded by the words “characterized in that,” “characterized by,” “wherein the improvement comprises,” or any other words to the same effect – stating concisely the technical features which, in combination with the features stated under (i), it is desired to protect.

(c) Where the national law of the designated State does not require the manner of claiming provided for in paragraph (b), failure to use that manner of claiming shall have no effect in that State provided the manner of claiming actually used satisfies the national law of that State.

6.4 *Dependent Claims*

(a) Any claim which includes all the features of one or more other claims (claim in dependent form, hereinafter referred to as “dependent claim”) shall do so by a reference, if possible at the beginning, to the other claim or claims and shall then state the additional features claimed. Any dependent claim which refers to more than one other claim (“multiple dependent claim”) shall refer to such claims in the alternative only. Multiple dependent claims shall not serve as a basis for any other multiple dependent claim.

(b) Any dependent claim shall be construed as including all the limitations contained in the claim to which it refers or, if the dependent claim is a multiple dependent claim, all the limitations contained in the particular claim in relation to which it is considered.

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(c) [as in Alternative A]

(d) Notwithstanding any other provision in paragraphs (a) to (c), any Contracting State may declare that as far as it, as a designated State, is concerned, any claim may include by reference the features of one other claim only ("prohibition of multiple dependencies"). Article 60(4) shall apply *mutatis mutandis* to any such declaration.

(c) [no change]

(d) *Any dependent claim which refers to more than one other claim (multiple dependent claim) shall refer to such claims in the alternative only. Multiple dependent claims shall not serve as a basis for any other multiple dependent claim.*

6.5 UTILITY MODELS

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 6.1 and 6.4, apply in respect of the matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least 2 months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

Rule 7 The Drawings

7.1 *Flow Sheets and Diagrams*

Flow sheets and diagrams are considered drawings.

7.2 *Time Limit*

The time limit referred to in Article 7(2)(ii) shall be reasonable under the circumstances of the case and shall, in no case, be shorter than 2 months from the date of the written invitation requiring the filing of drawings or additional drawings under the said provision.

Rule 8 The Abstract

8.1 *Contents and Form of the Abstract*

(a) The abstract shall consist of the following:

(i) a summary of the disclosure as contained in the description, the claims, and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention;

(ii) where applicable, the chemical formula which, among all the formulae contained in the application, best characterizes the invention.

(b) The abstract shall be as concise as the disclosure permits and should normally contain 50 to 150 words if it is in English or when translated into English.

(c) The abstract shall not contain statements on the alleged merits or value of the claimed invention or on its speculative application.

(d) Each main technical feature mentioned in the abstract and illustrated by a drawing in the international application shall be followed by an illustrative reference, placed between parentheses, to the relevant part of the relevant drawing.

Rule 7 (Alternative) The Drawings

[no change]

Rule 8 (Alternative) The Abstract

8.1 *Contents and Form of the Abstract*

(a) The abstract shall consist of the following:

(i) [no change]

(ii) where applicable, the chemical formula which, among all the formulae contained in the international application, best characterizes the invention.

(b) [no change]

(c) [no change]

(d) Each main technical feature mentioned in the abstract and illustrated by a drawing in the international application shall be followed by a *reference sign, placed between parentheses.*

(c) All dependent claims referring back to a single previous claim, and all dependent claims referring back to several previous claims, shall be grouped together to the extent and in the most practical way possible.

6.5 *Utility Models*

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 6.1 to 6.4, apply in respect of the matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least 2 months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

Rule 7 **The Drawings**

7.1 *Flow Sheets and Diagrams*

Flow sheets and diagrams are considered drawings.

7.2 *Time Limit*

The time limit referred to in Article 7(2)(ii) shall be reasonable under the circumstances of the case and shall, in no case, be shorter than 2 months from the date of the written invitation requiring the filing of drawings or additional drawings under the said provision.

Rule 8 **The Abstract**

8.1 *Contents and Form of the Abstract*

(a) The abstract shall consist of the following:

(i) a summary of the disclosure as contained in the description, the claims, and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention, and the principal use or uses of the invention;

(ii) where applicable, the chemical formula which, among all the formulae contained in the international application, best characterizes the invention.

(b) The abstract shall be as concise as the disclosure permits (preferably 50 to 150 words if it is in English or when translated into English).

(c) The abstract shall not contain statements on the alleged merits or value of the claimed invention or on its speculative application.

(d) Each main technical feature mentioned in the abstract and illustrated by a drawing in the international application shall be followed by a reference sign, placed between parentheses.

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8.2 *Indications for the Purposes of Publication*

(a) For the purposes of the publication of the abstract on the front page of the pamphlet and in the Gazette, the applicant shall indicate, in a note accompanying the abstract as filed, that figure of the drawings which he suggests should accompany the abstract when so published. In exceptional cases, he may suggest more than one figure.

(b) If the applicant fails to comply with paragraph (a), or if the International Searching Authority finds that a figure or figures other than that figure or those figures suggested by the applicant would, among all the figures of all the drawings, better characterize the invention, it shall indicate the figure or figures which it so considers. Publications by the International Bureau shall then use the figure or figures so indicated by the International Searching Authority. Otherwise, the figure or figures suggested by the applicant shall be used in the said publications.

8.3 *Guiding Principles in Drafting*

The abstract shall be so drafted that:

(i) it can efficiently serve as a scanning tool for purposes of searching in the particular art, especially by assisting the scientist, engineer or researcher in formulating an opinion on whether there is a need for consulting the international application itself;

(ii) it takes account of the fact that it exclusively serves the purpose of technical information and not that of interpreting the scope of protection sought.

Rule 9
Expressions, Etc., Not To Be Used

9.1 *Definition*

The international application shall not contain;

- (i) expressions contrary to morality;
- (ii) expressions contrary to public order;
- (iii) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents of any such person (mere comparisons with the prior art shall not be considered disparaging *per se*);
- (iv) any matter obviously irrelevant under the circumstances;
- (v) any unnecessary statements.

8.2 FAILURE TO SUGGEST A FIGURE TO BE PUBLISHED WITH THE ABSTRACT

(a) OMIT

If the applicant fails to make the indication referred to in Rule 3.3(a)(iii), or if the International Searching Authority finds that a figure or figures other than that figure or those figures suggested by the applicant would, among all the figures of all the drawings, better characterize the invention, it shall indicate the figure or figures which it so considers. Publications by the International Bureau shall then use the figure or figures so indicated by the International Searching Authority. Otherwise, the figure or figures suggested by the applicant shall be used in the said publications.

8.3 *Guiding Principles in Drafting*

The abstract shall be so *drafted that it can* efficiently serve as a scanning tool for purposes of searching in the particular art, especially by assisting the scientist, engineer or researcher in formulating an opinion on whether there is a need for consulting the international application itself.*

Rule 9 (Alternative)
Expressions, Etc., Not To Be Used

9.1 *Definition*

The international application shall not contain;

- (i) expressions *or drawings* contrary to morality;
- (ii) expressions *or drawings* contrary to public order;
- (iii) statements disparaging the products or processes of any particular person other than the applicant, or the merits or validity of applications or patents, *utility certificates, or utility models*, of any such person (mere comparisons with the prior art shall not be considered disparaging *per se*);
- (iv) any *statement or other* matter obviously irrelevant *or unnecessary* under the circumstances.
- (v) OMIT

* As to Rule 8.3(ii) of the 1969 Draft, see Article 3(3) in document PCT/DC/12.

8.2 *Failure to Suggest a Figure to be Published with the Abstract*

If the applicant fails to make the indication referred to in Rule 3.3(a)(iii), or if the International Searching Authority finds that a figure or figures other than that figure or those figures suggested by the applicant would, among all the figures of all the drawings, better characterize the invention, it shall indicate the figure or figures which it so considers. Publications by the International Bureau shall then use the figure or figures so indicated by the International Searching Authority. Otherwise, the figure or figures suggested by the applicant shall be used in the said publications.

8.3 *Guiding Principles in Drafting*

The abstract shall be so drafted that it can efficiently serve as a scanning tool for purposes of searching in the particular art, especially by assisting the scientist, engineer or researcher in formulating an opinion on whether there is a need for consulting the international application itself.

Rule 9 **Expressions, Etc., Not To Be Used**

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- (iv) any statement or other matter obviously irrelevant or unnecessary under the circumstances.

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9.2 *Noting of Lack of Compliance*

The receiving Office and the International Searching Authority may note lack of compliance with the prescriptions of Rule 9.1 and may suggest to the applicant that he voluntarily correct his application accordingly.

9.3 *Reference to Article 21(6)*

“Disparaging statements,” referred to in Article 21(6), shall have the meaning as defined in Rule 9.1(iii).

Rule 10
Terminology and Signs

10.1 *Terminology and Signs*

(a) Units of weights and measures shall be expressed in terms of the metric system, or also expressed in such terms if first expressed in terms of a different system.

(b) Temperatures shall be expressed in degrees centigrade, or also expressed in degrees centigrade if first expressed in a different manner.

(c) Density shall be expressed in metric units.

(d) For indications of heat, energy, light, noise, and magnetism, as well as for mathematical formulae and electrical units, the rules of international practice shall be observed; for chemical formulae, the symbols, atomic weights, and molecular formulae, in general use shall be employed.

(e) In general, only such technical terms, signs and symbols should be used as are generally accepted in the art.

(f) When the international application or its translation is in English or Japanese, the beginning of any decimal fraction shall be marked by a period, whereas, when the international application or its translation is in a language other than English or Japanese, it shall be marked by a comma.

10.2 *Consistency*

The terminology and the signs shall be consistent throughout the international application.

Rule 11
Physical Requirements of the
International Application

11.1 *Number of Copies*

(a) Subject to the provisions of paragraph (b), the international application shall be filed in one copy.

9.2 *Noting of Lack of Compliance*

The receiving Office and the International Searching Authority may note lack of compliance with the prescriptions of Rule 9.1 and may suggest to the applicant that he voluntarily correct his *international* application accordingly. *If the lack of compliance was noted by the receiving Office, that Office shall inform the competent International Searching Authority and the International Bureau; if the lack of compliance was noted by the International Searching Authority, that Authority shall inform the receiving office and the International Bureau.*

9.3 [no change]

Rule 10 (Alternative)
Terminology and Signs

10.1 *Terminology and Signs*

(a) [no change]

(b) [no change]

(c) [no change]

(d) For indications of heat, energy, light, *sound*, and magnetism, as well as for mathematical formulae and electrical units, the rules of international practice shall be observed; for chemical formulae, the symbols, atomic weights, and molecular formulae, in general use shall be employed.

(e) [no change]

(f) [no change]

10.2 [no change]

Rule 11 (Alternative)
Physical Requirements of the
International Application

11.1 *Number of Copies*

(a) Subject to the provisions of paragraph (b), the international application *and each of the documents referred to in the check list (Rule 3.3(a)(ii))* shall be filed in one copy.

9.2 *Noting of Lack of Compliance*

The receiving Office and the International Searching Authority may note lack of compliance with the prescriptions of Rule 9.1 and may suggest to the applicant that he voluntarily correct his international application accordingly. If the lack of compliance was noted by the receiving Office, that Office shall inform the competent International Searching Authority and the International Bureau; if the lack of compliance was noted by the International Searching Authority, that Authority shall inform the receiving Office and the International Bureau.

9.3 *Reference to Article 21(6)*

“Disparaging statements,” referred to in Article 21(6), shall have the meaning as defined in Rule 9.1(iii).

Rule 10 Terminology and Signs

10.1 *Terminology and Signs*

(a) Units of weights and measures shall be expressed in terms of the metric system, or also expressed in such terms if first expressed in terms of a different system.

(b) Temperatures shall be expressed in degrees centigrade, or also expressed in degrees centigrade if first expressed in a different manner.

(c) Density shall be expressed in metric units.

(d) For indications of heat, energy, light, sound, and magnetism, as well as for mathematical formulae and electrical units, the rules of international practice shall be observed; for chemical formulae, the symbols, atomic weights, and molecular formulae, in general use, shall be employed.

(e) In general, only such technical terms, signs and symbols should be used as are generally accepted in the art.

(f) When the international application or its translation is in English or Japanese, the beginning of any decimal fraction shall be marked by a period, whereas, when the international application or its translation is in a language other than English or Japanese, it shall be marked by a comma.

10.2 *Consistency*

The terminology and the signs shall be consistent throughout the international application.

Rule 11 Physical Requirements of the International Application

11.1 *Number of Copies*

(a) Subject to the provisions of paragraph (b), the international application and each of the documents referred to in the check list (Rule 3.3(a)(ii)) shall be filed in one copy.

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(b) Any receiving Office may require that the international application be filed in two or three copies. In that case, the receiving Office shall be responsible for verifying the identity of the second and the third copies with the record copy.

11.2 *Fitness for Reproduction*

(a) All elements of the international application (i.e., the request, the description, the claims, the drawings (if any), and the abstract), shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset, and microfilming, in any number of copies.

(b) All sheets shall be free from creases and cracks; they shall not be folded.

(c) Only one side of each sheet shall be used.

(d) Subject to Rule 11.13(j), each sheet shall be used in an upright position (i.e., the short sides at the top and bottom).

11.3 *Material to be Used*

All elements of the international application shall be on paper which shall be flexible, strong, white, smooth, non-shiny, and durable.

11.4 *Separate Sheets, Etc.*

(a) Each element of the international application shall commence on a new sheet.

(b) All sheets of the international application shall be so connected that they can be easily turned when consulted, and easily separated and joined again if they have been separated for reproduction purposes.

11.5 *Size of Sheets*

The size of the sheets shall be A4 (29.7 cm x 21 cm). However, any receiving Office may accept international applications on sheets of other sizes provided that the record copy, as transmitted to the International Bureau, and, if the competent International Searching Authority so desires, the search copy, shall be of A4 size.

11.6 *Margins*

(a) The minimum margins of the sheets containing the request, the description, the claims, and the abstract, shall be as follows:

- top of first sheet, except that of the request: 8 cm
- top of other sheets: 2 cm
- left side: 2.5 cm
- right side: 2 cm
- bottom: 2 cm

(b) The recommended maximum, for the margins provided for in paragraph (a), is as follows:

- top of first sheet, except that of the request: 9 cm
- top of other sheets: 4 cm
- left side: 4 cm
- right side: 3 cm
- bottom: 3 cm

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(b) Any receiving Office may require that the international application *and any of the documents referred to in the check list (Rule 3.3(a)(ii), except the receipt for the fees paid or the check for the payment of the fees*, be filed in two or three copies. In that case, the receiving Office shall be responsible for verifying the identity of the second and the third copies with the record copy.

11.2 *Fitness for Reproduction*

(a) All elements of the international application (i.e., the request, the description, the claims, *the drawings and the abstract*), shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset, and microfilming, in any number of copies.

(b) [no change]

(c) [no change]

(d) [no change]

11.3 [no change]

11.4 *Separate Sheets, Etc.*

(a) Each element (*request, description, claims, drawings, abstract*) of the international application shall commence on a new sheet.

(b) [no change]

11.5 [no change]

11.6 [no change]

(b) Any receiving Office may require that the international application and any of the documents referred to in the check list (Rule 3.3(a)(ii)), except the receipt for the fees paid or the check for the payment of the fees, be filed in two or three copies. In that case, the receiving Office shall be responsible for verifying the identity of the second and the third copies with the record copy.

11.2 *Fitness for Reproduction*

(a) All elements of the international application (i.e., the request, the description, the claims, the drawings, and the abstract) shall be so presented as to admit of direct reproduction by photography, electrostatic processes, photo offset, and microfilming, in any number of copies.

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(c) Only one side of each sheet shall be used.

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(a) The minimum margins of the sheets containing the request, the description, the claims, and the abstract, shall be as follows:

- top of first sheet, except that of the request: 8 cm
- top of other sheets: 2 cm
- left side: 2.5 cm
- right side: 2 cm
- bottom: 2 cm

(b) The recommended maximum, for the margins provided for in paragraph (a), is as follows:

- top of first sheet, except that of the request: 9 cm
- top of other sheets: 4 cm
- left side: 4 cm
- right side: 3 cm
- bottom: 3 cm

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(c) On sheets containing drawings, the surface usable shall not exceed 26.2 cm x 17.0 cm. The sheets shall not contain frames around the usable or used surface. The minimum margins shall be as follows:

- top: 2.5 cm
- left side: 2.5 cm
- right side: 1.5 cm
- bottom: 1.0 cm

(d) The margins referred to in paragraphs (a) to (c) apply to A4-size sheets, so that, even if the receiving Office accepts other sizes, the A4-size record copy and, when so required, the A4-size search copy shall leave the aforesaid margins.

(e) The margins of the international application, when submitted, must be completely blank.

11.7 *Numbering of Sheets*

(a) All the sheets contained in the international application shall be numbered in consecutive arabic numerals.

(b) The numbers shall be placed at the [bottom] [top] of the sheet, in the middle, but not in the margin.

11.8 *Numbering of Lines*

(a) It is strongly recommended to number every fifth line of each sheet of the description, and of each sheet of claims.

(b) The numbers should appear on the left side, to the right of the margin.

11.9 *Writing of Text Matter*

(a) The request, the description, the claims and the abstract shall be typed or printed.

(b) Only graphic symbols and characters, chemical or mathematical formulae, and certain characters in the Japanese language may, when necessary, be written by hand or drawn.

(c) The typing shall be 1½-spaced.

(d) All text matter shall be in characters not less than 0.21 cm high (the capital letters), and shall be in a dark, indelible color, satisfying the requirements specified in Rule 11.2.

(e) As far as the spacing of the typing and the size of the characters are concerned, paragraphs (c) and (d) shall not apply to texts in the Japanese language.

11.10 *Drawings in Text Matter*

(a) The request, the description, the claims and the abstract shall not contain drawings.

(b) The description, the claims and the abstract may contain chemical or mathematical formulae.

(c) The description and the abstract may contain tables.

11.11 *Words in Drawings*

(a) The drawings shall not contain text matter except a single word or words, when absolutely indispensable such as “water,” “steam,” “open,” “closed,” “section on AB,” and, in the case of electric circuits and block schematic or flow sheet diagrams, a few short catch words indispensable for understanding.

11.7 *Numbering of Sheets*

(a) [no change]

(b) The numbers shall be placed *at the bottom of* the sheet, in the middle, but not in the margin.

11.8 [no change]

11.9 *Writing of Text Matter*

(a) [no change]

(b) [no change]

(c) [no change]

(d) All text matter shall be in characters *the capital letters of which are* not less than 0.21 cm high, and shall be in a dark, indelible color, satisfying the requirements specified in Rule 11.2.

(e) [no change]

11.10 *Drawings, FORMULAE, AND TABLES, in Text Matter*

(a) [no change]

(b) [no change]

(c) The description and the abstract may contain tables; *any claim may contain tables only if the subject matter of the claim makes the use of tables desirable.*

11.11 [no change]

(c) On sheets containing drawings, the surface usable shall not exceed 26.2 cm x 17.0 cm. The sheets shall not contain frames around the usable or used surface. The minimum margins shall be as follows:

- top: 2.5 cm.
- left side: 2.5 cm
- right side: 1.5 cm
- bottom: 1.0 cm

(d) The margins referred to in paragraphs (a) to (c) apply to A4-size sheets, so that, even if the receiving Office accepts other sizes, the A4-size record copy and, when so required, the A4-size search copy shall leave the aforesaid margins.

(e) The margins of the international application, when submitted, must be completely blank.

11.7 *Numbering of Sheets*

(a) All the sheets contained in the international application shall be numbered in consecutive arabic numerals.

(b) The numbers shall be placed at the top of the sheet, in the middle, but not in the margin.

11.8 *Numbering of Lines*

(a) It is strongly recommended to number every fifth line of each sheet of the description, and of each sheet of claims.

(b) The numbers should appear on the left side, to the right of the margin.

11.9 *Writing of Text Matter*

(a) The request, the description, the claims and the abstract shall be typed or printed.

(b) Only graphic symbols and characters, chemical or mathematical formulae, and certain characters in the Japanese language may, when necessary, be written by hand or drawn.

(c) The typing shall be 1½-spaced.

(d) All text matter shall be in characters the capital letters of which are not less than 0.21 cm high, and shall be in a dark, indelible color, satisfying the requirements specified in Rule 11.2.

(e) As far as the spacing of the typing and the size of the characters are concerned, paragraphs (c) and (d) shall not apply to texts in the Japanese language.

11.10 *Drawings, Formulae, and Tables, in Text Matter*

(a) The request, the description, the claims and the abstract shall not contain drawings.

(b) The description, the claims and the abstract may contain chemical or mathematical formulae.

(c) The description and the abstract may contain tables; any claim may contain tables only if the subject matter of the claim makes the use of tables desirable.

11.11 *Words in Drawings*

(a) The drawings shall not contain text matter, except a single word or words, when absolutely indispensable, such as “water,” “steam,” “open,” “closed,” “section on AB,” and, in the case of electric circuits and block schematic or flow sheet diagrams, a few short catch words indispensable for understanding.

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(b) Any words used shall be so placed that, if translated, they may be pasted over without interfering with any lines of the drawings.

11.12 *Alterations, Etc.*

Each sheet shall be reasonably free from erasures and shall be free from alterations, overwritings, and interlineations. Non-compliance with this Rule may be authorized, in exceptional cases, if the authenticity of the content is not in question and the requirements for good reproduction are not in jeopardy.

11.13 *Special Requirements for Drawings*

(a) Drawings shall be executed in durable, black or blue, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without colors or color washes.

(b) Cross-sections shall be indicated by oblique hatching which should not impede the clear reading of the reference signs and leading lines.

(c) The scale of the drawings and the distinctness of their graphical execution shall be such that a photographic reproduction with a linear reduction in size to two-thirds would enable all details to be distinguished without difficulty.

(d) When, in exceptional cases, the scale is given on a drawing, it shall be represented graphically.

(e) All numbers, letters, and reference lines, appearing on the drawings, shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.

(f) All lines in the drawings shall, ordinarily, be drawn with the aid of drafting instruments.

(g) Each element of each figure shall be in proper proportion to each of the other elements in the figure.

(h) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin alphabet shall be used.

(i) The same sheet of drawings may contain several figures.

(j) The different figures shall be arranged on a sheet or sheets without wasting space, preferably in an upright position, clearly separated from one another.

(k) The different figures shall be numbered in arabic numerals consecutively and independently of the numbering of the sheets.

(l) Reference signs not mentioned in the description shall not appear in the drawings, and vice versa.

(m) The same features, when denoted by reference signs, shall, throughout the international application, be denoted by the same signs.

(n) If the drawings contain a large number of reference signs, it is strongly recommended to attach a separate sheet listing all reference signs and the features denoted by them.

11.14 *Later Documents*

Rules 10, and 11.1 to 11.13, also apply to any document – for example, corrected pages, amended claims submitted after the filing of the international application.

11.12 [no change]

11.13 *Special Requirements for Drawings*

(a) Drawings shall be executed in durable, black or blue, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without *colorings*.

(b) [no change]

(c) [no change]

(d) [no change]

(e) [no change]

(f) [no change]

(g) Each element of each figure shall be in proper proportion to each of the other elements in the figure, *except where the use of a different proportion is indispensable for the clarity of the figure*.

(h) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin *and, where customary, the Greek* alphabets shall be used.

(i) The same sheet of drawings may contain several figures. *Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets shall be so arranged that the complete figure can be assembled without concealing any part of any of the figures appearing on the various sheets*.

(j) [no change]

(k) [no change]

(l) [no change]

(m) [no change]

(n) [no change]

11.14 [no change]

(b) Any words used shall be so placed that, if translated, they may be pasted over without interfering with any lines of the drawings.

11.12 *Alterations, Etc.*

Each sheet shall be reasonably free from erasures and shall be free from alterations, overwritings, and interlineations. Non-compliance with this Rule may be authorized, in exceptional cases, if the authenticity of the content is not in question and the requirements for good reproduction are not in jeopardy.

11.13 *Special Requirements for Drawings*

(a) Drawings shall be executed in durable, black or blue, sufficiently dense and dark, uniformly thick and well-defined, lines and strokes without colorings.

(b) Cross-sections shall be indicated by oblique hatching which should not impede the clear reading of the reference signs and leading lines.

(c) The scale of the drawings and the distinctness of their graphical execution shall be such that a photographic reproduction with a linear reduction in size to two-thirds would enable all details to be distinguished without difficulty.

(d) When, in exceptional cases, the scale is given on a drawing, it shall be represented graphically.

(e) All numbers, letters and reference lines, appearing on the drawings, shall be simple and clear. Brackets, circles or inverted commas shall not be used in association with numbers and letters.

(f) All lines in the drawings shall, ordinarily, be drawn with the aid of drafting instruments.

(g) Each element of each figure shall be in proper proportion to each of the other elements in the figure, except where the use of a different proportion is indispensable for the clarity of the figure.

(h) The height of the numbers and letters shall not be less than 0.32 cm. For the lettering of drawings, the Latin and, where customary, the Greek alphabets shall be used.

(i) The same sheet of drawings may contain several figures. Where figures on two or more sheets form in effect a single complete figure, the figures on the several sheets shall be so arranged that the complete figure can be assembled without concealing any part of any of the figures appearing on the various sheets.

(j) The different figures shall be arranged on a sheet or sheets without wasting space, preferably in an upright position, clearly separated from one another.

(k) The different figures shall be numbered in arabic numerals consecutively and independently of the numbering of the sheets.

(l) Reference signs not mentioned in the description shall not appear in the drawings, and vice versa.

(m) The same features, when denoted by reference signs, shall, throughout the international application, be denoted by the same signs.

(n) If the drawings contain a large number of reference signs, it is strongly recommended to attach a separate sheet listing all reference signs and the features denoted by them.

11.14 *Later Documents*

Rules 10, and 11.1 to 11.13, also apply to any document – for example, corrected pages, amended claims – submitted after the filing of the international application.

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11.15 *Translations*

No designated Office shall require that the translation of an international application filed with it comply with requirements other than those prescribed for the international application as filed.

Rule 12
Language of the International Application

12.1 *The International Application*

Any international application shall be filed in the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Searching Authority competent for the international searching of that application, provided that if the agreement specifies several languages, one of which is an official language of the receiving Office, the receiving Office may prescribe that the international application be filed in that language.

12.2 *Changes in the International Application*

Any changes in the international application, such as amendments and corrections, shall be in the same language as the said application.

Rule 13
Unity of Invention

13.1 *Requirement*

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention").

13.2 *Claims of Different Categories [Alternative A]*

Rule 13.1 shall be construed as permitting any of the following two possibilities:

(i) in addition to an independent claim for a given product, the inclusion in the same international application of at least one independent claim for at least one process [specially adapted] for the manufacture of the said product, and/or the inclusion in the same international application of at least one independent claim for at least one use of the said product;

(ii) in addition to an independent claim for a given process, the inclusion in the same international application of at least one independent claim for at least one apparatus or means specifically designed for carrying out the said process.

13.2 *Claims of Different Categories [Alternative B]*

Rule 13.1 shall be construed as permitting any of the following three possibilities:

(i) in addition to an independent claim for a given product, the inclusion in the same international application of at least one independent claim for at least one process specially adapted for the manufacture of the said product;

11.15 [no change]

Rule 12 (Alternative)
Language of the International Application

12.1 *The International Application*

Any international application shall be filed in the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Searching Authority competent for the international searching of that application, provided that if the agreement specifies several languages, the receiving Office may prescribe *among the specified languages that language in which or those languages in one of which the international application must be filed and provided further that any international application may be filed in the English language if that language is among the languages specified in the said agreement.*

12.2 *Changes in the International Application*

Any changes in the international application, such as amendments and corrections, shall be in the same language as the said application (*cf. Rule 66.5*).

Rule 13 (Alternative)
Unity of Invention

13.1 [no change]

13.2 *Claims of Different Categories*

Rule 13.1 shall be construed as permitting [*in particular*] either of the following two possibilities:

(i) in addition to an independent claim for a given product, the inclusion in the same international application of *one independent claim for one process specially adapted for the manufacture of the said product, and the inclusion in the same international application of one independent claim for one use of the said product, or*

11.15 *Translations*

No designated Office shall require that the translation of an international application filed with it comply with requirements other than those prescribed for the international application as filed.

Rule 12 **Language of the International Application**

12.1 *The International Application*

Any international application shall be filed in the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Searching Authority competent for the international searching of that application, provided that, if the agreement specifies several languages, the receiving Office may prescribe among the specified languages that language in which or those languages in one of which the international application must be filed.

12.2 *Changes in the International Application*

Any changes in the international application, such as amendments and corrections, shall be in the same language as the said application (cf. Rule 66.5).

Rule 13 **Unity of Invention**

13.1 *Requirement*

The international application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept (“requirement of unity of invention”).

13.2 *Claims of Different Categories*

Rule 13.1 shall be construed as permitting, in particular, either of the following two possibilities:

(i) in addition to an independent claim for a given product, the inclusion in the same international application of one independent claim for one process specially adapted for the manufacture of the said product, and the inclusion in the same international application of one independent claim for one use of the said product, or

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(ii) in addition to an independent claim for a given product, the inclusion in the same international application of at least one independent claim for at least one use of the said product;

(iii) in addition to an independent claim for a given process, the inclusion in the same international application of at least one independent claim for at least one apparatus or means specifically designed for carrying out the said process.

13.3 *Claims of One and the Same Category*

Subject to Rule 13.1, it shall be permitted to include in the same international application two or more independent claims of the same category (i.e., product, process, or apparatus) which cannot readily be covered by a single generic claim.

13.4 *Dependent Claims*

Subject to Rule 13.1, it shall be permitted to include in the same application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

13.5 *Guidelines*

(a) Generally, the requirement of unity of invention may be regarded as fulfilled if the international application provides several solutions of a hitherto unsolved technical problem.

(b) The fact that separate claims in any given international application would require the searching of clearly separate fields of art may connote that the inventions are not so linked as to form a single general inventive concept.

Rule 14 The Transmittal Fee

14.1 *The Transmittal Fee*

(a) Any receiving Office may require that the applicant pay a fee to it, for its own benefit, for receiving the international application, transmitting copies to the International Bureau and the competent International Searching Authority, and performing all the other tasks which it must perform in connection with the international application in its capacity of receiving Office ("transmittal fee").

(b) The amount and the due date of the transmittal fee, if any, shall be fixed by the receiving Office.

Rule 15 The International Fee

15.1 *Basic Fee and Designation Fee*

Each international application shall be subject to the payment of a fee for the benefit of the International Bureau ("international fee") consisting of

- (i) a "basic fee," and

(ii) in addition to an independent claim for a given process, the inclusion in the same international application *of one independent claim for one apparatus* or means specifically designed for carrying out the said process.

13.3 *Claims of One and the Same Category*

Subject to Rule 13.1, it shall be permitted to include in the same international application two or more independent claims of the same category (i.e., product, process, apparatus, or use) which cannot readily be covered by a single generic claim.

13.4 *Dependent Claims*

Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

13.5* *UTILITY MODELS*

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rule 13, apply in respect of the matters regulated in that Rule the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least 2 months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

Rule 14 (Alternative) The Transmittal Fee

[no change]

Rule 15 (Alternative) The International Fee

15.1 *Basic Fee and Designation Fee*

Each international application shall be subject to the payment of a fee for the benefit of the International Bureau ("international fee") consisting of

- (i) a "basic fee," and

* Rule 13.5 of the 1969 Draft is omitted.

(ii) in addition to an independent claim for a given process, the inclusion in the same international application of one independent claim for one apparatus or means specifically designed for carrying out the said process.

13.3 *Claims of One and the Same Category*

Subject to Rule 13.1, it shall be permitted to include in the same international application two or more independent claims of the same category (i.e., product, process, apparatus, or use) which cannot readily be covered by a single generic claim.

13.4 *Dependent Claims*

Subject to Rule 13.1, it shall be permitted to include in the same international application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claim, even where the features of any dependent claim could be considered as constituting in themselves an invention.

13.5 *Utility Models*

Any designated State in which the grant of a utility model is sought on the basis of an international application may, instead of Rules 13.1 to 13.4, apply in respect of the matters regulated in those Rules the provisions of its national law concerning utility models once the processing of the international application has started in that State, provided that the applicant shall be allowed at least 2 months from the expiration of the time limit applicable under Article 22 to adapt his application to the requirements of the said provisions of the national law.

Rule 14 **The Transmittal Fee**

14.1 *The Transmittal Fee*

(a) Any receiving Office may require that the applicant pay a fee to it, for its own benefit, for receiving the international application, transmitting copies to the International Bureau and the competent International Searching Authority, and performing all the other tasks which it must perform in connection with the international application in its capacity of receiving Office (“transmittal fee”).

(b) The amount and the due date of the transmittal fee, if any, shall be fixed by the receiving Office.

Rule 15 **The International Fee**

15.1 *Basic Fee and Designation Fee*

Each international application shall be subject to the payment of a fee for the benefit of the International Bureau (“international fee”) consisting of

(i) a “basic fee,” and

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(ii) as many "designation fees" as there are States designated in the international application.

15.2 *Amounts*

(a) The amount of the basic fee shall be:

(i) if the application contains not more than 30 sheets: [between US \$40.00 and 50.00],*

(ii) if the application contains more than 30 sheets: [between US \$40.00 and 50.00] plus [US \$0.80 and 1.00]* per sheet in excess of 30 sheets.

(b) The amount of the designation fee shall be:

(i) for each designated State which does not require the furnishing of a copy under Article 13: [between US \$10.00 and 12.50],*

(ii) for each designated State which requires the furnishing of a copy under Article 13: [between US \$12.00 and 15.00].*

15.3 *Mode of Payment*

(a) The international fee shall be collected by the receiving Office.

(b) The international fee shall be payable in the currency prescribed by the receiving Office, it being understood that, when transferred by the receiving Office to the International Bureau, it shall be freely convertible into Swiss currency.

15.4 *Time of Payment*

(a) The basic fee shall be due on the date of receipt of the international application. However, any receiving Office may, at its discretion, notify the applicant of any lack of receipt or insufficiency of any amount received, and permit applicants to pay the basic fee later, without loss of the filing date, provided that:

(i) permission shall not be given to pay later than 1 month after the date of receipt of the international application;

(ii) permission may not be subject to any extra charge.

(b) The designation fee may be paid on the date of receipt of the international application or on any later date but, at the latest, it must be paid before the expiration of one year from the priority date.

15.5 *Partial Payment*

(a) If the applicant specifies the States to which he wishes any amount paid to be applied as designation fee, the amount shall be applied accordingly to the number of States which are covered by the amount in the order specified by the applicant.

(b) If the applicant does not specify any such wish and if the amount or amounts received by the receiving Office are higher than the basic fee and one designation fee but lower than what is due according to the number of the designated States, any amount in excess of the basic fee and one designation fee shall be treated as designation fees for the States following the State first named in the request and in the order in which the States are designated in the request up to and including that designated State for which the total amount of the designation fee is covered by the amount or amounts received.

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(ii) as many "designation fees" as there are States designated in the international application, *provided that, where a regional patent is sought for certain designated States, only one designation fee shall be due for those States.*

15.2 *Amounts*

(a) The amount of the basic fee shall be:

(i) if the *international* application contains not more than 30 sheets: *US \$45.00 or 194 Swiss francs,*

(ii) if the *international* application contains more than 30 sheets: *US \$45.00 or 194 Swiss francs plus US \$1.00 or 4.30 Swiss francs per sheet in excess of 30 sheets.*

(b) The amount of the designation fee shall be:

(i) for each designated State *or each group of designated States for which the same regional patent is sought* which does not require the furnishing of a copy under Article 13: *US \$12.00 or 52 Swiss francs,*

(ii) for each designated State *or each group of designated States for which the same regional patent is sought* which requires the furnishing of a copy under Article 13: *US \$14.00 or 60 Swiss francs.*

15.3 [no change]

15.4 *Time of Payment*

(a) The basic fee shall be due on the date of receipt of the international application. However, any receiving Office may, at its discretion, notify the applicant of any lack of receipt or insufficiency of any amount received, and permit applicants to pay the basic fee later, without loss of the *international* filing date, provided that:

(i) [no change]

(ii) [no change]

(b) [no change]

15.5 *Partial Payment*

(a) [no change]

(b) [no change]

(c) *The designation fee for the first mentioned State belonging to a group of States for which the same regional patent is sought and which is specified under paragraph (a) or which is reached under paragraph (b) shall, for the purposes of the said paragraphs, be considered as covering also the other States of the said group.*

* All amounts are tentative.

(ii) as many “designation fees” as there are States designated in the international application, provided that, where a regional patent is sought for certain designated States, only one designation fee shall be due for those States.

15.2 *Amounts*

(a) The amount of the basic fee shall be:

(i) if the international application contains not more than 30 sheets: US \$45.00 or 194 Swiss francs,

(ii) if the international application contains more than 30 sheets: US \$45.00 or 194 Swiss francs plus US \$1.00 or 4.30 Swiss francs per sheet in excess of 30 sheets.

(b) The amount of the designation fee shall be:

(i) for each designated State or each group of designated States for which the same regional patent is sought which does not require the furnishing of a copy under Article 13: US \$12.00 or 52 Swiss francs,

(ii) for each designated State or each group of designated States for which the same regional patent is sought which requires the furnishing of a copy under Article 13: US \$14.00 or 60 Swiss francs.

15.3 *Mode of Payment*

(a) The international fee shall be collected by the receiving Office.

(b) The international fee shall be payable in the currency prescribed by the receiving Office, it being understood that, when transferred by the receiving Office to the International Bureau, it shall be freely convertible into Swiss currency.

15.4 *Time of Payment*

(a) The basic fee shall be due on the date of receipt of the international application. However, any receiving Office may, at its discretion, notify the applicant of any lack of receipt or insufficiency of any amount received, and permit applicants to pay the basic fee later, without loss of the international filing date, provided that:

(i) permission shall not be given to pay later than one month after the date of receipt of the international application;

(ii) permission may not be subject to any extra charge.

(b) The designation fee may be paid on the date of receipt of the international application or on any later date but, at the latest, it must be paid before the expiration of one year from the priority date.

15.5 *Partial Payment*

(a) If the applicant specifies the States to which he wishes any amount paid to be applied as designation fee, the amount shall be applied accordingly to the number of States which are covered by the amount in the order specified by the applicant.

(b) If the applicant does not specify any such wish and if the amount or amounts received by the receiving Office are higher than the basic fee and one designation fee but lower than what is due according to the number of the designated States, any amount in excess of the basic fee and one designation fee shall be treated as designation fees for the States following the State first named in the request and in the order in which the States are designated in the request up to and including that designated State for which the total amount of the designation fee is covered by the amount or amounts received.

(c) The designation fee for the first mentioned State belonging to a group of States for which the same regional patent is sought and which is specified under paragraph (a) or which is reached under paragraph (b) shall, for the purposes of the said paragraphs, be considered as covering also the other States of the said group.

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15.6 *Refund*

(a) The international fee shall be refunded to the applicant if the determination referred to in Rule 20.4 is negative.

(b) In no other case shall the international fee be refunded.

Rule 16
The Search Fee

16.1 *Right to Ask for a Fee*

(a) Each International Searching Authority may require that the applicant pay a fee ("search fee") for its own benefit for carrying out the international search and for performing all other tasks entrusted to International Searching Authorities by the Treaty and these Regulations.

(b) The search fee shall be collected, and shall be due at the same time, and under the same conditions, as the basic fee part of the international fee under Rule 15.3 and 15.4(a), except that it shall be payable in a currency which is freely convertible into the currency of the State in which the competent International Searching Authority is located.

16.2 *Refund*

The search fee shall be refunded to the applicant if the determination referred to in Rule 20.4 is negative.

Rule 17
The Priority Document

17.1 *Obligation to Submit Copy of Earlier National Application*

(a) Where the priority of an earlier national application is claimed under Article 8 in the international application, a copy of the said application, certified by the national Office with which it was filed ("the priority document"), shall, unless already filed with the receiving Office together with the international application, be submitted by the applicant to the International Bureau not later than 16 months after the priority date or, in the case referred to in Article 23(2), not later than at the time the processing and examination are requested.

(b) If the applicant fails to comply with the requirement under paragraph (a), any designated State may disregard the priority claim.

(c) The International Bureau shall record the date on which it received the priority document and shall notify the applicant accordingly.

15.6 *Refund*

(a) The international fee shall be refunded to the applicant if the determination *under Article 11(1)* is negative.

(b) [no change]

Rule 16 (Alternative)
The Search Fee

16.1 *Right to Ask for a Fee*

(a) [no change]

(b) The search fee shall be collected by the receiving Office. It shall be payable in the currency prescribed by that Office, it being understood that, if that currency is not the same as the currency of the State in which the International Searching Authority is located, the search fee, when transferred by the receiving Office to that Authority, shall be freely convertible into the currency of the said State. As to the time of payment of the search fee, Rule 15.4(a) shall apply.

16.2 *Refund*

The search fee shall be refunded to the applicant if the determination *under Article 11(1)* is negative.

16.3 PARTIAL REFUND

Where the international application claims the priority of an earlier international application which has been the subject of an international search by the same International Searching Authority, that Authority shall refund the search fee paid in connection with the later international application to the extent and under the conditions provided for in the agreement under Article 16(3)(b), if the international search report on the later international application could wholly or partly be based on the results of the international search effected on the earlier international application.

Rule 17 (Alternative)
The Priority Document

17.1 *Obligation to Submit Copy of Earlier National Application*

(a) Where the priority of an earlier national application is claimed under Article 8 in the international application, a copy of the said *national* application, certified by the *authority* with which it was filed ("the priority document"), shall, unless already filed with the receiving Office, together with the international application, be submitted by the applicant to the International Bureau not later than 16 months after the priority date or, in the case referred to in Article 23(2), not later than at the time the processing and examination are requested.

(b) [no change]

(c) The International Bureau shall record the date on which it received the priority document and shall notify the applicant *and the designated Offices* accordingly.

15.6 *Refund*

(a) The international fee shall be refunded to the applicant if the determination under Article 11(1) is negative.

(b) In no other case shall the international fee be refunded.

Rule 16 The Search Fee

16.1 *Right to Ask for a Fee*

(a) Each International Searching Authority may require that the applicant pay a fee (“search fee”) for its own benefit for carrying out the international search and for performing all other tasks entrusted to International Searching Authorities by the Treaty and these Regulations.

(b) The search fee shall be collected by the receiving Office. It shall be payable in the currency prescribed by that Office, it being understood that, if that currency is not the same as the currency of the State in which the International Searching Authority is located, the search fee, when transferred by the receiving Office to that Authority, shall be freely convertible into the currency of the said State. As to the time of payment of the search fee, Rule 15.4(a) shall apply.

16.2 *Refund*

The search fee shall be refunded to the applicant if the determination under Article 11(1) is negative.

16.3 *Partial Refund*

Where the international application claims the priority of an earlier international application which has been the subject of an international search by the same International Searching Authority, that Authority shall refund the search fee paid in connection with the later international application to the extent and under the conditions provided for in the agreement under Article 16(3)(b), if the international search report on the later international application could wholly or partly be based on the results of the international search effected on the earlier international application.

Rule 17 The Priority Document

17.1 *Obligation to Submit Copy of Earlier National Application*

(a) Where the priority of an earlier national application is claimed under Article 8 in the international application, a copy of the said national application, certified by the authority with which it was filed (“the priority document”), shall, unless already filed with the receiving Office, together with the international application, be submitted by the applicant to the International Bureau not later than 16 months after the priority date or, in the case referred to in Article 23(2), not later than at the time the processing or examination is requested.

(b) If the applicant fails to comply with the requirement under paragraph (a), any designated State may disregard the priority claim.

(c) The International Bureau shall record the date on which it received the priority document and shall notify the applicant and the designated Offices accordingly.

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17.2 *Availability of Copies*

(a) The International Bureau shall, at the specific request of the designated State, promptly but not before the expiration of the time limit fixed in Rule 17.1(a), furnish a copy of the priority document to any designated Office. No such Office shall ask the applicant himself to furnish it with a copy, except where it requires the furnishing of a copy of the priority document together with a certified translation thereof.

(b) The International Bureau shall not make copies of the priority document available to the public prior to the international publication of the international application.

(c) Paragraphs (a) and (b) shall apply also to any earlier international application whose priority is claimed in the subsequent international application.

17.2 *Availability of Copies*

(a) The International Bureau shall, at the specific request of the designated *Office*, promptly but not before the expiration of the time limit fixed in Rule 17.1(a), furnish a copy of the priority document to *that* Office. No such Office shall ask the applicant himself to furnish it with a copy, except where it requires the furnishing of a copy of the priority document together with a certified translation thereof. *The applicant shall not be required to furnish a certified translation to the designated Office before the expiration of the applicable time limit under Article 22.*

(b) [no change]

(c) [no change]

Rule 18
The Applicant

Rule 18 (Alternative)
The Applicant

18.1 *Residence*

(a) Subject to the provisions of paragraph (b), the question whether an applicant is a resident of the Contracting State of which he claims to be a resident shall depend on the national law of that State and shall be decided by the receiving Office.

