

**RECORDS  
OF THE WASHINGTON  
DIPLOMATIC CONFERENCE  
ON THE PATENT  
COOPERATION TREATY**



**WORLD INTELLECTUAL PROPERTY  
ORGANIZATION  
(WIPO)**

**RECORDS  
OF THE WASHINGTON  
DIPLOMATIC CONFERENCE  
ON THE PATENT  
COOPERATION TREATY**

**1970**



**GENEVA  
1972**



## EDITOR'S NOTE

These *Records* of the Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970, contain all the documents relating to that conference which were issued before, during and after it.

The conference took place from May 25 to June 19, 1970.

The final text of the Patent Cooperation Treaty and the Regulations under the Treaty – as signed at the close of the Conference on June 19, 1970, and as opened for signature until end of 1970 – is printed twice in these *Records*: once with the “Notes” on the Treaty and Regulations under the Treaty (pages 9 to 161) and once opposite the drafts, the July 1969 draft (documents PCT/DC/4 and 5) and the March 1970 draft (documents PCT/DC/11 and 12), which served as the main bases of the discussions of the Conference (pages 282 to 515). The Notes were written by the International Bureau of WIPO. They are intended to facilitate the reading of the text of the Treaty and the Regulations thereunder by summarizing those provisions to which the text refers only by number. At the same time, they contain the cross-references between corresponding provisions in the Treaty and Regulations.

In addition to adopting the Treaty and Regulations, the Conference also adopted the Final Act and a Resolution, the texts of which are printed on pages 165 and 169, respectively.

The “Conference documents” are subdivided into four series: the “Main” series (starting on page 173) principally consists of observations on and proposed amendments to the drafts of the Treaty and Regulations, with the observations generally submitted by governments and international organizations and the proposed amendments by the governmental delegations participating in the Conference; the “WG” (Working Group) series (starting on page 516) consists of the working documents addressed to or submitted by the working groups set up during the Conference to examine particular questions which would facilitate the work of the two “Main Committees,” two bodies each consisting of all the delegations and all the observers and in the meetings of which most of the substantive discussions of the Conference took place; the “INF” (Information) series (starting on page 524) consists mainly of lists of documents; the “MISC” (Miscellaneous) series (starting on page 528) contains the rules of procedure and the agenda of the Conference, as well as the texts of the speeches delivered in the plenary sessions of the Conference by the US Secretary of State (Mr. William P. Rogers), the US Secretary of Commerce (Mr. Maurice H. Stans), the Director of BIRPI (Prof. G. H. C. Bodenhausen) and the Secretary General of the Conference (Dr. Arpad Bogsch).

The lists of participants in the Conference and officers of the Conference appear on pages 539 to 550.

The minutes of the Conference fall into three groups: those of the Plenary of the Conference (starting on page 553), those of the Main Committee I (starting on page 591) and those of the Main Committee II (starting on page 697). The minutes of the Plenary of the Conference are verbatim; those of the Main Committees I and II are summary minutes. They were prepared by the International Bureau after the Conference on the basis of tape recordings of the meetings of those three bodies. The drafts of the minutes were communicated to each participant and the text appearing in these *Records* takes into account the suggestion for amendment received from the participants.

The “Post-Conference documents” (pages 739 to 763) consist of papers prepared by the International Bureau after the Conference. They contain, in addition to the Notes on the Treaty and Regulations referred to above, a history of the Treaty (page 741), a summary of the Treaty and its advantages (page 746), and an analysis of the main differences between the drafts and the final texts (page 759).

Finally, the *Records* contain five different indexes.

The first two (page 767) are indexes to the Treaty and Regulations under the Treaty. The first of these two indexes, Part A, lists by number each Article of the Treaty and each Rule of the Regulations and indicates, under each of them, the pages where the final text, the drafts, the basic proposals, observations, amendments and references in the post-Conference documents concerning the particular Article or Rule are reprinted in these *Records*, as well as the serial numbers of those paragraphs of the minutes contained in these *Records* which reflect the discussions concerning the particular Article or Rule. The second index, Part B, is a catchword index, that is, an alphabetical listing of the main subject matters dealt with in the Treaty and Regulations. After each catchword, the number of the Article or Rule in which the particular subject is dealt with is indicated. By looking up in the Part A Index the Article or Rule so indicated, the reader will find the references to the pages or – in the case of the minutes – the paragraph numbers where the particular subject matter is treated.

The third index is an alphabetical list of States showing, under the name of each State, where to find names of the members of the delegation of that State, as well as the written observations submitted, the amendments filed, and the interventions made on behalf of that State.

The fourth index is an alphabetical list of the Organizations showing, under the name of each Organization, where to find names of observers representing that Organization, as well as the written observations and interventions made on behalf of it.

The fifth index is an alphabetical list of the participants indicating, under the name of each participant the State or Organization which he represented as well as the place in the *Records* where the name of the participant appears with his delegation, as an officer of the Conference or of a Committee, as a speaker in the Plenary or Main Committees, or as a plenipotentiary signing the Treaty or Final Act.

Geneva, 1972.

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**THE PATENT COOPERATION  
TREATY**

**REGULATIONS UNDER THE  
PATENT COOPERATION TREATY**

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**NOTES**



## 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.

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**PCT/PCD/4**            December 10, 1970 (Original: English)  
 WIPO/BIRPI

#### Notes on the Patent Cooperation Treaty

##### *The present document*

These Notes are intended to serve two main purposes. One is to facilitate the reading of the text of the Treaty by providing, where a provision refers to other provisions of the Treaty, brief information on those other provisions, so that the reader should generally be able to avoid, as far as possible, turning to the page on which the provisions referred to appear. The other is to enable the reader to find rapidly in the Regulations the Rules which pertain to any given provision of the Treaty. To this end, the pertinent Rules are referred to by their number and in most cases also by their title.

#### NOTES ON THE INTRODUCTORY PROVISIONS

The “Introductory Provisions” consist of two Articles, one dealing with the establishment of the International Patent Cooperation Union (Article 1), the other with definitions (Article 2).

#### NOTES ON ARTICLE 1

PARAGRAPH (1): “Contracting States” are the States which are bound by the Treaty: see Articles 62 (Becoming Party to the Treaty) and 63 (Entry into Force of the Treaty). Only States members of the Paris Union may become Contracting States (see Article 62(1)). A State may be a Contracting State without being bound by the provisions of Chapter II (International Preliminary Examination): see Article 64(1).

Rendering special technical services includes patent information services and technical assistance to developing countries: see Chapter IV.

“Application” and “Union” are defined in Article 2(i) and 2(xvi), respectively.

PARAGRAPH (2): It could be maintained that this provision is not necessary since the Treaty does not contain anything that diminishes rights guaranteed under the Paris Convention. That this cannot be otherwise follows also from Article 19 of the Paris Convention which prohibits the conclusion of agreements contravening the provisions of the Paris Convention. Thus the paragraph merely serves to emphasize something that goes without saying.

## 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;

(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;

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### NOTES ON ARTICLE 2

#### ITEM (i) (“application”):

See Articles 1(1); 2(v)(vi)(vii)(viii)(xi)(a)(b); 3(1); 8(1), (2)(b); 16(1); 27(5); 44; 50(1); 63(1)(a)(i)(ii)(iii)(b).  
See Rules 4.1(b)(v), 4.10(a), (a)(i)(iv), (b)(i), (c), (d), (e), 4.11, 4.13, 4.14; 9.1(iii); 20.6(b); 24.2(a); 33.1(c); 43.2, 43.6(b); 61.2(b); 64.1(b)(ii), 64.3; 66.7(a), (b); 70.10.

#### ITEM (ii) (“patent”):

See Articles 2(iii)(iv)(ix)(xii); 28(1); 41(1); 46; 50(1); 64(3)(c)(ii), (4)(a).  
See Rules 4.1(b)(v); 9.1(iii); 33.1(c); 64.3; 70.10.

#### ITEM (iii) (“national patent”):

See Articles 2(vi)(ix); 4(1)(ii).

#### ITEM (iv) (“regional patent”):

See Articles 2(v)(vi)(ix)(x)(xii); 4(1)(ii); 45(1), (2).  
See Rules 4.1(b)(iv); 15.1(ii), 15.2(b)(i)(ii), 15.5(c); 34.1(ii).

#### ITEM (v) (“regional application”):

See Article 2(x).

See Rules 4.10(a)(i)(iv), (b)(i); 34.1(ii).