(b) In any case, possession of a real and effective industrial or commercial establishment in a Contracting State shall be considered residence in that State.

18.2 *Nationality*

(a) Subject to the provisions of paragraph (b), the question whether an applicant is a national of the Contracting State of which he claims to be a national shall depend on the national law of that State and shall be decided by the receiving Office.

(b) In any case, a legal entity constituted according to the law of a Contracting State shall be considered a national of that State.

18.3 *Several Applicants: Same for All Designated States*

If all the applicants are applicants for the purposes of all designated States, the right to file an international application shall exist if at least one of them is entitled to file an international application according to Article 9.

18.4 *Several Applicants: Different for Different Designated States*

(a) The international application may indicate different applicants for the purposes of different designated States, provided that, in respect of each designated State, at least one of the applicants indicated for the purposes of that State is entitled to file an international application according to Article 9.

(b) If the condition referred to in paragraph (a) is not fulfilled in respect of any designated State, the designation of that State shall be considered not to have been made.

18.1 [no change]

18.2 [no change]

18.3 [no change]

18.4 [no change]

17.2 *Availability of Copies*

(a) The International Bureau shall, at the specific request of the designated Office, promptly but not before the expiration of the time limit fixed in Rule 17.1(a), furnish a copy of the priority document to that Office. No such Office shall ask the applicant himself to furnish it with a copy, except where it requires the furnishing of a copy of the priority document together with a certified translation thereof. The applicant shall not be required to furnish a certified translation to the designated Office before the expiration of the applicable time limit under Article 22.

(b) The International Bureau shall not make copies of the priority document available to the public prior to the international publication of the international application.

(c) Paragraphs (a) and (b) shall apply also to any earlier international application whose priority is claimed in the subsequent international application.

Rule 18

The Applicant

18.1 *Residence*

(a) Subject to the provisions of paragraph (b), the question whether an applicant is a resident of the Contracting State of which he claims to be a resident shall depend on the national law of that State and shall be decided by the receiving Office.

(b) In any case, possession of a real and effective industrial or commercial establishment in a Contracting State shall be considered residence in that State.

18.2 *Nationality*

(a) Subject to the provisions of paragraph (b), the question whether an applicant is a national of the Contracting State of which he claims to be a national shall depend on the national law of that State and shall be decided by the receiving Office.

(b) In any case, a legal entity constituted according to the national law of a Contracting State shall be considered a national of that State.

18.3 *Several Applicants: Same for All Designated States*

If all the applicants are applicants for the purposes of all designated States, the right to file an international application shall exist if at least one of them is entitled to file an international application according to Article 9.

18.4 *Several Applicants: Different for Different Designated States*

(a) The international application may indicate different applicants for the purposes of different designated States, provided that, in respect of each designated State, at least one of the applicants indicated for the purposes of that State is entitled to file an international application according to Article 9.

(b) If the condition referred to in paragraph (a) is not fulfilled in respect of any designated State, the designation of that State shall be considered not to have been made.

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(c) The International Bureau shall, from time to time, publish information on the various national laws in respect of the question who is qualified (inventor, successor in title of the inventor, owner of the invention, or other) to file a national application and shall accompany such information by a warning that the effect of the international application in any designated State may depend on whether the person designated in the international application as applicant for the purposes of that State is a person who, under the national law of that State, is qualified to file a national application.

18.5 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant, be recorded by the International Bureau, which shall notify the interested International Searching Authority and the designated Offices accordingly.

Rule 19

The Competent Receiving Office

19.1 *Where to File*

(a) Subject to the provisions of paragraph (b), the international application shall be filed, at the option of the applicant, with the national Office of the Contracting State of which the applicant is a resident or with the national Office of the Contracting State of which the applicant is a national.

(b) Any Contracting State may agree with another Contracting State or an intergovernmental organization that the national Office of the latter State or the intergovernmental organization shall, for all or some purposes, act instead of the national Office of the former State as receiving Office for applicants who are residents or nationals of that former State. Notwithstanding such agreement, the national Office of the former State shall be considered the competent receiving Office within the meaning of Article 15(5).

(c) In connection with any decision made under Article 9(2), the Assembly shall appoint the national Office or the intergovernmental organization which will act as receiving Office for applications of residents or nationals of States specified by the Assembly. Such appointment shall require the previous consent of the said national Office or intergovernmental organization.

19.2 *Several Applicants*

(a) If there are several applicants and they have no common agent, their common representative within the meaning of Rule 4.8 shall, for the purposes of the application of Rule 19.1, be considered the applicant.

(b) If there are several applicants and they have a common agent, the applicant first named in the request who is entitled to file an international application according to Article 9 shall, for the purposes of the application of Rule 19.1, be considered the applicant.

18.5 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant *or the receiving Office*, be recorded by the International Bureau, which shall notify the interested International Searching Authority and the designated Offices accordingly.

Rule 19 (Alternative)

The Competent Receiving Office

19.1 *Where to File*

(a) [no change]

(b) Any Contracting State may agree with another Contracting State or *any* intergovernmental organization that the national Office of the latter State or the intergovernmental organization shall, for all or some purposes, act instead of the national Office of the former State as receiving Office for applicants who are residents or nationals of that former State. Notwithstanding such agreement, the national Office of the former State shall be considered the competent receiving Office *for the purposes* of Article 15(5).

(c) [no change]

19.2 [no change]

(c) The International Bureau shall, from time to time, publish information on the various national laws in respect of the question who is qualified (inventor, successor in title of the inventor, owner of the invention, or other) to file a national application and shall accompany such information by a warning that the effect of the international application in any designated State may depend on whether the person designated in the international application as applicant for the purposes of that State is a person who, under the national law of that State, is qualified to file a national application.

18.5 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant or the receiving Office, be recorded by the International Bureau, which shall notify the interested International Searching Authority and the designated Offices accordingly.

Rule 19 **The Competent Receiving Office**

19.1 *Where to File*

(a) Subject to the provisions of paragraph (b), the international application shall be filed, at the option of the applicant, with the national Office of or acting for the Contracting State of which the applicant is a resident or with the national Office of or acting for the Contracting State of which the applicant is a national.

(b) Any Contracting State may agree with another Contracting State or any intergovernmental organization that the national Office of the latter State or the intergovernmental organization shall, for all or some purposes, act instead of the national Office of the former State as receiving Office for applicants who are residents or nationals of that former State. Notwithstanding such agreement, the national Office of the former State shall be considered the competent receiving Office for the purposes of Article 15(5).

(c) In connection with any decision made under Article 9(2), the Assembly shall appoint the national Office or the intergovernmental organization which will act as receiving Office for applications of residents or nationals of States specified by the Assembly. Such appointment shall require the previous consent of the said national Office or intergovernmental organization.

19.2 *Several Applicants*

(a) If there are several applicants and they have no common agent, their common representative within the meaning of Rule 4.8 shall, for the purposes of the application of Rule 19.1, be considered the applicant.

(b) If there are several applicants and they have a common agent, the applicant first named in the request who is entitled to file an international application according to Article 9 shall, for the purposes of the application of Rule 19.1, be considered the applicant.

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19.3 *Publication of Fact of Delegation of Duties of Receiving Office* 19.3 [no change]

(a) Any agreement referred to in Rule 19.1(b) shall be promptly notified to the International Bureau by the Contracting State which delegates the duties of the receiving Office to the national Office of another Contracting State or an intergovernmental organization.

(b) The International Bureau shall, promptly upon receipt, publish the notification in the Gazette.

Rule 20
Receipt of the International Application

20.1 *Date and Number*

(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt on the first sheet (the request) of each copy received and one of the numbers assigned by the International Bureau to that Office on each sheet of each copy received.

(b) The place on each sheet where the date or number shall be marked, and other details, shall be specified in the Administrative Instructions.

20.2 *Receipt on Different Days*

In cases where all the sheets pertaining to the same purported international application are not received on the same day by the receiving Office, that Office shall correct the date marked on the request so that it indicates the day on which the papers completing the international application were received, provided that

(i) where no invitation under Article 11(2)(a) to correct was addressed to the applicant, the said papers are received within 30 days from the date on which sheets were first received;

(ii) where an invitation under Article 11(2)(a) to correct was addressed to the applicant, the said papers are received within the applicable time limit under Rule 20.6;

(iii) in the case of Article 14(2), the missing drawings are received within 30 days from the date on which the incomplete papers were filed.

20.3 *Corrected Application*

In the case referred to in Article 11(2)(b), the receiving Office shall correct the date marked on the request so that it indicates the day on which the last required correction was received.

20.4 *Determination under Article 11(1)*

(a) Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers comply with the requirements of Article 11(1).

(b) For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows his identity to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.

Rule 20 (Alternative)
Receipt of the International Application

20.1 *Date and Number*

(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt *in the space provided for that purpose in the request form* of each copy received and one of the numbers assigned by the International Bureau to that Office on each sheet of each copy received.

(b) [no change]

20.2 *Receipt on Different Days*

(a) In cases where all the sheets pertaining to the same purported international application are not received on the same day by the receiving Office, that Office shall correct the date marked on the request (*still leaving legible, however, the earlier date or dates already marked*) so that it indicates the day on which the papers completing the international application were received, provided that

(i) where no invitation under Article 11(2)(a) to correct was *sent* to the applicant, the said papers are received within 30 days from the date on which sheets were first received;

(ii) where an invitation under Article 11(2)(a) to correct was *sent* to the applicant, the said papers are received within the applicable time limit under Rule 20.6;

(iii) [no change]

(iv) *the absence or later receipt of any sheet containing the abstract or part thereof shall not, in itself, require any correction of the date marked on the request.*

(b) *Any sheet received on a date later than the date on which sheets were first received shall be marked by the receiving Office with the date on which it was received.*

20.3 *Corrected INTERNATIONAL Application*

In the case referred to in Article 11(2)(b), the receiving Office shall correct the date marked on the request (*still leaving legible, however, the earlier date or dates already marked*) so that it indicates the day on which the last required correction was received.

20.4 [no change]

19.3 *Publication of Fact of Delegation of Duties of Receiving Office*

(a) Any agreement referred to in Rule 19.1(b) shall be promptly notified to the International Bureau by the Contracting State which delegates the duties of the receiving Office to the national Office of or acting for another Contracting State or an intergovernmental organization.

(b) The International Bureau shall, promptly upon receipt, publish the notification in the Gazette.

Rule 20

Receipt of the International Application

20.1 *Date and Number*

(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt in the space provided for that purpose in the request form of each copy received and one of the numbers assigned by the International Bureau to that Office on each sheet of each copy received.

(b) The place on each sheet where the date or number shall be marked, and other details, shall be specified in the Administrative Instructions.

20.2 *Receipt on Different Days*

(a) In cases where all the sheets pertaining to the same purported international application are not received on the same day by the receiving Office, that Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the papers completing the international application were received, provided that

(i) where no invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within 30 days from the date on which sheets were first received;

(ii) where an invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within the applicable time limit under Rule 20.6;

(iii) in the case of Article 14(2), the missing drawings are received within 30 days from the date on which the incomplete papers were filed;

(iv) the absence or later receipt of any sheet containing the abstract or part thereof shall not, in itself, require any correction of the date marked on the request.

(b) Any sheet received on a date later than the date on which sheets were first received shall be marked by the receiving Office with the date on which it was received.

20.3 *Corrected International Application*

In the case referred to in Article 11(2)(b), the receiving Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the last required correction was received.

20.4 *Determination under Article 11(1)*

(a) Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers comply with the requirements of Article 11(1).

(b) For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows his identity to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.

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20.5 *Positive Determination*

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp on the sheet containing the request the name of the receiving Office and the words "International Application," or "Demande internationale." If the official language of the receiving Office is neither English nor French, the words "International Application" or "Demande internationale" may be accompanied by a translation of these words in the official language of the receiving Office.

(b) The copy whose request sheet has been so stamped shall be the record copy of the international application.

(c) The receiving Office shall promptly notify the applicant of the international application number and the international filing date.

20.6 *Invitation to Correct*

(a) The invitation to correct under Article 11(2) shall specify the requirement provided for under Article 11(1) which, in the opinion of the receiving Office, has not been fulfilled.

(b) The receiving Office shall promptly mail the invitation to the applicant and shall fix a time limit, reasonable under the circumstances of the case, for filing the correction. The time limit shall not be less than 10 days, and shall not exceed 1 month, from the date of the invitation. If such time limit expires after the expiration of 1 year from the filing date of any application whose priority is claimed, the receiving Office may call this circumstance to the attention of the applicant.

20.7 *Negative Determination*

If the receiving Office does not, within the prescribed time limit, receive a reply to its invitation to correct, or if the correction offered by the applicant still does not fulfill the requirements provided for under Article 11(1), it shall:

(i) promptly notify the applicant that his application is not and will not be treated as an international application and shall indicate the reasons therefor,

(ii) notify the International Bureau that the number it has marked on the papers will not be used as an international application number,

(iii) keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1, and

(iv) send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

20.8 *Error by the Receiving Office*

If the receiving office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation to correct since the requirements provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.5.

20.5 *Positive Determination*

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp *in the space provided for that purpose in the request form* the name of the receiving Office and the words "PCT International Application," or "Demande internationale PCT." If the official language of the receiving Office is neither English nor French, the words "International Application" or "Demande internationale" may be accompanied by a translation of these words in the official language of the receiving Office.

(b) [no change]

(c) [no change]

20.6 [no change]

20.7 [no change]

20.8 [no change]

20.5 *Positive Determination*

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp in the space provided for that purpose in the request form the name of the receiving Office and the words “PCT International Application,” or “Demande internationale PCT.” If the official language of the receiving Office is neither English nor French, the words “International Application” or “Demande internationale” may be accompanied by a translation of these words in the official language of the receiving Office.

(b) The copy whose request sheet has been so stamped shall be the record copy of the international application.

(c) The receiving Office shall promptly notify the applicant of the international application number and the international filing date.

20.6 *Invitation to Correct*

(a) The invitation to correct under Article 11(2) shall specify the requirement provided for under Article 11(1) which, in the opinion of the receiving Office, has not been fulfilled.

(b) The receiving Office shall promptly mail the invitation to the applicant and shall fix a time limit, reasonable under the circumstances of the case, for filing the correction. The time limit shall not be less than 10 days, and shall not exceed 1 month, from the date of the invitation. If such time limit expires after the expiration of 1 year from the filing date of any application whose priority is claimed, the receiving Office may call this circumstance to the attention of the applicant.

20.7 *Negative Determination*

If the receiving Office does not, within the prescribed time limit, receive a reply to its invitation to correct, or if the correction offered by the applicant still does not fulfill the requirements provided for under Article 11(1), it shall:

(i) promptly notify the applicant that his application is not and will not be treated as an international application and shall indicate the reasons therefor,

(ii) notify the International Bureau that the number it has marked on the papers will not be used as an international application number,

(iii) keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1, and

(iv) send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

20.8 *Error by the Receiving Office*

If the receiving Office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation to correct since the requirements provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.5.

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20.9 *Certified Copy for the Applicant*

20.9 [no change]

Against payment of a fee, the receiving Office shall furnish to the applicant, on request, certified copies of the international application as filed and of any corrections thereto.

Rule 21
Preparation of Copies

Rule 21 (Alternative)
Preparation of Copies

21.1 *Responsibility of the Receiving Office*

[no change]

(a) Where the international application is required to be filed in one copy, the receiving Office shall be responsible for preparing the home copy and the search copy required under Article 12(1).

(b) Where the international application is required to be filed in two copies, the receiving Office shall be responsible for preparing the home copy.

(c) If the international application is filed in less than the number of copies required under Rule 11.1(b), the receiving Office shall be responsible for the prompt preparation of the number of copies required, and shall have the right to fix a fee for performing that task and to collect such fee from the applicant.

Rule 22
Transmittal of the Record Copy

Rule 22 (Alternative)
Transmittal of the Record Copy

22.1 *Procedure*22.1 *Procedure*

(a) The record copy shall be transmitted by the receiving Office to the International Bureau promptly upon receipt of the international application or, if a check to preserve national security must be performed, as soon as the necessary clearance has been obtained. In any case, including the case where such check must be performed, the receiving Office shall transmit the record copy in time for it to reach the International Bureau by the expiration of the 13th month from the priority date. If the transmittal is effected by mail, the receiving Office shall mail the record copy not later than 5 days prior to the expiration of the 13th month from the priority date.

(b) If the applicant is not in possession of the notification of receipt sent by the International Bureau under Rule 24(2)(a) by the expiration of 13 months and 10 days from the priority date, he shall have the right to ask the receiving Office to give him the record copy or, should the receiving Office allege that it has transmitted the record copy to the International Bureau, a certified copy based on the home copy.

(c) The applicant may transmit the copy he has received under paragraph (b) to the International Bureau. Unless the record copy transmitted by the receiving Office has been received by the International Bureau before the receipt by that Bureau of the copy transmitted by the applicant, the latter copy shall be considered the record copy.

(a) *If the determination under Article 11(1) is positive, and unless prescriptions concerning national security prevent the international application from being treated as such, the receiving Office shall transmit the record copy to the International Bureau. Such transmittal shall be effected promptly after receipt of the international application or, if a check to preserve national security must be performed, as soon as the necessary clearance has been obtained. In any case, the receiving Office shall transmit the record copy in time for it to reach the International Bureau by the expiration of the 13th month from the priority date. If the transmittal is effected by mail, the receiving Office shall mail the record copy not later than 5 days prior to the expiration of the 13th month from the priority date.*

(b) If the applicant is not in possession of the notification of receipt sent by the International Bureau under Rule 24.2(a) by the expiration of 13 months and 10 days from the priority date, he shall have the right to ask the receiving Office to give him the record copy or, should the receiving Office allege that it has transmitted the record copy to the International Bureau, a certified copy based on the home copy.

(c) [no change]

20.9 *Certified Copy for the Applicant*

Against payment of a fee, the receiving Office shall furnish to the applicant, on request, certified copies of the international application as filed and of any corrections thereto.

Rule 21 Preparation of Copies

21.1 *Responsibility of the Receiving Office*

(a) Where the international application is required to be filed in one copy, the receiving Office shall be responsible for preparing the home copy and the search copy required under Article 12(1).

(b) Where the international application is required to be filed in two copies, the receiving Office shall be responsible for preparing the home copy.

(c) If the international application is filed in less than the number of copies required under Rule 11.1(b), the receiving Office shall be responsible for the prompt preparation of the number of copies required, and shall have the right to fix a fee for performing that task and to collect such fee from the applicant.

Rule 22 Transmittal of the Record Copy

22.1 *Procedure*

(a) If the determination under Article 11(1) is positive, and unless prescriptions concerning national security prevent the international application from being treated as such, the receiving Office shall transmit the record copy to the International Bureau. Such transmittal shall be effected promptly after receipt of the international application or, if a check to preserve national security must be performed, as soon as the necessary clearance has been obtained. In any case, the receiving Office shall transmit the record copy in time for it to reach the International Bureau by the expiration of the 13th month from the priority date. If the transmittal is effected by mail, the receiving Office shall mail the record copy not later than 5 days prior to the expiration of the 13th month from the priority date.

(b) If the applicant is not in possession of the notification of receipt sent by the International Bureau under Rule 24.2(a) by the expiration of 13 months and 10 days from the priority date, he shall have the right to ask the receiving Office to give him the record copy or, should the receiving Office allege that it has transmitted the record copy to the International Bureau, a certified copy based on the home copy.

(c) The applicant may transmit the copy he has received under paragraph (b) to the International Bureau. Unless the record copy transmitted by the receiving Office has been received by the International Bureau before the receipt by that Bureau of the copy transmitted by the applicant, the latter copy shall be considered the record copy.

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22.2 *Alternative Procedure*

(a) Notwithstanding the provisions of Rule 22.1, any receiving Office may provide that the record copy of any international application filed with it shall be transmitted, at the option of the applicant, by the receiving Office or through the applicant. The receiving Office shall inform the International Bureau of the existence of any such provision.

(b) The applicant shall exercise the option through a written notice, which he shall file together with the international application. If he fails to exercise the said option, the applicant shall be considered to have opted for transmittal by the receiving Office.

(c) Where the applicant opts for transmittal by the receiving Office, the procedure shall be the same as that provided for in Rule 22.1.

(d) Where the applicant opts for transmittal through him, he shall indicate in the notice referred to in paragraph (b) whether he wishes to collect the record copy at the receiving Office or wishes the receiving Office to mail the record copy to him. If the applicant expresses the wish to collect the record copy, the receiving Office shall hold that copy at the disposal of the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 10 days before the expiration of 13 months from the priority date. If the applicant expresses the wish that the receiving Office mail the record copy to him or fails to express the wish to collect the record copy, the receiving Office shall mail that copy to the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 15 days before the expiration of 13 months from the priority date.

(e) Where the receiving Office does not hold the record copy at the disposal of the applicant by the date fixed in paragraph (d), or where, after having asked for the record copy to be mailed to him, the applicant has not received that copy at least 10 days before the expiration of 13 months from the priority date, the applicant may file a copy of his international application with the International Bureau and pay a special fee to that Bureau. This copy ("provisional record copy") shall be replaced by the record copy or, if the record copy has been lost, by a substitute record copy certified by the receiving Office on the basis of the home copy, as soon as practicable and, in any case, before the expiration of 14 months from the priority date. The amount of the special fee shall be [$\$25.00$].* If the special fee does not reach the International Bureau within 15 days from the filing of the provisional record copy, the international application shall be considered withdrawn.

22.3 *Time Limit under Article 12(3)(a)*

(a) The time limit referred to in Article 12(3)(a) shall be:

(i) where the procedure under Rule 22.1(c) or Rule 22.2(c) applies, 14 months from the priority date;

22.2 *Alternative Procedure*

(a) [no change]

(b) [no change]

(c) [no change]

(d) Where the applicant opts for transmittal through him, he shall indicate in the notice referred to in paragraph (b) whether he wishes to collect the record copy at the receiving Office or wishes the receiving Office to mail the record copy to him. If the applicant expresses the wish to collect the record copy, the receiving Office shall hold that copy at the disposal of the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 10 days before the expiration of 13 months from the priority date. *If, by the expiration of the time limit for receipt of the record copy by the International Bureau, the applicant has not collected that copy, the receiving Office shall notify the International Bureau accordingly.* If the applicant expresses the wish that the receiving Office mail the record copy to him or fails to express the wish to collect the record copy, the receiving Office shall mail that copy to the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 15 days before the expiration of 13 months from the priority date.

(e) Where the receiving Office does not hold the record copy at the disposal of the applicant by the date fixed in paragraph (d), or where, after having asked for the record copy to be mailed to him, the applicant has not received that copy at least 10 days before the expiration of 13 months from the priority date, the applicant may *transmit* a copy of his international application to the International Bureau and pay a special fee to that Bureau. This copy ("provisional record copy") shall be replaced by the record copy or, if the record copy has been lost, by a substitute record copy certified by the receiving Office on the basis of the home copy, as soon as practicable and, in any case, before the expiration of 14 months from the priority date. The amount of the special fee shall be *US \$25.00 or 108 Swiss francs*. If the special fee does not reach the International Bureau within 15 days from the *transmittal* of the provisional record copy, the international application shall be considered withdrawn.

22.3 *Time Limit under Article 12(3)(a)*

(a) The time limit referred to in Article 12(3)(a) shall be:

(i) where the procedure under *Rule 22.1 or Rule 22.2(c)* applies, 14 months from the priority date;

* Tentative amount.

22.2 *Alternative Procedure*

(a) Notwithstanding the provisions of Rule 22.1, any receiving Office may provide that the record copy of any international application filed with it shall be transmitted, at the option of the applicant, by the receiving Office or through the applicant. The receiving Office shall inform the International Bureau of the existence of any such provision.

(b) The applicant shall exercise the option through a written notice, which he shall file together with the international application. If he fails to exercise the said option, the applicant shall be considered to have opted for transmittal by the receiving Office.

(c) Where the applicant opts for transmittal by the receiving Office, the procedure shall be the same as that provided for in Rule 22.1.

(d) Where the applicant opts for transmittal through him, he shall indicate in the notice referred to in paragraph (b) whether he wishes to collect the record copy at the receiving Office or wishes the receiving Office to mail the record copy to him. If the applicant expresses the wish to collect the record copy, the receiving Office shall hold that copy at the disposal of the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 10 days before the expiration of 13 months from the priority date. If, by the expiration of the time limit for receipt of the record copy by the International Bureau, the applicant has not collected that copy, the receiving Office shall notify the International Bureau accordingly. If the applicant expresses the wish that the receiving Office mail the record copy to him or fails to express the wish to collect the record copy, the receiving Office shall mail that copy to the applicant as soon as the clearance referred to in Rule 22.1(a) has been obtained and, in any case, including the case where a check for such clearance must be performed, not later than 15 days before the expiration of 13 months from the priority date.

(e) Where the receiving Office does not hold the record copy at the disposal of the applicant by the date fixed in paragraph (d), or where, after having asked for the record copy to be mailed to him, the applicant has not received that copy at least 10 days before the expiration of 13 months from the priority date, the applicant may transmit a copy of his international application to the International Bureau. This copy (“provisional record copy”) shall be replaced by the record copy or, if the record copy has been lost, by a substitute record copy certified by the receiving Office on the basis of the home copy, as soon as practicable and, in any case, before the expiration of 14 months from the priority date.

22.3 *Time Limit under Article 12(3)*

(a) The time limit referred to in Article 12(3) shall be:

(i) where the procedure under Rule 22.1 or Rule 22.2(c) applies, 14 months from the priority date;

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(ii) where the procedure under Rule 22.2(d) applies, 13 months from the priority date, except that, where a provisional record copy is filed and the special fee is paid under Rule 22.2(e), it shall be 13 months from the priority date for the filing of the provisional record copy, and 14 months from the priority date for the filing of the record copy.

(b) Article 48(1) and Rule 82 shall not apply to the transmittal of the record copy. It is understood that Article 48(2) remains applicable.

22.4 *Statistics Concerning Non-Compliance with Rules 22.1 and 22.2*

The number of instances in which, according to the knowledge of the International Bureau, any receiving Office has not complied with the requirements of Rules 22.1 and/or 22.2 shall be indicated, once a year, in the Gazette.

22.5 *Documents Filed with the International Application*

For the purposes of the present Rule, the term "record copy" shall include also any document filed with the international application referred to in Rule 3.3(a)(ii).

Rule 23
Transmittal of the Search Copy

23.1 *Procedure*

(a) The search copy shall be transmitted by the receiving Office to the International Searching Authority at the latest on the same day as the record copy is transmitted to the International Bureau or, under Rule 22.2(d), to the applicant.

(b) If the International Bureau has not received, within 10 days from the receipt of the record copy, information from the International Searching Authority that that Authority is in possession of the search copy, the International Bureau shall promptly transmit a copy of the international application to the International Searching Authority. Unless the International Searching Authority has erred in alleging that it was not in possession of the search copy by the expiration of the 13th month from the priority date, the cost of making a copy for that Authority shall be reimbursed by the receiving Office to the International Bureau.

(c) The number of instances in which, according to the knowledge of the International Bureau, any receiving Office has not complied with the requirement of Rule 23.1(a) shall be indicated, once a year, in the Gazette.

Rule 24
Receipt of the Record Copy by the International Bureau

24.1 *Recording of Date of Receipt of the Record Copy*

The International Bureau shall, upon receipt, mark on the request sheet of the record copy the date of receipt and on all sheets of the international application the stamp of the International Bureau.

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(ii) [no change]

(b) [no change]

22.4 [no change]

22.5 *Documents Filed with the International Application*

For the purposes of the present Rule, the term "record copy" shall include also any document filed with the international application referred to in Rule 3.3(a)(ii). *If any document referred to in Rule 3.3(a)(ii) which is indicated in the check list as accompanying the international application is not, in fact, filed at the latest by the time the record copy leaves the receiving Office, that Office shall so note on the check list and the said indication shall be considered as if it had not been made.*

Rule 23 (Alternative)
Transmittal of the Search Copy

[no change]

Rule 24 (Alternative)
Receipt of the Record Copy by the International Bureau

24.1 [no change]

(ii) where the procedure under Rule 22.2(d) applies, 13 months from the priority date, except that, where a provisional record copy is filed under Rule 22.2(e), it shall be 13 months from the priority date for the filing of the provisional record copy, and 14 months from the priority date for the filing of the record copy.

(b) Article 48(1) and Rule 82 shall not apply to the transmittal of the record copy. Article 48(2) remains applicable.

22.4 Statistics Concerning Non-Compliance with Rules 22.1 and 22.2

The number of instances in which, according to the knowledge of the International Bureau, any receiving Office has not complied with the requirements of Rules 22.1 and/or 22.2 shall be indicated, once a year, in the Gazette.

22.5 Documents Filed with the International Application

For the purposes of the present Rule, the term “record copy” shall include also any document filed with the international application referred to in Rule 3.3(a)(ii). If any document referred to in Rule 3.3(a)(ii) which is indicated in the check list as accompanying the international application is not, in fact, filed at the latest by the time the record copy leaves the receiving Office, that Office shall so note on the check list and the said indication shall be considered as if it had not been made.

Rule 23 **Transmittal of the Search Copy**

23.1 Procedure

(a) The search copy shall be transmitted by the receiving Office to the International Searching Authority at the latest on the same day as the record copy is transmitted to the International Bureau or, under Rule 22.2(d), to the applicant.

(b) If the International Bureau has not received, within 10 days from the receipt of the record copy, information from the International Searching Authority that that Authority is in possession of the search copy, the International Bureau shall promptly transmit a copy of the international application to the International Searching Authority. Unless the International Searching Authority has erred in alleging that it was not in possession of the search copy by the expiration of the 13th month from the priority date, the cost of making a copy for that Authority shall be reimbursed by the receiving Office to the International Bureau.

(c) The number of instances in which, according to the knowledge of the International Bureau, any receiving Office has not complied with the requirement of Rule 23.1(a) shall be indicated, once a year, in the Gazette.

Rule 24 **Receipt of the Record Copy by the International Bureau**

24.1 Recording of Date of Receipt of the Record Copy

The International Bureau shall, upon receipt of the record copy, mark on the request sheet the date of receipt and on all sheets of the international application the stamp of the International Bureau.

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24.2 Notification of Receipt of the Record Copy

(a) Subject to the provisions of paragraph (b), the International Bureau shall promptly notify the applicant, the receiving Office, the International Searching Authority, and all designated States, of the fact and the date of receipt of the record copy. The notification shall identify the international application by its number, the international filing date, the name of the applicant, and the name of the receiving Office. The notification sent to the applicant shall also contain the list of the designated States which have been notified under this paragraph, and shall, in respect of each designated State, indicate any applicable time limit under Article 22(3).

(b) If the record copy is received after the expiration of the time limit fixed in Rule 22.3, the International Bureau shall promptly notify the applicant, the receiving Office, and the International Searching Authority, accordingly.

Rule 25
Receipt of the Search Copy by the
International Searching Authority

25.1 Notification of Receipt of the Search Copy

The International Searching Authority shall promptly notify the International Bureau, the applicant, and – unless the International Searching Authority is the same as the receiving Office – the receiving Office, of the fact and the date of receipt of the search copy.

Rule 26
Checking and Correcting Certain Elements of the
International Application

26.1 Time Limit for Check

The receiving Office shall issue the invitation to correct provided for in Article 14(1)(b) as soon as possible, preferably within 1 month from the receipt of the international application.

26.2 Time Limit for Correction

The time limit referred to in Article 14(1)(b) shall be reasonable under the circumstances of the particular case and shall be fixed in each case by the receiving Office. It shall not be less than 1 month and normally not more than 2 months from the date of the invitation to correct.

26.3 Checking of Physical Requirements under Article 14(1)(a)(v)

The physical requirements referred to in Rule 11 shall be checked to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication.

24.2 Notification of Receipt of the Record Copy

(a) Subject to the provisions of paragraph (b), the International Bureau shall promptly notify the applicant, the receiving Office, the International Searching Authority, and all designated *Offices*, of the fact and the date of receipt of the record copy. The notification shall identify the international application by its number, the international filing date, the name of the applicant, and the name of the receiving Office, *and shall indicate the filing date of any earlier application whose priority is claimed. Where, after the notification of any designated Office, the applicant changes his request by seeking a regional patent for the State concerned, the International Bureau shall notify that Office accordingly.* The notification sent to the applicant shall also contain the list of the designated *Offices* which have been notified under this paragraph, and shall, in respect of each designated *Office*, indicate any applicable time limit under Article 22(3).

(b) [no change]

Rule 25 (Alternative)
Receipt of the Search Copy by the
International Searching Authority

[no change]

Article 26 (Alternative)
Checking and Correcting Certain Elements of the
International Application

26.1 Time Limit for Check

(a) The receiving Office shall issue the invitation to correct provided for in Article 14(1)(b) as soon as possible, preferably within 1 month from the receipt of the international application.

(b) *If the receiving Office issues an invitation to correct the defect referred to in Article 14(1)(a)(iii) or (iv) (missing title or missing abstract), it shall notify the International Searching Authority accordingly.*

26.2 [no change]

26.3 [no change]

24.2 *Notification of Receipt of the Record Copy*

(a) Subject to the provisions of paragraph (b), the International Bureau shall promptly notify the applicant, the receiving Office, the International Searching Authority, and all designated Offices, of the fact and the date of receipt of the record copy. The notification shall identify the international application by its number, the international filing date, the name of the applicant, and the name of the receiving Office, and shall indicate the filing date of any earlier application whose priority is claimed. The notification sent to the applicant shall also contain the list of the designated Offices which have been notified under this paragraph, and shall, in respect of each designated Office, indicate any applicable time limit under Article 22(3).

(b) If the record copy is received after the expiration of the time limit fixed in Rule 22.3, the International Bureau shall promptly notify the applicant, the receiving Office, and the International Searching Authority, accordingly.

Rule 25

Receipt of the Search Copy by the International Searching Authority

25.1 *Notification of Receipt of the Search Copy*

The International Searching Authority shall promptly notify the International Bureau, the applicant, and – unless the International Searching Authority is the same as the receiving Office – the receiving Office, of the fact and the date of receipt of the search copy.

Rule 26

Checking and Correcting Certain Elements of the International Application

26.1 *Time Limit for Check*

(a) The receiving Office shall issue the invitation to correct provided for in Article 14(1)(b) as soon as possible, preferably within 1 month from the receipt of the international application.

(b) If the receiving Office issues an invitation to correct the defect referred to in Article 14(1)(a)(iii) or (iv) (missing title or missing abstract), it shall notify the International Searching Authority accordingly.

26.2 *Time Limit for Correction*

The time limit referred to in Article 14(1)(b) shall be reasonable under the circumstances of the particular case and shall be fixed in each case by the receiving Office. It shall not be less than 1 month and normally not more than 2 months from the date of the invitation to correct.

26.3 *Checking of Physical Requirements under Article 14(1)(a)(v)*

The physical requirements referred to in Rule 11 shall be checked to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication.

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26.4 Procedure

(a) If any correction offered to the receiving Office is of such a nature that it does not prevent clear direct reproduction, it may be submitted in the form of a letter; if the correction is of such a nature that it does prevent clear direct reproduction, the applicant shall be required to submit replacement sheets also.

(b) The identity – subject to the part corrected – of the contents of any replacement sheet with the sheet it replaces shall be checked by the receiving Office. That Office shall mark on each replacement sheet the international application number and the stamp identifying the Office. It shall keep a copy of the replacement sheet in its files.

(c) The receiving Office shall promptly transmit the letter and any replacement sheet to the International Bureau. The International Bureau shall transfer to the record copy the corrections requested in a letter, together with the indication of the date of its receipt by the receiving Office, and shall insert any replacement sheet in the record copy. The letter and any replaced sheet shall be kept in the files of the International Bureau.

(d) The receiving Office shall promptly transmit a copy of the letter and any replacement sheet to the International Searching Authority.

(e) The provisions of Rules 10 and 11 shall apply also to letters submitting corrections and to any replacement sheet.

26.5 Correction of Certain Elements

(a) The receiving Office shall decide whether the applicant has submitted the correction within the prescribed time limit. If the correction has been submitted within the prescribed time limit, the receiving Office shall decide whether the application so corrected is or is not to be considered withdrawn.

(b) The receiving Office shall mark on the papers containing the correction the date on which it received such papers.

26.6 Missing Drawings

(a) If, as provided in Article 14(2), the international application refers to drawings which in fact are not included in the application, the receiving Office shall so indicate in the said application.

(b) The date on which the applicant receives the notification provided for in Article 14(2) shall have no effect on the time limit fixed under Rule 20.2(iii).

Rule 27
Lack of Payment of Fees

27.1 Fees

(a) For the purposes of Article 14(3)(a), “fees prescribed under Article 3(4)(iv)” mean: the transmittal fee (Rule 14), the basic fee part of the international fee (Rule 15.1(i)), and the search fee (Rule 16).

(b) For the purposes of Article 14(3)(a) and (b), “the fee prescribed under Article 4(2)” means the designation fee part of the international fee (Rule 15.1(ii)).

26.4 Procedure

(a) Any correction offered to the receiving Office may be stated in a letter addressed to that Office if the correction is of such a nature that it can be transferred from the letter to the record copy without adversely affecting the clarity and the direct reproducibility of the sheet on to which the correction is to be transferred; otherwise, the applicant shall be required to submit a replacement sheet embodying the correction and the letter accompanying the replacement sheet shall draw attention to the differences between the replaced sheet and the replacement sheet.

(b) The receiving Office shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the Office. It shall keep in its files a copy of the letter containing the correction or, when the correction is contained in a replacement sheet, the replaced sheet, the letter accompanying the replacement sheet, and a copy of the replacement sheet.

(c) [no change]

(d) [no change]

(e) OMIT

26.5 Correction of Certain Elements

(a) The receiving Office shall decide whether the applicant has submitted the correction within the prescribed time limit. If the correction has been submitted within the prescribed time limit, the receiving Office shall decide whether the international application so corrected is or is not to be considered withdrawn.

(b) [no change]

26.6 Missing Drawings

(a) If, as provided in Article 14(2), the international application refers to drawings which in fact are not included in that application, the receiving Office shall so indicate in the said application.

(b) [no change]

Rule 27 (Alternative)
Lack of Payment of Fees

27.1 Fees

(a) For the purposes of Article 14(3)(a), “fees prescribed under Article 3(4)(iv)” mean: the transmittal fee (Rule 14), the basic fee part of the international fee (Rule 15.1(i)), and the search fee (Rule 16).

(b) [no change]

26.4 *Procedure*

(a) Any correction offered to the receiving Office may be stated in a letter addressed to that Office if the correction is of such a nature that it can be transferred from the letter to the record copy without adversely affecting the clarity and the direct reproducibility of the sheet on to which the correction is to be transferred; otherwise, the applicant shall be required to submit a replacement sheet embodying the correction and the letter accompanying the replacement sheet shall draw attention to the differences between the replaced sheet and the replacement sheet.

(b) The receiving Office shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the Office. It shall keep in its files a copy of the letter containing the correction or, when the correction is contained in a replacement sheet, the replaced sheet, the letter accompanying the replacement sheet, and a copy of the replacement sheet.

(c) The receiving Office shall promptly transmit the letter and any replacement sheet to the International Bureau. The International Bureau shall transfer to the record copy the corrections requested in a letter, together with the indication of the date of its receipt by the receiving Office, and shall insert any replacement sheet in the record copy. The letter and any replaced sheet shall be kept in the files of the International Bureau.

(d) The receiving Office shall promptly transmit a copy of the letter and any replacement sheet to the International Searching Authority.

26.5 *Correction of Certain Elements*

(a) The receiving Office shall decide whether the applicant has submitted the correction within the prescribed time limit. If the correction has been submitted within the prescribed time limit, the receiving Office shall decide whether the international application so corrected is or is not to be considered withdrawn.

(b) The receiving Office shall mark on the papers containing the correction the date on which it received such papers.

26.6 *Missing Drawings*

(a) If, as provided in Article 14(2), the international application refers to drawings which in fact are not included in that application, the receiving Office shall so indicate in the said application.

(b) The date on which the applicant receives the notification provided for in Article 14(2) shall have no effect on the time limit fixed under Rule 20.2(a)(iii).

Rule 27 **Lack of Payment of Fees**

27.1 *Fees*

(a) For the purposes of Article 14(3)(a), “fees prescribed under Article 3(4)(iv)” means: the transmittal fee (Rule 14), the basic fee part of the international fee (Rule 15.1(i)), and the search fee (Rule 16).

(b) For the purposes of Article 14(3)(a) and (b), “the fee prescribed under Article 4(2)” means the designation fee part of the international fee (Rule 15.1(ii)).

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Rule 28**Defects Noted by the International Bureau or the International Searching Authority**28.1 *Note on Certain Defects*

(a) If, in the opinion of the International Bureau or of the International Searching Authority, the international application contains any of the defects referred to in Article 14(1)(a)(i), (ii), or (v), the International Bureau or the International Searching Authority, respectively, shall bring such defects to the attention of the receiving Office.

(b) The receiving Office shall, unless it disagrees with the said opinion, proceed as provided in Article 14(1) and Rule 26.

Rule 29**International Applications or Designations Considered Withdrawn under Article 14(1), (3) or (4)**29.1 *International Applications*

If the receiving Office declares, under Article 14(1) and Rule 26.5 [failure to correct certain defects], or under Article 14(3)(a) [failure to pay the prescribed fees under Rule 27.1(a)], or under Article 14(4) [later finding of noncompliance with the requirements listed in items (i) to (iii) of Article 11(1)], that the international application is considered withdrawn:

(i) the receiving Office shall transmit the record copy (unless already transmitted), and any correction offered by the applicant, to the International Bureau;

(ii) the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration, and the International Bureau shall in turn notify the interested national Offices;

(iii) the receiving Office shall not transmit the search copy as provided in Rule 23, or, if such copy has already been transmitted, it shall notify the International Searching Authority of the said declaration;

(iv) the International Bureau shall not be required to notify the applicant of the receipt of the record copy.

29.2 *Designations*

If the receiving Office declares under Article 14(3)(b) [failure to pay the prescribed designation fee under Rule 27.1(b)] that the designation of any given State is considered withdrawn, the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration. The International Bureau shall in turn notify the interested national Office.

Rule 28 (Alternative)**Defects Noted by the International Bureau or the International Searching Authority**28.1 *Note on Certain Defects*

(a) [no change]

(b) The receiving Office shall, unless it disagrees with the said opinion, proceed as provided in Article 14(1)(b) and Rule 26.

Rule 29 (Alternative)**International Applications or Designations Considered Withdrawn under Article 14(1), (3) or (4)**

29.1 FINDING BY RECEIVING OFFICE

(a) If the receiving Office declares, under Article 14(1)(b) and Rule 26.5 (failure to correct certain defects), or under Article 14(3)(a) (failure to pay the prescribed fees under Rule 27.1(a)), or under Article 14(4) (later finding of non-compliance with the requirements listed in items (i) to (iii) of Article 11(1)), that the international application is considered withdrawn:

(i) [no change]

(ii) the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration, and the International Bureau shall in turn notify the interested *designated* Offices;

(iii) [no change]

(iv) [no change]

(b)* If the receiving Office declares under Article 14(3)(b) (failure to pay the prescribed designation fee under Rule 27.1(b)) that the designation of any given State is considered withdrawn, the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration. The International Bureau shall in turn notify the interested national Office.

29.2 FINDING BY DESIGNATED OFFICE

Where the effect of the international application ceases in any designated State by virtue of Article 24(1)(iii), or where such effect is maintained in any designated State by virtue of Article 24(2), the competent designated Office shall promptly notify the International Bureau accordingly.

29.3 CALLING CERTAIN FACTS TO THE ATTENTION OF THE RECEIVING OFFICE

If the International Bureau or the International Searching Authority considers that the receiving Office should make a finding under Article 14(4), it shall call the relevant facts to the attention of the receiving Office.

* Rule 29.2 in the 1969 Draft.

Rule 28
Defects Noted by the International Bureau
or the International Searching Authority

28.1 *Note on Certain Defects*

(a) If, in the opinion of the International Bureau or of the International Searching Authority, the international application contains any of the defects referred to in Article 14(1)(a)(i), (ii), or (v), the International Bureau or the International Searching Authority, respectively, shall bring such defects to the attention of the receiving Office.

(b) The receiving Office shall, unless it disagrees with the said opinion, proceed as provided in Article 14(1)(b) and Rule 26.