#### ITEM (vi) (“national application”):

See Articles 2(viii); 4(1)(v), (4); 8(2)(b); 11(3); 15(5)(a)(b)(c); 22(1); 24(1); 26; 27(3), (4); 29(1); 39(2); 64(3)(c)(ii).

See Rules 4.1(a)(v), (c); 17.1(a); 18.4(c); 52.1(b); 78.1(b).

(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;

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ITEM (vii) (“international application”):

See Articles 2(viii)(xi)(a)(b)(c)(xv); 3(1), (2), (4); 4(1)(i)(ii); 7(2)(i); 8(1), (2)(b); 9(1)(2); 10; 11(1), (1)(i)(ii)(iii), (iii)(a), (2)(a), (3), (4); 12(1), (2), (3); 13(1), (2)(a)(b); 14(1)(a)(b), (2), (3)(a), (4); 15(1), (5)(c); 16(2); 17(2)(a)(i), (3)(a)(b); 19(1), (2); 20(1)(a); 21(1), (2)(a)(b), (5), (6); 22(1); 23(1), (2); 24(1), (1)(i)(ii); 25(1)(a), (2)(a); 26; 27(1), (2), (2)(ii), (3), (4), (5), (7), (8); 28(2), (4); 29(1), (2)(iii), (4); 30(1)(a), (2)(a), (a)(i)(ii)(iii)(b)(c), (4); 31(1), (2)(a)(b), (3); 34(2)(b)(c)(ii), (3)(a)(b)(c), (4)(a)(i); 37(4)(a)(b); 39(1)(a); 40(1), (2); 41(2), (4); 42; 43; 45(1), (2); 46; 49; 57(5)(b); 64(2)(a)(i)(ii), (3)(a)(b)(c), (c)(ii), (4)(a)(c), (6)(a)(b); 65(1), (2); 66(2).

See Rules 3.3(a)(i)(ii); 4.2, 4.8(a), (b), 4.10(a)(i)(iv), (b)(i), (c), (d), 4.12(a), 4.13, 4.14; 6.2, 6.2(b), 6.5; 8.1(a)(ii), (d), 8.3; 9.1, 9.2; 10.1(f), 10.2; 11.1(a), (b), 11.2(a), 11.3, 11.4(a), (b), 11.5, 11.6(e), 11.7(a), 11.13(m), 11.14, 11.15; 12.1, 12.2; 13.1, 13.2(i)(ii), 13.3, 13.4, 13.5; 14.1(a); 15.1, 15.1(ii), 15.2(a)(i)(ii), 15.4(a), (a)(i), (b); 16.3; 17.1(a), 17.2(b), (c); 18.3, 18.4(a), (c); 19.1(a), 19.2(b); 20.1(a), 20.2(a), 20.4(a), 20.5(a), (b), (c), 20.7(i)(ii)(iii), 20.9; 21.1(a), (b), (c); 22.1(a), 22.2(a), (b), (e), 22.5; 23.1(b); 24.1, 24.2(a); 26.1(a), 26.4(b), 26.5(a), 26.6(a); 28.1(a); 29.1(a), 29.2; 31.1(a); 32.1(a), (b), (d); 33.1(c), 33.2(c), (d); 34.1(b)(ii); 35.1, 35.2(a)(i)(ii); 37.1, 37.2; 38.1, 38.2(a); 39.1; 40.1, 40.2(c); 41.1; 43.1, 43.4, 43.7; 44.3(a); 46.3, 46.4(a), 46.5(b); 47.1(b), 47.3; 48.1(a), 48.2(b)(ii), (i), 48.3(a), (b), (c), 48.4(a), 48.5, 48.6(a), (c); 49.1(c), 49.2, 49.3; 50.1(c), (d); 51.2, 51.4; 53.2(a)(iii), 53.3, 53.6; 54.2(i)(ii), 54.3(a)(i)(ii); 55.1, 55.2(a); 56.1, 56.2, 56.4; 59.1, 59.2; 61.2(b); 62.1(b); 64.1(b)(i)(ii); 66.1, 66.2(a)(i)(iii)(iv), 66.7(a), 66.8(a), (b); 67.1; 68.1, 68.2, 68.3(c); 70.2(c), 70.3, 70.12(i)(ii), 70.13, 70.16, 70.17(a), (b); 71.2(a); 74.1; 75.4(b); 76.2, 76.3; 86.1(i)(iv), 86.5; 87.1, 87.2(a); 90.2(d); 91.1(a), (b), (c), (e)(ii)(iii)(iv), (f), (g)(i); 92.1(a), 92.2(a), (b); 93.1, 93.2(a), 93.3; 94.1; 95.1(a).

ITEM (viii) (“application”):

See Articles 2(i)(v)(xi)(a)(b); 3(1); 8(1), (2)(b); 16(1); 27(5); 44; 50(1); 63(1)(a)(i)(ii)(iii)(b).

See Rules 4.1(b)(v), 4.10(a), (a)(i)(iv), (b)(i), (c), (d), (e), 4.11, 4.13, 4.14; 9.1(iii); 20.6(b); 24.2(a); 33.1(c); 34.1(d), (f); 43.2, 43.6(b); 61.2(b); 64.1(b)(ii), 64.3; 66.7(a), (b); 70.10.

ITEM (ix) (“patent”):

See Articles 2(i)(ii)(xii); 4(3); 28(1); 41(1); 43; 44; 46; 50(1); 64(3)(c)(ii), (4)(a).

See Rules 4.1(b)(v), 4.12(a), 4.13; 9.1(iii); 33.1(c); 34.1(d), (e); 43.6(b); 64.3; 70.10.

ITEM (x) (“national law”):

See Articles 4(1)(ii)(v), (4); 8(2)(b); 15(5)(a)(b); 17(3)(b); 19(3); 22(1), (3); 26; 27(1), (2), (3), (4), (5), (6), (7); 28(2), (3); 29(1), (2), (2)(i)(ii), (3), (4); 34(3)(b)(c); 35(2); 37(4)(a)(b); 39(1)(b); 41(2), (3); 45(2); 48(2)(a); 64(4)(a).

See Rules 2.3; 4.1(a)(v), (c), 4.4(c), 4.6(c); 5.1(a)(v); 6.3(c), 6.5; 13.5; 18.1(a), 18.2(a), (b), 18.4(c); 49.2; 52.1(a), (b); 76.2; 78.1(a), (b).

ITEM (xi) (“priority date”):

See Articles 13(1); 21(2)(a); 22(1); 29(3); 30(4); 39(1)(a); 40(1); 64(3)(b)(c)(ii), (4)(a).

See Rules 4.10(c); 15.4(b); 17.1(a); 22.1(a), (b), 22.2(d), (e), 22.3(a)(i)(ii); 23.1(b); 32.1(a); 33.1(c); 42.1; 46.1; 61.2(c); 70.10; 75.1(a); 78.1(a), (b), 78.2, 78.3.

(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;

ITEM (xii) (“national Office”):

See Articles 2(xiii)(xiv)(xv); 13(2)(c); 15(5)(a)(b); 16(1), (3)(a)(b)(e); 17(3)(b); 22(1); 25(1)(b); 27(4); 29(4); 30(2)(a)(b), (4); 34(3)(b)(c); 37(4)(b); 40(1); 49; 50(5)(b); 55(5); 56(2)(b); 58(3)(a)(ii); 63(1)(a)(iii); 64(2)(a)(ii), (3)(c)(ii).

See Rules 4.10(a)(iv); 19.1(a), (b), (c), 19.3(a); 29.1(b); 31.1(a); 34.1(c)(vi); 36.1(i); 48.5; 55.1(a); 58.1(c); 59.1, 59.2; 62.1(a), (b); 63.1(i); 69.1(c); 72.1(a); 75.2(a); 79.1; 80.5, 80.6, 80.7(a); 82.1(b), 82.2(b); 83.2(a); 87.2(a); 92.2(e), 92.3.

ITEM (xiii) (“designated Office”):

See Articles 4(1)(v); 7(2)(ii); 13(1), (2)(a)(b); 20(1)(a), (3); 22(1); 23(1), (2); 24(2); 25(1)(a), (2)(a); 26; 27(2), (3), (7); 28(1), (4); 30(2)(c).