Rule 29
International Applications or Designations Considered Withdrawn
under Article 14(1), (3) or (4)

29.1 *Finding by Receiving Office*

(a) If the receiving Office declares, under Article 14(1)(b) and Rule 26.5(failure to correct certain defects), or under Article 14(3)(a) (failure to pay the prescribed fees under Rule 27.1(a)), or under Article 14(4) (later finding of non-compliance with the requirements listed in items (i) to (iii) of Article 11(1)), that the international application is considered withdrawn:

(i) the receiving Office shall transmit the record copy (unless already transmitted), and any correction offered by the applicant, to the International Bureau;

(ii) the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration, and the International Bureau shall in turn notify the interested designated Offices;

(iii) the receiving Office shall not transmit the search copy as provided in Rule 23, or, if such copy has already been transmitted, it shall notify the International Searching Authority of the said declaration;

(iv) the International Bureau shall not be required to notify the applicant of the receipt of the record copy.

(b) If the receiving Office declares under Article 14(3)(b) (failure to pay the prescribed designation fee under Rule 27.1(b)) that the designation of any given State is considered withdrawn, the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration. The International Bureau shall in turn notify the interested national Office.

29.2 *Finding by Designated Office*

Where the effect of the international application ceases in any designated State by virtue of Article 24(1)(iii), or where such effect is maintained in any designated State by virtue of Article 24(2), the competent designated Office shall promptly notify the International Bureau accordingly.

29.3 *Calling Certain Facts to the Attention of the Receiving Office*

If the International Bureau or the International Searching Authority considers that the receiving Office should make a finding under Article 14(4), it shall call the relevant facts to the attention of the receiving Office.

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29.4 NOTIFICATION OF INTENT TO MAKE
DECLARATION UNDER ARTICLE 14(4)

Before the receiving Office issues any declaration under Article 14 (4), it shall notify the applicant of its intent to issue such declaration and the reasons therefor. The applicant may, if he disagrees with the tentative finding of the receiving Office, submit arguments to that effect within 1 month from the notification.

Rule 30
Time Limit under Article 14(4)

30.1 *Time Limit*

The time limit referred to in Article 14(4) shall be 6 months from the international filing date.

Rule 30 (Alternative)
Time Limit under Article 14(4)

[no change]

Rule 31
Copies Required under Article 13

31.1 *Request for Copies*

Any request under Article 13(1) shall relate to all international applications in which the national Office making the request is designated and shall have to be renewed every 6 months by means of a notification addressed by that Office to the International Bureau.

31.2 *Preparation of Copies*

The preparation of copies required under Article 13 shall be the responsibility of the International Bureau.

Rule 31 (Alternative)
Copies Required under Article 13

31.1 *Request for Copies*

Any request under Article 13(1) shall relate to all international applications in which the national Office making the request is designated and shall have to be renewed *for every year* by means of a notification addressed by that Office *before November 30 of the preceding year* to the International Bureau.

31.2 [no change]

Rule 32
Withdrawal of the International Application or of Designations

32.1 *Procedure*

(a) The applicant may withdraw the international application or the designation of any designated State prior to the communication of that application under Article 20.

(b) Withdrawal of the designation of all designated States shall be treated as withdrawal of the international application.

(c) Withdrawal shall be effected by a signed notice from the applicant to the International Bureau.

Rule 32 (Alternative)
Withdrawal of the International Application or of Designations

32.1 WITHDRAWALS

(a) The applicant may withdraw the international application *prior to the expiration of 20 months from the priority date except as to any designated State in which national processing or examination has already started. He may withdraw the designation of any designated State prior to the date on which processing or examination may start in that State.*

(b) [no change]

(c) Withdrawal shall be effected by a signed notice from the applicant to the International Bureau *or, if the record copy has not yet been sent to the International Bureau, to the receiving Office. In the case of Rule 4.8(b), the notice shall require the signature of all the applicants.*

29.4 *Notification of Intent to Make Declaration under Article 14(4)*

Before the receiving Office issues any declaration under Article 14(4), it shall notify the applicant of its intent to issue such declaration and the reasons therefor. The applicant may, if he disagrees with the tentative finding of the receiving Office, submit arguments to that effect within 1 month from the notification.

Rule 30 Time Limit under Article 14(4)

30.1 *Time Limit*

The time limit referred to in Article 14(4) shall be 6 months from the international filing date.

Rule 31 Copies Required under Article 13

31.1 *Request for Copies*

(a) Requests under Article 13(1) may relate to all, some kinds of, or individual international applications in which the national Office making the request is designated. Requests for all or some kinds of such international applications must be renewed for each year by means of a notification addressed by that Office before November 30 of the preceding year to the International Bureau.

(b) Requests under Article 13(2)(b) shall be subject to the payment of a fee covering the cost of preparing and mailing the copy.

31.2 *Preparation of Copies*

The preparation of copies required under Article 13 shall be the responsibility of the International Bureau.

Rule 32 Withdrawal of the International Application or of Designations

32.1 *Withdrawals*

(a) The applicant may withdraw the international application prior to the expiration of 20 months from the priority date except as to any designated State in which national processing or examination has already started. He may withdraw the designation of any designated State prior to the date on which processing or examination may start in that State.

(b) Withdrawal of the designation of all designated States shall be treated as withdrawal of the international application.

(c) Withdrawal shall be effected by a signed notice from the applicant to the International Bureau or, if the record copy has not yet been sent to the International Bureau, to the receiving Office. In the case of Rule 4.8(b), the notice shall require the signature of all the applicants.

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(d) The fact of withdrawal, together with the date of receipt of the notice effecting withdrawal, shall be recorded by the International Bureau and promptly notified by it to the receiving Office, the applicant, the designated Offices affected by the withdrawal, and, where the withdrawal concerns the international application and the international search report or the declaration referred to in Article 17(2)(a) has not yet issued, the International Searching Authority.

Rule 33

Relevant Prior Art for the International Search

33.1 *Relevant Prior Art for the International Search*

(a) For the purposes of Article 15(2), relevant prior art shall consist of everything which has been made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) and which is capable of being of assistance in determining that the claimed invention is or is not new and that it does or does not involve an inventive step (i.e., that it is or is not obvious), provided that the making available to the public occurred prior to the international filing date.

(b) When the written disclosure refers to an oral disclosure, use, exhibition, or other means whereby the contents of the written disclosure were made available to the public, and such making available to the public occurred on a date prior to the international filing date, the international search report shall separately mention that fact and the date on which it occurred if the making available to the public of the written disclosure occurred on a date posterior to the international filing date.

(c) Any published international application, national application or patent whose publication date is later but whose filing date, or, where applicable, claimed priority date, is earlier than the international filing date of the international application searched, and which would constitute relevant prior art for the purposes of Article 15(2) had it been published prior to the international filing date, shall be specially mentioned in the international search report.

33.2 *Fields to be Covered by the Search*

(a) The international search shall cover all those technical fields, and shall be carried out on the basis of all those search files, which may contain material pertinent to the invention.

(b) Consequently, not only shall the art in which the invention is classifiable be searched but also analogous arts regardless of where classified.

(c) The question what arts are, in any given case, to be regarded as analogous shall be considered in the light of what appears to be the necessary essential function or use of the invention and not only the specific functions expressly indicated in the international application.

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(d) *Where the record copy has already been sent to the International Bureau*, the fact of withdrawal, together with the date of receipt of the notice effecting withdrawal, shall be recorded by the International Bureau and promptly notified by it to the receiving Office, the applicant, the designated Offices affected by the withdrawal, and where the withdrawal concerns the international application and *where* the international search report or the declaration referred to in Article 17(2)(a) has not yet issued, the International Searching Authority.

Rule 33 (Alternative)

Relevant Prior Art for the International Search

33.1 *Relevant Prior Art for the International Search*

(a) For the purposes of Article 15(2), relevant prior art shall consist of everything which has been made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) and which is capable of being of assistance in determining that *the invention as described and claimed* is or is not new and that it does or does not involve an inventive step (i.e., that it is or is not obvious), provided that the making available to the public occurred prior to the international filing date.

(b) When *any* written disclosure refers to an oral disclosure, use, exhibition, or other means whereby the contents of the written disclosure were made available to the public, and such making available to the public occurred on a date prior to the international filing date, the international search report shall separately mention that fact and the date on which it occurred if the making available to the public of the written disclosure occurred on a date posterior to the international filing date.

(c) *Any published application, other than for a utility model, or any patent or utility certificate* whose publication date is later but whose filing date, or where applicable, claimed priority date, is earlier than the international filing date of the international application searched, and which would constitute relevant prior art for the purposes of Article 15(2) had it been published prior to the international filing date, shall be specially mentioned in the international search report. *For the purposes of this paragraph, applications which have only been laid open for public inspection are not considered published applications.*

33.2 *Fields to be Covered by the INTERNATIONAL Search*

(a) [no change]

(b) [no change]

(c) [no change]

(d) Where the record copy has already been sent to the International Bureau, the fact of withdrawal, together with the date of receipt of the notice effecting withdrawal, shall be recorded by the International Bureau and promptly notified by it to the receiving Office, the applicant, the designated Offices affected by the withdrawal, and, where the withdrawal concerns the international application and where the international search report or the declaration referred to in Article 17(2)(a) has not yet issued, the International Searching Authority.

Rule 33 **Relevant Prior Art for the International Search**

33.1 Relevant Prior Art for the International Search

(a) For the purposes of Article 15(2), relevant prior art shall consist of everything which has been made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) and which is capable of being of assistance in determining that the claimed invention is or is not new and that it does or does not involve an inventive step (i.e., that it is or is not obvious), provided that the making available to the public occurred prior to the international filing date.

(b) When any written disclosure refers to an oral disclosure, use, exhibition, or other means whereby the contents of the written disclosure were made available to the public, and such making available to the public occurred on a date prior to the international filing date, the international search report shall separately mention that fact and the date on which it occurred if the making available to the public of the written disclosure occurred on a date posterior to the international filing date.

(c) Any published application or any patent whose publication date is later but whose filing date, or, where applicable, claimed priority date, is earlier than the international filing date of the international application searched, and which would constitute relevant prior art for the purposes of Article 15(2) had it been published prior to the international filing date, shall be specially mentioned in the international search report.

33.2 Fields to be Covered by the International Search

(a) The international search shall cover all those technical fields, and shall be carried out on the basis of all those search files, which may contain material pertinent to the invention.

(b) Consequently, not only shall the art in which the invention is classifiable be searched but also analogous arts regardless of where classified.

(c) The question what arts are, in any given case, to be regarded as analogous shall be considered in the light of what appears to be the necessary essential function or use of the invention and not only the specific functions expressly indicated in the international application.

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(d) The international search shall embrace all subject matter that is generally recognized as equivalent to the subject matter of the claimed invention for all or certain of its features, even though, in its specifics, the invention as described in the international application is different.

33.3 *Orientation of Search*

(a) Within the limits of Article 15(3), the international search shall be directed to the invention, both as described and claimed, with particular emphasis on the inventive concept towards which the claims are directed.

(b) In so far as possible and reasonable, the international search shall cover the entire subject matter to which the claims are directed or to which they might reasonably be expected to be directed after they have been amended.

Rule 34 Minimum Documentation

34.1 *Definition*

(a) The documentation referred to in Article 15(4) ("minimum documentation") shall consist of:

(i) the patents, inventors' certificates, and published patent applications, of the following States from the dates indicated in each case:

1. France, from 1920
2. Federal Republic of Germany, from 1920
3. Japan, from ...*
4. Soviet Union, from ...*
5. Switzerland, in French or German languages only, from ...**
6. United Kingdom, from 1920
7. United States, from 1920;

(ii) all published international applications;

(iii) such other published items of non-patent literature as the International Searching Authorities shall agree upon and which shall be published in a list by the International Bureau when agreed upon for the first time and whenever changed.

(b) It is understood that, for the purposes of paragraph (a)(i), patent applications which have only been laid open for public inspection are not considered published applications.

(d) [no change]

33.3 *Orientation of THE INTERNATIONAL Search*

(a) *International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any) and with particular emphasis on the inventive concept towards which the claims are directed.*

(b) [no change]

Rule 34 (Alternative) Minimum Documentation

34.1 *Definition*

(a) *The definitions contained in Article 2(vii), (ix), (xi) and (xii) shall not apply for the purposes of this Rule.*

(b) *The documentation referred to in Article 15(4) ("minimum documentation") shall consist of:*

(i) *the "national patent documents" as specified in paragraph (c),*

(ii) *the published international (PCT) applications, the published regional patent applications, and the regional patents,*

(iii) *such other published items of non-patent literature as the International Searching Authorities shall agree upon and which shall be published in a list by the International Bureau when agreed upon for the first time and whenever changed.*

(c) *Subject to paragraphs (d) and (e), the "national patent documents" shall be the following:*

(i) *the patents issued in and after 1920 by France, the former Reichspatentamt of Germany, Japan, the Soviet Union, Switzerland (in French and German languages only), the United Kingdom, and the United States of America,*

(ii) *the patents issued by the Federal Republic of Germany,*

(iii) *the patent applications, if any, published in and after 1920 in the countries referred to in items (i) and (ii),*

(iv) *the inventors' certificates issued by the Soviet Union,*

(v) *the utility certificates issued by, and the published applications for utility certificates of, France.*

* *Observation:* Date to be determined later in the light of the availability of English-language abstracts.

** *Observation:* Date to be determined later in the light of general availability of copies in the search files.

(d) The international search shall embrace all subject matter that is generally recognized as equivalent to the subject matter of the claimed invention for all or certain of its features, even though, in its specifics, the invention as described in the international application is different.

33.3 *Orientation of the International Search*

(a) International search shall be made on the basis of the claims, with due regard to the description and the drawings (if any) and with particular emphasis on the inventive concept towards which the claims are directed.

(b) In so far as possible and reasonable, the international search shall cover the entire subject matter to which the claims are directed or to which they might reasonably be expected to be directed after they have been amended.

Rule 34 **Minimum Documentation**

34.1 *Definition*

(a) The definitions contained in Article 2(i) and (ii) shall not apply for the purposes of this Rule.

(b) The documentation referred to in Article 15(4) (“minimum documentation”) shall consist of:

(i) the “national patent documents” as specified in paragraph (c),

(ii) the published international (PCT) applications, the published regional applications for patents and inventors’ certificates, and the published regional patents and inventors’ certificates,

(iii) such other published items of non-patent literature as the International Searching Authorities shall agree upon and which shall be published in a list by the International Bureau when agreed upon for the first time and whenever changed.

(c) Subject to paragraphs (d) and (e), the “national patent documents” shall be the following:

(i) the patents issued in and after 1920 by France, the former *Reichspatentamt* of Germany, Japan, the Soviet Union, Switzerland (in French and German languages only), the United Kingdom, and the United States of America,

(ii) the patents issued by the Federal Republic of Germany,

(iii) the patent applications, if any, published in and after 1920 in the countries referred to in items (i) and (ii),

(iv) the inventors’ certificates issued by the Soviet Union,

(v) the utility certificates issued by, and the published applications for utility certificates of, France,

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(vi) *such patents issued by, and such patent applications published in, any other country after 1920 as are in the English, French, or German language and in which no priority is claimed, provided that the national Office of the interested country sorts out these documents and places them at the disposal of each International Searching Authority.*

(d) *Where an application is republished once (for example an Offenlegungsschrift as an Auslegeschrift) or more than once, no International Searching Authority shall be obliged to keep all versions in its documentation; consequently, each such Authority shall be entitled not to keep more than one version. Furthermore, where an application is granted and is issued in the form of a patent or a utility certificate (France), no International Searching Authority shall be obliged to keep both the application and the patent or utility certificate (France) in its documentation; consequently, each such Authority shall be entitled to keep either the application only or the patent or utility certificate (France) only.*

(e) *Any International Searching Authority whose official language, or one of whose official languages, is not Japanese or Russian is entitled not to include in its documentation those patent documents of Japan and the Soviet Union, respectively, for which no abstracts in the English language are generally available. English abstracts becoming generally available after the date of entry into force of these Regulations shall require the inclusion of the patent documents to which the abstracts refer no later than 6 months after such abstracts become generally available.*

(f) *For the purposes of this Rule, applications which have only been laid open for public inspection are not considered published applications.*

Rule 35

The Competent International Searching Authority

35.1 When Only One International Searching Authority is Competent

Each receiving Office shall inform the International Bureau which International Searching Authority is competent for the searching of the international applications filed with it, and the International Bureau shall promptly publish such information.

35.2 When Several International Searching Authorities are Competent

(a) Any receiving Office may, in accordance with the terms of the applicable agreement referred to in Article 16, specify several International Searching Authorities:

(i) by declaring all of them competent for any international application filed with it, and leaving the choice to the applicant, or,

(ii) by declaring one or more competent for certain kinds of international applications filed with it, and declaring one or more others competent for other kinds of international applications filed with it, provided that, for those kinds of international applications for which several International Searching Authorities are declared to be competent, the choice shall be left to the applicant.

Rule 35 (Alternative)

The Competent International Searching Authority

35.1 When Only One International Searching Authority is Competent

Each receiving Office shall, *in accordance with the terms of the applicable agreement referred to in Article 16(3)(b)*, inform the International Bureau which International Searching Authority is competent for the searching of the international applications filed with it, and the International Bureau shall promptly publish such information.

35.2 When Several International Searching Authorities are Competent

(a) Any receiving office may, in accordance with the terms of the applicable agreement referred to in Article 16(3)(b), specify several international Searching Authorities:

(i) [no change]

(ii) [no change]

(vi) such patents issued by, and such patent applications published in, any other country after 1920 as are in the English, French, or German language and in which no priority is claimed, provided that the national Office of the interested country sorts out these documents and places them at the disposal of each International Searching Authority.

(d) Where an application is republished once (for example, an *Offenlegungsschrift* as an *Auslegeschrift*) or more than once, no International Searching Authority shall be obliged to keep all versions in its documentation; consequently, each such Authority shall be entitled not to keep more than one version. Furthermore, where an application is granted and is issued in the form of a patent or a utility certificate (France), no International Searching Authority shall be obliged to keep both the application and the patent or utility certificate (France) in its documentation; consequently, each such Authority shall be entitled to keep either the application only or the patent or utility certificate (France) only.

(e) Any International Searching Authority whose official language, or one of whose official languages, is not Japanese or Russian is entitled not to include in its documentation those patent documents of Japan and the Soviet Union, respectively, for which no abstracts in the English language are generally available. English abstracts becoming generally available after the date of entry into force of these Regulations shall require the inclusion of the patent documents to which the abstracts refer no later than 6 months after such abstracts become generally available. In case of the interruption of abstracting services in English in technical fields in which English abstracts were formerly generally available, the Assembly shall take appropriate measures to provide for the prompt restoration of such services in the said fields.

(f) For the purposes of this Rule, applications which have only been laid open for public inspection are not considered published applications.

Rule 35

The Competent International Searching Authority

35.1 When Only One International Searching Authority is Competent

Each receiving Office shall, in accordance with the terms of the applicable agreement referred to in Article 16(3)(b), inform the International Bureau which International Searching Authority is competent for the searching of the international applications filed with it, and the International Bureau shall promptly publish such information.

35.2 When Several International Searching Authorities are Competent

(a) Any receiving Office may, in accordance with the terms of the applicable agreement referred to in Article 16(3)(b), specify several International Searching Authorities:

(i) by declaring all of them competent for any international application filed with it, and leaving the choice to the applicant, or

(ii) by declaring one or more competent for certain kinds of international applications filed with it, and declaring one or more others competent for other kinds of international applications filed with it, provided that, for those kinds of international applications for which several International Searching Authorities are declared to be competent, the choice shall be left to the applicant.

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(b) Any receiving Office availing itself of the faculty provided in paragraph (a) shall promptly inform the International Bureau, and the International Bureau shall promptly publish such information.

(b) [no change]

Rule 36
Minimum Requirements for
International Searching Authorities

Rule 36 (Alternative)
Minimum Requirements for
International Searching Authorities

36.1 *Definition of Minimum Requirements*

[no change]

The minimum requirements referred to in Article 16(3)(c) shall be the following:

(i) the national Office or intergovernmental organization must have at least 150 full-time employees with sufficient technical qualifications to carry out searches;

(ii) that Office or organization must have in its possession at least the minimum documentation referred to in Rule 34, properly arranged for search purposes;

(iii) that Office or organization must have a staff which is capable of searching the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated.

Rule 37
Missing or Defective Title

Rule 37 (Alternative)
Missing or Defective Title

37.1 *Lack of Title*

37.1 [no change]

If the international application does not contain a title and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect, the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

37.2 ESTABLISHMENT OF TITLE

If the international application does not contain a title and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish a title, or if the said Authority finds that the title does not comply with Rule 4.3, it shall itself establish a title.

(b) OMIT

37.2 *Establishment or Correction of Title*

(a) If the international application does not contain a title and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish a title, or if the said Authority finds that the title does not comply with Rule 4.3, it shall itself establish a title and shall invite the applicant's comments thereon.

(b) If, within 1 month from the date of the invitation referred to in paragraph (a), the applicant notifies his disagreement to the International Searching Authority, both the title suggested by the latter and the title submitted by the applicant (if any) shall henceforth appear on the application, together with an indication of the source of each title.

(b) Any receiving Office availing itself of the faculty provided in paragraph (a) shall promptly inform the International Bureau, and the International Bureau shall promptly publish such information.

Rule 36
Minimum Requirements for International Searching Authorities

36.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 16(3)(c) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out searches;

(ii) that Office or organization must have in its possession at least the minimum documentation referred to in Rule 34, properly arranged for search purposes;

(iii) that Office or organization must have a staff which is capable of searching the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated.

Rule 37
Missing or Defective Title

37.1 *Lack of Title*

If the international application does not contain a title and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect, the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

37.2 *Establishment of Title*

If the international application does not contain a title and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish a title, or if the said Authority finds that the title does not comply with Rule 4.3, it shall itself establish a title.

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Rule 38
Missing or Defective Abstract

38.1 *Lack of Abstract*

If the international application does not contain an abstract and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect, the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

38.2 *Establishment or Correction of Abstract*

(a) If the international application does not contain an abstract and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish an abstract, or if the said Authority finds that the abstract does not comply with Rule 8, it shall itself establish an abstract (in the language in which the international application is published) and shall invite the applicant to comment thereon within 1 month from the date of the invitation.

(b) The definitive contents of the abstract shall be determined by the International Searching Authority.

Rule 39
Subject Matter under Article 17(2)(a)(i)

39.1 *Definition*

No International Searching Authority shall be required to search an international application if, and to the extent to which, its subject matter is any of the following:

- (i) scientific and mathematical theories,
- (ii) plant or animal varieties or essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes,
- (iii) schemes, rules or methods of doing business, methods, performing purely mental acts or playing games,
- (iv) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods,
- (v) written representations of information [?],
- (vi) computer programs to the extent that the International Searching Authority is not equipped to search prior art concerning such programs,
- (vii) ornamental (industrial) designs.

Rule 38 (Alternative)
Missing or Defective Abstract

38.1 [no change]

38.2 ESTABLISHMENT OF ABSTRACT

(a) If the international application does not contain an abstract and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish an abstract, or if the said Authority finds that the abstract does not comply with Rule 8, it shall itself establish an abstract (in the language in which the international application is published). *In the latter case, it shall invite the applicant to comment on the abstract established by it within 1 month from the date of the invitation.*

(b) [no change]

Rule 39 (Alternative)
Subject Matter under Article 17(2)(a)(i)

39.1 *Definition*

No International Searching Authority shall be required to search an international application if, and to the extent to which, its subject matter is any of the following:

- (i) [no change]
- (ii) [no change]
- (iii) [no change]
- (iv) methods for treatment of the human or animal body by surgery or [*physical*] therapy, as well as diagnostic methods,
- (v) *mere presentations* of information,
- (vi) [no change]

Rule 38 **Missing Abstract**

38.1 *Lack of Abstract*

If the international application does not contain an abstract and the receiving Office has notified the International Searching Authority that it has invited the applicant to correct such defect, the International Searching Authority shall proceed with the international search unless and until it receives notification that the said application is considered withdrawn.

38.2 *Establishment of Abstract*

(a) If the international application does not contain an abstract and the International Searching Authority has not received a notification from the receiving Office to the effect that the applicant has been invited to furnish an abstract, or if the said Authority finds that the abstract does not comply with Rule 8, it shall itself establish an abstract (in the language in which the international application is published). In the latter case, it shall invite the applicant to comment on the abstract established by it within 1 month from the date of the invitation.

(b) The definitive contents of the abstract shall be determined by the International Searching Authority.

Rule 39 **Subject Matter under Article 17(2)(a)(i)**

39.1 *Definition*

No International Searching Authority shall be required to search an international application if, and to the extent to which, its subject matter is any of the following:

- (i) scientific and mathematical theories,
- (ii) plant or animal varieties or essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes,
- (iii) schemes, rules or methods of doing business, performing purely mental acts or playing games,
- (iv) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods,
- (v) mere presentations of information,
- (vi) computer programs to the extent that the International Searching Authority is not equipped to search prior art concerning such programs.

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Rule 40**Lack of Unity of Invention (International Search)**40.1 *Invitation to Restrict or Pay*

(a) The invitation to restrict the claims provided for in Article 17(3)(a) shall specify at least one possibility of restriction which, in the opinion of the International Searching Authority, would be in compliance with the applicable requirements.

(b) The invitation to pay additional fees provided for in Article 17(3)(a) shall specify the amount to be paid and the reasons therefor.

40.2 *Additional Fees*

(a) The amount of the additional fee due for searching under Article 17(3)(a) shall be determined by the competent International Searching Authority.

(b) The additional fee due for searching under Article 17(3)(a) shall be payable direct to the International Searching Authority.

(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Searching Authority or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the designated Offices.

40.3 *Time Limit*

The time limit provided for in Article 17(3)(c) shall be fixed, in each case, according to the circumstances of the case, by the International Searching Authority; it shall not be shorter than 15 days, and it shall not be longer than 45 days, from the date of the invitation.

40.4 *Procedure in the Case of Insufficient Restriction of the Claims*

If the applicant restricts the claims but not sufficiently to comply with the requirement of unity of invention, the International Searching Authority shall proceed as provided in Article 17(3)(c).

40.5 *Main Invention*

In case of doubt which invention is the main invention for the purposes of Article 17(3)(c), the invention first mentioned in the claims shall be considered the main invention.

Rule 40 (Alternative)**Lack of Unity of Invention (International Search)**40.1 *Invitation to Restrict or Pay*

(a) [no change]

(b) The invitation to pay additional fees provided for in Article 17(3)(a) shall specify *the reasons for which the international application is not considered as complying with the requirement of unity of invention and shall indicate the amount to be paid.*

40.2 *Additional Fees*

(a) [no change]

(b) [no change]

(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Searching Authority or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the designated Offices *together with the international search report. The applicant shall submit any translation thereof with the furnishing of the translation of the international application required under Article 22.*

(d) The three-member board, special instance or competent higher authority, referred to in paragraph (c), shall not comprise any person who made the decision which is the subject of the protest.

40.3 *Time Limit*

The time limit provided for in Article 17(3)(c) shall be fixed, in each case, according to the circumstances of the case, by the International Searching Authority; it shall not be shorter than 15 or 30 days, respectively, depending on whether the applicant's address is in the same country as or in a different country from that in which the International Searching Authority is located, and it shall not be longer than 45 days, from the date of the invitation.

40.4 [no change]

40.5 [no change]

Rule 40
Lack of Unity of Invention (International Search)

40.1 *Invitation to Pay*

The invitation to pay additional fees provided for in Article 17(3)(a) shall specify the reasons for which the international application is not considered as complying with the requirement of unity of invention and shall indicate the amount to be paid.

40.2 *Additional Fees*

(a) The amount of the additional fee due for searching under Article 17(3)(a) shall be determined by the competent International Searching Authority.

(b) The additional fee due for searching under Article 17(3)(a) shall be payable direct to the International Searching Authority.

(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Searching Authority or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the designated Offices together with the international search report. The applicant shall submit any translation thereof with the furnishing of the translation of the international application required under Article 22.

(d) The three-member board, special instance or competent higher authority, referred to in paragraph (c), shall not comprise any person who made the decision which is the subject of the protest.

40.3 *Time Limit*

The time limit provided for in Article 17(3)(a) shall be fixed, in each case, according to the circumstances of the case, by the International Searching Authority; it shall not be shorter than 15 or 30 days, respectively, depending on whether the applicant's address is in the same country as or in a different country from that in which the International Searching Authority is located, and it shall not be longer than 45 days, from the date of the invitation.

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Rule 41
The International-Type Search

41.1 *Obligation to Use Results; Refund of Fee*

If reference has been made in the request, in the form provided for in Rule 4.11, to an international-type search carried out under the conditions set out in Article 15(5), the International Searching Authority shall, to the extent possible, use the results of the said search in establishing the international search report on the international application. The International Searching Authority shall refund the search fee, to the extent and under the conditions provided for in the agreement under Article 16(3)(b), if the international search report could wholly or partly be based on the results of the international-type search.

Rule 42
Time Limit for International Search

42.1 *Time Limit for International Search*

All agreements concluded with International Searching Authorities shall provide for the same time limit for producing the international search report or the declaration referred to in Article 17(2)(a). This time limit shall not exceed 3 months from the receipt of the search copy by the International Searching Authority, or 9 months from the priority date, whichever time limit expires later.

Rule 43
The International Search Report

43.1 *Identifications*

The international search report shall identify the International Searching Authority which established it by indicating the name of such Authority, and the international application by indicating the international application number, the name of the applicant, the name of the receiving Office, and the international filing date.

43.2 *Dates*

The international search report shall be dated and shall indicate the date on which the international search was actually completed.

43.3 *Classification*

(a) The international search report shall contain the classification of the subject matter at least according to the International Patent Classification.

(b) Such classification shall be effected by the International Searching Authority.

43.4 *Language*

The international search report shall be in the language in which the international application to which it relates is published.

Rule 41 (Alternative)
The International-Type Search

[no change]

Rule 42 (Alternative)
Time Limit for International Search

42.1 *Time Limit for International Search*

All agreements concluded with International Searching Authorities shall provide for the same time limit for *establishing* the international search report or the declaration referred to in Article 17(2)(a). This time limit shall not exceed 3 months from the receipt of the search copy by the International Searching Authority, or 9 months from the priority date, whichever time limit expires later.

Rule 43 (Alternative)
The International Search Report

43.1 [no change]

43.2 *Dates*

The international search report shall be dated and shall indicate the date on which the international search was actually completed. *It shall also indicate the filing date of any earlier application whose priority is claimed.*

43.3 [no change]

43.4 *Language*

Every international search report and any declaration made under Article 17(2)(a) shall be in the language in which the international application to which it relates is published.

Rule 41

The International-Type Search

41.1 Obligation to Use Results; Refund of Fee

If reference has been made in the request, in the form provided for in Rule 4.11, to an international-type search carried out under the conditions set out in Article 15(5), the International Searching Authority shall, to the extent possible, use the results of the said search in establishing the international search report on the international application. The International Searching Authority shall refund the search fee, to the extent and under the conditions provided for in the agreement under Article 16(3)(b), if the international search report could wholly or partly be based on the results of the international-type search.

Rule 42

Time Limit for International Search

42.1 Time Limit for International Search

All agreements concluded with International Searching Authorities shall provide for the same time limit for establishing the international search report or the declaration referred to in Article 17(2)(a). This time limit shall not exceed 3 months from the receipt of the search copy by the International Searching Authority, or 9 months from the priority date, whichever time limit expires later. For a transitional period of 3 years from the entry into force of the Treaty, time limits for the agreement with any International Searching Authority may be individually negotiated, provided that such time limits shall not extend by more than 2 months the time limits referred to in the preceding sentence and in any case shall not go beyond the expiration of the 18th month after the priority date.

Rule 43

The International Search Report

43.1 Identifications

The international search report shall identify the International Searching Authority which established it by indicating the name of such Authority, and the international application by indicating the international application number, the name of the applicant, the name of the receiving Office, and the international filing date.

43.2 Dates

The international search report shall be dated and shall indicate the date on which the international search was actually completed. It shall also indicate the filing date of any earlier application whose priority is claimed.

43.3 Classification

(a) The international search report shall contain the classification of the subject matter at least according to the International Patent Classification.

(b) Such classification shall be effected by the International Searching Authority.

43.4 Language

Every international search report and any declaration made under Article 17(2)(a) shall be in the language in which the international application to which it relates is published.

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43.5 *Citations*

(a) The international search report shall contain the citations of the documents considered to be relevant.

(b) The method of identifying any cited document shall be regulated by the Administrative Instructions.

(c) Citations which are not relevant to all the claims shall be cited in relation to the claim or claims to which they are relevant.

(d) If only certain passages of the cited document are relevant or particularly relevant, they shall be identified, for example, by indicating the page, the column, or the lines, where the passage appears.

43.6 *Fields Searched*

(a) The international search report shall list the classification identification of the fields searched. If that identification is effected on the basis of a classification other than the International Patent Classification, the International Searching Authority shall publish the classification used.

(b) If the international search extended to patents, inventors' certificates, utility models, utility certificates, or published applications for any of those kinds of protection, of States, periods, or languages, not included in the minimum documentation as defined in Rule 34, the international search report shall identify such States, periods, or languages.

43.7 *Remarks Concerning Unity of Invention*

If the applicant paid additional fees for the international search, or if the international application or the international search was restricted under Article 17(3), the international search report shall so indicate. Furthermore, where the international search was made on restricted claims (Article 17(3)(a)) or on the main invention only (Article 17(3)(c)), the international search report shall indicate what parts of the international application were and what parts were not searched.

43.8 *Signature*

The international search report shall be signed by an authorized officer of the International Searching Authority.

43.9 *No Other Matter*

The international search report shall contain no matter other than that enumerated in Rules 33.1(b) and (c), 43.1, 2, 3, 5, 6, 7, and 8, and 44.2(a) and (b). In particular, it shall contain no expressions of opinion, reasoning, arguments, or explanations.

43.10 *Form*

The physical requirements as to the form of the international search report shall be prescribed by the Administrative Instructions.

43.5 [no change]

43.6 *Fields Searched*

(a) [no change]

(b) If the international search extended to patents, inventors' certificates, utility models, utility certificates, or published applications for any of those kinds of protection, of States, periods, or languages, not included in the minimum documentation as defined in Rule 34, the international search report shall identify *the kinds of documents, the States, the periods, and the languages to which it extended. For the purposes of this paragraph, Article 2 (xii) shall not apply.*

43.7 [no change]

43.8 [no change]

43.9 *No Other Matter*

The international search report shall contain no matter other than that enumerated in Rules 33.1(b) and (c), 43.1, 2, 3, 5, 6, 7, and 8, and 44.2(a) and (b) *and the indication referred to in Article 17(2)(b).* In particular, it shall contain no expressions of opinion, reasoning, arguments, or explanations.

43.10 [no change]

43.5 Citations

(a) The international search report shall contain the citations of the documents considered to be relevant.

(b) The method of identifying any cited document shall be regulated by the Administrative Instructions.

(c) Citations of particular relevance shall be specially indicated.

(d) Citations which are not relevant to all the claims shall be cited in relation to the claim or claims to which they are relevant.

(e) If only certain passages of the cited document are relevant or particularly relevant, they shall be identified, for example, by indicating the page, the column, or the lines, where the passage appears.

43.6 Fields Searched

(a) The international search report shall list the classification identification of the fields searched. If that identification is effected on the basis of a classification other than the International Patent Classification, the International Searching Authority shall publish the classification used.

(b) If the international search extended to patents, inventors' certificates, utility certificates, utility models, patents or certificates of addition, inventors' certificates of addition, utility certificates of addition, or published applications for any of those kinds of protection, of States, periods, or languages, not included in the minimum documentation as defined in Rule 34, the international search report shall, when practicable, identify the kinds of documents, the States, the periods, and the languages to which it extended. For the purposes of this paragraph, Article 2(ii) shall not apply.

43.7 Remarks Concerning Unity of Invention

If the applicant paid additional fees for the international search, the international search report shall so indicate. Furthermore, where the international search was made on the main invention only (Article 17(3)(a)), the international search report shall indicate what parts of the international application were and what parts were not searched.

43.8 Signature

The international search report shall be signed by an authorized officer of the International Searching Authority.

43.9 No Other Matter

The international search report shall contain no matter other than that enumerated in Rules 33.1(b) and (c), 43.1, 2, 3, 5, 6, 7 and 8, and 44.2(a) and (b), and the indication referred to in Article 17(2)(b). In particular, it shall contain no expressions of opinion, reasoning, arguments, or explanations.

43.10 Form

The physical requirements as to the form of the international search report shall be prescribed by the Administrative Instructions.

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Rule 44
Transmittal of the International Search Report,
Etc.

44.1 *Copies of Report or Declaration*

The International Searching Authority shall, on the same day, transmit one copy of the international search report or the declaration referred to in Article 17(2)(a) to the International Bureau and one copy to the applicant.

44.2 *Title or Abstract*

(a) Subject to paragraphs (b) and (c), the international search report shall either state that the International Searching Authority approves the title and the abstract as submitted by the applicant or be accompanied by the text of the title and/or abstract as modified by the International Searching Authority under Rule 38.

(b) If, at the time the international search is completed, the time limit allowed for the applicant to comment on any suggestion of the International Searching Authority in respect of the title or the abstract has not expired, the international search report shall indicate that it is incomplete as to one or both of these elements.

(c) As soon as the time limit referred to in paragraph (b) has expired, the International Searching Authority shall notify the title or abstract approved or established by it to the International Bureau and to the applicant.

Rule 45
Translation of the International Search Report

45.1 *Languages*

International search reports and declarations referred to in Article 17(2)(a) shall, when not in English, be translated into English.

Rule 46
Amendment of Claims Before the
International Bureau

46.1 *Time Limit*

The time limit referred to in Article 19 shall be 2 months from the date of transmittal of the international search report to the International Bureau and to the applicant by the International Searching Authority or, when such transmittal takes place before the expiration of 14 months from the priority date, 3 months from the date of such transmittal.

Rule 44 (Alternative)
Transmittal of the International Search Report,
Etc.

44.1 [no change]

44.2 *Title or Abstract*

(a) Subject to paragraphs (b) and (c), the international search report shall either state that the International Searching Authority approves the title and the abstract as submitted by the applicant or be accompanied by the text of the title and/or abstract as *established* by the International Searching Authority under *Rules 37 and 38*.

(b) If, at the time the international search is completed, the time limit allowed for the applicant to comment on any suggestion of the International Searching Authority in respect of the abstract has not expired, the international search report shall indicate that it is incomplete *as far as the abstract is concerned*.

(c) As soon as the time limit referred to in paragraph (b) has expired, the International Searching Authority shall *notify the abstract approved* or established by it to the International Bureau and to the applicant.

44.3 COPIES OF CITED DOCUMENTS

On the specific request of the applicant, the International Searching Authority shall send to him, together with the international search report, a copy of each of the documents cited in that report. The said Authority may require that the applicant pay to it the cost of preparing and mailing the copies.

Rule 45 (Alternative)
Translation of the International Search Report

[no change]

Rule 46 (Alternative)
Amendment of Claims Before the
International Bureau

46.1 [no change]

Rule 44
Transmittal of the International Search Report, Etc.

44.1 *Copies of Report or Declaration*

The International Searching Authority shall, on the same day, transmit one copy of the international search report or the declaration referred to in Article 17(2)(a) to the International Bureau and one copy to the applicant.

44.2 *Title or Abstract*

(a) Subject to paragraphs (b) and (c), the international search report shall either state that the International Searching Authority approves the title and the abstract as submitted by the applicant or be accompanied by the text of the title and/or abstract as established by the International Searching Authority under Rules 37 and 38.

(b) If, at the time the international search is completed, the time limit allowed for the applicant to comment on any suggestion of the International Searching Authority in respect of the abstract has not expired, the international search report shall indicate that it is incomplete as far as the abstract is concerned.

(c) As soon as the time limit referred to in paragraph (b) has expired, the International Searching Authority shall notify the abstract approved or established by it to the International Bureau and to the applicant.

44.3 *Copies of Cited Documents*

(a) The request referred to in Article 20(3) may be presented any time during 7 years from the international filing date of the international application to which the international search report relates.

(b) The International Searching Authority may require that the party (applicant or designated Office) presenting the request pay to it the cost of preparing and mailing the copies. The level of the cost of preparing copies shall be provided for in the agreements referred to in Article 16(3)(b) between the International Searching Authorities and the International Bureau.

(c) Any International Searching Authority not wishing to send copies direct to any designated Office shall send a copy to the International Bureau and the International Bureau shall then proceed as provided in paragraphs (a) and (b).

(d) Any International Searching Authority may perform the obligations referred to in (a) to (c) through another agency responsible to it.

Rule 45
Translation of the International Search Report

45.1 *Languages*

International search reports and declarations referred to in Article 17(2)(a) shall, when not in English, be translated into English.

Rule 46
Amendment of Claims Before the International Bureau

46.1 *Time Limit*

The time limit referred to in Article 19 shall be 2 months from the date of transmittal of the international search report to the International Bureau and to the applicant by the International Searching Authority or, when such transmittal takes place before the expiration of 14 months from the priority date, 3 months from the date of such transmittal.

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46.2 *Dating of Amendments*

The date of receipt of any amendment shall be recorded by the International Bureau and shall be indicated by it in any publication or copy issued by it.

46.3 *Language of Amendments*

If the international application has been filed in a language other than the language in which it is published by the International Bureau, any amendment made under Article 19 shall also be in the language in which the international application is published.

46.4 *Statement*

(a) The statement referred to in Article 19(1) shall be in the language in which the international application is published and shall not exceed 500 words if in the English language or if translated into that language.

(b) The statement shall contain no comments on the international search report or the relevance of the citations contained in that report. The statement may refer to a citation contained in the international search report only in order to indicate that a specific amendment of the claims is intended to avoid the document cited.

46.5 *Form of Amendments*

(a) If the amendment is of such a nature that it does not prevent clear direct reproduction, it may be submitted in the form of a letter; if the amendment is of such a nature that it does prevent clear direct reproduction, the applicant shall be required to submit replacement sheets also.

(b) The identity – subject to the part amended – of the contents of any replacement sheet with the sheet it replaces shall be checked by the International Bureau. That Bureau shall mark on each replacement sheet the international application number and the stamp identifying the International Bureau.

(c) The International Bureau shall transfer the amendments requested in a letter to the record copy and shall insert any replacement sheet in the record copy. The letter and any replaced sheet shall be kept in the files of the International Bureau.

(d) The provisions of Rules 10 and 11 shall apply also to letters submitting amendments and to any replacement sheet.

Rule 47**Communication to Designated Offices**47.1 *Procedure*

(a) The communication provided for in Article 20 shall be effected by the International Bureau.

46.2 [no change]

46.3 *Language of Amendments*

If the international application has been filed in a language other than the language in which it is published by the International Bureau, any amendment made under Article 19 shall be both in the language in which the international application has been filed and in that in which it is published.

46.4 [no change]

46.5 *Form of Amendments*

(a) *The applicant shall be required to submit a replacement sheet for every sheet of the claims which, on account of an amendment or amendments under Article 19, differs from the sheet originally filed. The letter accompanying the replacement sheets shall draw attention to the differences between the replaced sheets and the replacement sheets. To the extent that any amendment results in the cancellation of an entire sheet, that amendment shall be communicated in a letter.*

(b) *The International Bureau shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the International Bureau. It shall keep in its files any replaced sheet, the letter accompanying the replacement sheet or sheets, and any letter referred to in the last sentence of paragraph (a).*

(c) *The International Bureau shall insert any replacement sheet in the record copy and, in the case referred to in the last sentence of paragraph (a), shall indicate the cancellations in the record copy.*

(d) OMIT

Rule 47 (Alternative)**Communication to Designated Offices**47.1 *Procedure*

(a) [no change]

46.2 *Dating of Amendments*

The date of receipt of any amendment shall be recorded by the International Bureau and shall be indicated by it in any publication or copy issued by it.

46.3 *Language of Amendments*

If the international application has been filed in a language other than the language in which it is published by the International Bureau, any amendment made under Article 19 shall be both in the language in which the international application has been filed and in that in which it is published.

46.4 *Statement*

(a) The statement referred to in Article 19(1) shall be in the language in which the international application is published and shall not exceed 500 words if in the English language or if translated into that language.

(b) The statement shall contain no comments on the international search report or the relevance of the citations contained in that report. The statement may refer to a citation contained in the international search report only in order to indicate that a specific amendment of the claims is intended to avoid the document cited.

46.5 *Form of Amendments*

(a) The applicant shall be required to submit a replacement sheet for every sheet of the claims which, on account of an amendment or amendments under Article 19, differs from the sheet originally filed. The letter accompanying the replacement sheets shall draw attention to the differences between the replaced sheets and the replacement sheets. To the extent that any amendment results in the cancellation of an entire sheet, that amendment shall be communicated in a letter.

(b) The International Bureau shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the International Bureau. It shall keep in its files any replaced sheet, the letter accompanying the replacement sheet or sheets, and any letter referred to in the last sentence of paragraph (a).

(c) The International Bureau shall insert any replacement sheet in the record copy and, in the case referred to in the last sentence of paragraph (a), shall indicate the cancellations in the record copy.