See Rules 4.10(c); 6.2(b); 11.15; 17.1(c), 17.2(a); 18.5; 24.2(a); 29.1(a)(ii), 29.2; 32.1(d); 40.2(c); 44.3(b), (c); 47.1(c), (d), (e), 47.3; 48.3(b); 49.2; 51, 51.4; 52; 86.1(iv); 95.1(a).

ITEM (xiv) (“elected Office”):

See Articles 31(7); 36(3)(a)(b); 37(3)(b); 38(1); 39(1)(a), (3); 40(2); 41(1), (4); 42.

See Rules 54.4; 61.2; 61.2(c); 68.3(c); 71.2(b), (c); 72.2, 72.3; 75.2, 75.2(b); 76.2, 76.4; 78, 78.3; 86.1(iv); 95.1(a).

ITEM (xv) (“receiving Office”):

See Articles 10; 11(1), (1)(i), (2)(a)(b); 12(1); 14(1)(a)(b), (2), (3)(a)(b), (4); 16(2); 25(1)(a)(b), (2)(a); 27(7); 30(2)(b), (3); 31(2)(a); 32(2); 56(5).

See Rules 2.3; 3.2, 3.3(b); 4.10(d), 4.17(b); 9.2; 11.1(b), 11.5, 11.6(d); 12.1; 14.1(a), (b); 15.3(a), (b), 15.4(a), 15.5(b); 16.1(b); 17.1(a); 18.1(a), 18.2(a), 18.5; 19.1(b), (c), 19.3(a); 20.1(a), 20.2(a), (b), 20.3, 20.4(a), 20.5(a), (c), 20.6(a), (b), 20.7, 20.8, 20.9; 21.1(a), (b), (c); 22.1(a), (b), (c), 22.2(a), (b), (c), (d), (e), 22.4, 22.5; 23.1(a), (b), (c); 24.2(a), (b); 25.1; 26.1(a), (b), 26.2, 26.4(a), (b), (c), (d), 26.5(a), (b), 26.6(a); 28.1(a), (b); 29.1(a), (a)(i)(ii)(iii), (b), 29.3, 29.4; 32.1(c), (d); 35.1, 35.2(a), (b); 37.1, 37.2; 38.1, 38.2(a); 43.1; 53.1(b), 53.6; 54.4; 61.2(b); 70.3; 79.1; 86.1(ii); 89.2(a); 90.2(d), 90.3(b); 91.1(e)(i), (g)(i); 93.1.

ITEM (xvi) (“Union”):

See Articles 1(1), (2)(xvii); 53(2)(a)(i)(iv)(vi)(vii)(viii)(x); 54(6)(a)(ii)(v); 55(1), (2), (3); 57(1)(a)(b)(c), (2), (3), (3)(i)(ii), (5)(d)(e), (7)(a).

ITEM (xvii) (“Assembly”):

See Articles 9(2); 16(3)(a)(b)(e); 31(2)(b); 32(2); 47(2)(b); 50(4), (6), (7); 51(1), (5); 53(1)(a), (2)(a)(b), (5)(b), (6)(a), (8), (9), (10), (11)(a)(b)(c), (12); 54(1), (2)(a), (3), (4), (5)(a)(c), (6)(a)(i)(ii)(iv)(v); 55(4), (6), (7)(a); 56(1), (2)(a), (3)(iii), (5), (6)(b), (7), (8); 57(5)(b)(c)(d)(e), (7)(a)(b)(c), (8)(a), (9); 58(2)(a), (4); 60(2); 61(1)(a)(b), (2)(a), (3)(a)(b)(c); 65(1), (2); 67(1)(b).

See Rules 19.1(c); 34.1(e); 54.2(ii), 54.3(a)(ii); 59.2; 81.2(a), (b); 85.1; 86.2(b); 88.1, 88.2, 88.3, 88.4; 89.2(c).

ITEM (xviii) (“Organization”):

See Articles 2(xix)(xx); 53(2)(b), (11)(a)(b); 54(6)(b), (7)(a); 57(1)(b)(c), (2), (7)(c), (8)(a)(b).

(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.

## 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.

#### ITEM (xix) (“International Bureau”):

See Articles 12(1), (3); 13(1), (2)(b)(c); 16(3)(b); 17(1), (2)(a); 18(2), (3); 19(1); 21(1), (2)(b), (6); 25(1)(a)(b), (2)(a)(b); 30(1)(a); 31(6)(b); 32(2); 34(1); 36(1), (2)(b), (3)(a); 37(3)(a)(b); 38(1), (2); 49; 50(1), (2); 51(4); 53(2)(a)(iii); 55(1), (2), (4), (5), (7)(a)(b), (8); 57(3)(i)(ii), (4); 59; 63(1)(a)(i)(ii)(iii); 64(3)(c).

See Rules 3.2; 4.10(c), (d); 8.2; 9.2; 11.5; 12.1; 14.1(a); 15.1, 15.3(b); 17.1(a), (c), 17.2(a), (b); 18.4(c), 18.5; 19.3(a), (b); 20.1(a), 20.7(ii)(iv); 22.1(a), (b), (c), 22.2(a), (d), (e), 22.4; 23.1(a), (b), (c); 24.1, 24.2(a), (b); 25.1; 26.4(c); 28.1(a); 29.1(a)(i)(ii)(iv), (b), 29.2, 29.3; 31.1(a), 31.2; 32.1(c), (d); 34.1(b)(iii); 35.1, 35.2(b); 44.1, 44.2(c), 44.3(b), (c); 46.1, 46.2, 46.3, 46.5(b), (c); 47.1(a), (b), (c), 47.2(a); 48.2(a)(vi), (f), (h), 48.3(b), (c), 48.4(a), (b), 48.5, 48.6(a), (b); 49.1(a), (b), (c); 50.1(a), (b), (c), (d); 51.2, 51.4; 54.4; 55.2(a), (d); 57.1, 57.2(a), (b), 57.3(b), (c), 57.5(a), (b); 59.1; 60.1(d), 60.2(a), (b), 60.3; 61.1(a), (c), 61.2(a), (b), 61.3; 62.1(b), 62.2(a), (b); 66.7(a); 69.1(b)(ii); 71.1, 71.2(b), (c); 72.1(b), 72.2, 72.3; 73.1; 75.1(b), 75.2(a), (b), 75.3, 75.4(a), (b); 76.1(a), (b), (c); 77.1(a), (b), (c), (d); 79.1; 80.7(c); 81.3(b); 83.1, 83.2(a), (b); 85.1; 86.1(ii)(iv); 87.1, 87.2(a); 89.1(b); 90.2(d), 90.3(b); 91.1(e)(iv), (g)(i), (h); 92.2(d), (e); 93.2(a), (b); 94.1; 95.1(a), (b).

#### ITEM (xx) (“Director General”):

See Articles 51(2)(b); 53(2)(a)(iv), (10), (11)(a)(b)(c); 54(6)(a)(ii)(iii)(iv)(v), (7)(a)(b); 55(3), (6), (7)(c); 56(2)(d), (5), (6)(a); 57(7)(c); 58(4); 61(1)(a)(b), (3)(a); 62(2); 64(4)(c), (6)(a)(b); 66(1), (2); 67(1)(b); 68(1), (2), (3), (4); 69.

See Rules 81.1(a), (b), 81.2(a), 81.3(a); 89.2(a), (b), (c).

**GENERAL OBSERVATION:** Whenever the terms defined in this Article occur in other Articles of the Treaty, reference is made in the notes to these term definitions except that the terms defined in Article 2(vii) and (xvi) to (xx), since they are generally self-explanatory, are referred to only once, namely when they first occur in the Treaty.

#### NOTES ON CHAPTER I

This Chapter, entitled “International Application and International Search,” contains 28 Articles (Articles 3 to 30).

The Articles are arranged in a sequence which generally follows the chronology of events in the procedure: Articles 3 to 21 deal with what could be called “the international phase,” whereas Articles 22 to 29 deal with what could be called “the national phase.” Article 30 relates to both phases.

The international phase consists of two main features, the international application (Articles 3 to 14) and the international search (Articles 15 to 18), and one necessarily subsequent event (amendment of the claims before the International Bureau, Article 19) and two usually subsequent events (the communication to the designated Offices, Article 20, and the international publication, Article 21).

The national phase concerns what happens in the designated State in connection with the international application, except that the main effect of the international application – namely, that it has the effect of a national application in each designated State – is already mentioned in Article 11 (more precisely in Article 11(3)) in connection with the filing date in order to underline the fact that the said effect occurs simultaneously with the according of the international filing date.