Rule 47

Communication to Designated Offices

47.1 *Procedure*

(a) The communication provided for in Article 20 shall be effected by the International Bureau.

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(b) Such communication shall be effected promptly after the International Bureau has received amendments from the applicant, or a declaration that the applicant does not wish to make amendments before the International Bureau, or, in any case, when the time limit provided for in Rule 46.1 has expired. Where, under Article 17(2)(a) the International Searching Authority has made a declaration that no international search report will be established, the communication provided for in Article 20 shall be effected, unless the international application is withdrawn, within 1 month from the date on which the International Bureau has been notified of the said declaration by the International Searching Authority; such communication shall be accompanied by an indication of the date of the notification sent to the applicant under Article 17(2)(a).

(c) The International Bureau shall send a notice to the applicant indicating the national Offices to which the communication has been effected and the date of such communication. Such notice shall be sent on the same day as the communication.

(d) Each designated Office shall, when it so requires, receive the international search reports and the declarations referred to in Article 17(2)(a) also in the translation referred to in Rule 45.1.

47.2 *Copies*

(a) The copies required for communication shall be prepared by the International Bureau.

(b) They shall be on sheets of A4 size.

47.3 *Languages*

The international application communicated under Article 20 shall be in the language in which it is published provided that if that language is different from the language in which it was filed it shall, on the request of the designated Office, be communicated in either or both of these languages.

Rule 48 International Publication

48.1 *Form*

(a) The international application shall be published in the form of a pamphlet.

(b) The particulars regarding the form of the pamphlet and the method of reproduction shall be governed by the Administrative Instructions.

48.2 *Contents*

(a) The pamphlet shall contain:

- (i) a front page,
- (ii) the description,
- (iii) the claims,
- (iv) the drawings, if any,

(v) Subject to paragraph (g), the international search report or the declaration under Article 17(2)(a).

(vi) [any statement filed under Article 19(1), unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.]

(b) [no change]

(c) The International Bureau shall send a notice to the applicant indicating the *designated* Offices to which the communication has been effected and the date of such communication. Such notice shall be sent on the same day as the communication.

(d) [no change]

47.2 *Copies*

[no change]

47.3 *Languages*

[no change]

Rule 48 (Alternative) International Publication

48.1 [no change]

48.2 *Contents*

(a) The pamphlet shall contain:

- (i) a *standardized* front page,
- (ii) [no change]
- (iii) [no change]
- (iv) [no change]
- (v) [no change]

(vi) any statement filed under Article 19(1), unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.

(b) Such communication shall be effected promptly after the International Bureau has received amendments from the applicant, or a declaration that the applicant does not wish to make amendments before the International Bureau, or, in any case, when the time limit provided for in Rule 46.1 has expired. Where, under Article 17(2)(a), the International Searching Authority has made a declaration that no international search report will be established, the communication provided for in Article 20 shall be effected, unless the international application is withdrawn, within 1 month from the date on which the International Bureau has been notified of the said declaration by the International Searching Authority; such communication shall be accompanied by an indication of the date of the notification sent to the applicant under Article 17(2)(a).

(c) The International Bureau shall send a notice to the applicant indicating the designated Offices to which the communication has been effected and the date of such communication. Such notice shall be sent on the same day as the communication.

(d) Each designated Office shall, when it so requires, receive the international search reports and the declarations referred to in Article 17(2)(a) also in the translation referred to in Rule 45.1.

(e) Where any designated Office has waived the requirement provided under Article 20, the copies of the documents which otherwise would have been sent to that Office shall, at the request of that Office or the applicant, be sent to the applicant at the time of the notice referred to in paragraph (c).

47.2 *Copies*

(a) The copies required for communication shall be prepared by the International Bureau.

(b) They shall be on sheets of A4 size.

47.3 *Languages*

The international application communicated under Article 20 shall be in the language in which it is published provided that if that language is different from the language in which it was filed it shall, on the request of the designated Office, be communicated in either or both of these languages.

Rule 48 **International Publication**

48.1 *Form*

(a) The international application shall be published in the form of a pamphlet.

(b) The particulars regarding the form of the pamphlet and the method of reproduction shall be governed by the Administrative Instructions.

48.2 *Contents*

(a) The pamphlet shall contain:

(i) a standardized front page,

(ii) the description,

(iii) the claims,

(iv) the drawings, if any,

(v) subject to paragraph (g), the international search report or the declaration under Article 17(2)(a),

(vi) any statement filed under Article 19(1), unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.

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(b) Subject to paragraph (c), the front page shall include:

(i) data taken from the request sheet and such other data as are prescribed by the Administrative Instructions,

(ii) a figure or figures where the international application contains drawings,

(iii) the abstract.

(c) Where a declaration under Article 17(2)(a) has issued, the front page shall conspicuously refer to that fact and shall include neither a drawing nor an abstract.

(d) The figure or figures referred to in paragraph (b)(ii) shall be selected as provided in Rule 8.2. Reproduction of such figure or figures on the front page may be in a reduced form.

(e) The abstract referred to in paragraph (b)(iii) and, where applicable, its translation as provided in Rule 48.3(c) may, if there is not enough room on the front page for the totality of the abstract (in one or two languages), appear in part on the back of the front page.

(f) If the claims have been amended under Article 19, the publication shall either contain the full text of the claims both as filed and as amended or shall contain the full text of the claims as filed and specify the amendments. [Any statement referred to in Article 19(1) shall be included as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.] The date of receipt of the amended claims by the International Bureau shall be indicated.

(g) If, at the time when publication is due, the international search report is not yet available (for example, because of publication on the request of the applicant as provided in Articles 21(2)(b) and 60(3)(c)(i)), the pamphlet shall contain, in place of the international search report, an indication to the effect that that report was not available and that either the pamphlet (then also including the international search report) will be republished or the international search report (when it becomes available) will be separately published.

(h) If, at the time when publication is due, the time limit for amending the claims under Article 19 has not expired, the pamphlet shall refer to that fact and indicate that, should the claims be amended under Article 19, then, promptly after such amendments, either the pamphlet (containing the claims as amended) will be republished or a statement reflecting all the amendments will be published. In the latter case, at least the front page and the claims shall be republished [and, if a statement under Article 19(1) has been filed, that statement shall be published as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4].

(i) The Administrative Instructions shall determine the cases in which the various alternatives referred to in paragraphs (g) and (h) shall apply. Such determination shall depend on the volume and complexity of the amendment shall depend on the volume and complexity of the amendments and/or the volume of the application and the cost factors.

(b) Subject to paragraph (c), the front page shall include:

(i) [no change]

(ii) [no change]

(iii) the abstract; *if the abstract is both in English and another language, the English text shall appear first.*

(c) Where a declaration under Article 17(2)(a) has issued, the front page shall conspicuously refer to that fact and *need* include neither a drawing nor an abstract.

(d) [no change]

(e) *If there is not enough room on the front page for the totality of the abstract referred to in paragraph (b)(iii), the said abstract shall appear on the back of the front page. The same shall apply to the translation of the abstract when such translation is required to be published under Rule 48.3(c).*

(f) If the claims have been amended under Article 19, the publication *shall contain either* the full text of the claims both as filed and as amended *or the* full text of the claims as filed and specify the amendments. Any statement referred to in Article 19(1) shall be included as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4. The date of receipt of the amended claims by the International Bureau shall be indicated.

(g) [no change]

(h) If, at the time when publication is due, the time limit for amending the claims under Article 19 has not expired, the pamphlet shall refer to that fact and indicate that, should the claims be amended under Article 19, then, promptly after such amendments, either the pamphlet (containing the claims as amended) will be republished or a statement reflecting all the amendments will be published. In the latter case, at least the front page and the claims shall be republished and, if a statement under Article 19(1) has been filed, that statement shall be published as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.

(i) The Administrative Instructions shall determine the cases in which the various alternatives referred to in paragraphs (g) and (h) shall apply. Such determination shall depend on the volume and complexity of the amendments and/or the volume of the *international* application and the cost factors.

(b) Subject to paragraph (c), the front page shall include:

(i) data taken from the request sheet and such other data as are prescribed by the Administrative Instructions,

(ii) a figure or figures where the international application contains drawings,

(iii) the abstract; if the abstract is both in English and in another language, the English text shall appear first.

(c) Where a declaration under Article 17(2)(a) has issued, the front page shall conspicuously refer to that fact and need include neither a drawing nor an abstract.

(d) The figure or figures referred to in paragraph (b)(ii) shall be selected as provided in Rule 8.2. Reproduction of such figure or figures on the front page may be in a reduced form.

(e) If there is not enough room on the front page for the totality of the abstract referred to in paragraph (b)(iii), the said abstract shall appear on the back of the front page. The same shall apply to the translation of the abstract when such translation is required to be published under Rule 48.3(c).

(f) If the claims have been amended under Article 19, the publication shall contain either the full text of the claims both as filed and as amended or the full text of the claims as filed and specify the amendments. Any statement referred to in Article 19(1) shall be included as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4. The date of receipt of the amended claims by the International Bureau shall be indicated.

(g) If, at the time when publication is due, the international search report is not yet available (for example, because of publication on the request of the applicant as provided in Articles 21(2)(b) and 64(3)(c)(i)), the pamphlet shall contain, in place of the international search report, an indication to the effect that that report was not available and that either the pamphlet (then also including the international search report) will be republished or the international search report (when it becomes available) will be separately published.

(h) If, at the time when publication is due, the time limit for amending the claims under Article 19 has not expired, the pamphlet shall refer to that fact and indicate that, should the claims be amended under Article 19, then, promptly after such amendments, either the pamphlet (containing the claims as amended) will be republished or a statement reflecting all the amendments will be published. In the latter case, at least the front page and the claims shall be republished and, if a statement under Article 19(1) has been filed, that statement shall be published as well, unless the International Bureau finds that the statement does not comply with the provisions of Rule 46.4.

(i) The Administrative Instructions shall determine the cases in which the various alternatives referred to in paragraphs (g) and (h) shall apply. Such determination shall depend on the volume and complexity of the amendments and/or the volume of the international application and the cost factors.

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48.3 *Language*

(a) If the international application is filed in English, French, German, Japanese, or Russian, that application, [as well as any statement filed under Article 19(1) and to be published under Rule 48.2(h)], shall be published in the language in which it was filed.

(b) If the international application is filed in a language other than English, French, German, Japanese, or Russian, that application, [as well as any statement filed under Article 19(1) and to be published under Rule 48.2(h)], shall be published in English translation. The translation shall be prepared under the responsibility of the International Searching Authority, which shall be obliged to have it ready in time to permit international publication by the due date. Notwithstanding Rule 16.1(a), the International Searching Authority may charge a fee for the translation to the applicant.

(c) If the international application is published in a language other than English, the international search report, or the declaration referred to in Article 17(2)(a), and the abstract shall be published both in that language and in English. The translations shall be prepared under the responsibility of the International Bureau.

48.4 *Earlier Publication on the Applicant's Request*

(a) Where the applicant asks for publication under Articles 21(2)(b) and 60(3)(c)(i) and the international search report, or the declaration referred to in Article 17(2)(a), is not yet available for publication together with the international application, the International Bureau shall collect a special publication fee whose amount shall be fixed in the Administrative Instructions.

(b) Publication under Articles 21(2)(b) and 60(3)(c)(i) shall be effected by the International Bureau promptly after the applicant has asked for it and, where a special fee is due under paragraph (a), after receipt of such fee.

48.5 *Notification of National Publication*

Where the publication of the international application by the International Bureau is governed by Article 60(3)(c)(ii), the national Office shall, promptly after effecting the national publication referred to in the said provision, notify the International Bureau of the fact of such national publication.

48.3 *Language*

(a) If the international application is filed in English, French, German, Japanese, or Russian, that application shall be published in the language in which it was filed.

(b) If the international application is filed in a language other than English, French, German, Japanese, or Russian, that application shall be published in English translation. The translation shall be prepared under the responsibility of the International Searching Authority, which shall be obliged to have it ready in time to permit *the communication under Article 20 by the prescribed date, or, if the international publication is due at an earlier date than the said communication, to permit international publication by the prescribed date.* Notwithstanding Rule 16.1(a), the International Searching Authority may charge a fee for the translation to the applicant. *The International Searching Authority shall give the applicant an opportunity to comment on the draft translation. The International Searching Authority shall fix a time limit reasonable under the circumstances of the case for such comments. If there is no time to take the comments of the applicant into account before the translation is communicated or if there is a difference of opinion between the applicant and the said Authority as to the correct translation, the applicant may send a copy of his comments, or what remains of them, to the International Bureau and each designated Office to which the translation was communicated. The International Bureau shall publish the essence of the comments together with the translation of the International Searching Authority or subsequently to the publication of such translation.*

(c) [no change]

48.4 [no change]

48.5 *Notification of National Publication*

Where the publication of the international application by the International Bureau is governed by Article 60(3)(c)(ii), the national Office concerned shall, promptly after effecting the national publication referred to in the said provision, notify the International Bureau of the fact of such national publication.

48.6 ANNOUNCING OF CERTAIN FACTS

(a) *If any notification under Rule 29.1(ii) reaches the International Bureau at a time later than at which it was able to prevent the international publication of the international application, the International Bureau shall promptly publish a notice in the Gazette reproducing the essence of such notification.*

(b) *The essence of any notification under Rule 29.2 or 51.4 shall be published in the Gazette and if the notification reaches the International Bureau before preparations for the publication of the pamphlet has been completed, also in the pamphlet.*

(c) *If the international application is withdrawn after its international publication, this fact shall be published in the Gazette.*

48.3 *Language*

(a) If the international application is filed in English, French, German, Japanese, or Russian, that application shall be published in the language in which it was filed.

(b) If the international application is filed in a language other than English, French, German, Japanese, or Russian, that application shall be published in English translation. The translation shall be prepared under the responsibility of the International Searching Authority, which shall be obliged to have it ready in time to permit the communication under Article 20 by the prescribed date, or, if the international publication is due at an earlier date than the said communication, to permit international publication by the prescribed date. Notwithstanding Rule 16.1(a), the International Searching Authority may charge a fee for the translation to the applicant. The International Searching Authority shall give the applicant an opportunity to comment on the draft translation. The International Searching Authority shall fix a time limit reasonable under the circumstances of the case for such comments. If there is no time to take the comments of the applicant into account before the translation is communicated or if there is a difference of opinion between the applicant and the said Authority as to the correct translation, the applicant may send a copy of his comments, or what remains of them, to the International Bureau and each designated Office to which the translation was communicated. The International Bureau shall publish the essence of the comments together with the translation of the International Searching Authority or subsequently to the publication of such translation.

(c) If the international application is published in a language other than English, the international search report, or the declaration referred to in Article 17(2)(a), and the abstract shall be published both in that language and in English. The translations shall be prepared under the responsibility of the International Bureau.

48.4 *Earlier Publication on the Applicant's Request*

(a) Where the applicant asks for publication under Articles 21(2)(b) and 64(3)(c)(i) and the international search report, or the declaration referred to in Article 17(2)(a), is not yet available for publication together with the international application, the International Bureau shall collect a special publication fee whose amount shall be fixed in the Administrative Instructions.

(b) Publication under Articles 21(2)(b) and 64(3)(e)(i) shall be effected by the International Bureau promptly after the applicant has asked for it and, where a special fee is due under paragraph (a), after receipt of such fee.

48.5 *Notification of National Publication*

Where the publication of the international application by the International Bureau is governed by Article 64(3)(c)(ii), the national Office concerned shall, promptly after effecting the national publication referred to in the said provision, notify the International Bureau of the fact of such national publication.

48.6 *Announcing of Certain Facts*

(a) If any notification under Rule 29.1(a)(ii) reaches the International Bureau at a time later than that at which it was able to prevent the international publication of the international application, the International Bureau shall promptly publish a notice in the Gazette reproducing the essence of such notification.

(b) The essence of any notification under Rules 29.2 or 51.4 shall be published in the Gazette and, if the notification reaches the International Bureau before preparations for the publication of the pamphlet have been completed, also in the pamphlet.

(c) If the international application is withdrawn after its international publication, this fact shall be published in the Gazette.

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Rule 49**Languages of Translations and Amounts of Fees under Article 22(1) and (2)**49.1 *Notification*

(a) Any Contracting State requiring the furnishing of a translation or the payment of a national fee, or both, under Article 22, shall notify the International Bureau of:

- (i) the languages from which and the language into which it requires translation,
- (ii) the amount of the national fee.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) If the requirements under paragraph (a) change later, such changes shall be notified by the Contracting State to the International Bureau and that Bureau shall promptly publish the notification in the Gazette. If the change means that translation is required into a language which, before the change, was not required, such change shall be effective only with respect to international applications filed later than 2 months after the publication of the notification in the Gazette. Otherwise, the effective date of any change shall be determined by the Contracting State.

49.2 *Languages*

The language into which translation may be required must be an official language of the designated Office. If there are several of such languages, no translation may be required if the international application is in one of them. If there are several official languages and a translation must be furnished, the applicant may choose any of those languages. Notwithstanding the foregoing provisions of this paragraph, if there are several official languages but the national law prescribes the use of one such language for foreigners, a translation into that language may be required.

Rule 50**Faculty under Article 22(3)**50.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limits provided for in Article 22(1) or (2) shall notify the International Bureau of the time limits so allowed.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) Notifications concerning the shortening of the previously fixed time limit shall be effective in relation to international applications filed after the expiration of 3 months computed from the date on which the notification was published by the International Bureau.

Rule 49 (Alternative)**Languages of Translations and Amounts of Fees under Article 22(1) and (2)**

49.1 [no change]

49.2 [no change]

49.3 STATEMENTS UNDER ARTICLE 19

For the purposes of Article 22 and the present Rule, any statement made under Article 19(1) shall be considered part of the international application.

Rule 50 (Alternative)**Faculty under Article 22(3)**50.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limits provided for in Article 22(1) or (2) shall notify the International Bureau of the time limits so *fixed*.

(b) [no change]

(c) [no change]

Rule 49
Languages of Translations and Amounts of Fees
under Article 22(1) and (2)

49.1 *Notification*

(a) Any Contracting State requiring the furnishing of a translation or the payment of a national fee, or both, under Article 22, shall notify the International Bureau of:

(i) the languages from which and the language into which it requires translation,

(ii) the amount of the national fee.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) If the requirements under paragraph (a) change later, such changes shall be notified by the Contracting State to the International Bureau and that Bureau shall promptly publish the notification in the Gazette. If the change means that translation is required into a language which, before the change, was not required, such change shall be effective only with respect to international applications filed later than 2 months after the publication of the notification in the Gazette. Otherwise, the effective date of any change shall be determined by the Contracting State.

49.2 *Languages*

The language into which translation may be required must be an official language of the designated Office. If there are several of such languages, no translation may be required if the international application is in one of them. If there are several official languages and a translation must be furnished, the applicant may choose any of those languages. Notwithstanding the foregoing provisions of this paragraph, if there are several official languages but the national law prescribes the use of one such language for foreigners, a translation into that language may be required.

49.3 *Statements under Article 19*

For the purposes of Article 22 and the present Rule, any statement made under Article 19(1) shall be considered part of the international application.

Rule 50
Faculty under Article 22(3)

50.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limits provided for in Article 22(1) or (2) shall notify the International Bureau of the time limits so fixed.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) Notifications concerning the shortening of the previously fixed time limit shall be effective in relation to international applications filed after the expiration of 3 months computed from the date on which the notification was published by the International Bureau.

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(d) Notifications concerning the lengthening of the previously fixed time limit shall become effective upon publication by the International Bureau in the Gazette in respect of international applications pending at the time or filed after the date of such publication, or, if the Contracting State effecting the notification fixes some later date, as from the latter date.

(d) [no change]

Rule 51
Review by Designated Offices

51.1 *Time Limit for Presenting the Request to Send Copies*

The time limit referred to in Article 25(1)(c) shall be 2 months computed from the date of the notification sent to the applicant under Rules 20.7(i), 24.2(b), 29.1(a)(ii), or 29.2.

51.2 *Copy of the Notice*

Where the applicant, after having received a negative determination under Rule 20.7(i), requests the International Bureau, under Article 25(1), to send copies of the file of the purported international application to any of the named Offices he has attempted to designate, he shall attach to his request a copy of the notice of the negative determination under Rule 20.7(i).

51.3 *Time Limit for Paying National Fee and Furnishing Translation*

The time limit referred to in Article 25(2)(a) shall expire at the same time as the time limit prescribed in Rule 51.1.

Rule 52
Amendment of the Claims, the Description, and the Drawings, Before Designated Offices

52.1 *Time Limit*

(a) In any designated State in which processing and examination start without special request, the applicant shall, if he so wishes, exercise the right under Article 28 after the communication of the international application under Rule 47.1 has been effected and before the time limit applicable under Article 22 expires, provided that, if the said communication has not been effected by the expiration of the time limit applicable under Article 22, he shall exercise the said right not later than on such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

Rule 51 (Alternative)
Review by Designated Offices

51.1 *Time Limit for Presenting the Request to Send Copies*

The time limit referred to in Article 25(1)(c) shall be 2 months computed from the date of the notification sent to the applicant under Rules 20.7(i), 24.2(b), 29.1(ii), or 29.2.

51.2 *Copy of the Notice*

Where the applicant, after having received a negative determination under *Article 11(1)*, requests the International Bureau, under Article 25(1), to send copies of the file of the purported international application to any of the named Offices he has attempted to designate, he shall attach to his request a copy of the notice *referred to in* Rule 20.7(i).

51.3 [no change]

51.4 NOTIFICATION TO THE INTERNATIONAL BUREAU

Where, under Article 25 (2), the competent designated Office decides that the refusal, declaration or finding referred to in Article 25 (1) was not justified, it shall promptly notify the International Bureau that it treats the international application as if the error referred to in Article 25(2) had not occurred.

Rule 52 (Alternative)
Amendment of the Claims, the Description, and the Drawings, Before Designated Offices

52.1 *Time Limit*

(a) In any designated State in which processing or examination starts without special request, the applicant shall, if he so wishes, exercise the right under Article 28 after the communication of the international application under Rule 47.1 has been effected and before the time limit applicable under Article 22 expires, provided that, if the said communication has not been effected by the expiration of the time limit applicable under Article 22, he shall exercise the said right not later than on such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

(d) Notifications concerning the lengthening of the previously fixed time limit shall become effective upon publication by the International Bureau in the Gazette in respect of international applications pending at the time or filed after the date of such publication, or, if the Contracting State effecting the notification fixes some later date, as from the latter date.

Rule 51 **Review by Designated Offices**

51.1 Time Limit for Presenting the Request to Send Copies

The time limit referred to in Article 25(1)(c) shall be 2 months computed from the date of the notification sent to the applicant under Rules 20.7(i), 24.2(b), 29.1(a)(ii), or 29.1(b).

51.2 Copy of the Notice

Where the applicant, after having received a negative determination under Article 11(1), requests the International Bureau, under Article 25(1), to send copies of the file of the purported international application to any of the named Offices he has attempted to designate, he shall attach to his request a copy of the notice referred to in Rule 20.7(i).

51.3 Time Limit for Paying National Fee and Furnishing Translation

The time limit referred to in Article 25(2)(a) shall expire at the same time as the time limit prescribed in Rule 51.1.

51.4 Notification to the International Bureau

Where, under Article 25(2), the competent designated Office decides that the refusal, declaration or finding referred to in Article 25(1) was not justified, it shall promptly notify the International Bureau that it will treat the international application as if the error or omission referred to in Article 25(2) had not occurred.

Rule 52 **Amendment of the Claims, the Description, and the Drawings, Before Designated Offices**

52.1 Time Limit

(a) In any designated State in which processing or examination starts without special request, the applicant shall, if he so wishes, exercise the right under Article 28 within one month from the fulfillment of the requirements under Article 22, provided that, if the communication under Rule 47.1 has not been effected by the expiration of the time limit applicable under Article 22, he shall exercise the said right not later than 4 months after such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

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(b) In any designated State in which the national law provides that examination starts only on special request, the time limit within or the time at which the applicant may exercise the right under Article 28 shall be the same as that provided by the national law for the filing of amendments in the case of the examination, on special request, of national applications, provided that such time limit shall not expire prior to, or such time shall not come before, the expiration of the time limit applicable under Article 22.

(c) No designated Office shall grant a patent or refuse the grant of a patent before the time limit applicable under this Rule has expired.

(b) [no change]
(c) OMIT

PART C
RULES CONCERNING CHAPTER II OF
THE TREATY

Rule 53
The Demand

53.1 *Form*

(a) The demand shall be made on a printed form.

(b) Copies of printed forms shall be furnished free of charge by the receiving Offices to the applicants.

(c) The particulars of the forms shall be prescribed by the Administrative Instructions.

(d) The demand shall be submitted in two identical copies.

53.2 *Contents*

(a) The demand shall contain:

(i) a petition,

(ii) indications concerning the applicant and the agent if there is an agent,

(iii) indications concerning the international application to which it relates,

(iv) election of States.

(b) The demand shall be signed.

53.3 *The Petition*

The petition shall be to the following effect and shall preferably be worded as follows: "Demand under Article 31 of the Patent Cooperation Treaty: The undersigned requests that the international application specified below be the subject of international preliminary examination according to the Patent Cooperation Treaty."

53.4 *The Applicant*

As to the indications concerning the applicant, Rules 4.4 and 4.5 shall apply *mutatis mutandis*.

53.5 *The Agent*

If an agent is designated, Rules 4.4, 4.7, and 4.8, shall apply *mutatis mutandis*.

PART C
RULES CONCERNING CHAPTER II OF
THE TREATY

Rule 53 (Alternative)
The Demand

53.1 [no change]

53.2 [no change]

53.3 [no change]

53.4 [no change]

53.5 [no change]

(b) In any designated State in which the national law provides that examination starts only on special request, the time limit within or the time at which the applicant may exercise the right under Article 28 shall be the same as that provided by the national law for the filing of amendments in the case of the examination, on special request, of national applications, provided that such time limit shall not expire prior to, or such time shall not come before, the expiration of the time limit applicable under paragraph (a).

PART C
RULES CONCERNING CHAPTER II OF THE TREATY

Rule 53
The Demand

53.1 *Form*

- (a) The demand shall be made on a printed form.
- (b) Copies of printed forms shall be furnished free of charge by the receiving Offices to the applicants.
- (c) The particulars of the forms shall be prescribed by the Administrative Instructions.
- (d) The demand shall be submitted in two identical copies.

53.2 *Contents*

- (a) The demand shall contain:
 - (i) a petition,
 - (ii) indications concerning the applicant and the agent if there is an agent,
 - (iii) indications concerning the international application to which it relates,
 - (iv) election of States.
- (b) The demand shall be signed.

53.3 *The Petition*

The petition shall be to the following effect and shall preferably be worded as follows: "Demand under Article 31 of the Patent Cooperation Treaty: The undersigned requests that the international application specified below be the subject of international preliminary examination according to the Patent Cooperation Treaty."

53.4 *The Applicant*

As to the indications concerning the applicant, Rules 4.4 and 4.16 shall apply, and Rule 4.5 shall apply *mutatis mutandis*.

53.5 *The Agent*

If an agent is designated, Rules 4.4, 4.7, and 4.16 shall apply, and Rule 4.8 shall apply *mutatis mutandis*.

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53.6 *The International Application*

The international application shall be identified by the name of the receiving Office with which the international application was filed, the date of the international filing, the name and address of the applicant, the title of the invention, and, where the international application number is known to the applicant, that number.

53.7 *Election of States*

The demand shall name, among the designated States, at least one Contracting State bound by Chapter II of the Treaty as elected State.

53.8 *Signature*

The demand shall be signed by the applicant.

Rule 54**The Applicant Entitled to Make a Demand**54.1 *Residence and Nationality*

The residence or nationality of the applicant shall, for the purposes of Article 31(2), be determined according to Rules 18.1 and 18.2.

54.2 *Several Applicants: Same for All Elected States*

If all the applicants are applicants for the purposes of all elected States, the right to make a demand under Article 31 shall exist if at least one of them is a resident or national of a Contracting State bound by Chapter II of the Treaty and if the international application has been filed as provided in Article 31(2).

54.3 *Several Applicants: Different for Different Elected States*

(a) For the purposes of different elected States, different applicants may be indicated, provided that, in respect of each elected State, at least one of the applicants indicated for the purposes of that State is a resident or national of a Contracting State bound by Chapter II of the Treaty and that the international application has been filed as provided in Article 31(2).

(b) If the requirement under paragraph (a) is not fulfilled in respect of any elected State, the election of that State shall be considered not to have been made.

54.4 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant or the receiving Office be recorded by the International Bureau, which shall notify the interested International Preliminary Examining Authority and the elected Offices accordingly.

53.6 IDENTIFICATION OF *the International Application*

The international application shall be identified by the name of the receiving Office with which the international application *was filed, the name* and address of the applicant, the title of the invention, and, where the international *filing date and the international* application number *are* known to the applicant, *that date and* that number.

53.7 [no change]

53.8 [no change]

Rule 54 (Alternative)**The Applicant Entitled to Make a Demand**

54.1 [no change]

54.2 [no change]

54.3 [no change]

54.4 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant *or the receiving Office* be recorded by the International Bureau, which shall notify the interested International Preliminary Examining Authority and the elected Offices accordingly.

53.6 *Identification of the International Application*

The international application shall be identified by the name of the receiving Office with which the international application was filed, the name and address of the applicant, the title of the invention, and, where the international filing date and the international application number are known to the applicant, that date and that number.

53.7 *Election of States*

The demand shall name, among the designated States, at least one Contracting State bound by Chapter II of the Treaty as elected State.

53.8 *Signature*

The demand shall be signed by the applicant.

Rule 54

The Applicant Entitled to Make a Demand

54.1 *Residence and Nationality*

The residence or nationality of the applicant shall, for the purposes of Article 31(2), be determined according to Rules 18.1 and 18.2.

54.2 *Several Applicants: Same for All Elected States*

If all the applicants are applicants for the purposes of all elected States, the right to make a demand under Article 31(2) shall exist if at least one of them is

(i) a resident or national of a Contracting State bound by Chapter II and the international application has been filed as provided in Article 31(2)(a), or

(ii) a person entitled to make a demand under Article 31(2)(b) and the international application has been filed as provided in the decision of the Assembly.

54.3 *Several Applicants: Different for Different Elected States*

(a) For the purposes of different elected States, different applicants may be indicated, provided that, in respect of each elected State, at least one of the applicants indicated for the purposes of that State is

(i) a resident or national of a Contracting State bound by Chapter II and the international application has been filed as provided in Article 31(2)(a), or

(ii) a person entitled to make a demand under Article 31(2)(b) and the international application has been filed as provided in the decision of the Assembly.

(b) If the requirement under paragraph (a) is not fulfilled in respect of any elected State, the election of that State shall be considered not to have been made.

54.4 *Change in the Person or Name of the Applicant*

Any change in the person or name of the applicant shall, on the request of the applicant or the receiving Office, be recorded by the International Bureau, which shall notify the interested International Preliminary Examining Authority and the elected Offices accordingly.

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Rule 55
Languages
(International Preliminary Examination)

55.1 *The Demand*

The demand shall be in the language of the international application or, when a translation is required under Rule 55.2, in the language of that translation.

55.2 *The International Application*

(a) If the competent International Preliminary Examining Authority is not part of the same national Office or intergovernmental organization as the competent International Searching Authority, and if the international application is in a language other than the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Preliminary Examining Authority competent for the international preliminary examination, the latter may require that the applicant submit a translation of the application.

(b) The translation shall be submitted not later than the later of the following two dates:

(i) the date on which the time limit under Rule 46.1 expires,

(ii) the date on which the demand is submitted.

(c) The translation shall contain a statement that, to the best of the applicant's knowledge, it is complete and faithful. This statement shall be signed by the applicant.

Rule 56
Later Elections

56.1 *Elections Submitted Later Than the Demand*

The election of States not named in the demand shall be effected by a notice signed and submitted by the applicant, and shall identify the international application and the demand.

56.2 *Identification of the International Application*

The international application shall be identified by its international filing date and its number, by the name of the applicant, and by the name of the receiving Office with which it was filed.

56.3 *Identification of the Demand*

The demand shall be identified by the date on which it was submitted and by the name of the International Preliminary Examining Authority to which it was submitted.

56.4 *Form of Later Elections*

The later election shall preferably be made on a printed form furnished free of charge to applicants. If it is not made on such a form, it shall preferably be worded as follows: "In relation to the international application filed with... on... under No... by... (applicant) (and the demand for international preliminary examination submitted on... to...), the undersigned elects the following additional States) under Article 31 of the Patent Cooperation Treaty:..."

Rule 55 (Alternative)
Languages
(International Preliminary Examination)

55.1 [no change]

55.2 *The International Application*

(a) If the competent International Preliminary Examining Authority is not part of the same national Office or intergovernmental organization as the competent International Searching Authority, and if the international application is in a language other than the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Preliminary Examining Authority competent for the international preliminary examination, the latter may require that the applicant submit a translation of that application.

(b) [no change]

(c) [no change]

(d) *If the provisions of paragraphs (b) and (c) are not complied with, the International Preliminary Examining Authority shall invite the applicant to comply with them within 1 month from the date of the invitation. If the applicant fails to do so, the demand shall be considered as if it had not been submitted and the International Preliminary Examining Authority shall notify the applicant and the International Bureau accordingly.*

Rule 56 (Alternative)
Later Elections

56.1 [no change]

56.2 *Identification of the International Application*

The international application shall be identified as provided in Rule 53.6.

56.3 [no change]

56.4 [no change]

Rule 55

Languages (International Preliminary Examination)

55.1 The Demand

The demand shall be in the language of the international application or, when a translation is required under Rule 55.2, in the language of that translation.

55.2 The International Application

(a) If the competent International Preliminary Examining Authority is not part of the same national Office or intergovernmental organization as the competent International Searching Authority, and if the international application is in a language other than the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Preliminary Examining Authority competent for the international preliminary examination, the latter may require that the applicant submit a translation of that application.

(b) The translation shall be submitted not later than the later of the following two dates:

- (i) the date on which the time limit under Rule 46.1 expires,
- (ii) the date on which the demand is submitted.

(c) The translation shall contain a statement that, to the best of the applicant's knowledge, it is complete and faithful. This statement shall be signed by the applicant.

(d) If the provisions of paragraphs (b) and (c) are not complied with, the International Preliminary Examining Authority shall invite the applicant to comply with them within 1 month from the date of the invitation. If the applicant fails to do so, the demand shall be considered as if it had not been submitted and the International Preliminary Examining Authority shall notify the applicant and the International Bureau accordingly.

Rule 56

Later Elections

56.1 Elections Submitted Later Than the Demand

The election of States not named in the demand shall be effected by a notice signed and submitted by the applicant, and shall identify the international application and the demand.

56.2 Identification of the International Application

The international application shall be identified as provided in Rule 53.6.

56.3 Identification of the Demand

The demand shall be identified by the date on which it was submitted and by the name of the International Preliminary Examining Authority to which it was submitted.

56.4 Form of Later Elections

The later election shall preferably be made on a printed form furnished free of charge to applicants. If it is not made on such a form, it shall preferably be worded as follows: "In relation to the international application filed with ... on ... under No. ... by ... (applicant) (and the demand for international preliminary examination submitted on ... to ...), the undersigned elects the following additional State(s) under Article 31 of the Patent Cooperation Treaty:..."

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56.5 LANGUAGE OF LATER ELECTIONS

The later election shall be in the language of the demand.

Rule 57
The Handling Fee

57.1 *Requirement to Pay*

Each demand for international preliminary examination shall be subject to the payment of a fee for the benefit of the International Bureau ("handling fee").

57.2 *Amount*

(a) The amount of the handling fee shall be [between US \$12.00 and 15.00]* augmented by as many times [between US \$12.00 and 15.00]* as the number of languages into which the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau.

(b) Where, because of a later election or elections, the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau into one or more additional languages, a supplement to the handling fee shall be payable and shall amount to [between US \$12.00 and 15.00]* for each additional language.

57.3 *Mode and Time of Payment*

(a) Subject to paragraph (b), the handling fee shall be collected by the International Preliminary Examining Authority to which the demand is submitted and shall be due at the time the demand is submitted.

(b) Any supplement to the handling fee under Rule 57.2(b) shall be collected by the International Bureau and shall be due at the time the later election is submitted.

(c) The handling fee shall be payable in the currency prescribed by the International Preliminary Examining Authority to which the demand is submitted, it being understood that, when transferred by that Authority to the International Bureau, it shall be freely convertible into Swiss currency. Any supplement to the handling fee shall be payable in Swiss currency.

57.4 *Failure to Pay (Handling Fee)*

(a) Where the handling fee is not paid as required by the present Rule, the International Preliminary Examination Authority shall invite the applicant to pay the fee within 1 month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the fee, unless, under Rule 60.1(b), a later date is applicable.

Rule 57 (Alternative)
The Handling Fee

57.1 [no change]

57.2 *Amount*

(a) The amount of the handling fee shall be *US \$14.00 or 60 Swiss francs* augmented by as many times *the same amount* as the number of languages into which the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau.

(b) Where, because of a later election or elections, the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau into one or more additional languages, a supplement to the handling fee shall be payable and shall amount to *US \$14.00 or 60 Swiss francs* for each additional language.

57.3 *Mode and Time of Payment*

(a) [no change]

(b) [no change]

(c) The handling fee shall be payable in the currency prescribed by the International Preliminary Examining Authority to which the demand is submitted, it being understood that, when transferred by that Authority to the International Bureau, it shall be freely convertible into *Swiss currency*.

(d) Any supplement to the handling fee shall be payable in Swiss currency.

57.4 *Failure to Pay (Handling Fee)*

(a) Where the handling fee is not paid as required by *Rules 57.2(a) and 57.3(a) and (c)*, the International Preliminary Examining Authority shall invite the applicant to pay the fee within 1 month from the date of the invitation.

(b) [no change]

* All amounts are tentative.

56.5 *Language of Later Elections*

The later election shall be in the language of the demand.

Rule 57 **The Handling Fee**

57.1 *Requirement to Pay*

Each demand for international preliminary examination shall be subject to the payment of a fee for the benefit of the International Bureau (“handling fee”).

57.2 *Amount*

(a) The amount of the handling fee shall be US \$14.00 or 60 Swiss francs augmented by as many times the same amount as the number of languages into which the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau.

(b) Where, because of a later election or elections, the international preliminary examination report must, in application of Article 36(2), be translated by the International Bureau into one or more additional languages, a supplement to the handling fee shall be payable and shall amount to US \$14.00 or 60 Swiss francs for each additional language.

57.3 *Mode and Time of Payment*

(a) Subject to paragraph (b), the handling fee shall be collected by the International Preliminary Examining Authority to which the demand is submitted and shall be due at the time the demand is submitted.

(b) Any supplement to the handling fee under Rule 57.2(b) shall be collected by the International Bureau and shall be due at the time the later election is submitted.

(c) The handling fee shall be payable in the currency prescribed by the International Preliminary Examining Authority to which the demand is submitted, it being understood that, when transferred by that Authority to the International Bureau, it shall be freely convertible into Swiss currency.

(d) Any supplement to the handling fee shall be payable in Swiss currency.

57.4 *Failure to Pay (Handling Fee)*

(a) Where the handling fee is not paid as required by Rules 57.2(a) and 57.3(a) and (c), the International Preliminary Examining Authority shall invite the applicant to pay the fee within 1 month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the fee, unless, under Rule 60.1(b), a later date is applicable.

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(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

57.5 *Failure to Pay (Supplement to the Handling Fee)*

(a) Where the supplement to the handling fee under Rule 57.2(b) is not paid as required by the present Rule, the International Bureau shall invite the applicant to pay the supplement within 1 month from the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been effected on the date on which the International Bureau receives the supplement, unless, under Rule 60.2(b), a later date is applicable.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the later election shall be considered as if it had not been submitted.

57.6 *Refund*

In no case shall the handling fee, including any supplement thereto, be refunded.

**Rule 58
The Preliminary Examination Fee**

58.1 *Right to Ask for a Fee*

(a) Each International Preliminary Examining Authority may require that the applicant pay a fee ("preliminary examination fee") for its own benefit for carrying out the international preliminary examination and for performing all other tasks entrusted to International Preliminary Examining Authorities under the Treaty and these Regulations.

(b) Such fee shall be payable directly to that Authority in the currency of the State in which such Authority is located or in a currency freely convertible into such currency.

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(c) [no change]

57.5 *Failure to Pay (Supplement to the Handling Fee)*

(a) Where the supplement to the handling fee is not paid *as required by Rules 57.2(b) and 57.3(b) and (d)* the International Bureau shall invite the applicant to pay the supplement within 1 month from the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been *received* on the date on which the International Bureau receives the supplement, unless, under Rule 60.2(b), a later date is applicable.

(c) [no change]

57.6 [no change]

**Rule 58 (Alternative)
The Preliminary Examination Fee**

58.1 *Right to Ask for a Fee*

(a) Each International Preliminary Examining Authority may require that the applicant pay a fee ("preliminary examination fee") for its own benefit for carrying out the international preliminary examination and for performing all other tasks entrusted to International Preliminary Examining Authorities under the Treaty and these Regulations.

(b) *The amount and the due date of the preliminary examination fee, if any, shall be fixed by the International Preliminary Examining Authority, provided that the said due date shall not be earlier than the due date of the handling fee.*

(c) *The preliminary examination fee shall be payable directly to the International Preliminary Examining Authority. Where that Authority is a national Office, it shall be payable in the currency prescribed by that Office, and where the Authority is an intergovernmental organization, it shall be payable in the currency of the State in which the intergovernmental organization is located or in any other currency which is freely convertible into the currency of the said State.*

(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

57.5 Failure to Pay (Supplement to the Handling Fee)

(a) Where the supplement to the handling fee is not paid as required by Rules 57.2(b) and 57.3(b) and (d), the International Bureau shall invite the applicant to pay the supplement within 1 month from the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been received on the date on which the International Bureau receives the supplement, unless, under Rule 60.2(b), a later date is applicable.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the later election shall be considered as if it had not been submitted.

57.6 Refund

In no case shall the handling fee, including any supplement thereto, be refunded.

Rule 58
The Preliminary Examination Fee

58.1 Right to Ask for a Fee

(a) Each International Preliminary Examining Authority may require that the applicant pay a fee (“preliminary examination fee”) for its own benefit for carrying out the international preliminary examination and for performing all other tasks entrusted to International Preliminary Examining Authorities under the Treaty and these Regulations.

(b) The amount and the due date of the preliminary examination fee, if any, shall be fixed by the International Preliminary Examining Authority, provided that the said due date shall not be earlier than the due date of the handling fee.

(c) The preliminary examination fee shall be payable directly to the International Preliminary Examining Authority. Where that Authority is a national Office, it shall be payable in the currency prescribed by that Office, and where the Authority is an intergovernmental organization, it shall be payable in the currency of the State in which the intergovernmental organization is located or in any other currency which is freely convertible into the currency of the said State.

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Rule 59
The Competent International Preliminary
Examining Authority

59.1 *Information*

Each Contracting State bound by the provisions of Chapter II shall inform the International Bureau which International Preliminary Examining Authority is competent for the international preliminary examination of international applications filed with its national Office, or, in the case provided for in Rule 19.1(b), with the national Office of another State or an intergovernmental organization acting for the former Office, and the International Bureau shall promptly publish such information.

Rule 59 (Alternative)
The Competent International Preliminary
Examining Authority

59.1 WHEN ONLY ONE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY IS COMPETENT

Each Contracting State bound by the provisions of Chapter II shall, *in accordance with the terms of the applicable agreement referred to in Article 16(2) and (3) as invoked in Article 32(2)*, inform the International Bureau which International Preliminary Examining Authority is competent for the international preliminary examination of international applications filed with its national Office, or, in the case provided for in Rule 19.1(b), with the national Office of another State or an intergovernmental organization acting for the former Office, and the International Bureau shall promptly publish such information.

59.2 WHEN SEVERAL INTERNATIONAL PRELIMINARY EXAMINING AUTHORITIES ARE COMPETENT

(a) *Each Contracting State bound by the provisions of Chapter II may, in accordance with the terms of the applicable agreement referred to in Article 16(2) and (3) as invoked in Article 32(2), specify several International Preliminary Examining Authorities.*

(b) *Where the Contracting State makes use of the faculty referred to in paragraph (a), the provisions of Rule 35.2 shall apply MUTATIS MUTANDIS.*

Rule 60
Certain Defects in the Demand or Elections

60.1 *Defects in the Demand*

(a) If the demand does not comply with the requirements specified in Rule 53, the International Preliminary Examining Authority shall invite the applicant to correct the defects within 1 month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the correction or, when the handling fee is received under Rule 57.4(b) at a later date, on that date.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

(d) If the defect is noticed by the International Bureau, it shall bring the defect to the attention of the International Preliminary Examining Authority, which shall then proceed as provided in paragraphs (a) to (c).

60.2 *Defects in Later Elections*

(a) If the later election does not comply with the requirements of Rule 56, the International Bureau shall invite the applicant to correct the defects within 1 month from the date of the invitation.

Rule 60 (Alternative)
Certain Defects in the Demand or Elections

60.1 *Defects in the Demand*

(a) If the demand does not comply with the requirements specified in *Rules 53 and 55*, the International Preliminary Examining Authority shall invite the applicant to correct the defects within 1 month from the date of the invitation.

(b) [no change]

(c) [no change]

(d) [no change]

60.2 [no change]

Rule 59
The Competent International Preliminary Examining Authority

59.1 *Demands under Article 31(2)(a)*

For demands made under Article 31(2)(a), each Contracting State bound by the provisions of Chapter II shall, in accordance with the terms of the applicable agreement referred to in Article 32(2) and (3), inform the International Bureau which International Preliminary Examining Authority is or which International Preliminary Examining Authorities are competent for the international preliminary examination of international applications filed with its national Office, or, in the case provided for in Rule 19.1(b), with the national Office of another State or an intergovernmental organization acting for the former Office, and the International Bureau shall promptly publish such information. Where several International Preliminary Examining Authorities are competent, the provisions of Rule 35.2 shall apply *mutatis mutandis*.

59.2 *Demands under Article 31(2)(b)*

As to demands made under Article 31(2)(b), the Assembly, in specifying the International Preliminary Examining Authority competent for international applications filed with a national Office which is an International Preliminary Examining Authority, shall give preference to that Authority; if the national Office is not an International Preliminary Examining Authority, the Assembly shall give preference to the International Preliminary Examining Authority recommended by that Office.

Rule 60
Certain Defects in the Demand or Elections

60.1 *Defects in the Demand*

(a) If the demand does not comply with the requirements specified in Rules 53 and 55, the International Preliminary Examining Authority shall invite the applicant to correct the defects within 1 month from the date of the invitation.

(b) If the applicant complies with the invitation within the prescribed time limit, the demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the correction, or, when the handling fee is received under Rule 57.4(b) at a later date, on that date.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the demand shall be considered as if it had not been submitted.

(d) If the defect is noticed by the International Bureau, it shall bring the defect to the attention of the International Preliminary Examining Authority, which shall then proceed as provided in paragraphs (a) to (c).

60.2 *Defects in Later Elections*

(a) If the later election does not comply with the requirements of Rule 56, the International Bureau shall invite the applicant to correct the defects within 1 month from the date of the invitation.

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(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been received on the date on which the International Bureau receives the correction, or, where the supplement to the handling fee is received under Rule 57.5(b) at a later date, on that date.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the later election shall be considered as if it had not been submitted.

60.3 *Attempted Elections*

If the applicant has attempted to elect a State which is not a designated State or which is not bound by Chapter II, the attempted election shall be considered not to have been made, and the International Bureau shall notify the applicant accordingly.

Rule 61 **Notification of the Demand and Elections**

61.1 *Notifications to the International Bureau, the Applicant, and the International Preliminary Examining Authority*

(a) The International Preliminary Examining Authority shall indicate on both copies of the demand the actual date of receipt or, where applicable, the date referred to in Rules 57.4(b) or 60.1(b). The International Preliminary Examining Authority shall promptly send the original copy to the International Bureau. It shall keep the other copy in its files.

(b) The International Preliminary Examining Authority shall promptly inform the applicant in writing of the date of receipt of the demand.

(c) The International Bureau shall promptly notify the International Preliminary Examining Authority and the applicant of the receipt, and the date of receipt, of any later election. That date shall be the actual date of receipt by the International Bureau or, where applicable, the date referred to in Rule 60.2(b).

61.2 *Notifications to the Elected Offices*

(a) The notification provided for in Article 31(7) shall be effected by the International Bureau.

(b) The notification shall indicate the number and filing date of the international application, the name of the applicant, the name of the receiving Office, the filing date of the national or international application whose priority is claimed (where priority is claimed), the date of receipt by the International Preliminary Examining Authority of the demand, and – in the case of later elections – the date of receipt by the International Bureau of the later election.

(c) The notification shall be sent to the elected Office promptly after the expiration of the 18th month from the priority date, or, if the international preliminary examination report is communicated earlier, then, at the same time as the communication of that report. Elections effected after such notification shall be notified promptly after they have been effected.

60.3 [no change]

Rule 61 (Alternative) **Notification of the Demand and Elections**

61.1 *Notifications to the International Bureau, the Applicant and the International Preliminary Examining Authority*

(a) The International Preliminary Examining Authority shall indicate on both copies of the *demand* the *date of* receipt or, where applicable, the date referred to *in Rule* 60.1(b). The International Preliminary Examining Authority shall promptly send the original copy to the International Bureau. It shall keep the other copy in its files.

(b) The International Preliminary Examining Authority shall promptly inform the applicant in writing of the date of receipt of the demand. *Where the demand has been considered under Rules 57.4(c) or 60.1(c) as if it had not been submitted, the International Preliminary Examining Authority shall notify the applicant accordingly.*

(c) The International Bureau shall promptly notify the International Preliminary Examining Authority and the applicant of the receipt, and the date of receipt, of any later election. That date shall be the actual date of receipt by the International Bureau or, where applicable, the date referred to in Rule 60.2(b) . *Where the later election has been considered under Rules 57.5(c) or 60.2(c) as if it had not been submitted, the International Bureau shall notify the applicant accordingly.*

61.2 [no change]

(b) If the applicant complies with the invitation within the prescribed time limit, the later election shall be considered as if it had been received on the date on which the International Bureau receives the correction, or, where the supplement to the handling fee is received under Rule 57.5(b) at a later date, on that date.

(c) If the applicant does not comply with the invitation within the prescribed time limit, the later election shall be considered as if it had not been submitted.

60.3 *Attempted Elections*

If the applicant has attempted to elect a State which is not a designated State or which is not bound by Chapter II, the attempted election shall be considered not to have been made, and the International Bureau shall notify the applicant accordingly.

Rule 61 **Notification of the Demand and Elections**

61.1 *Notifications to the International Bureau, the Applicant, and the International Preliminary Examining Authority*

(a) The International Preliminary Examining Authority shall indicate on both copies of the demand the date of receipt or, where applicable, the date referred to in Rule 60.1(b). The International Preliminary Examining Authority shall promptly send the original copy to the International Bureau. It shall keep the other copy in its files.

(b) The International Preliminary Examining Authority shall promptly inform the applicant in writing of the date of receipt of the demand. Where the demand has been considered under Rules 57.4(c) or 60.1(c) as if it had not been submitted, the International Preliminary Examining Authority shall notify the applicant accordingly.

(c) The International Bureau shall promptly notify the International Preliminary Examining Authority and the applicant of the receipt, and the date of receipt, of any later election. That date shall be the actual date of receipt by the International Bureau or, where applicable, the date referred to in Rule 60.2(b). Where the later election has been considered under Rules 57.5(c) or 60.2(c) as if it had not been submitted, the International Bureau shall notify the applicant accordingly.

61.2 *Notifications to the Elected Offices*

(a) The notification provided for in Article 31(7) shall be effected by the International Bureau.

(b) The notification shall indicate the number and filing date of the international application, the name of the applicant, the name of the receiving Office, the filing date of the application whose priority is claimed (where priority is claimed), the date of receipt by the International Preliminary Examining Authority of the demand, and – in the case of later elections – the date of receipt by the International Bureau of the later election.

(c) The notification shall be sent to the elected Office promptly after the expiration of the 18th month from the priority date, or, if the international preliminary examination report is communicated earlier, then, at the same time as the communication of that report. Elections effected after such notification shall be notified promptly after they have been effected.

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61.3 *Information for the Applicant*

The International Bureau shall inform the applicant in writing that it has effected the notification referred to in Rule 61.2. At the same time, it shall indicate to him, in respect of each elected State, any applicable time limit under Article 39(1)(b).

Rule 62
Copy for the International
Preliminary Examining Authority

62.1 *The International Application*

(a) Where the competent International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the competent International Searching Authority, the same file shall serve the purposes of international search and international preliminary examination.

(b) Where the competent International Searching Authority is not part of the same national Office or intergovernmental organization as the competent International Preliminary Examining Authority, the International Bureau shall, promptly upon receipt of the international search report or, if the demand was received after the international search report, promptly upon receipt of the demand, send a copy of the international application and the international search report to the said Preliminary Examining Authority. In cases where, instead of the international search report, a declaration under Article 17(2)(a) has issued, references in the preceding sentence to the international search report shall be considered references to the said declaration.

62.2 *Amendments*

(a) Any amendment filed under Article 19 shall be promptly transmitted by the International Bureau to the International Preliminary Examining Authority. If, at the time of filing such amendments, a demand for international preliminary examination has already been submitted, the applicant shall, at the same time as he files the amendments with the International Bureau, also file a copy of such amendments with the International Preliminary Examining Authority.

(b) If the time limit for filing amendments under Article 19 (see Rule 46.1) has expired without the applicant's having filed amendments under that Article, the International Bureau shall notify the International Preliminary Examining Authority accordingly.

Rule 63
Minimum Requirements for International
Preliminary Examining Authorities

63.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 16(3)(c), as applied under Article 32(2), shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out examinations;

61.3 [no change]

Rule 62 (Alternative)
Copy for the International
Preliminary Examining Authority

62.1 [no change]

62.2 *Amendments*

(a) [no change]

(b) If the time limit for filing amendments under Article 19 (see Rule 46.1) has expired without the applicant's having filed amendments under that Article, or if the applicant has declared that he does not wish to make amendments under that Article, the International Bureau shall notify the International Preliminary Examining Authority accordingly.

Rule 63 (Alternative)
Minimum Requirements for International
Preliminary Examining Authorities

[no change]

61.3 *Information for the Applicant*

The International Bureau shall inform the applicant in writing that it has effected the notification referred to in Rule 61.2. At the same time, it shall indicate to him, in respect of each elected State, any applicable time limit under Article 39(1)(b).

Rule 62

Copy for the International Preliminary Examining Authority

62.1 *The International Application*

(a) Where the competent International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the competent International Searching Authority, the same file shall serve the purposes of international search and international preliminary examination.

(b) Where the competent International Searching Authority is not part of the same national Office or intergovernmental organization as the competent International Preliminary Examining Authority, the International Bureau shall, promptly upon receipt of the international search report or, if the demand was received after the international search report, promptly upon receipt of the demand, send a copy of the international application and the international search report to the said Preliminary Examining Authority. In cases where, instead of the international search report, a declaration under Article 17(2)(a) has issued, references in the preceding sentence to the international search report shall be considered references to the said declaration.

62.2 *Amendments*

(a) Any amendment filed under Article 19 shall be promptly transmitted by the International Bureau to the International Preliminary Examining Authority. If, at the time of filing such amendments, a demand for international preliminary examination has already been submitted, the applicant shall, at the same time as he files the amendments with the International Bureau, also file a copy of such amendments with the International Preliminary Examining Authority.

(b) If the time limit for filing amendments under Article 19 (see Rule 46.1) has expired without the applicant's having filed amendments under that Article, or if the applicant has declared that he does not wish to make amendments under that Article, the International Bureau shall notify the International Preliminary Examining Authority accordingly.

Rule 63

Minimum Requirements for International Preliminary Examining Authorities

63.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 32(3) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out examinations;

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(ii) that Office or organization must have at its ready disposal at least the minimum documentation referred to in Rule 34, properly arranged for examination purposes;

(iii) that Office or organization must have a staff which is capable of examining in the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated.

Rule 64
Prior Art for International
Preliminary Examination

64.1 *Prior Art*

(a) For the purposes of Article 33(2) and (3), everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) shall be considered prior art provided that such making available occurred prior to the relevant date.

(b) For the purposes of paragraph (a), the relevant date will be:

(i) Subject to item (ii), the international filing date of the international application under international preliminary examination;

(ii) where the international application under international preliminary examination validly claims the priority of an earlier national or international application, the filing date of such earlier application.

64.2 *Oral Disclosures*

In cases where the making available to the public occurred by means of an oral disclosure before the relevant date as defined in Rule 64.1(b) and the date of that oral disclosure is indicated in a written disclosure which has been made available to the public after the relevant date, the oral disclosure shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such oral disclosure in the manner provided for in Rule 70.10.

64.3 *Certain Patents and Published National or International Applications*

In cases where a national application or patent, or an international application which would constitute prior art for the purposes of Article 33(2) and (3) had it been published prior to the relevant date referred to in Rule 64.1, was published, as such, after the relevant date but was filed earlier than the relevant date or claimed the priority of an earlier national or international application which had been filed prior to the relevant date, such published national application or patent or international application shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such national application or patent or international application in the manner provided for in Rule 70.11.

Rule 64 (Alternative)
Prior Art for International
Preliminary Examination

64.1 [no change]

64.2 *Oral Disclosures*

In cases where the making available to the public occurred by means of an oral disclosure before the relevant date as defined in Rule 64.1(b) and the date of that oral disclosure is indicated in a written disclosure which has been made available to the public after the relevant date, the oral disclosure shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such oral disclosure in the manner provided for in Rule 70.9.

64.3 **CERTAIN PUBLISHED DOCUMENTS**

In cases where a national application *other than for a utility model*, or any patent or *utility certificate*, or an international application which would constitute prior art for the purposes of Article 33(2) and (3) had it been published prior to the relevant date referred to in Rule 64.1, was published, as such, after the relevant date but was filed earlier than the relevant date or claimed the priority of an earlier national or international application which had been filed prior to the relevant date, such published national application, patent or *utility certificate*, or international application shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such national application, or patent or *utility certificate*, or international application in the manner provided for in Rule 70.10. *For the purposes of this Rule, applications which have only been laid open for public inspection are not considered published applications.*

(ii) that Office or organization must have at its ready disposal at least the minimum documentation referred to in Rule 34, properly arranged for examination purposes;

(iii) that Office or organization must have a staff which is capable of examining in the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated.

Rule 64 **Prior Art for International Preliminary Examination**

64.1 Prior Art

(a) For the purposes of Article 33(2) and (3), everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) shall be considered prior art provided that such making available occurred prior to the relevant date.

(b) For the purposes of paragraph (a), the relevant date will be:

(i) subject to item (ii), the international filing date of the international application under international preliminary examination;

(ii) where the international application under international preliminary examination validly claims the priority of an earlier application, the filing date of such earlier application.

64.2 Non-written Disclosures

In cases where the making available to the public occurred by means of an oral disclosure, use, exhibition or other non-written means ("non-written disclosure") before the relevant date as defined in Rule 64.1(b) and the date of such non-written disclosure is indicated in a written disclosure which has been made available to the public after the relevant date, the non-written disclosure shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such non-written disclosure in the manner provided for in Rule 70.9.

64.3 Certain Published Documents

In cases where any application or any patent which would constitute prior art for the purposes of Article 33(2) and (3) had it been published prior to the relevant date referred to in Rule 64.1 was published, as such, after the relevant date but was filed earlier than the relevant date or claimed the priority of an earlier application which had been filed prior to the relevant date, such published application or patent shall not be considered part of the prior art for the purposes of Article 33(2) and (3). Nevertheless, the international preliminary examination report shall call attention to such application or patent in the manner provided for in Rule 70.10.

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Rule 65
Inventive Step or Non-Obviousness

65.1 *Approach to Prior Art*

For the purposes of Article 33(3), the international preliminary examination shall take into consideration the relation of any particular claim to the prior art as a whole. It shall take into consideration the claim's relation not only to individual documents or parts thereof taken separately but also its relation to combinations of such documents or parts of documents, where such combinations are obvious to a person skilled in the art.

Rule 66
Procedure Before the International Preliminary Examining Authority

66.1 *Basis of the International Preliminary Examination*

Before the international preliminary examination starts, the applicant may make amendments according to Article 34(2)(b) and the international preliminary examination shall initially be directed to the claims, the description, and the drawings, as contained in the international application at the time the international preliminary examination starts.

66.2 *First Written Opinion of the International Preliminary Examining Authority*

- (a) In any of the following cases, that is to say:
- (i) if, in the opinion of the International Preliminary Examining Authority, the international application has any of the defects described in Article 34(4),
 - (ii) if, in the course of the international preliminary examination, the International Preliminary Examining Authority happens to notice anything that, in the opinion of the said Authority, amounts to a defect in the form or contents of the international application under the Treaty or these Regulations,
 - (iii) if, in the opinion of the International Preliminary Examining Authority, the international preliminary examination report should be negative in respect of any of the claims because the invention claimed therein does not appear to be novel, does not appear to involve an inventive step (does not appear to be non-obvious), or does not appear to be industrially applicable,
 - (iv) if the International Preliminary Examining Authority wishes to accompany the international preliminary examination report by observations on: the clarity of the claims, the description, and the drawings; the question whether the claims are fully supported by the description; or whether any amendment goes beyond the disclosure in the international application as filed,

Rule 65 (Alternative)
Inventive Step or Non-Obviousness

65.1 [no change]

65.2 RELEVANT DATE

For the purposes of Article 33(3), the relevant date for the consideration of inventive step (non-obviousness) is the date prescribed in Rule 64.1.

Rule 66 (Alternative)
Procedure Before the International Preliminary Examining Authority

66.1 [no change]

66.2 *First Written Opinion of the International Preliminary Examining Authority*

- (a) *If the International Preliminary Examining Authority:*
- (i) *considers that* the international application has any of the defects described in Article 34(4),
 - (ii) *considers that* the international preliminary examination report should be negative in respect of any of the claims because the invention claimed therein does not appear to be novel, does not appear to involve an inventive step (does not appear to be non-obvious), or does not appear to be industrially applicable,
 - (iii) *notices that there is some defect in the form or contents of the international application under the Treaty or these Regulations,*
 - (iv) *considers that any amendment goes beyond the disclosure in the international application as filed, or*
 - (v) *wishes to accompany the international preliminary examination report by observations on the clarity of the claims, the description, and the drawings, or the question whether the claims are fully supported by the description,*

Rule 65 **Inventive Step or Non-Obviousness**

65.1 *Approach to Prior Art*

For the purposes of Article 33(3), the international preliminary examination shall take into consideration the relation of any particular claim to the prior art as a whole. It shall take into consideration the claim's relation not only to individual documents or parts thereof taken separately but also its relation to combinations of such documents or parts of documents, where such combinations are obvious to a person skilled in the art.

65.2 *Relevant Date*

For the purposes of Article 33(3), the relevant date for the consideration of inventive step (non-obviousness) is the date prescribed in Rule 64.1.

Rule 66 **Procedure Before the** **International Preliminary Examining Authority**

66.1 *Basis of the International Preliminary Examination*

Before the international preliminary examination starts, the applicant may make amendments according to Article 34(2)(b) and the international preliminary examination shall initially be directed to the claims, the description, and the drawings, as contained in the international application at the time the international preliminary examination starts.

66.2 *First Written Opinion of the International Preliminary Examining Authority*

- (a) If the International Preliminary Examining Authority
 - (i) considers that the international application has any of the defects described in Article 34(4),
 - (ii) considers that the international preliminary examination report should be negative in respect of any of the claims because the invention claimed therein does not appear to be novel, does not appear to involve an inventive step (does not appear to be non-obvious), or does not appear to be industrially applicable,
 - (iii) notices that there is some defect in the form or contents of the international application under the Treaty or these Regulations,
 - (iv) considers that any amendment goes beyond the disclosure in the international application as filed, or
 - (v) wishes to accompany the international preliminary examination report by observations on the clarity of the claims, the description, and the drawings, or the question whether the claims are fully supported by the description,

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the said Authority shall notify the applicant accordingly in writing.

(b) The notification shall fully state the reasons for the opinion of the International Preliminary Examining Authority.

(c) The notification shall invite the applicant to submit a written reply together, where appropriate, with amendments or corrections.

(d) The notification shall fix a time limit for the reply. The time limit shall be reasonable under the circumstances. It shall normally be 2 months after the date of notification. In no case shall it be shorter than 1 month after the said date. It shall be at least 2 months after the said date where the international search report is transmitted at the same time as the notification. In no case shall it be more than 3 months after the said date.

66.3 *Formal Response to the International Preliminary Examining Authority*

(a) The applicant may respond to the invitation referred to in Rule 66.2(c) of the International Preliminary Examining Authority by amendments or corrections or – if he disagrees with the opinion of that Authority – by submitting arguments, as the case may be, or do both.

(b) Any response shall be submitted directly to the International Preliminary Examining Authority.

66.4 *Additional Opportunity for Amendment or Correction*

(a) If the International Preliminary Examining Authority wishes to issue one or more additional written opinions, it may do so, and Rules 66.2 and 66.3 shall apply.

(b) On the request of the applicant, the International Preliminary Examining Authority may give him one or more additional opportunities to submit amendments or corrections.

66.5 *Amendment*

(a) Any change, other than the rectification of obvious errors of transcription, in the claims, the description, or the drawings, including cancellation of claims, omission of passages in the description, or omission of certain drawings, shall be considered an amendment.

(b) If, in the opinion of the International Preliminary Examining Authority, any amendment goes beyond the disclosure in the international application as filed, the statement under Article 35(2) shall be made as if such amendment had not been proposed by the applicant, and the international preliminary examination report shall indicate this circumstance.

66.6 *Informal Communications with the Applicant*

The International Preliminary Examining Authority may, at any time, communicate informally, over the telephone, in writing, or through personal interviews, with the applicant. The said Authority shall, at its discretion, decide whether it wishes to grant more than one personal interview if so requested by the applicant, or whether it wishes to reply to any informal written communication from the applicant.

the said Authority shall notify the applicant accordingly in writing.

(b) [no change]

(c) [no change]

(d) [no change]

66.3 [no change]

66.4 [no change]

66.5 *Amendment*

Any change, other than the rectification of obvious errors of transcription, in the claims, the description, or the drawings, including cancellation of claims, omission of passages in the description, or omission of certain drawings, shall be considered an amendment.

(b) OMIT

66.6 [no change]

the said Authority shall notify the applicant accordingly in writing.

(b) The notification shall fully state the reasons for the opinion of the International Preliminary Examining Authority.

(c) The notification shall invite the applicant to submit a written reply together, where appropriate, with amendments or corrections.

(d) The notification shall fix a time limit for the reply. The time limit shall be reasonable under the circumstances. It shall normally be 2 months after the date of notification. In no case shall it be shorter than 1 month after the said date. It shall be at least 2 months after the said date where the international search report is transmitted at the same time as the notification. In no case shall it be more than 3 months after the said date.

66.3 *Formal Response to the International Preliminary Examining Authority*

(a) The applicant may respond to the invitation referred to in Rule 66.2(c) of the International Preliminary Examining Authority by making amendments or corrections or – if he disagrees with the opinion of that Authority – by submitting arguments, as the case may be, or do both.

(b) Any response shall be submitted directly to the International Preliminary Examining Authority.

66.4 *Additional Opportunity for Amendment or Correction*

(a) If the International Preliminary Examining Authority wishes to issue one or more additional written opinions, it may do so, and Rules 66.2 and 66.3 shall apply.

(b) On the request of the applicant, the International Preliminary Examining Authority may give him one or more additional opportunities to submit amendments or corrections.

66.5 *Amendment*

Any change, other than the rectification of obvious errors of transcription, in the claims, the description, or the drawings, including cancellation of claims, omission of passages in the description, or omission of certain drawings, shall be considered an amendment.

66.6 *Informal Communications with the Applicant*

The International Preliminary Examining Authority may, at any time, communicate informally, over the telephone, in writing, or through personal interviews, with the applicant. The said Authority shall, at its discretion, decide whether it wishes to grant more than one personal interview if so requested by the applicant, or whether it wishes to reply to any informal written communication from the applicant.

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66.7 Priority Document

(a) If the International Preliminary Examining Authority needs a copy of the application whose priority is claimed in the international application, the International Bureau shall, on request, promptly furnish such copy, provided that, where the request is made before the International Bureau has received the priority document under Rule 17.1(a), the applicant shall furnish such copy, at his option, to the International Bureau or directly to the International Preliminary Examining Authority.

(b) If the application whose priority is claimed is in a language other than the language or one of the languages of the International Preliminary Examining Authority, the applicant shall furnish, on invitation, a translation in the said language or one of the said languages.

(c) The copy to be furnished by the applicant under paragraph (a) and the translation referred to in paragraph (b) shall be furnished not later than by the expiration of 2 months from the date of the request or invitation. If it is not furnished within that time limit, the international preliminary examination report shall be established as if the priority had not been claimed.

66.8 Form of Corrections and Amendments

(a) If the amendment or correction is of such a nature that it does not prevent clear direct reproduction it may be submitted in the form of a letter; if the amendment or correction is of such a nature that it does prevent clear direct reproduction, the applicant shall be required to submit replacement sheets also.

(b) The identity – subject to the part amended or corrected – of the contents of any replacement sheet with the sheet it replaces shall be checked by the International Preliminary Examining Authority. That Authority shall mark on each replacement sheet the international application number and the stamp identifying the Authority. It shall keep a copy of the replacement sheet in its files.

(c) The provisions of Rules 10 and 11 shall apply also to letters submitting corrections and to any replacement sheet.

Rule 67**Subject Matter under Article 34(4)(a)(i)****67.1 Definition**

No International Preliminary Examining Authority shall be required to carry out an international preliminary examination on an international application if, and to the extent to which, its subject matter is any of the following:

- (i) scientific and mathematical theories,
- (ii) plant or animal varieties or essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes,
- (iii) schemes; rules or methods of doing business, performing purely mental acts or playing games,

66.7 Priority Document

(a) If the International Preliminary Examining Authority needs a copy of the application whose priority is claimed in the international application, the International Bureau shall, on request, promptly furnish such copy, provided that, where the request is made before the International Bureau has received the priority document under Rule 17.1(a), the applicant shall furnish *such copy to the International Bureau and directly to the International Preliminary Examining Authority.*

(b) [no change]

(c) [no change]

66.8 Form of Corrections and Amendments

(a) *The applicant shall be required to submit a replacement sheet for every sheet of the international application which, on account of a correction or amendment, differs from the sheet originally filed. The letter accompanying the replacement sheets shall draw attention to the differences between the replaced sheets and the replacement sheets. To the extent that any amendment results in the cancellation of an entire sheet, that amendment shall be communicated in a letter.*

(b) *The International Preliminary Examining Authority shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the said Authority. It shall keep in its files any replaced sheet, the letter accompanying the replacement sheet or sheets, and any letter referred to in the last sentence of paragraph (a).*

(c) OMIT

Rule 67 (Alternative)**Subject Matter under Article 34(4)(a)(i)****67.1 Definition**

No International Preliminary Examining Authority shall be required to carry out an international preliminary examination on an international application if, and to the extent to which, its subject matter is any of the following:

- (i) [no change]
- (ii) [no change]
- (iii) [no change]

66.7 *Priority Document*

(a) If the International Preliminary Examining Authority needs a copy of the application whose priority is claimed in the international application, the International Bureau shall, on request, promptly furnish such copy, provided that, where the request is made before the International Bureau has received the priority document under Rule 17.1(a), the applicant shall furnish such copy to the International Bureau and directly to the International Preliminary Examining Authority.

(b) If the application whose priority is claimed is in a language other than the language or one of the languages of the International Preliminary Examining Authority, the applicant shall furnish, on invitation, a translation in the said language or one of the said languages.

(c) The copy to be furnished by the applicant under paragraph (a) and the translation referred to in paragraph (b) shall be furnished not later than by the expiration of 2 months from the date of the request or invitation. If they are not furnished within that time limit, the international preliminary examination report shall be established as if the priority had not been claimed.

66.8 *Form of Corrections and Amendments*

(a) The applicant shall be required to submit a replacement sheet for every sheet of the international application which, on account of a correction or amendment, differs from the sheet originally filed. The letter accompanying the replacement sheets shall draw attention to the differences between the replaced sheets and the replacement sheets. To the extent that any amendment results in the cancellation of an entire sheet, that amendment shall be communicated in a letter.

(b) The International Preliminary Examining Authority shall mark on each replacement sheet the international application number, the date on which it was received, and the stamp identifying the said Authority. It shall keep in its files any replaced sheet, the letter accompanying the replacement sheet or sheets, and any letter referred to in the last sentence of paragraph (a).

Rule 67

Subject Matter under Article 34(4)(a)(i)

67.1 *Definition*

No International Preliminary Examining Authority shall be required to carry out an international preliminary examination on an international application if, and to the extent to which, its subject matter is any of the following:

- (i) scientific and mathematical theories,
- (ii) plant or animal varieties or essentially biological processes for the production of plants and animals, other than microbiological processes and the products of such processes,
- (iii) schemes, rules or methods of doing business, performing purely mental acts or playing games,

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(iv) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods,

(v) written representations of information [?],

(vi) computer programs to the extent that the International Preliminary Examining Authority is not equipped to carry out an international preliminary examination concerning such programs,

(vii) ornamental (industrial) designs.

Rule 68
Lack of Unity of Invention (International Preliminary Examination)

68.1 *No Invitation to Restrict or Pay*

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses not to invite the applicant to restrict the claims or to pay additional fees, it shall establish the international preliminary examination report, subject to Article 34(4)(b), in respect of the entire international application, but shall indicate, in the said report, that, in its opinion, the requirement of unity of invention is not fulfilled and shall briefly indicate the reasons for its opinion.

68.2 *Invitation to Restrict or Pay*

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses to invite the applicant, at his option, to restrict the claims or to pay additional fees, it shall specify at least one possibility of restriction which, in the opinion of the International Preliminary Examining Authority, would be in compliance with the applicable requirement, and shall specify the amount of the additional fees and the reasons therefor. It shall, at the same time, fix a time limit, with regard to the circumstances of the case, for complying with the invitation; such time limit shall not be shorter than 1 month, and it shall not be longer than 2 months, from the date of the invitation.

68.3 *Additional Fees*

(a) The amount of the additional fee due for international preliminary examination under Article 34(3)(a) shall be determined by the competent International Preliminary Examining Authority.

(b) The additional fee due for international preliminary examination under Article 34(3)(a) shall be payable direct to the International Preliminary Examining Authority.

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(iv) methods for treatment of the human or animal body by surgery or [*physical*] therapy, as well as diagnostic methods,

(v) *mere presentations* of information,

(vi) [no change]

Rule 68 (Alternative)
Lack of Unity of Invention (International Preliminary Examination)

68.1 *No Invitation to Restrict or Pay*

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses not to invite the applicant to restrict the claims or to pay additional fees, it shall establish the international preliminary examination report, subject to Article 34(4)(b), in respect of the entire international application, but shall indicate, in the said report, that, in its opinion, the requirement of unity of invention is not fulfilled and shall *specify* the reasons for *which the international application is not considered as complying with the requirement of unity of invention*.

68.2 *Invitation to Restrict or Pay*

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses to invite the applicant, at his option, to restrict the claims or to pay additional fees, it shall specify at least one possibility of restriction which, in the opinion of the International Preliminary Examining Authority, would be in compliance with the applicable requirement, and shall specify the amount of the additional fees and the reasons *for which the international application is not considered as complying with the requirement of unity of invention*. It shall, at the same time, fix a time limit, with regard to the circumstances of the case, for complying with the invitation; such time limit shall not be shorter than 1 month, and it shall not be longer than 2 months, from the date of the invitation.

68.3 *Additional Fees*

(a) [no change]

(b) [no change]

- (iv) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods,
- (v) mere presentations of information,
- (vi) computer programs to the extent that the International Preliminary Examining Authority is not equipped to carry out an international preliminary examination concerning such programs.

Rule 68

Lack of Unity of Invention (International Preliminary Examination)

68.1 No Invitation to Restrict or Pay

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses not to invite the applicant to restrict the claims or to pay additional fees, it shall establish the international preliminary examination report, subject to Article 34(4)(b), in respect of the entire international application, but shall indicate, in the said report, that, in its opinion, the requirement of unity of invention is not fulfilled and shall specify the reasons for which the international application is not considered as complying with the requirement of unity of invention.

68.2 Invitation to Restrict or Pay

Where the International Preliminary Examining Authority finds that the requirement of unity of invention is not complied with and chooses to invite the applicant, at his option, to restrict the claims or to pay additional fees, it shall specify at least one possibility of restriction which, in the opinion of the International Preliminary Examining Authority, would be in compliance with the applicable requirement, and shall specify the amount of the additional fees and the reasons for which the international application is not considered as complying with the requirement of unity of invention. It shall, at the same time, fix a time limit, with regard to the circumstances of the case, for complying with the invitation; such time limit shall not be shorter than 1 month, and it shall not be longer than 2 months, from the date of the invitation.

68.3 Additional Fees

(a) The amount of the additional fee due for international preliminary examination under Article 34(3)(a) shall be determined by the competent International Preliminary Examining Authority.

(b) The additional fee due for international preliminary examination under Article 34(3)(a) shall be payable direct to the International Preliminary Examining Authority.

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(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Preliminary Examining Authority, or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the elected Offices.

68.4 *Procedure in the Case of Insufficient Restriction of the Claims*

If the applicant restricts the claims but not sufficiently to comply with the requirement of unity of invention, the International Preliminary Examining Authority shall proceed as provided in Article 34(3)(c).

68.5 *Main Invention*

In case of doubt which invention is the main invention for the purposes of Article 34(3)(c), the invention first mentioned in the claims shall be considered the main invention.

Rule 69

Time Limit for International Preliminary Examination

69.1 *Time Limit for International Preliminary Examination*

(a) All agreements concluded with International Preliminary Examining Authorities shall provide for the same time limit for the establishment of the international preliminary examination report. This time limit shall not exceed:

(i) 6 months after the start of the international preliminary examination,

(ii) in cases where the International Preliminary Examining Authority issues an invitation to restrict the claims or pay additional fees (Article 34(3)), 8 months after the start of the international preliminary examination.

(b) International preliminary examination shall start upon receipt, by the International Preliminary Examining Authority:

(i) under Rule 62.2(a), of the claims as amended under Article 19, or

(ii) under Rule 62.2(b), of a notice from the International Bureau that no amendments under Article 19 have been filed within the prescribed time limit, or

(iii) of a notice, after the international search report is in the possession of the International Preliminary Examining Authority, from the applicant expressing the wish that the international preliminary examination should start and be directed to the claims as specified in such notice, or

(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Preliminary Examining Authority, or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the elected Offices *as an annex to the international preliminary examination report.*

(d) *The three-member board, special instance or competent higher authority, referred to in paragraph (c), shall not comprise any person who made the decision which is the subject of the protest.*

68.4 [no change]

68.5 [no change]

Rule 69 (Alternative)

Time Limit for International Preliminary Examination

69.1 *Time Limit for International Preliminary Examination*

(a) [no change]

(b) International preliminary examination shall start upon receipt, by the International Preliminary Examining Authority:

(i) [no change]

(ii) under Rule 62.2(b), of a notice from the International Bureau that no amendments under Article 19 have been filed within the prescribed time limit *or that the applicant has declared that he does not wish to make such amendments, or*

(iii) [no change]

(c) Any applicant may pay the additional fee under protest, that is, accompanied by a reasoned statement to the effect that the international application complies with the requirement of unity of invention or that the amount of the required additional fee is excessive. Such protest shall be examined by a three-member board or other special instance of the International Preliminary Examining Authority, or any competent higher authority, which, to the extent that it finds the protest justified, shall order the total or partial reimbursement to the applicant of the additional fee. On the request of the applicant, the text of both the protest and the decision thereon shall be notified to the elected Offices as an annex to the international preliminary examination report.

(d) The three-member board, special instance or competent higher authority, referred to in paragraph (c), shall not comprise any person who made the decision which is the subject of the protest.

68.4 *Procedure in the Case of Insufficient Restriction of the Claims*

If the applicant restricts the claims but not sufficiently to comply with the requirement of unity of invention, the International Preliminary Examining Authority shall proceed as provided in Article 34(3)(c).

68.5 *Main Invention*

In case of doubt which invention is the main invention for the purposes of Article 34(3)(c), the invention first mentioned in the claims shall be considered the main invention.

Rule 69

Time Limit for International Preliminary Examination

69.1 *Time Limit for International Preliminary Examination*

(a) All agreements concluded with International Preliminary Examining Authorities shall provide for the same time limit for the establishment of the international preliminary examination report. This time limit shall not exceed:

- (i) 6 months after the start of the international preliminary examination,
- (ii) in cases where the International Preliminary Examining Authority issues an invitation to restrict the claims or pay additional fees (Article 34(3)), 8 months after the start of the international preliminary examination.

(b) International preliminary examination shall start upon receipt, by the International Preliminary Examining Authority:

- (i) under Rule 62.2(a), of the claims as amended under Article 19, or
- (ii) under Rule 62.2(b), of a notice from the International Bureau that no amendments under Article 19 have been filed within the prescribed time limit or that the applicant has declared that he does not wish to make such amendments, or
- (iii) of a notice, after the international search report is in the possession of the International Preliminary Examining Authority, from the applicant expressing the wish that the international preliminary examination should start and be directed to the claims as specified in such notice, or

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(iv) of a notice of the declaration by the International Searching Authority that no international search report will be established (Article 17(2)(a)).

(iv) [no change]

(c) [no change]

(c) If the competent International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the competent International Searching Authority, the international preliminary examination may, if the International Preliminary Examining Authority so wishes, start at the same time as the international search. In such a case, the international preliminary examination report shall be established notwithstanding the provisions of paragraph (a), no later than 6 months after the expiration of the time limit allowed under Article 19 for amending the claims.

Rule 70

The International Preliminary Examination Report

70.1 Definition

For the purposes of this Rule, "report" shall mean international preliminary examination report.

70.2 Basis of the Report

(a) If the claims have been amended in the course of the international preliminary examination procedure, the report shall issue, subject to Rule 66.5(b), on the claims as amended.

(b) If, pursuant to Rule 66.7, the report is established as if the priority had not been claimed, the report shall so indicate.

70.3 Identifications

The report shall identify the International Preliminary Examining Authority which established it by indicating the name of such Authority, and the international application by indicating the international application number, the name of the applicant, the name of the receiving Office, and the international filing date.

70.4 Dates

The report shall indicate:

(i) the date on which the demand was submitted, and

(ii) the date of the report; that date shall be the date on which the report is completed.

70.5 Classification

(a) The report shall repeat the classification given under Rule 43.3 if the International Preliminary Examining Authority agrees with such classification.

(b) Otherwise, the International Preliminary Examining Authority shall indicate in the report the classification, at least according to the International Patent Classification, which it considers correct.

Rule 70 (Alternative)

The International Preliminary Examination Report

70.1 [no change]

70.2 Basis of the Report

(a) If the claims have been amended, the report shall issue on the claims as amended.

(b) If, pursuant to Rule 66.7(c), the report is established as if the priority had not been claimed, the report shall so indicate.

(c) If the International Preliminary Examining Authority considers that any amendment goes beyond the disclosure in the international application as filed, the report shall be established as if such amendment had not been made, and the report shall so indicate. It shall also indicate the reasons why it considers that the amendment goes beyond the said disclosure.

70.3 [no change]

70.4 [no change]

70.5 [no change]

(b) [no change]

(iv) of a notice of the declaration by the International Searching Authority that no international search report will be established (Article 17(2)(a)).

(c) If the competent International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the competent International Searching Authority, the international preliminary examination may, if the International Preliminary Examining Authority so wishes, start at the same time as the international search. In such a case, the international preliminary examination report shall be established, notwithstanding the provisions of paragraph (a), no later than 6 months after the expiration of the time limit allowed under Article 19 for amending the claims.

Rule 70

The International Preliminary Examination Report

70.1 Definition

For the purposes of this Rule, “report” shall mean international preliminary examination report.

70.2 Basis of the Report

(a) If the claims have been amended, the report shall issue on the claims as amended.

(b) If, pursuant to Rule 66.7(c), the report is established as if the priority had not been claimed, the report shall so indicate.

(c) If the International Preliminary Examining Authority considers that any amendment goes beyond the disclosure in the international application as filed, the report shall be established as if such amendment had not been made, and the report shall so indicate. It shall also indicate the reasons why it considers that the amendment goes beyond the said disclosure.

70.3 Identifications

The report shall identify the International Preliminary Examining Authority which established it by indicating the name of such Authority, and the international application, by indicating the international application number, the name of the applicant, the name of the receiving Office, and the international filing date.

70.4 Dates

The report shall indicate:

- (i) the date on which the demand was submitted, and
- (ii) the date of the report; that date shall be the date on which the report is completed.

70.5 Classification

(a) The report shall repeat the classification given under Rule 43.3 if the International Preliminary Examining Authority agrees with such classification.

(b) Otherwise, the International Preliminary Examining Authority shall indicate in the report the classification, at least according to the International Patent Classification, which it considers correct.

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70.6 *Statement under Article 35(2)*

(a) The statement referred to in Article 35(2) shall consist of the words "YES" or "NO," or their equivalent in the language of the report, or some appropriate sign provided for in the Administrative Instructions, and shall be accompanied by the citations, explanations and observations, if any, referred to in Article 35(2), last sentence, and Rule 66.5(b).

(b) If any of the three criteria referred to in Article 35(2) (that is, novelty, inventive step (non-obviousness), industrial applicability) is not satisfied, the statement shall be negative.

70.7 *Citations under Article 35(2)*

(a) The report shall contain the citations of the documents considered to be relevant for supporting the statements made under Article 35(2).

(b) The provisions of Rule 43.5(b) and (d) shall apply also to the report.

70.8 *Explanations under Article 35(2)*

The Administrative Instructions shall contain guidelines for cases in which the explanations referred to in Article 35(2) should or should not be given and the form of such explanations. Such guidelines shall be based on the principles laid down in Article 35(2) and the following principles:

(i) explanations shall be given whenever the statement in relation to any claim is negative;

(ii) explanations shall be given whenever the statement is positive unless the reason for citing any document is easy to imagine on the basis of consultation of the cited document;

(iii) generally, explanations shall be given if the cited document is held to be relevant only in connection with the question of novelty or only in connection with the question of inventive step (non-obviousness) and not in connection with both questions.

70.9 *Certain Contentions of Applicant in Connection with the Laws of Specific States*

At the specific request of the applicant, the report shall indicate, in relation to any citation appearing in the report, that, in the opinion of the applicant, the citation is not relevant for the purposes of any specific elected State and shall give a brief summary of the reasons for such contention. The contention may only be based on a specific provision of the law of the said State. The applicant must identify such provision. If he fails to do so or if, in the opinion of the International Preliminary Examining Authority, the contention is not based on such provision, the report may omit any indication of the applicant's contention.

70.10 *Oral Disclosures*

Any oral disclosure referred to in the report by virtue of Rule 64.2 shall be mentioned by indicating the fact that it is an oral disclosure, as well as the date on which the written disclosure referring to the oral disclosure was made available to the public and the date on which the oral disclosure occurred in public.

70.6 *Statement under Article 35(2)*

(a) The statement referred to in Article 35(2) shall consist of the words "YES" or "NO," or their equivalent in the language of the report, or some appropriate sign provided for in the Administrative Instructions, and shall be accompanied by the citations, explanations and observations, if any, referred to *in the last sentence of Article 35(2)*.

(b) If any of the three criteria referred to in Article 35(2) (that is, novelty, inventive step (non-obviousness), industrial applicability) is not satisfied, the statement shall be negative. *If, in such a case, any of the criteria, taken separately, is satisfied, the report shall specify the criterion or criteria so satisfied.*

70.7 *Citations under Article 35(2)*

(a) The report *shall cite the documents* considered to be relevant for supporting the statements made under Article 35(2).

(b) [no change]

70.8 *Explanations under Article 35(2)*

The Administrative Instructions shall contain guidelines for cases in which the explanations referred to in Article 35(2) should or should not be given and the form of such explanations. Such guidelines shall be based on *the following principles*:

(i) [no change]

(ii) [no change]

(iii) generally, explanations shall be given *if the case provided for in the last sentence of Rule 70.6(b) obtains.*

70.9 (old): OMIT

70.9* *Oral Disclosure*

[no change]

70.10** CERTAIN PUBLISHED DOCUMENTS

Any published national application, *other than for a utility model, or any patent or utility certificate*, or international application, referred to in the report by virtue of Rule 64.3 shall be mentioned as such and shall be accompanied by an indication of its date of publication, of its filing date, and its claimed priority date (if any). In respect of *the priority date of any such document, the report may indicate that, in the opinion of the International Preliminary Examining Authority, such date has not been validly claimed.*

* Rule 70.10 in the 1969 Draft.

** Rule 70.11 in the 1969 Draft.

70.6 *Statement under Article 35(2)*

(a) The statement referred to in Article 35(2) shall consist of the words “YES” or “NO,” or their equivalent in the language of the report, or some appropriate sign provided for in the Administrative Instructions, and shall be accompanied by the citations, explanations and observations, if any, referred to in the last sentence of Article 35(2).

(b) If any of the three criteria referred to in Article 35(2) (that is, novelty, inventive step (non-obviousness), industrial applicability) is not satisfied, the statement shall be negative. If, in such a case, any of the criteria, taken separately, is satisfied, the report shall specify the criterion or criteria so satisfied.

70.7 *Citations under Article 35(2)*

(a) The report shall cite the documents considered to be relevant for supporting the statements made under Article 35(2).

(b) The provisions of Rule 43.5(b) and (e) shall apply also to the report.

70.8 *Explanations under Article 35(2)*

The Administrative Instructions shall contain guidelines for cases in which the explanations referred to in Article 35(2) should or should not be given and the form of such explanations. Such guidelines shall be based on the following principles:

(i) explanations shall be given whenever the statement in relation to any claim is negative;

(ii) explanations shall be given whenever the statement is positive unless the reason for citing any document is easy to imagine on the basis of consultation of the cited document;

(iii) generally, explanations shall be given if the case provided for in the last sentence of Rule 70.6(b) obtains.

70.9 *Non-Written Disclosures*

Any non-written disclosure referred to in the report by virtue of Rule 64.2 shall be mentioned by indicating its kind, the date on which the written disclosure referring to the non-written disclosure was made available to the public, and the date on which the non-written disclosure occurred in public.

70.10 *Certain Published Documents*

Any published application or any patent referred to in the report by virtue of Rule 64.3 shall be mentioned as such and shall be accompanied by an indication of its date of publication, of its filing date, and its claimed priority date (if any). In respect of the priority date of any such document, the report may indicate that, in the opinion of the International Preliminary Examining Authority, such date has not been validly claimed.

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70.11 *Certain Patents and Published National or International Applications*

Any published national application or patent, or international application, referred to in the report by virtue of Rule 64.3 shall be mentioned as such and shall be accompanied by an indication of its date of publication, of its filing date, and its claimed priority date (if any). In respect of any claimed priority date, the report shall indicate, when the relevant priority document is in the possession of the International Preliminary Examining Authority, whether, in the opinion of that Authority, the priority date has been validly claimed, or, when the said document is not in the possession of that Authority, that fact.

70.12. *Mention of Amendments or Corrections of Certain Defects*

If, before the International Preliminary Examining Authority, amendments or corrections have been made, they shall be specified in the report.

70.13 *Observations on Certain Amendments*

If, in the opinion of the International Preliminary Examining Authority, any amendment goes beyond the disclosure in the international application as filed, a statement reflecting this opinion shall be included in the report.

70.14 *Mention of Certain Defects*

If the International Preliminary Examining Authority is of the opinion that, at the time it prepares the report:

(i) the international application contains any of the defects referred to in Rule 66.2(a)(ii), it shall include this opinion and the reasons therefor in the report;

(ii) the international application calls for any of the observations referred to in Rule 66.2(a)(iv), it may include this opinion in the report and, if it does, it shall also indicate in the report the reasons for such opinion.

70.15 *Remarks Concerning Unity of Invention*

If the applicant paid additional fees for the international preliminary examination, or if the international application or the international preliminary examination was restricted under Article 34(3), the report shall so indicate. Furthermore, where the international preliminary examination was carried out on restricted claims (Article 34(3)(a)) or on the main invention only (Article 34(3)(c)), the report shall indicate what parts of the international application were and what parts were not the subject of international preliminary examination.

70.16 *Signature*

The report shall be signed by an authorized officer of the International Preliminary Examining Authority.

70.11* *Mention of Amendments or Corrections of Certain Defects*

If, before the International Preliminary Examining Authority, amendments or corrections have been made, *this fact* shall be *indicated* in the report.

70.13 (old): OMIT

70.12** *Mention of Certain Defects*

If the International Preliminary Examining Authority *considers* that, at the time it prepares the report:

(i) the international application contains any of the defects referred to in Rule 66.2(a)(iii), it shall include this opinion and the reasons therefor in the report;

(ii) the international application calls for any of the observations referred to in Rule 66.2(a)(v), it may include this opinion in the report and, if it does, it shall also indicate in the report the reasons for such opinion.

70.13*** [no change]

70.14**** *Signature*

[no change]

* Rule 70.12 in the 1969 Draft.
 ** Rule 70.14 in the 1969 Draft.
 *** Rule 70.15 in the 1969 Draft.
 **** Rule 70.16 in the 1969 Draft.

70.11 Mention of Amendments or Correction of Certain Defects

If, before the International Preliminary Examining Authority, amendments or corrections have been made, this fact shall be indicated in the report.

70.12 Mention of Certain Defects

If the International Preliminary Examining Authority considers that, at the time it prepares the report:

(i) the international application contains any of the defects referred to in Rule 66.2(a)(iii), it shall include this opinion and the reasons therefor in the report;

(ii) the international application calls for any of the observations referred to in Rule 66.2(a)(v), it may include this opinion in the report and, if it does, it shall also indicate in the report the reasons for such opinion.

70.13 Remarks Concerning Unity of Invention

If the applicant paid additional fees for the international preliminary examination, or if the international application or the international preliminary examination was restricted under Article 34(3), the report shall so indicate. Furthermore, where the international preliminary examination was carried out on restricted claims (Article 34(3)(a)), or on the main invention only (Article 34(3)(c)), the report shall indicate what parts of the international application were and what parts were not the subject of international preliminary examination.

70.14 Signature

The report shall be signed by an authorized officer of the International Preliminary Examining Authority.

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70.17 *Form*

The physical requirements as to the form of the report shall be prescribed by the Administrative Instructions.

70.18 *Annexes to the Report*

If the claims, the description, or the drawings, were amended or any part of the international application was corrected before the International Preliminary Examining Authority, each replacement sheet and each sheet containing an amendment or correction (without being replaced), bearing thereon the date of receipt, the international application number, and the stamp of the International Preliminary Examining Authority, shall be attached to the report as an annex thereto, unless such sheet contains an amendment replaced or modified by a later amendment. If the amendment or the correction is submitted in the form of a letter, a copy of such letter shall also be annexed to the report.

70.19 *Languages of the Report and the Annexes*

The report and its annexes, if any, shall be in the language in which the international application to which they relate is published.

Rule 71
Transmittal of the International Preliminary
Examination Report

71.1 *Recipients*

The International Preliminary Examining Authority shall, on the same day, transmit one copy of the international preliminary examination report and its annexes, if any, to the International Bureau, and one copy to the applicant.

70.15* *Form*

[no change]

70.16** ATTACHMENT OF CORRECTIONS AND AMENDMENTS

If the claims, the description, or the drawings, were amended or any part of the international application was corrected before the International Preliminary Examining Authority, each replacement sheet *marked as provided in Rule 66.8(b)* shall be attached to the report as an *annex thereto*. *Replacement sheets superseded by later replacement sheets shall not be attached*. If the amendment is communicated in a letter, a copy of such letter shall also be annexed to the report.

70.17*** *Languages of the Report and the Annexes*

(a) *The report shall be in the language in which the international application to which it relates is published.*

(b) *Any annex shall be both in the language in which the international application to which it relates was filed and also, if it is different, in the language in which the international application to which it relates is published.*

Rule 71 (Alternative)
Transmittal of the International Preliminary
Examination Report

71.1 [no change]

71.2 COPIES OF CITED DOCUMENTS

On the specific request of the applicant, the International Preliminary Examining Authority shall send to him, together with the international preliminary examination report, a copy of those documents cited in that report which were not cited in the international search report. The said Authority may require that the applicant pay to it the cost of preparing and mailing the copies.

* Rule 70.17 in the 1969 Draft.

** Rule 70.18 in the 1969 Draft.

*** Rule 70.19 in the 1969 Draft.

70.15 *Form*

The physical requirements as to the form of the report shall be prescribed by the Administrative Instructions.

70.16 *Attachment of Corrections and Amendments*

If the claims, the description, or the drawings, were amended or any part of the international application was corrected before the International Preliminary Examining Authority, each replacement sheet marked as provided in Rule 66.8(b) shall be attached to the report as an annex thereto. Replacement sheets superseded by later replacement sheets shall not be attached. If the amendment is communicated in a letter, a copy of such letter shall also be annexed to the report.

70.17 *Languages of the Report and the Annexes*

(a) The report shall be in the language in which the international application to which it relates is published.

(b) Any annex shall be both in the language in which the international application to which it relates was filed and also, if it is different, in the language in which the international application to which it relates is published.

Rule 71

Transmittal of the International Preliminary Examination Report

71.1 *Recipients*

The International Preliminary Examining Authority shall, on the same day, transmit one copy of the international preliminary examination report and its annexes, if any, to the International Bureau, and one copy to the applicant.

71.2 *Copies of Cited Documents*

(a) The request under Article 36(4) may be presented any time during 7 years from the international filing date of the international application to which the report relates.

(b) The International Preliminary Examining Authority may require that the party (applicant or elected Office) presenting the request pay to it the cost of preparing and mailing the copies. The level of the cost of preparing copies shall be provided for in the agreements referred to in Article 32(2) between the International Preliminary Examining Authorities and the International Bureau.

(c) Any International Preliminary Examining Authority not wishing to send copies direct to any elected Office shall send a copy to the International Bureau and the International Bureau shall then proceed as provided in paragraphs (a) and (b).

(d) Any International Preliminary Examining Authority may perform the obligations referred to in (a) to (c) through another agency responsible to it.

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Rule 72
Translation of the International Preliminary
Examination Report

Rule 72 (Alternative)
Translation of the International Preliminary
Examination Report

72.1 *Languages*

[no change]

(a) Any elected State may require that the international preliminary examination report, established in any language other than the official language, or one of the official languages, of its national Office, be translated into English, French, German, Japanese, Russian, or Spanish.

(b) Any such requirement shall be notified to the International Bureau, which shall promptly publish it in the Gazette.

72.2 *Copies of Translations for the Applicant*

The International Bureau shall transmit a copy of each translation of the international preliminary examination report to the applicant at the same time as it communicates such translation to the interested elected Office or Offices.

72.3 *Observations on the Translation*

The applicant may make written observations on what, in his opinion, are errors of translation in the translation of the international preliminary examination report and shall send a copy of any such observations to each of the interested elected Offices and a copy to the International Bureau.

Rule 73
Communication of the International Preliminary
Examination Report

Rule 73 (Alternative)
Communication of the International Preliminary
Examination Report

73.1 *Preparation of Copies*

[no change]

The International Bureau shall prepare the copies of the documents to be communicated under Article 36(3)(a).

73.2 *Time Limit for Communication*

The communication provided for in Article 36(3)(a) shall be effected as promptly as possible.

Rule 74
Translations of Annexes of the
International Preliminary Examination Report
and Transmittal Thereof

Rule 74 (Alternative)
Translations of Annexes of the
International Preliminary Examination Report
and Transmittal Thereof

74.1 *Time Limit*74.1 *Time Limit*

(a) Subject to paragraph (b), the time limit referred to in Article 36(3)(b) shall be 2 months after the date of the transmittal of the annexes by the International Preliminary Examining Authority to the applicant under Article 36(1).

(a) OMIT

(b) Any replacement sheet and any amendment referred to in Rule 70.18 and filed prior to the furnishing of the translation of the international application required under Article 39 shall be translated and transmitted together with the furnishing under Article 39 or, if filed less than 1 month before such furnishing or if filed after such furnishing, 1 month after they have been filed.

Any replacement sheet referred to in Rule 70.16, or any amendment referred to in the last sentence of that Rule which was filed prior to the furnishing of the translation of the international application required under Article 39, or, where the furnishing of such translation is governed by Article 60(2)(a)(i), which was filed prior to the furnishing of the translation of the international application required under Article 22, shall be translated and transmitted together with the furnishing under Article 39 or, where applicable, under Article 22, or if filed less than 1 month before such furnishing or if filed after such furnishing, 1 month after it has been filed.

Rule 72
Translation of the International Preliminary Examination Report

72.1 *Languages*

(a) Any elected State may require that the international preliminary examination report, established in any language other than the official language, or one of the official languages, of its national Office, be translated into English, French, German, Japanese, Russian, or Spanish.

(b) Any such requirement shall be notified to the International Bureau, which shall promptly publish it in the Gazette.

72.2 *Copies of Translations for the Applicant*

The International Bureau shall transmit a copy of each translation of the international preliminary examination report to the applicant at the same time as it communicates such translation to the interested elected Office or Offices.

72.3 *Observations on the Translation*

The applicant may make written observations on what, in his opinion, are errors of translation in the translation of the international preliminary examination report and shall send a copy of any such observations to each of the interested elected Offices and a copy to the International Bureau.

Rule 73
Communication of the International Preliminary Examination Report

73.1 *Preparation of Copies*

The International Bureau shall prepare the copies of the documents to be communicated under Article 36(3)(a).

73.2 *Time Limit for Communication*

The communication provided for in Article 36(3)(a) shall be effected as promptly as possible.

Rule 74
**Translations of Annexes of the International
Preliminary Examination Report and Transmittal Thereof**

74.1 *Time Limit*

Any replacement sheet referred to in Rule 70.16, or any amendment referred to in the last sentence of that Rule which was filed prior to the furnishing of the translation of the international application required under Article 39, or, where the furnishing of such translation is governed by Article 64(2)(a)(i), which was filed prior to the furnishing of the translation of the international application required under Article 22, shall be translated and transmitted together with the furnishing under Article 39 or, where applicable, under Article 22, or, if filed less than 1 month before such furnishing or if filed after such furnishing, 1 month after it has been filed.

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Rule 75**Withdrawal of the International Application, of the Demand, or of Elections**75.1 *Withdrawal of the International Application*

Withdrawal of the international application by the applicant for the purposes of elected States may be effected prior to the communication of the international preliminary examination report under Article 36(3)(a). Such withdrawal shall have effect only in elected States. Rule 32.1, paragraphs (c) and (d), shall apply *mutatis mutandis*.

75.2 *Notification of Elected Offices*

(a) The fact that the demand has been withdrawn shall be promptly notified by the International Bureau to the national Offices of all States which, up to the time of the withdrawal, were elected States and had been informed of their election.

(b) The fact that any election has been withdrawn and the date of receipt of the withdrawal shall be promptly notified by the International Bureau to the elected Office concerned, except where it has not yet been informed that it had been elected.

75.3 *Notification of the International Preliminary Examining Authority*

The fact that the demand or all elections have been withdrawn shall be promptly notified by the International Bureau to the International Preliminary Examining Authority if, at the time of the withdrawal, the latter had been informed of the existence of the demand.

75.4 *Faculty under Article 37(4)(b)*

(a) Any Contracting State wishing to take advantage of the faculty provided for in Article 37(4)(b) shall notify the International Bureau in writing.

(b) The notification under paragraph (a) shall be promptly published by the International Bureau in the Gazette, and shall have effect in respect of international applications filed more than 1 month after the publication date of the relevant issue of the Gazette.

Rule 76**Languages of Translations and Amounts of Fees under Article 39(1)**76.1 *Notification*

(a) Any Contracting State requiring the furnishing of a translation or the payment of a national fee, or both, under Article 39(1), shall notify the International Bureau of:

(i) the languages from which and the language into which it requires translation,

(ii) the amount of the national fee.

(b) Any notification received by the International Bureau under paragraph (a) shall be published by the International Bureau in the Gazette.

Rule 75 (Alternative)**Withdrawal of the Demand, or of Elections**

75.1 WITHDRAWALS

(a) *Withdrawal of the demand or all the elections may be effected prior to the expiration of 25 months from the priority date except as to any elected State in which national processing or examination has already started. Withdrawal of the election of any elected State may be effected prior to the date on which examination and processing may start in that State.*

(b) *Withdrawal shall be effected by a signed notice from the applicant to the International Bureau. In the case of Rule 4.8(b), the notice shall require the signature of all the applicants.*

75.2 *Notification of Elected Offices*

(a) The fact that the demand or all elections have been withdrawn shall be promptly notified by the International Bureau to the national Offices of all States which, up to the time of the withdrawal, were elected States and had been informed of their election.

(b) [no change]

75.3 [no change]

75.4 [no change]

Rule 76 (Alternative)**Languages of Translations and Amounts of Fees under Article 39(1)**

76.1 [no change]

Rule 75
Withdrawal of the Demand, or of Elections

75.1 *Withdrawals*

(a) Withdrawal of the demand or all the elections may be effected prior to the expiration of 25 months from the priority date except as to any elected State in which national processing or examination has already started. Withdrawal of the election of any elected State may be effected prior to the date on which examination and processing may start in that State.

(b) Withdrawal shall be effected by a signed notice from the applicant to the International Bureau. In the case of Rule 4.8(b), the notice shall require the signature of all the applicants.

75.2 *Notification of Elected Offices*

(a) The fact that the demand or all elections have been withdrawn shall be promptly notified by the International Bureau to the national Offices of all States which, up to the time of the withdrawal, were elected States and had been informed of their election.

(b) The fact that any election has been withdrawn and the date of receipt of the withdrawal shall be promptly notified by the International Bureau to the elected Office concerned, except where it has not yet been informed that it had been elected.

75.3 *Notification of the International Preliminary Examining Authority*

The fact that the demand or all elections have been withdrawn shall be promptly notified by the International Bureau to the International Preliminary Examining Authority if, at the time of the withdrawal, the latter had been informed of the existence of the demand.

75.4 *Faculty under Article 37(4)(b)*

(a) Any Contracting State wishing to take advantage of the faculty provided for in Article 37(4)(b) shall notify the International Bureau in writing.

(b) The notification under paragraph (a) shall be promptly published by the International Bureau in the Gazette, and shall have effect in respect of international applications filed more than 1 month after the publication date of the relevant issue of the Gazette.

Rule 76
Languages of Translations and Amounts of Fees under Article 39(1);
Translation of Priority Document

76.1 *Notification*

(a) Any Contracting State requiring the furnishing of a translation or the payment of a national fee, or both, under Article 39(1), shall notify the International Bureau of:

(i) the languages from which and the language into which it requires translation,

(ii) the amount of the national fee.

(b) Any notification received by the International Bureau under paragraph (a) shall be published by the International Bureau in the Gazette.

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(c) If the requirements under paragraph (a) change later, such changes shall be notified by the Contracting State to the International Bureau and that Bureau shall promptly publish the notification in the Gazette. If the change means that translation is required into a language which, before the change, was not required, such change shall be effective only with respect to a demand submitted later than 2 months after the publication of the notification in the Gazette. Otherwise, the effective date of any change shall be determined by the Contracting State.

76.2 *Languages*

The language into which translation may be required must be an official language of the elected Office. If there are several of such languages, no translation may be required if the international application is in one of them. If there are several official languages and a translation must be furnished, the applicant may choose any of those languages. Notwithstanding the foregoing provisions of this paragraph, if there are several official languages but the national law prescribes the use of one such language for foreigners, a translation into that language may be required.

Rule 77 Faculty under Article 39(1)(b)

77.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limit provided for in Article 39(1)(a) shall notify the International Bureau of the time limit so allowed.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) Notifications concerning the shortening of the previously fixed time limit shall be effective in relation to demands submitted after the expiration of 3 months computed from the date on which the notification was published by the International Bureau.

(d) Notifications concerning the lengthening of the previously fixed time limit shall become effective upon publication by the International Bureau in the Gazette in respect of demands pending at the time or submitted after the date of such publication, or, if the Contracting State effecting the notification fixes some later date, as from the latter date.

76.2 [no change]

76.3 STATEMENTS UNDER ARTICLE 19

For the purposes of Article 39 and the present Rule, any statement made under Article 19(1) shall be considered as part of the international application.

Rule 76bis (Alternative) Translation of Priority Document

The applicant shall not be required to furnish to any elected Office a certified translation of the priority document before the expiration of the applicable time limit under Article 39.

Rule 77 (Alternative) Faculty under Article 39(1)(b)

77.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limit provided for in Article 39(1)(a) shall notify the International Bureau of the time limit so *fixed*.

(b) [no change]

(c) [no change]

(d) [no change]

(c) If the requirements under paragraph (a) change later, such changes shall be notified by the Contracting State to the International Bureau and that Bureau shall promptly publish the notification in the Gazette. If the change means that translation is required into a language which, before the change, was not required, such change shall be effective only with respect to a demand submitted later than 2 months after the publication of the notification in the Gazette. Otherwise, the effective date of any change shall be determined by the Contracting State.

76.2 *Languages*

The language into which translation may be required must be an official language of the elected Office. If there are several of such languages, no translation may be required if the international application is in one of them. If there are several official languages and a translation must be furnished, the applicant may choose any of those languages. Notwithstanding the foregoing provisions of this paragraph, if there are several official languages but the national law prescribes the use of one such language for foreigners, a translation into that language may be required.

76.3 *Statements under Article 19*

For the purposes of Article 39 and the present Rule, any statement made under Article 19(1) shall be considered as part of the international application.

76.4 *Time Limit for Translation of Priority Document*

The applicant shall not be required to furnish to any elected Office a certified translation of the priority document before the expiration of the applicable time limit under Article 39.

Rule 77

Faculty under Article 39(1)(b)

77.1 *Exercise of Faculty*

(a) Any Contracting State allowing a time limit expiring later than the time limit provided for in Article 39(1)(a) shall notify the International Bureau of the time limit so fixed.

(b) Any notification received by the International Bureau under paragraph (a) shall be promptly published by the International Bureau in the Gazette.

(c) Notifications concerning the shortening of the previously fixed time limit shall be effective in relation to demands submitted after the expiration of 3 months computed from the date on which the notification was published by the International Bureau.

(d) Notifications concerning the lengthening of the previously fixed time limit shall become effective upon publication by the International Bureau in the Gazette in respect of demands pending at the time or submitted after the date of such publication, or, if the Contracting State effecting the notification fixes some later date, as from the latter date.

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Rule 78
Amendment of the Claims, the Description, and the
Drawings, Before Elected Offices

78.1 *Time Limit under Article 41(1)*

(a) The applicant shall, if he so wishes, exercise the right under Article 41 after the transmittal of the international preliminary examination report under Article 36(1) has been effected and before the time limit applicable under Article 39 expires, provided that, if the said transmittal has not taken place by the expiration of the time limit applicable under Article 39, he shall exercise the said right not later than on such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

(b) In any elected State in which the national law provides that examination starts only on special request, the national law may provide that the time limit within or the time at which the applicant may exercise the right under Article 41 shall be the same as that provided by the national law for the filing of amendments in the case of the examination, on special request, of national applications, provided that such time limit shall not expire prior to, or such time shall not come before, the expiration of the time limit applicable under Article 39.

(c) No elected State shall grant a patent or refuse the grant of a patent before the time limit applicable under this Rule has expired.

PART D
RULES CONCERNING CHAPTER III OF
THE TREATY

Rule 79
Calendar

79.1 *Expressing Dates*

Applicants, national Offices, receiving Offices, International Searching and Preliminary Examining Authorities, and the International Bureau, shall, for the purposes of the Treaty and the Regulations, express any date in terms of the Christian era and the Gregorian calendar, or, if they use other eras and calendars, they shall also express any date in terms of the Christian era and the Gregorian calendar.

Rule 78 (Alternative)
Amendment of the Claims, the Description, and the
Drawings, Before Elected Offices

78.1 TIME LIMIT WHERE ELECTION IS EFFECTED PRIOR TO EXPIRATION OF 19 MONTHS FROM PRIORITY DATE

(a) *Where the election of any Contracting State is effected prior to the expiration of the 19th month from the priority date*, the applicant shall, if he so wishes, exercise the right under Article 41 after the transmittal of the international preliminary examination report under Article 36(1) has been effected and before the time limit applicable under Article 39 expires, provided that, if the said transmittal has not taken place by the expiration of the time limit applicable under Article 39, he shall exercise the said right not later than on such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

(b) [no change]

(c) OMIT

78.2 TIME LIMIT WHERE ELECTION IS EFFECTED AFTER EXPIRATION OF 19 MONTHS FROM PRIORITY DATE

Where the election of any Contracting State has been effected after the expiration of the 19th month from the priority date and the applicant wishes to make amendments under Article 41, the time limit for making amendments under Article 28 shall apply.

78.3 UTILITY MODELS

The provisions of Rules 6.5 and 13.5 shall apply, mutatis mutandis, before elected Offices. If the election was made before the expiration of the 19th month from the priority date, the reference to the time limit applicable under Article 22 is replaced by a reference to the time limit applicable under Article 39.

PART D
RULES CONCERNING CHAPTER III OF
THE TREATY

Rule 79 (Alternative)
Calendar

[no change]

Rule 78
Amendment of the Claims, the Description,
and the Drawings, Before Elected Offices

78.1 *Time Limit Where Election Is Effected Prior to Expiration of 19 months from Priority Date*

(a) Where the election of any Contracting State is effected prior to the expiration of the 19th month from the priority date, the applicant shall, if he so wishes, exercise the right under Article 41 after the transmittal of the international preliminary examination report under Article 36(1) has been effected and before the time limit applicable under Article 39 expires, provided that, if the said transmittal has not taken place by the expiration of the time limit applicable under Article 39, he shall exercise the said right not later than on such expiration date. In either case, the applicant may exercise the said right at any other time if so permitted by the national law of the said State.

(b) In any elected State in which the national law provides that examination starts only on special request, the national law may provide that the time limit within or the time at which the applicant may exercise the right under Article 41 shall, where the election of any Contracting State is effected prior to the expiration of the 19th month from the priority date, be the same as that provided by the national law for the filing of amendments in the case of the examination, on special request, of national applications, provided that such time limit shall not expire prior to, or such time shall not come before, the expiration of the time limit applicable under Article 39.

78.2 *Time Limit Where Election Is Effected After Expiration of 19 months From Priority Date*

Where the election of any Contracting State has been effected after the expiration of the 19th month from the priority date and the applicant wishes to make amendments under Article 41, the time limit for making amendments under Article 28 shall apply.

78.3 *Utility Models*

The provisions of Rules 6.5 and 13.5 shall apply, *mutatis mutandis*, before elected Offices. If the election was made before the expiration of the 19th month from the priority date, the reference to the time limit applicable under Article 22 is replaced by a reference to the time limit applicable under Article 39.

PART D
RULES CONCERNING CHAPTER III OF THE TREATY

Rule 79
Calendar

79.1 *Expressing Dates*

Applicants, national Offices, receiving Offices, International Searching and Preliminary Examining Authorities, and the International Bureau, shall, for the purposes of the Treaty and the Regulations, express any date in terms of the Christian era and the Gregorian calendar, or, if they use other eras and calendars, they shall also express any date in terms of the Christian era and the Gregorian calendar.

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Rule 80
Computation of Time Limits

80.1 *Periods Expressed in Years*

When a period is expressed as one year or a certain number of years, computation shall start on the day on which the relevant event occurred, and the period shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the computation started, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.2 *Periods Expressed in Months*

When a period is expressed as one month or a certain number of months, computation shall start on the day on which the relevant event occurred, and the period shall expire in the relevant subsequent month on the day which has the same number as the day on which the computation started, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.3 *Periods Expressed in Days*

When a period is expressed as a certain number of days, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire on the day on which the last day of the count has been reached.

80.4 *Local Dates*

(a) The date which is taken into consideration as the starting date of the computation of any period shall be the date which prevails in the locality at the time when the relevant event occurred.

(b) The date on which any period expires shall be the date which prevails in the locality in which the required document must be filed or the required fee must be paid.

80.5 *Expiration on a Non-Working Day*

If the expiration of any period during which any document or fee must reach a national Office or intergovernmental organization falls on a day on which such Office or organization is not open to the public for the purposes of the transaction of official business, or on which ordinary mail is not delivered in the locality in which such Office or organization is situated, the period shall expire on the next subsequent day on which neither of the said two circumstances exists.

80.6 *Date of Documents*

Where a period starts on the day of the date of a document or letter emanating from a national Office or intergovernmental organization, any interested party may prove that the said document or letter was mailed on a day later than the date it bears, in which case the date of actual mailing shall, for the purposes of computing the period, be considered to be the date on which the period starts.

Rule 80 (Alternative)
Computation of Time Limits

80.1 *Periods Expressed in Years*

When a period is expressed as one year or a certain number of years, computation shall start on the day *following the day* on which the relevant event occurred, and the period shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which *the said event occurred*, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.2 *Periods Expressed in Months*

When a period is expressed as one month or a certain number of months, computation shall start on the day *following the day* on which the relevant event occurred, and the period shall expire in the relevant subsequent month on the day which has the same number as the day on which *the said event occurred*, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.3 [no change]

80.4 [no change]

80.5 [no change]

80.6 [no change]

Rule 80

Computation of Time Limits

80.1 Periods Expressed in Years

When a period is expressed as one year or a certain number of years, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.2 Periods Expressed in months

When a period is expressed as one month or a certain number of months, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

80.3 Periods Expressed in Days

When a period is expressed as a certain number of days, computation shall start on the day following the day on which the relevant event occurred, and the period shall expire on the day on which the last day of the count has been reached.

80.4 Local Dates

(a) The date which is taken into consideration as the starting date of the computation of any period shall be the date which prevails in the locality at the time when the relevant event occurred.

(b) The date on which any period expires shall be the date which prevails in the locality in which the required document must be filed or the required fee must be paid.

80.5 Expiration on a Non-Working Day

If the expiration of any period during which any document or fee must reach a national Office or intergovernmental organization falls on a day on which such Office or organization is not open to the public for the purposes of the transaction of official business, or on which ordinary mail is not delivered in the locality in which such Office or organization is situated, the period shall expire on the next subsequent day on which neither of the said two circumstances exists.

80.6 Date of Documents

Where a period starts on the day of the date of a document or letter emanating from a national Office or intergovernmental organization, any interested party may prove that the said document or letter was mailed on a day later than the date it bears, in which case the date of actual mailing shall, for the purposes of computing the period, be considered to be the date on which the period starts.

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80.7 *End of Working Day*

(a) A period expiring on a given day shall expire at the moment the national Office or intergovernmental organization with which the document must be filed or to which the fee must be paid closes for business on that day.

(b) Any Office or organization may depart from the provisions of paragraph (a) up to midnight on the relevant day.

(c) The International Bureau shall be open for business until 6 p.m.

80.7 [no change]

Rule 81**Modification of Time Limits Fixed in the Treaty**81.1 *Proposal*

(a) Any Contracting State and the Director General may propose a modification under Article 47(2).

(b) Proposals made by a Contracting State shall be presented to the Director General.

81.2 *Decision by the Assembly*

(a) When the proposal is made to the Assembly, its text shall be sent by the Director General to all Contracting States at least 2 months in advance of that session of the Assembly whose agenda includes the proposal.

(b) During the discussion of the proposal in the Assembly, the proposal may be amended or consequential amendments proposed.

(c) The proposal shall be considered adopted if none of the Contracting States present at the time of voting votes against the proposal.

81.3 *Decision by Correspondence*

(a) When consultation by correspondence is chosen, the proposal shall be included in a written communication from the Director General to the Contracting States, inviting them to express their vote in writing.

(b) The invitation shall fix the time limit within which the reply containing the vote expressed in writing must reach the International Bureau. That time limit shall not be less than 3 months from the date of the invitation.

(c) Replies containing formal proposals for amending the proposal shall be considered negative votes. Replies merely containing statements as to preferences or other observations shall be considered positive votes.

(d) The proposal shall be considered adopted if none of the Contracting States opposes the amendment and if at least one-half of the Contracting States express either approval or indifference or abstention.

Rule 81 (Alternative)**Modification of Time Limits Fixed in the Treaty**81.1 *Proposal*

(a) Any Contracting State *or* the Director General may propose a modification under Article 47(2).

(b) [no change]

81.2 [no change]

81.3 [no change]

80.7 *End of Working Day*

(a) A period expiring on a given day shall expire at the moment the national Office or intergovernmental organization with which the document must be filed or to which the fee must be paid closes for business on that day.

(b) Any Office or organization may depart from the provisions of paragraph (a) up to midnight on the relevant day.

(c) The International Bureau shall be open for business until 6 p.m.

Rule 81

Modification of Time Limits Fixed in the Treaty

81.1 *Proposal*

(a) Any Contracting State or the Director General may propose a modification under Article 47(2).

(b) Proposals made by a Contracting State shall be presented to the Director General.

81.2 *Decision by the Assembly*

(a) When the proposal is made to the Assembly, its text shall be sent by the Director General to all Contracting States at least 2 months in advance of that session of the Assembly whose agenda includes the proposal.

(b) During the discussion of the proposal in the Assembly, the proposal may be amended or consequential amendments proposed.

(c) The proposal shall be considered adopted if none of the Contracting States present at the time of voting votes against the proposal.

81.3 *Voting by Correspondence*

(a) When voting by correspondence is chosen, the proposal shall be included in a written communication from the Director General to the Contracting States, inviting them to express their vote in writing.

(b) The invitation shall fix the time limit within which the reply containing the vote expressed in writing must reach the International Bureau. That time limit shall not be less than 3 months from the date of the invitation.

(c) Replies must be either positive or negative. Proposals for amendments or mere observations shall not be regarded as votes.

(d) The proposal shall be considered adopted if none of the Contracting States opposes the amendment and if at least one-half of the Contracting States express either approval or indifference or abstention.

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Rule 82
Irregularities in the Mail Service

Rule 82 (Alternative)
Irregularities in the Mail Service

82.1 *Delay or Loss in Mail*

[no change]

(a) Subject to the provisions of Rule 22.3, any interested party may offer evidence that he has mailed the document or letter 5 days prior to the expiration of the time limit. Except in cases where surface mail normally arrives at its destination within 2 days of mailing, or where no airmail service is available, such evidence may be offered only if the mailing was by airmail. In any case, evidence may be offered only if the mailing was by mail recorded or registered by the postal authorities.

(b) If such mailing is proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in arrival shall be excused, or, if the document or letter is lost in the mail, substitution for it of a new copy shall be permitted, provided that the interested party proves to the satisfaction of the said Office or organization that the document or letter offered in substitution is identical with the document or letter lost.

(c) In the cases provided for in paragraph (b), evidence of mailing within the prescribed time limit, and, where the document or letter was lost, the substitute document or letter as well, shall be submitted within 1 month after the date on which the interested party noticed – or with due diligence should have noticed – the delay or the loss, and in no case later than 6 months after the expiration of the time limit applicable in the given case.

82.2 *Interruption in the Mail Service*

(a) Subject to the provisions of Rule 22.3, any interested party may offer evidence that on any of the 10 days preceding the day of expiration of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, in the locality where the interested party resides or has his place of business or is staying.

(b) If such circumstances are proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in arrival shall be excused, provided that the interested party proves to the satisfaction of the said Office or organization that he effected the mailing within 5 days after the mail service was resumed. The provisions of Rule 82.1(c) shall apply *mutatis mutandis*.

Rule 83
Right to Practice Before International Authorities

Rule 83 (Alternative)
Right to Practice Before International Authorities

83.1 *Proof of Right*

[no change]

The International Bureau, the competent International Searching Authority, and the competent International Preliminary Examining Authority, may require the production of proof of the right to practice referred to in Article 49.

Rule 82

Irregularities in the Mail Service

82.1 Delay or Loss in Mail

(a) Subject to the provisions of Rule 22.3, any interested party may offer evidence that he has mailed the document or letter 5 days prior to the expiration of the time limit. Except in cases where surface mail normally arrives at its destination within 2 days of mailing, or where no airmail service is available, such evidence may be offered only if the mailing was by airmail. In any case, evidence may be offered only if the mailing was by mail registered by the postal authorities.

(b) If such mailing is proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in arrival shall be excused, or, if the document or letter is lost in the mail, substitution for it of a new copy shall be permitted, provided that the interested party proves to the satisfaction of the said Office or organization that the document or letter offered in substitution is identical with the document or letter lost.

(c) In the cases provided for in paragraph (b), evidence of mailing within the prescribed time limit, and, where the document or letter was lost, the substitute document or letter as well, shall be submitted within 1 month after the date on which the interested party noticed – or with due diligence should have noticed – the delay or the loss, and in no case later than 6 months after the expiration of the time limit applicable in the given case.

82.2 Interruption in the Mail Service

(a) Subject to the provisions of Rule 22.3, any interested party may offer evidence that on any of the 10 days preceding the day of expiration of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, in the locality where the interested party resides or has his place of business or is staying.

(b) If such circumstances are proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in arrival shall be excused, provided that the interested party proves to the satisfaction of the said Office or organization that he effected the mailing within S days after the mail service was resumed. The provisions of Rule 82.1(c) shall apply *mutatis mutandis*.

Rule 83

Right to Practice Before International Authorities

83.1 Proof of Right

The International Bureau, the competent International Searching Authority, and the competent International Preliminary Examining Authority, may require the production of proof of the right to practice referred to in Article 49.

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83.2 *Information*

(a) The national Office or the intergovernmental organization which the interested person is alleged to have a right to practice before shall, upon request, inform the International Bureau, the competent International Searching Authority, or the competent International Preliminary Examining Authority, whether such person has the right to practice before it.

(b) Such information shall be binding upon the International Bureau, the International Searching Authority, or the International Preliminary Examining Authority, as the case may be.

PART E
RULES CONCERNING CHAPTER IV OF
THE TREATY

Rule 84
Expenses of Delegations

84.1 *Expenses Borne by Governments*

The expenses of each Delegation shall be borne by the Government which has appointed it.

Rule 85
Absence of Quorum in the Assembly

85.1 *Consultation by Correspondence*

In the case provided for in Article 50(5)(b), the International Bureau shall communicate the decisions of the Assembly (other than those concerning the Assembly's own procedure) to the Contracting States which were not represented and shall invite them to express in writing their vote or abstention within a period of 3 months from the date of the communication. If, at the expiration of that period, the number of Contracting States having thus expressed their vote or abstention attains the number of Contracting States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

Rule 86
The Gazette

86.1 *Contents*

(a) The Gazette referred to in Article 51(5) shall contain:

(i) for each published international application, data specified by the Administrative Instructions taken from the front page of the pamphlet published under Rule 48, the drawing (if any) appearing on the said front page, and the abstract,

(ii) the schedule of all fees payable to the receiving Offices, the International Bureau, and the International Searching and Preliminary Examining Authorities,

(iii) notices whose publication is required under the Treaty or these Regulations,

PART E
RULES CONCERNING CHAPTER IV OF
THE TREATY

Rule 84 (Alternative)
Expenses of Delegations

[no change]

Rule 85 (Alternative)
Absence of Quorum in the Assembly

[no change]

Rule 86 (Alternative)
The Gazette

86.1 *Contents*

The Gazette referred to in Article 51(5) shall contain:

(i) [no change]

(ii) [no change]

(iii) notices *the* publication of *which* is required under the Treaty or these Regulations,

83.2 *Information*

(a) The national Office or the intergovernmental organization which the interested person is alleged to have a right to practice before shall, upon request, inform the International Bureau, the competent International Searching Authority, or the competent International Preliminary Examining Authority, whether such person has the right to practice before it.

(b) Such information shall be binding upon the International Bureau, the International Searching Authority, or the International Preliminary Examining Authority, as the case may be.

PART E RULES CONCERNING CHAPTER V OF THE TREATY

Rule 84 Expenses of Delegations

84.1 *Expenses Borne by Governments*

The expenses of each Delegation participating in any organ established by or under the Treaty shall be borne by the Government which has appointed it.

Rule 85 Absence of Quorum in the Assembly

85.1 *Voting by Correspondence*

In the case provided for in Article 53(5)(b), the International Bureau shall communicate the decisions of the Assembly (other than those concerning the Assembly's own procedure) to the Contracting States which were not represented and shall invite them to express in writing their vote or abstention within a period of 3 months from the date of the communication. If, at the expiration of that period, the number of Contracting States having thus expressed their vote or abstention attains the number of Contracting States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

Rule 86 The Gazette

86.1 *Contents*

The Gazette referred to in Article 55(4) shall contain:

(i) for each published international application, data specified by the Administrative Instructions taken from the front page of the pamphlet published under Rule 48, the drawing (if any) appearing on the said front page, and the abstract,

(ii) the schedule of all fees payable to the receiving Offices, the International Bureau, and the International Searching and Preliminary Examining Authorities,

(iii) notices the publication of which is required under the Treaty or these Regulations,

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(iv) information, if and to the extent furnished to the International Bureau by the designated or elected Offices, on the question whether the requirements provided for in Articles 22 or 39 have been complied with in respect of the international applications designating or electing the Office concerned,

(v) any other useful information prescribed by the Administrative Instructions, provided access to such information is not prohibited under the Treaty or these Regulations.

86.2 *Languages*

(a) The Gazette shall be published in English-language editions and French-language editions. It shall also be published in editions in any other language, provided the cost of publication is assured through sales or subventions.

(b) The Assembly may order the publication of the Gazette in languages other than those referred to in paragraph (a).

86.3 *Frequency*

The Gazette shall be published once a week.

86.4 *Sale*

The subscription and other sale prices of the Gazette shall be fixed in the Administrative Instructions.

86.5 *Title*

The title of the Gazette shall be "Gazette of International Patent Applications," and "Gazette des Demandes internationales des Brevets," respectively.

86.6 *Further Details*

Further details concerning the Gazette may be provided for in the Administrative Instructions.

Rule 87
Copies of Publications

87.1 *Free Copies*

Any International Searching or Preliminary Examining Authority shall have the right to receive, free of charge, two copies of every published international application, of the Gazette, and of any other publication of general interest published by the International Bureau in connection with the Treaty or these Regulations.

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(iv) [no change]

(v) [no change]

86.2 [no change]

86.3 [no change]

86.4 [no change]

86.5 [no change]

86.6 [no change]

Rule 87 (Alternative)
Copies of Publications

87.1 INTERNATIONAL SEARCHING AND
PRELIMINARY EXAMINING
AUTHORITIES

[no change in text]

87.2 NATIONAL OFFICES

(a) *The national Office of any Contracting State shall have the right to receive, free of charge, one copy of every published international application in which it is not designated, of the Gazette, and of any other publication of general interest published by the International Bureau in connection with the Treaty or these Regulations.*

(b) *The publications referred to in paragraph (a) shall be sent on special request, which shall be made, in respect of each year, by November 30 of the preceding year. If any publication is available in more than one language, the request shall specify the language in which it is desired.*

(iv) information, if and to the extent furnished to the International Bureau by the designated or elected Offices, on the question whether the requirements provided for in Articles 22 or 39 have been complied with in respect of the international applications designating or electing the Office concerned,

(v) any other useful information prescribed by the Administrative Instructions, provided access to such information is not prohibited under the Treaty or these Regulations.

86.2 *Languages*

(a) The Gazette shall be published in an English-language edition and a French-language edition. It shall also be published in editions in any other language, provided the cost of publication is assured through sales or subventions.

(b) The Assembly may order the publication of the Gazette in languages other than those referred to in paragraph (a).

86.3 *Frequency*

The Gazette shall be published once a week.

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The subscription and other sale prices of the Gazette shall be fixed in the Administrative Instructions.

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The title of the Gazette shall be "Gazette of International Patent Applications," and "Gazette des Demandes internationales de brevets," respectively.

86.6 *Further Details*

Further details concerning the Gazette may be provided for in the Administrative Instructions.

Rule 87 Copies of Publications

87.1 *International Searching and Preliminary Examining Authorities*

Any International Searching or Preliminary Examining Authority shall have the right to receive, free of charge, two copies of every published international application, of the Gazette, and of any other publication of general interest published by the International Bureau in connection with the Treaty or these Regulations.

87.2 *National Offices*

(a) Any national Office shall have the right to receive, free of charge, one copy of every published international application, of the Gazette, and of any other publication of general interest published by the International Bureau in connection with the Treaty or these Regulations.

(b) The publications referred to in paragraph (a) shall be sent on special request, which shall be made, in respect of each year, by November 30 of the preceding year. If any publication is available in more than one language, the request shall specify the language in which it is desired.

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Rule 88
Amendment of the Regulations

88.1 *Requirement of Unanimity*

Amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment:

- (i) Rule 14.1 (Transmittal Fee),
- (ii) Rule 22.2 (Transmittal of the Record Copy; Alternative Procedure),
- (iii) Rule 22.3 (Time Limit Under Article 12(3)),
- (iv) Rule 33 (Relevant Prior Art for International Search),
- (v) Rule 64 (Prior Art for International Preliminary Examination),
- (vi) the present paragraph.

88.2 *Requirement of Absence of Opposition by Certain States*

Amendment of the following provisions of these Regulations shall require that no State which has the right to vote in the Assembly, and is referred to in Article 54(3)(a)(ii), vote against the proposed amendment:

- (i) Rule 34 (Minimum Documentation),
- (ii) Rule 39 (Subject Matter Under Article 17(2)(a)(i)),
- (iii) Rule 67 (Subject Matter Under Article 34(4)(a)(i)),
- (iv) the present paragraph.

88.3 *Procedure*

Any proposal for amending a provision referred to in Rules 88.1 or 88.2, if the proposal is to be decided upon in the Assembly, shall be communicated to all Contracting States at least 2 months prior to the opening of that session of the Assembly which is called upon to make a decision on the proposal.

Rule 89
Administrative Instructions

89.1 *Scope*

(a) The Administrative Instructions shall contain provisions:

- (i) concerning matters in respect of which these Regulations expressly refer to such Instructions,
- (ii) concerning any details in respect of the application of these Regulations.

(b) The Administrative Instructions shall not be in conflict with the provisions of the Treaty, these Regulations, or any agreement concluded by the International Bureau with an International Searching Authority, or an International Preliminary Examining Authority.

Rule 88 (Alternative)
Amendment of the Regulations

88.1 *Requirement of Unanimity*

Amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment:

- (i) [no change]
- (ii) [no change]
- (iii) [no change]
- (iv) [no change]
- (v) [no change]
- (vi) *Rule 81 (Modification of Time Limits Fixed in the Treaty),*
- (vii) *the present paragraph.*

88.2 [no change]

88.3 [no change]

Rule 89 (Alternative)
Administrative Instructions

[no change]

Rule 88

Amendment of the Regulations

88.1 *Requirement of Unanimity*

Amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment:

- (i) Rule 14.1 (Transmittal Fee),
- (ii) Rule 22.2 (Transmittal of the Record Copy; Alternative Procedure),
- (iii) Rule 22.3 (Time Limit Under Article 12(3)),
- (iv) Rule 33 (Relevant Prior Art for International Search),
- (v) Rule 64 (Prior Art for International Preliminary Examination),
- (vi) Rule 81 (Modification of Time Limits Fixed in the Treaty),
- (vii) the present paragraph (i.e., Rule 88.1).

88.2 *Requirement of Unanimity During a Transitional Period*

During the first 5 years after the entry into force of the Treaty, amendment of the following provisions of these Regulations shall require that no State having the right to vote in the Assembly vote against the proposed amendment:

- (i) Rule 5 (The Description),
- (ii) Rule 6 (The Claims),
- (iii) the present paragraph (i.e., Rule 88.2).

88.3 *Requirement of Absence of Opposition by Certain States*

Amendment of the following provisions of these Regulations shall require that no State referred to in Article 58(3)(a)(ii) and having the right to vote in the Assembly vote against the proposed amendment:

- (i) Rule 34 (Minimum Documentation),
- (ii) Rule 39 (Subject Matter Under Article 17(2)(a)(i)),
- (iii) Rule 67 (Subject Matter Under Article 34(4)(a)(i)),
- (iv) the present paragraph (i.e., Rule 88.3).

88.4 *Procedure*

Any proposal for amending a provision referred to in Rules 88.1, 88.2 or 88.3, shall, if the proposal is to be decided upon in the Assembly, be communicated to all Contracting States at least 2 months prior to the opening of that session of the Assembly which is called upon to make a decision on the proposal.

Rule 89

Administrative Instructions

89.1 *Scope*

(a) The Administrative Instructions shall contain provisions:

- (i) concerning matters in respect of which these Regulations expressly refer to such Instructions,
- (ii) concerning any details in respect of the application of these Regulations.

(b) The Administrative Instructions shall not be in conflict with the provisions of the Treaty, these Regulations, or any agreement concluded by the International Bureau with an International Searching Authority, or an International Preliminary Examining Authority.

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89.2 *Source*

(a) The Administrative Instructions shall be drawn up and promulgated by the Director General after consultation with the receiving Offices and the International Searching and Preliminary Examining Authorities.

(b) They may be modified by the Director General after consultation with the Offices or Authorities which have a direct interest in the proposed modification.

(c) The Assembly may invite the Director General to modify the Administrative Instructions, and the Director General shall proceed accordingly.

89.3 *Publication and Entry Into Force*

(a) The Administrative Instructions and any modification thereof shall be published in the Gazette.

(b) Each publication shall specify the date on which the published provisions come into effect. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication in the Gazette.

PART F
RULES CONCERNING SEVERAL CHAPTERS
OF THE TREATY

Rule 90
Representation

90.1 *Definitions*

For the purposes of Rule 90.2 and Rule 90.3:

(i) "agent" means any of the persons referred to in Article 49;

(ii) "common representative" means the applicant referred to in Rule 4.8.

90.2 *Effects*

(a) Any act by or in relation to an agent shall have the effect of an act by or in relation to the applicant or applicants having appointed the agent.

(b) Any act by or in relation to a common representative or his agent shall have the effect of an act by or in relation to all the applicants.

(c) If there are several agents appointed by the same applicant or applicants, any act by or in relation to any of the several agents shall have the effect of an act by or in relation to the said applicant or applicants.

(d) The effects described in paragraphs (a), (b), and (c), shall apply to the processing of the international application before the receiving Office, the International Bureau, the International Searching Authority, and the International Preliminary Examining Authority.

90.3 *Appointment*

(a) Appointment of any agent or of any common representative within the meaning of Rule 4.8(a), if the said agent or common representative is not designated in the request signed by all applicants, shall be effected in a separate signed power of attorney.

PART F
RULES CONCERNING SEVERAL CHAPTERS
OF THE TREATY

Rule 90 (Alternative)
Representation

90.1 [no change]

90.2 [no change]

90.3 *Appointment*

(a) Appointment of any agent or of any common representative within the meaning of Rule 4.8(a), if the said agent or common representative is not designated in the request signed by all applicants, shall be effected in a separate signed power of attorney (*i.e., a document appointing an agent or a common representative*).

89.2 *Source*

(a) The Administrative Instructions shall be drawn up and promulgated by the Director General after consultation with the receiving Offices and the International Searching and Preliminary Examining Authorities.

(b) They may be modified by the Director General after consultation with the Offices or Authorities which have a direct interest in the proposed modification.

(c) The Assembly may invite the Director General to modify the Administrative Instructions, and the Director General shall proceed accordingly.

89.3 *Publication and Entry Into Force*

(a) The Administrative Instructions and any modification thereof shall be published in the Gazette.

(b) Each publication shall specify the date on which the published provisions come into effect. The dates may be different for different provisions, provided that no provision may be declared effective prior to its publication in the Gazette.

PART F RULES CONCERNING SEVERAL CHAPTERS OF THE TREATY

Rule 90 Representation

90.1 *Definitions*

For the purposes of Rule 90.2 and Rule 90.3:

(i) “agent” means any of the persons referred to in Article 49;

(ii) “common representative” means the applicant referred to in Rule 4.8.

90.2 *Effects*

(a) Any act by or in relation to an agent shall have the effect of an act by or in relation to the applicant or applicants having appointed the agent.

(b) Any act by or in relation to a common representative or his agent shall have the effect of an act by or in relation to all the applicants.

(c) If there are several agents appointed by the same applicant or applicants, any act by or in relation to any of the several agents shall have the effect of an act by or in relation to the said applicant or applicants.

(d) The effects described in paragraphs (a), (b), and (c), shall apply to the processing of the international application before the receiving Office, the International Bureau, the International Searching Authority, and the International Preliminary Examining Authority.

90.3 *Appointment*

(a) Appointment of any agent or of any common representative within the meaning of Rule 4.8(a), if the said agent or common representative is not designated in the request signed by all applicants, shall be effected in a separate signed power of attorney (i.e., a document appointing an agent or a common representative).

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(b) The power of attorney may be submitted to the receiving Office or the International Bureau. Whichever of the two is the recipient of the power of attorney submitted shall immediately notify the other and the interested International Searching Authority and the interested International Preliminary Examining Authority.

(c) If the separate power of attorney is not signed as provided in paragraph (a), or if the required separate power of attorney is missing, or if the indication of the name or address of the appointed person does not comply with Rule 4.4, the power of attorney shall be considered nonexistent until the defect is corrected.

90.4 *Revocation*

(a) Any appointment may be revoked by the persons or their successors in title who have made the appointment.

(b) Rule 90.3 shall apply, *mutatis mutandis*, to the document containing the revocation.

Rule 91 Obvious Errors of Transcription

91.1 *Rectification*

(a) Subject to paragraphs (b) and (c), obvious errors of transcription in the international application or other papers submitted by the applicant may be rectified.

(b) Errors which are due to the fact that something other than what was obviously intended was written in the international application or other paper shall be regarded as obvious errors of transcription. Omissions of entire elements or sheets of the international application, even if clearly resulting from inattention, at the stage, for example, of copying or assembling sheets, shall not be rectifiable. The rectification itself shall be obvious in the sense that anyone would immediately realize that nothing else could have been intended than what is offered as rectification.

(c) Rectification may be made on the request of the applicant. The authority having discovered what appears to be an obvious error of transcription may invite the applicant to present a request for rectification.

(d) Any rectification shall require the express authorization:

(i) of the receiving Office if the error is in the request,

(ii) of the International Searching Authority if the error is in any other part of the international application,

(iii) of the International Preliminary Examining Authority if the error is in any paper submitted to that Authority, and

(b) [no change]

(c) If the separate power of attorney is not signed as provided in paragraph (a), or if the required separate power of attorney is missing, or if the indication of the name or address of the appointed person does not comply with Rule 4.4, the power of attorney shall be considered nonexistent *unless* the defect is corrected.

90.4 [no change]

Rule 91 (Alternative) Obvious Errors of Transcription

91.1 *Rectification*

(a) Subject to paragraphs (b) to (d), obvious errors of transcription in the international application or other papers submitted by the applicant may be rectified.

(b) Errors which are due to the fact that something other than what was obviously intended was written in the international application or other paper shall be regarded as obvious errors of transcription. *The rectification itself shall be obvious in the sense that anyone would immediately realize that nothing else could have been intended than what is offered as rectification.*

(c) *Omissions of entire elements or sheets of the international application, even if clearly resulting from inattention, at the stage, for example, of copying or assembling sheets, shall not be rectifiable.**

(d)** [no change]

(e)*** [no change]

* Appears in paragraph (b) of the 1969 Draft.

** Paragraph (c) in the 1969 Draft.

*** Paragraph (d) in the 1969 Draft.

(b) The power of attorney may be submitted to the receiving Office or the International Bureau. Whichever of the two is the recipient of the power of attorney submitted shall immediately notify the other and the interested International Searching Authority and the interested International Preliminary Examining Authority.

(c) If the separate power of attorney is not signed as provided in paragraph (a), or if the required separate power of attorney is missing, or if the indication of the name or address of the appointed person does not comply with Rule 4.4, the power of attorney shall be considered nonexistent unless the defect is corrected.

90.4 *Revocation*

(a) Any appointment may be revoked by the persons who have made the appointment or their successors in title.

(b) Rule 90.3 shall apply, *mutatis mutandis*, to the document containing the revocation.

Rule 91 **Obvious Errors of Transcription**

91.1 *Rectification*

(a) Subject to paragraphs (b) to (g), obvious errors of transcription in the international application or other papers submitted by the applicant may be rectified.

(b) Errors which are due to the fact that something other than what was obviously intended was written in the international application or other paper shall be regarded as obvious errors of transcription. The rectification itself shall be obvious in the sense that anyone would immediately realize that nothing else could have been intended than what is offered as rectification.

(c) Omissions of entire elements or sheets of the international application, even if clearly resulting from inattention, at the stage, for example, of copying or assembling sheets, shall not be rectifiable.

(d) Rectification may be made on the request of the applicant. The authority having discovered what appears to be an obvious error of transcription may invite the applicant to present a request for rectification as provided in paragraphs (e) to (g).

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(iv) of the International Bureau if the error is in any paper, other than the international application or amendments or corrections to that application, submitted to the International Bureau.

The date of the authorization shall be recorded in the files of the international application.

(e) Any rectification authorized by authorities other than the International Bureau shall be promptly notified by the authorizing authority to the International Bureau.

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(f) *Any authority, other than the International Bureau, which authorizes any rectification shall promptly inform the International Bureau of such rectification.*

Rule 92 Correspondence

92.1 *Need for Letter and for Signature*

(a) Any paper submitted by the applicant in the course of the international procedure provided for in the Treaty and these Regulations, other than the international application itself, shall be accompanied by a letter identifying the international application to which it relates. The letter shall be signed by the applicant.

(b) If the requirements provided for in paragraph (a) are not complied with, the paper shall be considered not to have been submitted.

92.2 *Languages*

(a) Subject to the provisions of paragraphs (b) and (c), any letter or document sent or submitted by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which it relates.

(b) Any letter from the applicant to the International Searching Authority or the International Preliminary Examining Authority may be in a language other than that of the international application, provided the said Authority authorizes the use of such language.

(c) When a translation is required under Rule 55.2, the International Preliminary Examining Authority may require that any letter from the applicant to the said Authority be in the language of that translation.

Rule 92 (Alternative) Correspondence

92.1 *Need for Letter and for Signature*

(a) Any paper submitted by the applicant in the course of the international procedure provided for in the Treaty and these Regulations, other than the international application itself, shall, *if not itself in the form of a letter*, be accompanied by a letter identifying the international application to which it relates. The letter shall be signed by the applicant.

(b) [no change]

92.2 *Languages*

(a) Subject to the provisions of paragraphs (b) and (c), any letter or *document submitted* by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which it relates.

(b) [no change]

(c) [no change]

- (e) No rectification shall be made except with the express authorization:
- (i) of the receiving Office if the error is in the request,
 - (ii) of the International Searching Authority if the error is in any part of the international application other than the request or in any paper submitted to that Authority,
 - (iii) of the International Preliminary Examining Authority if the error is in any part of the international application other than the request or in any paper submitted to that Authority, and
 - (iv) of the International Bureau if the error is in any paper, other than the international application or amendments or corrections to that application, submitted to the International Bureau.
- (f) The date of the authorization shall be recorded in the files of the international application.
- (g) The authorization for rectification referred to in paragraph (e) may be given until the following events occur:
- (i) in the case of authorization given by the receiving Office and the International Bureau, the communication of the international application under Article 20;
 - (ii) in the case of authorization given by the International Searching Authority, the establishment of the international search report or the making of a declaration under Article 17(2)(a);
 - (iii) in the case of authorization given by the International Preliminary Examining Authority, the establishment of the international preliminary examination report.
- (h) Any authority, other than the International Bureau, which authorizes any rectification shall promptly inform the International Bureau of such rectification.

Rule 92 **Correspondence**

92.1 Need for Letter and for Signature

- (a) Any paper submitted by the applicant in the course of the international procedure provided for in the Treaty and these Regulations, other than the international application itself, shall, if not itself in the form of a letter, be accompanied by a letter identifying the international application to which it relates. The letter shall be signed by the applicant.
- (b) If the requirements provided for in paragraph (a) are not complied with, the paper shall be considered not to have been submitted.

92.2 Languages

- (a) Subject to the provisions of paragraphs (b) and (c), any letter or document submitted by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which it relates.
- (b) Any letter from the applicant to the International Searching Authority or the International Preliminary Examining Authority may be in a language other than that of the international application, provided the said Authority authorizes the use of such language.
- (c) When a translation is required under Rule 55.2, the International Preliminary Examining Authority may require that any letter from the applicant to the said Authority be in the language of that translation.

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(d) Any letter from the applicant to the International Bureau shall be in English or French.

(e) Any letter or notification from the International Bureau to the applicant or to any national Office shall be in English or French.

92.3 *Mailings by National Offices and Intergovernmental Organizations*

Any document or letter emanating from or transmitted by a national Office or an intergovernmental organization and constituting an event from the date of which any time limit under the Treaty or these Regulations commences to run shall be sent by recorded or registered airmail, provided that surface mail may be used instead of airmail in cases where surface mail normally arrives at its destination within 2 days from mailing or where airmail service is not available.

Rule 93
Keeping of Records and Files

93.1 *The Receiving Office*

Each receiving Office shall keep the records relating to each international application or purported international application, including the home copy, for at least 10 years from the international filing date.

93.2 *The International Bureau*

(a) The International Bureau shall keep the file, including the record copy, of any international application for at least 30 years from the date of receipt of the record copy.

(b) The basic records of the International Bureau shall be kept indefinitely.

93.3 *The International Searching and Preliminary Examining Authorities*

Each International Searching Authority and each International Preliminary Examining Authority shall keep the file of each international application it receives for at least 10 years from the date of receipt.

93.4 *Reproductions*

For the purposes of this Rule, records, copies and files shall also mean photographic reproductions of records, copies, and files, whatever may be the form of such reproductions (microfilms or other).

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(d) [no change]

(e) [no change]

92.3 [no change]*

Rule 93 (Alternative)
Keeping of Records and Files

93.1 *The Receiving Office*

Each receiving Office shall keep the records relating to each international application or purported international application, including the home copy, for at least 10 years from the international filing date *or, where no international filing date is accorded, from the date of receipt.*

93.2 [no change]

93.3 *The International Searching and Preliminary Examining Authorities*

Each International Searching Authority and each International Preliminary Examining Authority shall keep the file of each international application it receives for at least 10 years from the *international filing date.*

93.4 [no change]

* **Editor's Note:** See document PCT/DC/12/Add.1 for an Addendum to this Rule.

(d) Any letter from the applicant to the International Bureau shall be in English or French.

(e) Any letter or notification from the International Bureau to the applicant or to any national Office shall be in English or French.

92.3 *Mailings by National Offices and Intergovernmental Organizations*

Any document or letter emanating from or transmitted by a national Office or an intergovernmental organization and constituting an event from the date of which any time limit under the Treaty or these Regulations commences to run shall be sent by registered air mail, provided that surface mail may be used instead of air mail in cases where surface mail normally arrives at its destination within 2 days from mailing or where air mail service is not available.

Rule 93 **Keeping of Records and Files**

93.1 *The Receiving Office*

Each receiving Office shall keep the records relating to each international application or purported international application, including the home copy, for at least 10 years from the international filing date or, where no international filing date is accorded, from the date of receipt.

93.2 *The International Bureau*

(a) The International Bureau shall keep the file, including the record copy, of any international application for at least 30 years from the date of receipt of the record copy.

(b) The basic records of the International Bureau shall be kept indefinitely.

93.3 *The International Searching and Preliminary Examining Authorities*

Each International Searching Authority and each International Preliminary Examining Authority shall keep the file of each international application it receives for at least 10 years from the international filing date.

93.4 *Reproductions*

For the purposes of this Rule, records, copies and files shall also mean photographic reproductions of records, copies, and files, whatever may be the form of such reproductions (microfilms or other).

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Rule 94
Furnishing of Copies by the International Bureau
and the International Preliminary Examining
Authority

94.1 *Obligation to Furnish*

At the request of the applicant or any person authorized by the applicant, the International Bureau and the International Preliminary Examining Authority shall furnish, subject to reimbursement of the cost of the service, copies of any document contained in the file of the applicant's international application.

Rule 95
Availability of Translations

95.1 *Copy of Translation*

(a) When the applicant furnishes a translation of the international application to any designated or elected Office, he shall, subject to the provisions of paragraphs (b) and (c), simultaneously furnish a copy of the same translation to the International Bureau. When furnishing the translation to the national Office, the applicant shall indicate that he has complied with the said obligation. Failing such indication, the national Office shall, itself, prepare and transmit a copy of the translation to the International Bureau and may charge the applicant a fee for such service.

(b) If translations into the same language are filed in several national Offices, paragraph (a) shall apply only to the translation first furnished, or, if several are furnished on the same day, to one of them only.

(c) The International Bureau may announce in the Gazette that the furnishing of translations into certain languages or of certain types of applications is required only on request, and in such cases the furnishing of the translation shall be required within 30 days from the date of the request addressed by the International Bureau to the applicant. The International Bureau shall make no request after the expiration of 1 year from the filing of the translation. If the applicant does not comply with the request, the International Bureau shall address the request to the national Office, which, itself, shall then prepare and transmit a copy to the International Bureau and may charge the applicant a fee for such service.

Rule 94 (Alternative)
Furnishing of Copies by the International Bureau
and the International Preliminary Examining
Authority

94.1 *Obligation to Furnish*

At the request of the applicant or any person authorized by the applicant, the International Bureau and the International Preliminary Examining Authority shall furnish, subject to reimbursement of the cost of the service, copies of any document contained in the file of the applicant's international application *or purported international application*.

Rule 95 (Alternative)
Availability of Translations

95.1 FURNISHING OF COPIES OF TRANSLATIONS

(a) *At the request of the International Bureau, any designated or elected Office shall provide it with a copy of the translation of the international application furnished by the applicant to that Office.*

(b) *The International Bureau may, upon request and subject to reimbursement of the cost, furnish to any person copies of the translations received under paragraph (a).*

(c) OMIT

Rule 94
Furnishing of Copies by the International Bureau
and the International Preliminary Examining Authority

94.1 *Obligation to Furnish*

At the request of the applicant or any person authorized by the applicant, the International Bureau and the International Preliminary Examining Authority shall furnish, subject to reimbursement of the cost of the service, copies of any document contained in the file of the applicant's international application or purported international application.

Rule 95
Availability of Translations

95.1 *Furnishing of Copies of Translations*

(a) At the request of the International Bureau, any designated or elected Office shall provide it with a copy of the translation of the international application furnished by the applicant to that Office.

(b) The International Bureau may, upon request and subject to reimbursement of the cost, furnish to any person copies of the translations received under paragraph (a).

CONFERENCE DOCUMENTS OF THE WORKING GROUPS “WG” SERIES

(PCT/DC/WG.II/1 to 9, WG.IV/1 and 2, WG.V/1 to 4)

LIST OF DOCUMENTS

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
II/1*	Sweden	Article 58 <i>bis</i> .
II/2*	Brazil	New Article on Patent Information Services.
II/3*	Main Committee II	Referral of Study to Working Group II.
II/4*	Brazil	New Chapter IV.
II/5*	Israel	Assistance to Developing Countries.
II/6	Brazil, Sweden	Preamble, Chapter IV <i>bis</i> .
II/7	Drafting Sub-Group of Working Group II	Art. 1, 53 and a new Chapter.
II/8*	Brazil	Art. 53.
II/9*	Brazil	Art. 56 <i>bis</i> , 56 <i>quater</i> .
III/1	Secretariat	Art. 53.
IV/1	Germany (Fed. Rep.)	Art. 27, 60 <i>bis</i> .
IV/2*	United Kingdom	Art. 11, 27, 60.
V/1*	Israel	Art. 31.
V/2*	Israel	Art. 33, 61.
V/3*	Israel	Art. 31.
V/4	United Kingdom	Art. 31, 32; Rule 59.

* Distribution of document restricted to members of Working Group.

TEXT OF DOCUMENTS “WG” SERIES

Editor’s Note: *During the Diplomatic Conference the two Main Committees established Working Groups to deal with specific questions. Four of the Working Groups had documents prepared for their discussions. These documents, for Working Groups II, III, IV and V (PCT/DC/WG.II/1 to 9, WG.III/1, WG.IV/1 and 2, WG.V/1 to 4), are reproduced hereinafter.*

PCT/DC/WG.II/1 May 30, 1970 (Original: English)
SWEDEN

Proposal concerning Article 58bis

It is proposed that a new Article (58bis), entitled “Patent Information Services,” be adopted, reading as follows:

“(1) The International Bureau may provide technical and other information available on the basis of published documents, primarily patents and published applications. The International Bureau shall perform these services either directly or through one or more International Searching Authorities or other national or international Specialized institutions with which the International Bureau may reach agreement.

(2) The expenses attributable to the services referred to in this Article shall be covered by service fees.

(3) The Assembly shall adopt regulations regarding the implementation of this Article. These regulations shall, in particular, be aimed at facilitating the acquisition of technical knowledge by developing countries.”

PCT/DC/WG.II/2 June 1, 1970 (Original: English)
BRAZIL

It is proposed that the new Article, entitled “Patent Information Services,” read as follows:

“(1) The International Bureau shall provide the Contracting States with technical information on the basis of published documents, primarily patents and published applications. The International Bureau shall perform these services either directly or through one or more International Searching Authorities or other national or international specialized institutions with which the International Bureau may reach agreement.

(2) Such information may in particular consist of patents issued, patents in the public domain and copies of documents, drawings and other available information, including know-how, concerning patents.

(3) The information services shall be operated in a way particularly facilitating the acquisition of technical knowledge (technology), including know-how, by developing countries, members of the Union.

(4) The services pursuant to this Article, when rendered to developing countries, shall be financed by a fund constituted by a fee representing 2% (two percent) of the sum total of the international fees.

(5) When such services are rendered to developed countries, the corresponding expenses shall be covered by fees to be paid by the Contracting States benefiting from them.

(6) All details concerning the implementation of this Article shall be regulated by the Assembly.”

PCT/DC/WG.II/3 June 1, 1970 (Original: French)
MAIN COMMITTEE II

Memorandum addressed to Working Group II

1. At its meeting on June 1, 1970, Main Committee II reserved its position on the proposals presented by the Delegation of Brazil concerning the inclusion of a new Article 52(3)(c) (document PCT/DC/45) and the proposal by the Delegation of Israel to add a second sentence to Article 53(4) (document PCT/DC/49). Main Committee II has decided to refer the study of these questions to Working Group II established by Main Committee I, to enable all the proposals relating to the developing countries to be examined by the same Working Group.

2. Working Group II is requested to take note of the foregoing and to submit to Main Committee II proposals on the matters referred to above.

PCT/DC/WG.II/4 June 2, 1970 (Original: English)
BRAZIL

Proposal concerning a new Chapter

It is proposed that a new chapter, entitled “Transient Provisions,” be adopted, reading as follows:

“Article 66 Transient Provisions

(1) Special transient provisions are envisaged by the Contracting States with a view to fostering the economic development of developing nations through the adoption of measures designed to increase the efficiency of their national Patent Offices, and to provide their industry with better

information on the availability of technological solutions applicable to their specific development needs, in order that, until they are able to create their own technology, they may absorb under more favorable conditions an expanding volume of the modern technology generated mainly in the industrialized countries, which is essential for the accelerated and sustained growth of their economies.

(2) The special provisions listed in this Chapter shall be carried out within a period of one year from the date of entry into force of this Treaty, and shall remain in force for a period of twenty years thereafter, renewable by the Assembly for an additional period of ten years.”

“Article 67¹

Patent Information Services

(1) The International Bureau shall provide the Contracting States with technical information on the basis of published documents, primarily patents and published applications. The International Bureau shall perform these services either directly or through one or more International Searching Authorities or other national or international specialized institutions with which the International Bureau may reach agreement.

(2) Such information may in particular consist of patents issued, patents in the public domain and copies of documents, drawings and other available information, including know-how, concerning patents.

(3) The information services shall be operated in a way particularly facilitating the acquisition of technical knowledge (technology), including know-how, by developing countries, members of the Union.

(4) The services pursuant to this Article, when rendered to developing countries, shall be financed by a fund representing 2% (two percent) of the sum total of the international fees to be paid by the applicant.

(5) When such services are rendered to developed countries, the corresponding expenses shall be covered by fees to be paid by the Contracting States benefiting from them.

(6) All details concerning the implementation of this Article shall be regulated by the Assembly.

Article 68²

Committee for Technical Assistance

(1) The Assembly shall establish a Committee for Technical Assistance (referred to in the Article as “the Committee”).

(2)(a) The Assembly shall determine the composition of the Committee and appoint its members, provided that at least half of the members shall be developing Contracting States, and that the membership shall include at least two

International Searching or Preliminary Examining Authorities on a rotating basis.

(b) The Director General shall, on his own initiative or upon request of the Committee, invite representatives of international governmental organizations concerned with technical assistance to participate in the discussions of interest to developing countries.

(3) The aim of the Committee shall be to grant technical assistance upon request to the developing Contracting States. Such technical assistance shall consist *inter alia* of training programmes, of advice in improvement and modernization of methods of work of their national patent offices and of the supply of equipment for the purpose of demonstration as well as for operational purposes.

(4)(a) The Union shall enter into agreements with international financing organizations and international organizations concerned with technical assistance on the one hand, and with the interested developing Contracting States on the other, for the financing of projects pursuant to this Article, in their feasibility, planning and execution stages.

(b) Whenever equipment or services can be supplied by the developing countries concerned, the financing referred to in paragraph (4)(a) shall include coverage of local costs.

(5) The details of the composition and procedure of the Committee shall be governed by the decisions of the Assembly.”

PCT/DC/WG.II/5 June 3, 1970 (Original: English)
ISRAEL

Proposals concerning Articles 1, 52 and 53

Article 1

After “patent application” add “informing about patents and technological information contained therein and assisting countries whose economic situation and development stage so require in developing their services relating to patents.”

Article 52

Add a new paragraph 3(iii), reading as follows:

“(3)(iii) to plans and program for the improvement of patent offices and patent services in countries whose economic situation and development stage so require in developing their technical services relating to patents.”

Article 53

(a) After the present text of Article 53(v) it is proposed to add:

“In fixing fees and charges for countries and nationals and residents of these countries, the Assembly may give special consideration to the level of economic development reached by these countries.”

¹ This proposal is identical with that in Document PCT/DC/WG.II/2.

² This proposal corresponds in part with that in Document PCT/DC/45.

(b) *Add a new paragraph (8), reading as follows:*

“(8) From fees and charges paid to the Union two percent shall be allocated for reducing cost of services rendered under Articles 52(3)(iii) and 58*bis* of this Treaty. No allocation as aforesaid shall be made in any year in which a deficit occurred, unless the Assembly decides otherwise.”

PCT/DC/WG.II/6 June 6, 1970 (Original: English)
BRAZIL, SWEDEN

Proposals concerning the Preamble and a New Chapter

A. Insert in the Preamble the following paragraph:

“The Contracting States

...

In order to foster the economic development of developing nations through the adoption of measures designed to increase the efficiency of the administration of their national and regional patent systems, to provide their industry with better information on the availability of technological solutions applicable to their special needs, and to facilitate the assimilation of the expanding volume of modern technology by such industry in order to accelerate and sustain the growth of their national economy,

Have concluded the following Treaty:”

B. Insert the following Chapter:

“CHAPTER IV*bis*
GENERAL TECHNICAL SERVICES

Article 56bis
Patent Information Services

(1) The International Bureau may provide technical and other information available on the basis of published documents, primarily patents and published applications.

(2) The International Bureau may perform these services either directly or through one or more International Searching Authorities or other national or international specialized institutions with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition of technical knowledge (technology), including know-how, by developing countries members of the Union.

(4) The services shall be available to Governments and to the general public.

(5) Services to Governments of member States of the Union shall be furnished at cost, provided that when the Government is that of a member State which is a developing country, the service shall be furnished below cost if the difference may be covered from profit made on services furnished to other than Governments of

members of the Union or from any of the sources referred to in Articles [53(6*bis*)] and 56*ter*(4).

(6) The details concerning the implementation of the provisions of this Article shall be governed by decision of the Assembly and, within the limits to be fixed by the Assembly, such committees which the Assembly may set up for that purpose.

Article 56ter
Technical Assistance

(1) The Assembly shall establish a Committee for Technical Assistance (hereinafter referred to as ‘the Committee’).

(2)(a) The members of the Committee shall be elected among the States members of the Union. Their number shall be fixed by the Assembly. Half of them shall be developing countries.

(b) The Director General shall, on his own initiative or upon request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

(3)(a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries for developing the administration of their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

(4)(a) The International Bureau shall enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly agencies of the United Nations and the Specialized Agencies connected with the United Nations, concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(b) Whenever equipment or services can be supplied by the Government receiving the technical assistance, the financing referred to in subparagraph (a) shall include covering of local costs.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups which the Assembly may set up for that purpose.”

C. Possible Additions in Article 53:
Alternative I

“(6*bis*) Each Contracting State shall pay each year to the International Bureau a sum corresponding to 2% of the value of the international fees paid in the preceding year for international applications filed in its national Office for the purposes of financing information

services rendered by the International Bureau to developing countries under Article 58*bis*.”

Alternative II

“(6*bis*) Each Contracting State may require that the International Bureau collect a supplement on the designation fee concerning that State for the purposes of financing information services rendered by the International Bureau to developing countries under Article 56*bis*(5).”

PCT/DC/WG.II/7 June 8, 1970 (Original: French)
DRAFTING SUB-GROUP OF WORKING
GROUP II

**Report and Proposals concerning the Preamble,
Article 1, a New Chapter, and possibly Article 53**

1. The Drafting Sub-Group of Working Group II, composed of the Delegations of Argentina, Brazil, Sweden and the United States of America, met on June 6 and 8, 1970.

2. The Drafting Sub-Group presents to Working Group II the following proposals:

A. *Insert in the Preamble the following paragraph:*

“The Contracting States

...

In order to foster the economic development of developing nations through the adoption of measures designed to increase the efficiency of their national and regional patent systems, to provide their economies with better information on the availability of technological solutions applicable to their special needs, and to facilitate the assimilation of the expanding volume of modern technology in order to accelerate and sustain the growth of their national economy,

Have concluded the following Treaty:”

B. *Amend Article 1(1) to read as follows:*

“(1) The States party to this Treaty (hereinafter called ‘the Contracting States’) constitute a Union for cooperation in the filing, searching, and examination, of patent applications and for rendering of general technical services, to be known as the International Patent Cooperation Union.

(2) [No change].”

C. *Insert the following Chapter:*

“CHAPTER IV*bis*
GENERAL TECHNICAL SERVICES

Article 56bis

Patent Information Services

(1) The International Bureau may provide technical and other pertinent information available to it on the basis of published documents, primarily patents and published applications.

(2) The International Bureau may perform these services either directly or through one or

more International Searching Authorities or other national or International specialized institutions with which the International Bureau may reach agreement.

(3) The information services shall be operated in a way particularly facilitating the acquisition of technical knowledge (technology), including available published know-how, by developing countries members of the Union.

(4) The services shall be available to Governments of member States and their nationals and residents. The Assembly may decide to extend these services.

(5) Services to Governments of member States of the Union shall be furnished at cost, provided that when the Government is that of a member State which is a developing country, the service shall be furnished below cost if the difference may be covered from profit made on services furnished to others than Governments of members of the Union or from other sources, in particular those referred to in Article 56*ter*(4).

(6) The details concerning the implementation of the provisions of this Article shall be governed by decision of the Assembly and, within the limits to be fixed by the Assembly, such committees which the Assembly may set up for that purpose.

Article 56ter

Technical Assistance

(1) The Assembly shall establish a Committee for Technical Assistance (hereinafter referred to as ‘the Committee’).

(2)(a) The members of the Committee shall be elected among the States members of the Union, with due regard to the representation of developing countries.

(b) The Director General shall, on his own initiative or upon request of the Committee, invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee.

(3)(a) The task of the Committee shall be to organize and supervise technical assistance for Contracting States which are developing countries for developing the administration of their patent systems individually or on a regional basis.

(b) The technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.

(4) The International Bureau shall enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly agencies of the United Nations and the Specialized Agencies connected with the United Nations, concerned with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article.

(5) The details concerning the implementation of the provisions of this Article shall be governed by decisions of the Assembly and, within the limits to be fixed by the Assembly, such working groups which the Assembly may set up for that purpose.”

3. As far as a possible insertion in Article 53 is concerned, the Drafting Sub-Group examined the following two alternatives, but could not reach agreement:

Alternative I

“(6bis) Each Contracting State shall pay each year to the International Bureau a sum corresponding to 2% of the value of the international fees paid in the preceding year for international applications filed in its national Office for the purposes of financing information services rendered by the International Bureau to developing countries under Article 56bis.”

Alternative II

“(6bis) Any Contracting State may request that the International Bureau collect a uniform supplement on the designation fee concerning that State for the purposes of financing information services rendered by the International Bureau to developing countries under Article 56bis(5). Any such supplement should be approved by the Assembly.”

PCT/DC/WG.II/8 June 8, 1970 (Original: English)
BRAZIL

Proposal concerning Article 53

It is proposed that the following paragraph be inserted in Article 53:

“(6bis) Each Contracting State shall pay each year to the International Bureau a sum corresponding to a supplement to be fixed and periodically adjusted by the Assembly for the purposes of financing information services rendered by the International Bureau to developing countries under Article 56bis.”

PCT/DC/WG.II/9 June 9, 1970 (Original: English)
BRAZIL

Proposals concerning Article 56bis and a New Article 56quater

It is proposed to modify Article 56bis (see document PCT/DC/WG.II/7) as follows:

1. Paragraph 5 of Article 56bis should become subparagraph 5(a).
2. A new subparagraph 5(b) should be added, reading as follows:

“5(b) The costs referred to in paragraph 5(a) are to be understood as incremental operational costs, defined for the purposes of this Article as costs over and above those normally incident to the performance of required services or obligations as a national Office or a Searching Authority.”

It is proposed that a new Article (56quater) be adopted, reading as follows

“Article 56quater

The Assembly shall, taking into account Articles 56bis(5)(b) and 56ter(4), adopt when necessary the adequate measures for additional financing of the technical services envisaged in this Chapter.”

PCT/DC/WG.III/1 June 3, 1970 (Original: English)
SECRETARIAT

Proposal concerning Article 53

It is proposed to replace Article 53(5) by the following text:

“(5)(a) Should any financial year close with a deficit, the Contracting States shall, subject to the provisions of subparagraph (b) to (e), pay contributions to cover such deficit.

(b) *Subject to the provisions of subparagraphs (c) and (d), the amount of each Contracting State shall be proportionate to the number of international applications filed by its nationals and residents in the relevant year.*

(c) *The contribution of any Contracting State having chosen class I for the purposes of contributions in the Paris Convention for the Protection of Industrial Property shall be equivalent to at least one-third of the contribution of the Contracting State in the said class whose contribution is the highest.*

(d) *Any Contracting State having chosen class VI or VII for the purposes of contributions in the Paris Convention for the Protection of Industrial Property shall, on request, be dispensed of any contributions.*

(e) [The same as subparagraph (c) in document PCT/DC/11, page 165.]

(f) [The same as subparagraph (d) in document PCT/DC/11, page 164.]

(g) [The same as subparagraph (e) in document PCT/DC/11, page 165.]”

It is further proposed to add to subparagraph (b) of Article 53(7) the following text:

“... on the basis of principles similar to those provided for in paragraph (5)(b) to (d).”

PCT/DC/WG.IV/1 June 4, 1970 (Original: English)
GERMANY (FEDERAL REPUBLIC)

Proposals concerning Article 27 and a new Article 60bis

Delete Article 27(5), last sentence.

Insert a new Article 60bis, entitled “Reservation for Prior Art Purposes” and reading as follows:

“(1) Any State may declare at any time that, notwithstanding Article 11(3), for international applications an event, which is later than the international filing date of the international application, is relevant for prior art purposes, as

distinguished from priority purposes, if the national law of the said State provides that national applications on which a patent is granted become relevant for prior art purposes only from their actual filing date in the said State.

(2) Any declaration made under paragraph (1) shall be made in writing and deposited with the Director General.

(3) Any State making use of the faculty referred to in paragraph (1) shall, at the same time, deposit a written communication indicating what event is relevant under its national law for prior art purposes for an international application.

(4) The declaration made under paragraph (1) and the communication under paragraph (3) shall be communicated by the International Bureau to all Contracting States and shall be published in the Gazette of the International Bureau.

(5) Any other Contracting State providing in its national law that international applications, published pursuant to this Treaty before the grant of the patent, are relevant for prior art purposes as from the priority date claimed for such applications may, with respect to International applications filed in the State having made a declaration under paragraph (1), declare relevant for prior art purposes an event corresponding to the event which the latter State has indicated in the communication under paragraph (3).

(6) Paragraph (5) shall apply *mutatis mutandis* in the case of a group of Contracting States having entrusted an intergovernmental authority with the task of granting regional patents.

(7) Any declaration made under paragraph (1) may, at any time, be withdrawn or modified by notification addressed to the Director General. In the case where a declaration is modified, a new communication under paragraph (3) shall be made at the same time."

PCT/DC/WG.IV/2 June 6, 1970 (Original: English)
UNITED KINGDOM

Proposals concerning Articles 11, 27 and 60

Article 11(3). Insert at beginning:

"Subject to Article 60(4) ..."

Article 27(5). Delete last sentence.

Article 60

A. Insert new paragraph (4) reading as follows:

"(4)(a) Any State whose national law does not equate for prior art purposes the priority date claimed under the Paris Convention to the actual filing date in that State may declare that the filing outside that State of an International application designating that State is not equated to an actual filing in that State for prior art purposes.

(b) Any State making a declaration under subparagraph (a) shall to that extent not be bound by the provisions of Article 11(3).

(c) Any State making a declaration under subparagraph (a) shall, at the same time, state in

writing the date from which, and the conditions under which, the prior art effect of any international application designating that State becomes effective in that State. This statement may be modified at any time by notification addressed to the Director General."

B. Paragraph (4) of the draft in PCT/DC/11 to be renumbered as paragraph (5) but otherwise unchanged.

C. Paragraph (5) of the draft in PCT/DC/11 to be renumbered as paragraph (6) and to read as follows:

"(6) No reservations to this Treaty other than the reservations under paragraphs (1) to (4) are permitted."

PCT/DC/WG.V/1 June 5, 1970 (Original: English)
ISRAEL

Proposal concerning Article 31

Article 31(2) should become subparagraph (a) and the first line should be amended to read:

"(a) Subject to subparagraph (b), only an applicant who is a resident or national ..."

A new subparagraph (b) should be added, as follows:

"(b) The provisions of Article 15(5)(a), (b) and (c) shall apply, *mutatis mutandis*, in respect of international preliminary examination."

PCT/DC/WG.V/2 June 6, 1970 (Original: English)
ISRAEL

Proposals concerning Articles 33 and 61

Note: This proposal is in substitution for the proposals contained in documents PCT/DC/41 and PCT/DC/WG.V/1.

It is proposed that Article 33(7) read as follows:

"(7)(a) If the national law of the Contracting State bound by Chapter II with whose national Office a national application is filed so permits, the applicant who files such a national application may, subject to the conditions provided for in such law, request that a search similar to an international preliminary examination ('an international-type preliminary examination') be carried out on such application, provided that the national application was the subject of an international-type search.

(b) If the national law of the Contracting State bound by Chapter II so provides, the national Office of or acting for such State may subject any national application filed with it to an international-type preliminary examination, provided that the national application was the subject of an international-type search. This faculty shall be exercised without discrimination against applicants who are nationals or residents of States other than the said Contracting State. For the purposes of this subparagraph, international applications designating the said State may be

treated by that State as national applications once the requirements of Article 22 have been complied with by the applicant.

(c) The international-type preliminary examination shall be carried out by the International Preliminary Examining Authority referred to in Article 32 which would be competent for an international preliminary examination if the national application were an international application and were filed with the Office referred to in subparagraphs (a) and (b). If the national application is in a language which the International Preliminary Examining Authority considers not equipped to handle, the international-type preliminary examination shall be carried out on a translation prepared by the applicant in a language prescribed for international applications and which the International Preliminary Examining Authority undertook to accept for international applications. The national application and the translation, when required, shall be presented in the form prescribed for international applications.

(d) The agreement between the interested International Preliminary Examining Authority and the International Bureau may provide for a later application of that agreement in the case of international-type preliminary examinations than in the case of international preliminary examination.

It is proposed that Article 61(1) read as follows:

“(1) ... Agreements concerning the international-type search or international-type preliminary examination of national applications may also provide for the gradual application of Articles 15(5) and 33(7).”

PCT/DC/WG.V/3 June 9, 1970 (Original: English)
ISRAEL

Proposal concerning Article 31

Article 31(2) should become Article 31(2)(a).

A new subparagraph (b) should be added, reading as follows:

“(2)(b) The Assembly may decide to allow residents and nationals of Contracting States not bound by Chapter II to make demands for international preliminary examination of their international applications in designated States bound by Chapter II, whose national law permits such examination, under conditions to be decided by the Assembly, provided, however, that in such

case the Assembly shall provide to the national Office which fulfills the requirements under Article 32 the opportunity to become the International Preliminary Examining Authority for such applications for which that national Office is the receiving Office.

PCT/DC/WG.V/4 June 9, 1970 (Original: English)
UNITED KINGDOM

Proposals concerning Articles 31 and 32 and Rule 59

Article 31

(1) *No change.*

(2)(a) *Present paragraph (2), but delete “only.”*

“(b) The Assembly may decide to allow applicants who are neither residents nor nationals of Contracting States bound by Chapter II but who are residents or nationals of a Contracting State to make demands for international preliminary examination.”

(3) *No change.*

(4) *Add:* “A demand made under paragraph (2)(b) may only elect States bound by Chapter II who declare that they are prepared to be so elected.”

Article 32

(1) *No change.*

“(2) The provisions of Article 16(2) apply *mutatis mutandis* in respect of International Preliminary Examining Authorities competent for the examination of applications falling under Article 31(2) (a).

(3) The Assembly shall specify the International Preliminary Examining Authority competent for examining applications falling under Article 31(2)(b).

(4) The provisions of Article 16(3) apply *mutatis mutandis* in respect of International Preliminary Examining Authorities in all cases.”

Rule 59

59.1 *No change.*

“59.2 In specifying the International Preliminary Examining Authority under Article 32(3), the Assembly shall give preference to the receiving Office, provided it has been appointed as an International Preliminary Examining Authority under Article 32.”

CONFERENCE DOCUMENTS OF THE INFORMATION (“INF”) SERIES

(PCT/DC/INF/1 to PCT/DC/INF/10)

LIST OF DOCUMENTS

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
1	United States of America	General Information
1-A	United States of America	Services and Facilities Available in the Department of State Building.
2	Secretariat	Functional Directory – Secretariat.
3	Secretariat	First List of Documents.
4	Secretariat	Second List of Documents.
5	Secretariat	Third List of Documents.
6	Secretariat	Fourth List of Documents.
7	Secretariat	Fifth List of Documents.
8	Secretariat	Sixth List of Documents.
9	Secretariat	Seventh List of Documents.
10	Secretariat	Signatory States.

TEXT OF DOCUMENTS PCT/DC/INF/1 TO 10

Editor's Note: *Before and during the Diplomatic Conference, eleven documents, numbered PCT/DC/INF/1 and 1 A to 10, were issued. They covered matters of general interest to the participants. The two most important, PCT/DC/INF/1 and PCT/DC/INF/10, are reproduced below.*

PCT/DC/INF/1

February 11, 1970 (Original: English)

UNITED STATES OF AMERICA

General Information furnished by the Host Government

Background

1. In accordance with the decision of the Conference of Representatives of the Paris Union for the Protection of Industrial Property in December 1967, the United States Government has invited members of the Paris Union to a Diplomatic Conference for the purpose of negotiating and concluding a Patent Cooperation Treaty (PCT) and the Regulations relating to that Treaty. The Conference will be convened at Washington, D.C., on May 25, 1970, and will end not later than June 19, 1970. It is planned that the Treaty will be signed at the close of the Conference and will remain open for signature for six months.

Agenda and Documentation

2. The Conference will adopt the agenda. A draft agenda is proposed by the host Government (see document PCT/DC/MISC/2).

3. The work of the Conference will be based on six documents prepared by the United International Bureaux for the Protection of Intellectual Property (BIRPI) and published on July 11, 1969. They bear the numbers PCT/DC/1 to 6. The texts of the Draft Treaty and the Draft Regulations are contained in documents PCT/DC/4 and 5, respectively. All documents are available in English and in French. Documents PCT/DC/2 (a summary of the Draft Treaty) and PCT/DC/4 (the text of the Draft Treaty) are also available in Spanish. Copies may be obtained free of charge from BIRPI, 32, chemin des Colombettes, Geneva, Switzerland.

4. The Document Officer for the Conference will be located in Room 1318 in the International Conference Suite, Department of State, and will be responsible for the processing and distribution of all Conference documents during the Conference.

5. Delegations wishing to have a statement or proposal circulated as a Conference document are requested to submit three copies of the text in English

or French to the Secretary General. Documents processed during the Conference will be distributed to the delegations at the Conference Information Center. A "Request for Documents" form will be available at registration so that each delegation may indicate its requirements.

Participation

6. The States party to the Paris Convention for the Protection of Industrial Property have been invited to send representatives to the Conference. Other Governments and certain international organizations have been invited to send observers.

7. Only delegations of member States of the International Union for the Protection of Industrial Property ("Paris Union") will have the right to vote in the Conference. Delegations of other invited States will have observer status.

8. Invitations have been issued through diplomatic channels by the United States Department of State and, in certain cases, by the Director of BIRPI. Approximately 30 international organizations have been invited to send observers to the Conference.

Credentials and Full Powers

9. Written credentials and full powers for signing the Treaty should be submitted to the Secretary General of the Conference not later than the opening of the Conference. Credentials should include the names of all members of the delegation. Credentials may be sent to the Secretary General of the Conference, in care of the Office of International Conferences, Department of State, Washington, D.C. 20520, or may be presented at the time of registration on May 25, 1970. (For details concerning credentials and full powers see "Draft Rules of Procedure" PCT/DC/MISC/1.)

Registration

10. Registration of official participants will take place on Monday, May 25, 1970, beginning at 9:00 a.m., at the Conference Information Center in the International Conference Suite, United States Department of State. Arrangements will be made to admit participants to the building of the United States Department of State on May 25 for registration.

11. Conference passes will be issued at the time of registration. The pass must be shown for entrance to the Department of State Building and should be worn in the building while the Conference is in session.

Headquarters

12. The Headquarters of the Conference and the offices of the Secretariat will be located in the International Conference Suite on the first floor of the

Department of State. Access to the International Conference Suite is through the Diplomatic Entrance at 2201 "C" Street, N.W.

Secretariat

13. BIRPI, in cooperation with the United States as host Government, will be responsible for the organization of the Secretariat of the Conference. Offices of the Secretariat will be located in the International Conference Suite beginning Monday, May 25, 1970. A complete list of the Secretariat with room and telephone numbers will be available at the time of registration.

Opening Session

14. The inaugural session will convene in the Main Conference Room at 10:00 a.m. on Monday, May 25, 1970, and will be open to invited guests and the press. Access to other sessions will be controlled pursuant to rules of procedure established by the Conference.

Organization of Meetings

15. The Conference will meet as Plenary mainly at the beginning and the end of the period allotted for the Conference.

16. Otherwise, most of the work will be carried out in two Main Committees, that is, Main Committee I and Main Committee II.

17. Main Committee I will primarily deal with Chapters I, II and III of the Draft Treaty (International Application and International Search, International Preliminary Examination, Common Provisions) and with the related Rules of the Draft Regulations. Main Committee II will deal with Chapters IV and V of the Draft Treaty (Administrative Provisions, Final Provisions) and with the related Rules of the Regulations. All delegations having the right to vote may be members of both Main Committees.

18. Observer Delegations and Observer Organizations will have the right to attend most or all of the meetings of the Plenary and of the two Main Committees.

19. The two Main Committees will frequently meet at the same time in different conference rooms.

20. One or two additional meetings of smaller bodies (committees or working groups) may also coincide with the meetings of the two Main Committees. Observers will normally not be admitted to these meetings.

21. Consequently, delegations having the right to vote may have to participate in three or four meetings at the same time. Observers will not have occasion to attend more than two meetings at the same time.

Rules of Procedure

22. The "Draft Rules of Procedure" have been sent to Governments and will be presented for adoption by the Conference. A draft is proposed by the host Government (see Document PCT/DC/MISC/1).

Interpretation

23. Simultaneous interpretation into English, French, Spanish and Russian will be provided at the Plenaries and in meetings of Main Committees I and II. As a

general rule, interpretation in other bodies of the Conference will be only into English and French.

Language of Documents

24. Documents produced during the Conference will be in English and French.

Hotels

25. It is suggested that requests for hotel reservations be addressed to hotels directly or through the diplomatic missions in Washington. This should be done as soon as possible since the number of tourists visiting Washington is considerable in May and June.

26. Two publications of the Washington Convention and Visitors Bureau concerning the location and prices of Washington hotels and motels are being sent under separate cover.

Inquiries

27. Questions concerning documents and other substantive matters should be addressed to BIRPI at Geneva.

28. Question concerning administrative arrangements for the Conference should be directed to Mr. William T. Keough, Administration Officer, Department of State, Room 1427, Office of International Conferences, Department of State, Washington, D.C. 20520.

Mail

29. Mail for participants in the Conference may be addressed as follows:

(NAME)
Patent Cooperation Treaty Conference
Department of State
Conference Information Center
2201 C Street, N.W.
Washington, D.C. 20520
United States of America

Weather Conditions

30. For the information of persons planning to travel to Washington for the Conference, the normal temperatures for May and June are:

	<i>May</i>	<i>June</i>
Maximum.....	75.5 F.	83.4 F.
Minimum	56.0 F.	64.9 F.
Average.....	65.8 F.	74.2 F.

31. Precipitation averages 4.14 inches in May and 3.21 inches in June. The climate is usually mild in May and June; however, it is advisable to bring a lightweight raincoat as a precaution against any unseasonable weather.

Visas

32. Visas are required for entry into the United States of America. Participants should obtain them from the nearest United States of America Consulate.

Miscellaneous

33. A document listing the services available in the State Department Building will be distributed at the time of registration.

PCT/DC/INF/1A May 18, 1970 (Original: English)
UNITED STATES OF AMERICA

**Services and Facilities Available in the
Departement of State Building**

[Omitted]

PCT/DC/INF/2 May 25, 1970 (Original: English)
SECRETARIAT

Functional Directory: Secretariat

[Omitted]

PCT/DC/INF/3
May 26, 1970 (Original: English/French)
SECRETARIAT

First List of Documents

[Omitted]

PCT/DC/INF/4
May 28, 1970 (Original: English/French)
SECRETARIAT

Second List of Documents

[Omitted]

PCT/DC/INF/5
May 29, 1970 (Original: English/French)
SECRETARIAT

Third List of Documents

[Omitted]

PCT/DC/INF/6
June 1, 1970 (Original: English/French)
SECRETARIAT

Fourth List of Documents

[Omitted]

PCT/DC/INF/7
June 3, 1970 (Original: English/French)
SECRETARIAT

Fifth List of Documents

[Omitted]

PCT/DC/INF/8
June 8, 1970 (Original: English/French)
SECRETARIAT

Sixth List of Documents

[Omitted]

PCT/DC/INF/9
June 18, 1970 (Original: English/French)
SECRETARIAT

Seventh List of Documents

[Omitted]

PCT/DC/INF/10
June 19, 1970 (Original: English)
SECRETARIAT

Signatory States

The Representatives of the following States
signed the Patent Cooperation Treaty on
June 19, 1970:

Algeria
Brazil
Canada
Denmark
Finland
Germany (Federal Republic)
Holy See
Hungary
Ireland
Israel
Italy
Japan
Norway
Philippines
Sweden
Switzerland
United Arab Republic
United Kingdom
United States
Yugoslavia

CONFERENCE DOCUMENTS OF THE MISCELLANEOUS (“MISC”) SERIES

(PCT/DC/MISC/1 to PCT/DC/MISC/13)

LIST OF DOCUMENTS

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
1	United States of America	Draft Rules of Procedure.
2	United States of America	Draft Agenda.
3	Director of BIRPI	Address by Prof. G. H. C. Bodenhausen.
4	Secretariat	Provisional List of Participants.
4 Add. 1 & Corr. 1	Secretariat	Addendum and Corrigendum to PCT/DC/MISC/4.
4 Add. 2 & Corr.	Secretariat	Addendum and Corrigendum to PCT/DC/MISC/4.
4 Add. 3	Secretariat	Addendum to PCT/DC/MISC/4.
5	President of the Conference	Proposals for Elections.
6	United States of America	Address by Honorable Maurice H. Stans.
7	United Arab Republic	Observations.
8	Secretariat	Officers and Committees of the Conference.
8 Corr. 1	Secretariat	Corrigendum to PCT/DC/MISC/8.
9	Secretariat	List of Participants.
10	Secretariat	Officers and Committees of the Conference.
11	Bolivia, Chile, Costa Rica, Ecuador, Guatemala, Paraguay	Statement of Developing Countries.
11 Rev.	Bolivia, Chile, Costa Rica, Ecuador, Guatemala, Paraguay, Peru	Statement of Developing Countries.
12	Secretary General of the Conference	Speech of Dr. Arpad Bogsch.
13	United States of America	Remarks by Honorable William P. Rogers.

TEXT OF DOCUMENTS PCT/DC/MISC/1 TO 13

Editor's Note: *Before and during the Diplomatic Conference, eighteen documents were issued in the "MISC" (Miscellaneous) series. The following are reproduced below: PCT/DC/MISC/1, 2, 7, 11. Rev.*

PCT/DC/MISC/1

February 11, 1970 (Original: English)
UNITED STATES OF AMERICA

Draft Rules of Procedure proposed by the Host Government

Contents

<p>Chapter I: Objective, Composition and Organs</p> <p style="padding-left: 20px;">Rule 1: Objective</p> <p style="padding-left: 20px;">Rule 2: Composition</p> <p style="padding-left: 20px;">Rule 3: Organs</p> <p>Chapter II: Representation</p> <p style="padding-left: 20px;">Rule 4: Representation of Governments</p> <p style="padding-left: 20px;">Rule 5: Representation of Observer Organizations</p> <p style="padding-left: 20px;">Rule 6: Credentials and Full Powers</p> <p style="padding-left: 20px;">Rule 7: Letters of Appointment</p> <p style="padding-left: 20px;">Rule 8: Presentation of Credentials, etc.</p> <p style="padding-left: 20px;">Rule 9: Provisional Participation</p> <p style="padding-left: 20px;">Rule 10: Examination of Credentials, etc.</p> <p>Chapter III: Committees and Working Groups</p> <p style="padding-left: 20px;">Rule 11: Credentials Committee</p> <p style="padding-left: 20px;">Rule 12: Main Committees</p> <p style="padding-left: 20px;">Rule 13: Drafting Committees</p> <p style="padding-left: 20px;">Rule 14: Working Groups</p> <p style="padding-left: 20px;">Rule 15: Steering Committee</p> <p>Chapter IV: Officers</p> <p style="padding-left: 20px;">Rule 16: Officers</p> <p style="padding-left: 20px;">Rule 17: Acting Chairmen</p> <p style="padding-left: 20px;">Rule 18: Replacement of Chairmen</p> <p style="padding-left: 20px;">Rule 19: Chairmen not Entitled to Vote</p> <p>Chapter V: Secretariat</p> <p style="padding-left: 20px;">Rule 20: Secretariat</p> <p>Chapter VI: Conduct of Business</p> <p style="padding-left: 20px;">Rule 21: Quorum</p> <p style="padding-left: 20px;">Rule 22: General Powers of the Chairman</p> <p style="padding-left: 20px;">Rule 23: Speeches</p> <p style="padding-left: 20px;">Rule 24: Precedence</p> <p style="padding-left: 20px;">Rule 25: Points of Order</p> <p style="padding-left: 20px;">Rule 26: Time Limit on Speeches</p> <p style="padding-left: 20px;">Rule 27: Closing of List of Speakers</p> <p style="padding-left: 20px;">Rule 28: Adjournment of Debate</p> <p style="padding-left: 20px;">Rule 29: Closure of Debate</p>	<p>Rule 30: Suspension or Adjournment of the Meeting</p> <p>Rule 31: Order of Procedural Motions</p> <p>Rule 32: Amendments</p> <p>Rule 33: Withdrawal of Motions</p> <p>Rule 34: Reconsideration of Proposals Adopted or Rejected</p> <p>Chapter VII: Voting</p> <p style="padding-left: 20px;">Rule 35: Voting Rights</p> <p style="padding-left: 20px;">Rule 36: Required Majorities</p> <p style="padding-left: 20px;">Rule 37: Meaning of the Expression "Member Delegations Present and Voting"</p> <p style="padding-left: 20px;">Rule 38: Method of Voting</p> <p style="padding-left: 20px;">Rule 39: Conduct During Voting</p> <p style="padding-left: 20px;">Rule 40: Division of Proposals and Amendments</p> <p style="padding-left: 20px;">Rule 41: Voting on Amendments</p> <p style="padding-left: 20px;">Rule 42: Voting on Proposals</p> <p style="padding-left: 20px;">Rule 43: Elections on the Basis of Proposals Made by the President of the Conference</p> <p style="padding-left: 20px;">Rule 44: Equally Divided Votes</p> <p>Chapter VIII: Languages and Summary Minutes</p> <p style="padding-left: 20px;">Rule 45: Languages of Oral Interventions</p> <p style="padding-left: 20px;">Rule 46: Summary Minutes</p> <p style="padding-left: 20px;">Rule 47: Languages of Documents and Summary Minutes</p> <p>Chapter IX: Open and Closed Meetings</p> <p style="padding-left: 20px;">Rule 48: Meetings of the Plenary and of the Main Committees</p> <p style="padding-left: 20px;">Rule 49: Meetings of Other Committees and of Working Groups</p> <p>Chapter X: Observers</p> <p style="padding-left: 20px;">Rule 50: Observers</p>
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Chapter I: Objective, Composition and Organs

Rule 1: Objective

(1) The objective of the Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970 (hereinafter referred to as "the Conference"), is to negotiate and conclude, on the basis of the drafts contained in BIRPI documents PCT/DC/4 and 5, a treaty, tentatively designated as "the Patent Cooperation Treaty," and Regulations under that Treaty.

(2) The Conference may also adopt final acts, protocols, recommendations and resolutions the subject matter of which is germane to the objective stated in paragraph (1) and which the circumstances may call for.

Rule 2: Composition

(1) The Conference shall consist of the Delegations (see Rule 4) of the States members of the International (Paris) Union for the Protection of Industrial Property invited to the Conference. Only such Delegations shall have the right to vote in the Conference. They are referred to hereinafter as "the Member Delegations."

(2) Delegations of other States invited to the Conference by the host Government (hereinafter referred to as "Observer Delegations") and representatives of intergovernmental and international nongovernmental organizations invited to the Conference by or with the authorization of the host Government (hereinafter referred to as "Observer Organizations") may participate in the discussions of the Conference as specified in these Rules.

(3) The term "delegation" or "delegations," as hereinafter used, shall, unless otherwise expressly indicated, include both Member Delegations and Observer Delegations. It does not include Observer Organizations.

(4) The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) and any other official of BIRPI designated by him may participate in the discussions of the Conference and any body thereof and may submit in writing statements, suggestions and observations to the Conference and any body thereof.

Rule 3: Organs

(1) The Conference shall meet in Plenary for the opening and closing of the Conference, for the adoption of the instruments (and any possible resolution and recommendation) referred to in Rule 1, and for the purposes specified in other provisions of these Rules and in the agenda of the Conference.

(2) The Conference shall have such *Committees* and *Working Groups* as shall be established in accordance with these Rules.

(3) The Conference shall have a Secretariat provided by BIRPI in cooperation with the host Government.

*Chapter II: Representation**Rule 4: Representation of Governments*

(1) Each Delegation shall consist of one or more delegates and may include alternates and advisors. Each Delegation shall have a Head of Delegation.

(2) The term "delegate" or "delegates," as hereinafter used, shall, unless otherwise expressly indicated, include both member delegates and observer delegates. It does not include representatives of Observer Organizations.

(3) Each alternate or advisor may act as delegate upon designation by the Head of his Delegation.

Rule 5: Representation of Observer Organizations

Each Observer Organization may be represented by not more than three representatives.

Rule 6: Credentials and Full Powers

(1) Each Member Delegation shall present credentials.

(2) Full powers shall be required for signing the treaty adopted by the Conference. Such powers may be included in the credentials.

(3) Credentials and full powers shall be signed by the Head of State or the Head of Government or the Minister responsible for external affairs.

Rule 7: Letters of Appointment

(1) Each Observer Delegation shall present a letter or other document appointing the delegate or delegates as well as any alternate and any advisor. Such document or letter shall be signed as provided in Rule 6(3) or by the Ambassador accredited to the host Government.

(2) The representatives of Observer Organizations shall present a letter or other document appointing them. It shall be signed by the Head (Director General, Secretary General, President) of the Organization.

Rule 8: Presentation of Credentials, etc.

The credentials and full powers referred to in Rule 6 and the letters or other documents referred to in Rule 7 should be presented to the Secretary General of the Conference not later than at the time of the opening of the Conference.

Rule 9: Provisional Participation

Pending a decision upon their credentials, letters or other documents of appointment, delegations and representatives shall be entitled to participate provisionally in the Conference.

Rule 10: Examination of Credentials, etc.

(1) The Credentials Committee shall examine the credentials, full powers, letters or other documents referred to in Rules 6 and 7 and shall report to the Plenary.

(2) The final decision on the said credentials, full powers, letters or other documents shall be within the competence of the Plenary. Such decision shall be made as soon as possible and in any case not later than the vote on the adoption of the Treaty and the Regulations.

*Chapter III: Committees and Working Groups**Rule 11: Credentials Committee*

(1) The Conference shall have a Credentials Committee.

(2) The Credentials Committee shall consist of 12 members elected by the Plenary from among the Member Delegations.

(3) Its officers shall be elected from among its members by the Plenary.

Rule 12: Main Committees

(1) The Conference shall have two Main Committees:

(i) Main Committee I shall examine Chapters I, II and III of the Draft Treaty, the Draft Regulations as far as they concern the said Chapters of the Draft Treaty, and any proposal or other matter not within the competence of Main Committee II.

(ii) Main Committee II shall examine Chapters IV and V of the Draft Treaty as well as the Draft Regulations as far as they concern the said Chapters of the Draft Treaty.

(2) Each Main Committee shall establish draft texts, which it shall submit to the Plenary.

(3) Each Member Delegation shall have the right to be a member of each Main Committee.

(4) The officers of each Main Committee shall be elected from among its members by the Plenary.

Rule 13: Drafting Committees

(1) Each Main Committee shall have its own Drafting Committee.

(2) There shall be a General Drafting Committee, which shall coordinate the draft texts established by the Main Committees.

(3) The members of the three Drafting Committees shall be elected by the Plenary.

(4) The officers of each Drafting Committee shall be elected from among its members by the Plenary.

Rule 14: Working Groups

(1) Each Committee may establish such Working Groups as it deems useful.

(2) The members of each Working Group shall be elected by the Committee which has established it.

(3) The officers of each Working Group shall be elected by the members of the Working Group.

Rule 15: Steering Committee

(1) The Steering Committee shall consist of the President of the Conference and the Chairmen of the Main Committees, of the Credentials Committee, and of the General Drafting Committee.

(2) The Steering Committee shall meet from time to time to review the progress of the Conference and to make recommendations for furthering such progress.

(3) Coordination of the meetings of all Committees and Working Groups, including the organization of any joint meeting, shall be decided by the Steering Committee.

Chapter IV: Officers

Rule 16: Officers

(1) The Plenary shall, in its first meeting, elect the President of the Conference and the 16 Vice-Presidents of the Conference.

(2) The President and Vice-Presidents so elected shall also act as Chairman and Vice-Chairmen, respectively, of the Plenary and of the Steering Committee.

(3) Each of the two Main Committees, the three Drafting Committees, and the Credentials Committee, shall have one Chairman and two Vice-Chairmen.

(4) Precedence among Vice-Chairmen depends on the place occupied by the name of the State of each of them in the list of participating States established in the English alphabetical order.

Rule 17: Acting Chairmen

(1) Subject to the provisions of Rule 18, any meetings of bodies whose Chairmen are absent therefrom shall be presided over by the following as Acting Chairmen:

(i) where there is one Vice-Chairman, by that Vice-Chairman;

(ii) where there are several Vice-Chairmen, by that Vice-Chairman who, among all the Vice-Chairmen present, has precedence over all the others.

(2) If both the Chairman and the Vice-Chairman or Vice-Chairmen, where appropriate, are absent from any meeting, an Acting Chairman shall be elected by the body concerned.

Rule 18: Replacement of Chairmen

If any Chairman is unable to continue to perform his functions, a new Chairman shall be elected.

Rule 19: Chairmen Not Entitled to Vote

No Chairman or Acting Chairman shall vote. Another member of his Delegation may vote for his State.

Chapter V: Secretariat

Rule 20: Secretariat

(1) The Director of BIRPI shall, from among the staff of BIRPI, designate the Secretary General of the Conference, an Assistant Secretary General, and a Secretary for each of the Committees and Working Groups. An Assistant Secretary General for Administration shall be designated by the host Government.

(2) The Secretary General shall, in cooperation with the Assistant Secretary General for Administration, direct the staff required by the Conference.

(3) The Secretariat shall provide for the receiving, translation, reproduction, and distribution, of the required documents; the interpretation of oral interventions; the preparation and circulation of the summary minutes (see Rule 46); and the general performance of all other Conference work required.

(4) The Director of BIRPI shall be responsible for the custody and preservation in the archives of BIRPI of all Conference documents; the publication of the corrected summary minutes after the Conference; and the distribution of the final documents of the Conference to the participating Governments.

Chapter VI: Conduct of Business

Rule 21: Quorum

(1) A quorum shall be required in the Plenary and shall be constituted by a majority of the Member Delegations.

(2) A quorum shall not be required in the Committees and Working Groups.

Rule 22: General Powers of the Chairman

In addition to exercising the powers conferred upon him elsewhere by these Rules, the Chairman shall declare the opening and closing of the meetings, direct the discussions, accord the right to speak, put questions to the vote, and announce decisions. He shall rule on points of order and, subject to these Rules of Procedure, shall have complete control of the proceedings and over the maintenance of order thereat. The Chairman may propose the limiting of time to be allowed to speakers, the limiting of the number of times each delegation may speak on any question, the closing of the list of speakers, or the closing of the debate. He may also propose the

suspension or the adjournment of the debate on the question under discussion.

Rule 23: Speeches

No person may speak without having previously obtained the permission of the Chairman. Subject to Rules 24 and 25, the Chairman shall call upon speakers in the order in which they signify their desire to speak. The Secretariat shall be responsible for drawing up a list of such speakers. The Chairman may call a speaker to order if his remarks are not relevant to the subject under discussion.

Rule 24: Precedence

The Chairman of a Committee or Working Group may be accorded precedence for the purpose of explaining the conclusions arrived at by his Committee or Working Group.

Rule 25: Points of Order

During the discussion of any matter, any Member Delegation may rise to a point of order, and the point of order shall be immediately decided by the Chairman in accordance with these Rules of Procedure. Any Member Delegation may appeal against the ruling of the Chairman. The appeal shall be immediately put to the vote and the Chairman's ruling shall stand unless overruled by a majority of the Member Delegations present and voting. A Member Delegation rising to a point of order may not speak on the substance of the matter under discussion.

Rule 26: Time Limit on Speeches

Any meeting may limit the time to be allowed to each speaker and the number of times each delegation or representative of an Observer Organization may speak on any question. When the debate is limited and a delegation or Observer Organization has used up its allotted time, the Chairman shall call it to order without delay.

Rule 27: Closing of List of Speakers

During the discussion of any matter, the Chairman may announce the list of speakers and, with the consent of the meeting, declare the list closed. He may, however, accord the right of reply to any delegation if a speech delivered after he has declared the list closed makes it desirable.

Rule 28: Adjournment of Debate

During the discussion of any matter, any Member Delegation may move the adjournment of the debate on the question under discussion. In addition to the proposer of the motion, one Member Delegation may speak in favor of the motion, and two against, after which the motion shall immediately be put to the vote. The Chairman may limit the time to be allowed to speakers under this Rule.

Rule 29: Closure of Debate

Any Member Delegation may at any time move the closure of the debate on the question under discussion, whether or not any other delegation has signified its wish to speak. Permission to speak on the motion for closure of the debate shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the motion shall immediately be put to the vote. If the meeting is in favor of closure, the Chairman shall

declare the debate closed. The Chairman may limit the time to be allowed to Member Delegations under this Rule.

Rule 30: Suspension or Adjournment of the Meeting

During the discussion of any matter, any Member Delegation may move the suspension or the adjournment of the meeting. Such motions shall not be debated, but shall immediately be put to the vote. The Chairman may limit the time to be allowed to the speaker moving the suspension or adjournment.

Rule 31: Order of Procedural Motions

Subject to Rule 25, the following motions shall have precedence in the following order over all other proposals or motions before the meeting:

- (a) to suspend the meeting,
- (b) to adjourn the meeting,
- (c) to adjourn the debate on the question under discussion,
- (d) to close the debate on the question under discussion.

Rule 32: Amendments

Proposals for amending the Drafts contained in documents PCT/DC/4 and 5 may be made by the Member Delegations and shall, as a rule, be submitted in writing and handed to the Secretary General of the Conference or the person designated by him. The Secretariat shall distribute copies to the participants represented on the body concerned. As a general rule, no proposal shall be discussed or put to the vote in any meeting unless copies of it have been made available not later than 5 p.m. on the day before that meeting. The Chairman may, however, permit the discussion and consideration of proposals even though copies have not been distributed, or have been made available only on the day they are considered.

Rule 33: Withdrawal of Motions

A motion may be withdrawn by the Member Delegation which has proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion thus withdrawn may be reintroduced by any Member Delegation.

Rule 34: Reconsideration of Proposals Adopted or Rejected

When a proposal has been adopted or rejected, it may not be reconsidered unless so decided by a two-thirds majority of the Member Delegations present and voting. Permission to speak on the motion to reconsider shall be accorded only to one Member Delegation seconding and two Member Delegations opposing the motion, after which the question of reconsideration shall immediately be put to the vote.

Chapter VII: Voting

Rule 35: Voting Rights

Each Member Delegation shall have one vote in each of the bodies of which it is a member. A Member Delegation may represent and vote for its own Government only.

Rule 36: Required Majorities

- (1) Adoption of the Treaty and the Regulations shall require a majority of two-thirds of the Member

Delegations present and voting in the final vote in the Plenary.

(2) Any other decisions by the Plenary and all decisions in the Committees or Working Groups shall, subject to Rule 34, require a majority of the Member Delegations present and voting.

Rule 37: Meaning of the Expression "Member Delegations Present and Voting"

For the purpose of these Rules, the expression "Member Delegations present and voting" means Member Delegations present and casting an affirmative or negative vote. Member Delegations which abstain from voting shall be considered as not voting.

Rule 38: Method of Voting

(1) Voting shall be by show of hands or by standing, unless any Member Delegation requests a roll-call, in which case it shall be by roll-call. The roll shall be called in the English alphabetical order of the names of the States, beginning with the Member Delegation whose name is drawn by lot by the Chairman.

(2) The preceding paragraph shall also apply to voting for elections, unless in a given case the body concerned decides by a simple majority, at the request of any Member Delegation, that the election be held by secret ballot.

(3) Only proposals or amendments proposed by a Member Delegation and seconded by at least one other Member Delegation shall be put to a vote.

Rule 39: Conduct During Voting

After the Chairman has announced the beginning of voting, no one shall interrupt the voting except on a point of order in connection with the actual conduct of the voting. The Chairman may permit Member Delegations to explain their votes, either before or after the voting, except once it is decided that the vote will be by secret ballot. The Chairman may limit the time to be allowed for such explanations.

Rule 40: Division of Proposals and Amendments

Any Member Delegation may move that parts of a proposal, or of any amendment thereto, be voted upon separately. If objection is made to the request for division, the motion for division shall be put to a vote. Permission to speak on the motion for division shall be given only to one Member Delegation in favor and two Member Delegations against. If the motion for division is carried, all parts of the proposal or of the amendment, separately approved, shall again be put to the vote, together, as a whole. If all the operative parts of the proposal or of the amendment have been rejected, the proposal or the amendment shall be considered to have been rejected also as a whole.

Rule 41: Voting on Amendments

When an amendment to a proposal is moved, the amendment shall be voted on first. When two or more amendments to a proposal are moved, they will be put to a vote in the order in which their substance is removed from the proposal, the furthest removed being put to a vote first and the least removed put to a vote last. If, however, the adoption of any amendment necessarily implies the rejection of any other amendment or of the original proposal, such

amendment and proposal shall not be put to a vote. If one or more amendments are adopted, the proposal as amended shall be put to a vote. A motion is considered an amendment to a proposal even if it merely adds to, deletes from, or revises part of, that proposal.

Rule 42: Voting on Proposals

If two or more proposals relate to the same question, the body concerned shall, unless it decides otherwise, vote on the proposals in the order in which they have been submitted.

Rule 43: Elections on the Basis of Proposals Made by the President of the Conference

The President of the Conference may propose a list of candidates for all positions to which election is to be voted upon by the Plenary.

Rule 44: Equally Divided Votes

(1) If a vote is equally divided on matters other than elections of officers, the proposal or amendment shall be regarded as rejected.

(2) If a vote is equally divided on a proposal for election of officers, the vote shall be repeated until one of the candidates receives more votes than any of the others.

Chapter VIII: Languages and Summary Minutes

Rule 45: Languages of Oral Interventions

(1) Subject to paragraphs (2) and (3), oral interventions shall be in either English, French, Russian or Spanish, and interpretation shall be provided for by the Secretariat in the other three languages.

(2) Oral interventions in the Credentials Committee, the three Drafting Committees, and any Working Group, may, for technical reasons, be required to be made either in English or in French, interpretation into the other language being provided for by the Secretariat.

(3) Any Member Delegation may make oral interventions in another language, provided its own interpreter simultaneously interprets the intervention in English or French. In such a case, the Secretariat shall provide for interpretation from English or French into the other three languages referred to in paragraph (1), or the other language referred to in paragraph (2), as the case may be.

Rule 46: Summary Minutes

(1) Provisional summary minutes shall be drawn up by the Secretariat and shall be made available as soon as possible to all participants, who shall inform the Secretariat within three days of any suggestions for changes in the summary of their own interventions. In the case of provisional summary minutes made available during or after the last five days of the Conference, such suggestions shall be communicated to BIRPI within two months from the making available of the provisional summary minutes.

(2) The final summary minutes shall be published in due course by BIRPI.

Rule 47: Languages of Documents and Summary Minutes

(1)(a) Proposals and amendments shall be filed in English or French.

(b) The Secretariat shall distribute such proposals and amendments in English and French.

(2) Observer Delegations and Observer Organizations may file observations germane to the questions under discussion in English or French or both. The Secretariat shall, whenever possible, distribute such observations in the language or languages in which they were filed.

(3) Subject to paragraph (4), all other documents shall be distributed in English and French.

(4)(a) Provisional summary minutes shall be drawn up in the language used by the speaker if the speaker has used English or French; if the speaker has used another language, his intervention shall be summarized in English or French.

(b) The final summary minutes shall be made available in English and French.

*Chapter IX: Open and Closed Meetings**Rule 48: Meetings of the Plenary and of the Main Committees*

The meetings of the Plenary and of the Main Committees shall be open unless the body concerned decides otherwise and in so far as there are seats available.

Rule 49: Meetings of Other Committees and of Working Groups

Meetings of other Committees and of Working Groups shall be closed.

*Chapter X: Observers**Rule 50: Observers*

Any Observer Delegation and the representative of any Observer Organization may, upon invitation by the Chairman, make oral statements.

PCT/DC/MISC/2

February 11, 1970 (Original: English)
UNITED STATES OF AMERICA

Draft Agenda proposed by the Host Government

1. Opening of the Conference.
2. Address by the Director of BIRPI.
3. Election of the President of the Conference.
4. Adoption of the Agenda.
5. Adoption of the Rules of Procedure of the Conference.
6. Election of:
 - (a) the Vice-Presidents of the Conference,
 - (b) the members of the Credentials Committee, the General Drafting Committee and the two Drafting Committees,
 - (c) the Chairmen and Vice-Chairmen of the two Main Committees and of each of the four other Committees referred to in the preceding item.
7. Introduction of the Draft Patent Cooperation Treaty by the Secretary General of the Conference.

8. Introductory and general observations by Member Delegations.*

9. Consideration of the reports of the Credentials Committee.

10. Consideration of the texts submitted by the two Main Committees and the General Drafting Committee.

11. Final vote on:

(a) the text of the Patent Cooperation Treaty and of the Regulations under that Treaty,

(b) any other instruments, resolutions or recommendations.

12. Closing of the Conference by the President of the Conference.

Note: The signing of the instruments adopted by the Conference will take place in a special ceremony immediately after the closing of the Conference.

PCT/DC/MISC/3

May 25, 1970 (Original: English)
DIRECTOR OF BIRPI

Address by Professor G. H. C. Bodenhausen, Director of BIRPI, at the Opening Session of the Conference on May 25, 1970

Editor's Note: The text of the address contained in this document is reproduced in the Verbatim Minutes of the Plenary of the Conference on pages 554 to 556 of this volume.

PCT/DC/MISC/4

May 22, 1970 (Original: English/French)
SECRETARIAT

Provisional List of Participants

[Omitted]

PCT/DC/MISC/4/Add.1 and Corr. 1

May 26, 1970 (Original: English/French)
SECRETARIAT

Addenda and Corrigenda to the Provisional List of Participants

[Omitted]

PCT/DC/MISC/4/Add.2 and Corr. 2

June 1, 1970 (Original: English/French)
SECRETARIAT

Addenda and Corrigenda to the Provisional List of Participants

[Omitted]

* Observer Delegations and Observer Organizations will be given an opportunity to make introductory and general observations in the Main Committees.

PCT/DC/MISC/4/Add.3

June 8, 1970 (Original: English/French)
SECRETARIAT

Addenda to the Provisional List of Participants

[Omitted]

PCT/DC/MISC/5

May 25, 1970 (Original: English)
PRESIDENT OF THE CONFERENCE

Proposal for Elections

[Omitted]

PCT/DC/MISC/6 May 25, 1970 (Original: English)
UNITED STATES OF AMERICA SECRETARY OF
COMMERCE

Address by the Honorable Maurice H. Stans, United States Secretary of Commerce, before the Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970, at the State Department Auditorium, Washington, D.C., May 25, 1970, 10:45 a.m.

Editor's Note: *The text of the address contained in this document is reproduced in the Verbatim Minutes of the Plenary of the Conference on pages 553 and 554 of this volume.*

PCT/DC/MISC/7 May 26, 1970 (Original: English)
UNITED ARAB REPUBLIC

Observations

The United Arab Republic representative would like to kindly request the following note to be circulated among the delegates to the Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970, as his general opening observations.

The United Arab Republic wishes to express its appreciation for BIRPI and its PCT staff headed by the honorable Dr. Arpad Bogesch, whose valuable and continuous efforts for several years led to the existence of the Draft PCT and its Regulations before us today. He wishes to extend his Government's appreciation and thanks to the host Government.

The United Arab Republic looks forward to this Diplomatic conference with sincere hope that the articles of the PCT will bring about a real and close cooperation between all countries in the field of industrial property, new inventions and modern technology, which is apparently available only to the industrial countries. The United Arab Republic feels that the PCT should be approached in the light of helping the developing countries reach a better standard of living to narrow the existing gap between the rich nations and poor nations, for the sake of economic and social development, a most necessary ingredient element for the establishment and maintenance of international peace and security.

The United Arab Republic participates in this conference with the hope that the PCT will provide effective ways and means to transfer technology and

technical know-how and the flow of such valuable information from the industrial nations to the developing nations. In so doing we hope the industrialized nations will assist the developing countries in the necessary applications of these patents and industrial achievement. What is needed is an international sense of world moral responsibility to enlarge the area of development and not an acquiescence of the growing exclusivity to a few. United our goals of prosperity and progress will be achieved. It is from this angle and through this lens that we will endeavor to tackle the articles of the PCT.

The United Arab Republic representative would support the point of view of the distinguished representatives from Algeria, Brazil, Belgium and Zambia and also would like to pay tribute to the other distinguished delegates' speeches.

PCT/DC/MISC/8

May 26, 1970 (Original: English/French)
SECRETARIAT

Officers and Committees of the Conference

[Omitted]

PCT/DC/MISC/8/Corr.1

May 26, 1970 (Original: English/French)
SECRETARIAT

Corrigendum to the Document Listing the Officers and the Committees of the Conference

[Omitted]

PCT/DC/MISC/9

June 17, 1970 (Original: English/French)
SECRETARIAT

List of Participants

[Omitted]

PCT/DC/MISC/10

June 17, 1970 (Original: English/French)
SECRETARIAT

Officers and Committees of the Conference

[Omitted]

PCT/DC/MISC/11 June 19, 1970 (Original: English)
BOLIVIA, CHILE, COSTA RICA, ECUADOR,
GUATEMALA, PARAGUAY.

[Omitted]

Editor's Note: *See PCT/DC/MISC/11.Rev.*

PCT/DC/MISC/11.Rev.

June 19, 1970 (Original: English)
BOLIVIA, CHILE, COSTA RICA, ECUADOR,
GUATEMALA, PARAGUAY, PERU

Statement

1. The Diplomatic Conference held in Washington on a Cooperation Treaty on Patent matters has been attended by several observers from developing countries. This fact clearly indicates the importance that these countries and the developing world in general give to the subjects that were discussed at this Conference. Whatever the existent criteria on the present structure of the patent system may be, the latter continues to be a transcendental vehicle as far as technology transfer is concerned. The development of this Conference has revealed and has allowed to be identified the main problems presented by the present patent system and the alterations introduced into it by the Treaty negotiated in this Conference in so far as it constitutes an instrument for the transfer of technology. Furthermore, it is important that this Conference has made the industrialized countries aware for the first time of this matter and of some of the specific problems of the developing countries.
2. It must be noted that the influence of technology in the development of countries is an element that has been widely recognized in all the meetings where the problem of development has been discussed, starting from the more general ones, such as those held in the United Nations, to the regional and subregional ones with the attendance and participation of the industrialized countries as well as in those meetings representing the developing countries themselves.
3. It is for this reason that the observers of the developing countries that have attended this meeting think that their views on the conclusion and results of it must be recorded in such a way that they be duly taken into account by the industrialized countries.
4. The observer developing countries in this meeting have considered with interest and special expectation some of the achievements attained in it through the initiative of some developing countries that are full members of the system, and particularly the efforts made in this sense by Brazil and other countries that have favored, supported and widened its actions. It is very satisfying to note that in a conference of this kind the possibility has existed for these statements to be implemented and that developing countries as well as some industrialized countries have stood up for and supported the position of the developing world and have attained achievements of some significance.
5. However, it is necessary to point out that these achievements do not alter, in this instance, the basic philosophy of the patent system, whose structure is still that of protection geared towards the direct, governmental and private interests of the industrialized countries, owners of technology, without due consideration yet for the situation, which is still peripheral, of the developing countries, whose interest ought to be at the center of the international structure of patent transfer. This fact gives rise to a justified feeling of anguish in the developing countries that have attended this meeting.
6. We must first point out that the lack of information encountered by the developing countries in respect of technical progress includes even the initial step of the effective knowledge of how the present patent system operates, thus raising, even inside the system, if it could be admitted as valid and justified, the real costs of the technological transfer through patents, in a way which is not only unjust but which also conspires against the international effectiveness of the transfer of technology, allowing for the distortion of the technological market, bringing about the transmission of technologies that are not the best in relation to the economic needs of developing countries, thus altering their economic development, and mutilating and making more difficult their capacity to innovate technology.
7. Because of this, we believe it is vital that the creation of information centers for countries, members or non-members of the Union, with sufficient personnel and means and with objectives wider than those of interest only to regional or subregional patents, be considered. They should be established in developing areas without its being necessary that the corresponding headquarters belong to member countries of this system. We believe that this is in the interest not only of developing countries but also of the rationalization of the system and, in this way, in the long range interests of industrialized countries. The countries that agree on this position consider that the main developing areas (Latin America for instance) should be the headquarters of this kind of center.
8. The subject of the needs and interests of the developing world must be the center of any international system of technological transfer not only for reasons of justice and coherence on the part of the developed countries – that have already acknowledged those as basic in other international meetings – but also because the developing world is a present and above all a potential market, remarkable for technology in general. That is, it is even in the direct economic interest of countries and entitles owners of technology to take into account the situation of the developing countries that form such a market.
9. Consequently, the aim of developing countries is not only to import technology, but to import it in such a way that it may lessen the costs, and it should be done through means that may favor the independent technological development capacity of these countries.
10. In the same context, we must point out the need for a proper and effective technical assistance, which is vital to a better use of the technical information within reach of developing countries but goes beyond helping to solve the problems of mere information within the system; by its very nature, it should lay the basis which will allow the developing countries to collaborate in technical development itself, increasing their capacity to innovate and even allowing it to benefit themselves and others. A technical assistance system that is properly financed is a decisive factor in the rationalization of the technology transfer process and in this sense it even corresponds to one of the chief ideas of this Conference, although the technical assistance situation has not been duly considered in it.
11. Likewise, it is fundamental to study seriously the financial mechanisms that would diminish the real

costs of technology transfer and would facilitate the access of developing countries to technological progress.

12. Consequently, our position contributes towards a better rationalization of the present system and to its insertion in the widest context (which must be natural for the patent system) of technology transfer in general terms.

We believe that, in presenting the above-mentioned proposals, the developing countries are offering a participation profitable to all the international community; the mechanisms already in operation between the developing countries, or with their participation, be it regional or subregional (for example, as in those involving Latin American countries), are in a position to have open discussions and efficient organizations to study and, taking into consideration the points of view exposed, act upon the subjects of interest to us. In those and all that turn out to be appropriate, the observer countries that sign this document will carry out the above-mentioned postulates, and others that might consult their interests. Only in this way will political legitimation be attained in a structure that historically has been conceived for the benefit of a few, but, by its own nature and at the present time, is only internationally conceivable for the benefit of the whole community.

PCT/DC/MISC/12 June 19, 1970 (Original: English)
SECRETARY GENERAL OF THE DIPLOMATIC
CONFERENCE

**Closing Speech by Dr. Arpad Bogsch, Secretary
General of the Conference**

Editor's Note: The text of the speech contained in this document is reproduced in the Verbatim Minutes of the Plenary of the Conference on pages 580 and 581 of this volume.

PCT/DC/MISC/13 June 19, 1970 (Original: English)
UNITED STATES OF AMERICA SECRETARY OF
STATE

**Remarks by the Honorable William P. Rogers,
Secretary of State, to the Washington Diplomatic
Conference on the signing of the Treaty on Patent
Cooperation, Friday, June 19, 1970, 10:30 a.m.
E.D.T.**

Editor's Note: The text of the remarks contained in this document is reproduced in the Verbatim Minutes of the Plenary of the Conference on page 580 of this volume.