#### NOTES ON ARTICLE 3

**PARAGRAPH (1):** “Application” and “international application” are defined in Article 2(i) and (vii), respectively.

**PARAGRAPH (2):** As to “request,” “description,” “claims,” “drawings” and “abstract,” see Articles 4, 5, 6, 7 and 3(3), respectively. As to “abstract,” see also Rule 8 (The Abstract).

As to the consequences of an incomplete request and the absence of a description and claims, see Articles 11(2)(a) and 14(1)(b). As to drawings referred to but in fact not included, see Article 14(2). As to missing abstracts, see Article 14(1)(a)(iv) and Rules 38 (Missing [or Defective] Abstract) and 44.2 (Title or Abstract). In respect of all elements of the international application, see also Rules 9 (Expressions, Etc., Not To Be Used) and 10 (Terminology and Signs).

(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.

#### **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;

PARAGRAPH (3): –

PARAGRAPH (4) (in general): "Prescribed" means as provided in the Regulations (see Article 58(1)(i)).

PARAGRAPH (4)(i): See Rule 12 (Language of the International Application).

PARAGRAPH (4)(ii): See Rule 11 (Physical Requirements of the International Application).

PARAGRAPH (4)(iii): See Rule 13 (Unity of Invention).

PARAGRAPH (4)(iv): See Rules 14 (The Transmittal Fee), 15 (The International Fee), 16 (The Search Fee). The international fee consists of two parts: the "basic fee" and the "designation fee" (see Rule 15.1). For the consequences of non-payment, see Article 14(3).

#### NOTES ON ARTICLE 4

PARAGRAPH (1) (in general): As to the form of the request see Rule 3; as to its contents, see Rule 4.

The request must be signed (Rule 4.1(d)) by the applicant (Rule 4.15) but, since an agent may act in lieu of the applicant, the signature may be that of the agent (see Rules 2.1 and 90.2), provided the latter is properly appointed (Rule 90.3).

Once the processing in the designated Office starts, that Office may require that the international application be confirmed by the signature of the applicant if, as filed, it was signed by an agent (Article 27(2)(ii)).

As to the definition of "signature," see Rule 2.3.

PARAGRAPH (1)(i): See Rule 4.2 (Petition). Cf. with Article 11(1)(iii)(a).

PARAGRAPH (1)(ii): The effect of this provision is that all designations must be made in the international application when filed. Contracting States must be designated by their names (Rule 4.9).

If a regional patent is desired, not only this wish but also the names of the designated States for which the regional patent is sought must be indicated (Rule 4.1(b)(iv)). For certain designated or elected States, only the regional patent (and not the national patent) may be available (Article 45(2)).

As to the absence of any designation, see Article 11(1)(iii)(b) and (2).

"National patent," "regional patent," and "national law," are defined in Article 2(iii), (iv), and (x), respectively.



(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.

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PARAGRAPH (1)(iii): For the applicant, the “other prescribed data” are his address, nationality and residence (Rule 4.5); for the agent, his address (Rule 4.7). As to the manner of indicating names and addresses, see Rules 4.4 and 4.16.

As to the absence of the name of the applicant, see Article 11(1)(iii)(c) and (2).

As to who may be an applicant, see Articles 9 and 27(3), and Rule 18 (The Applicant). See also Rule 19.2 (Several Applicants).

As to who has the right to practice before International Authorities, see Article 49, and as to the meaning of the word “agent,” see Rule 2.2.

The name of the applicant is one of the elements which can be published by designated Offices (Article 30(2)(b)).

PARAGRAPH (1)(iv): As to the characteristics of the title, see Rule 4.3.

As to the lack of a title, see Article 14(1)(a)(iii) and (b) and Rule 37, the latter dealing also with defective titles.

The title must be repeated at the beginning of the description (Rule 5.1(a)).

As to the international search report and the title, see Rule 44.2(a).

The title is one of the elements which can be published by designated Offices (Article 30(2)(b)).

PARAGRAPH (1)(v): The “other prescribed data” concerning the inventor consist of his address (Rule 4.6). As to the manner of indicating names and addresses, see Rules 4.4 and 4.16.

As to the consequences of failure to indicate the name of the inventor, see paragraph (4). See also Article 22(1), second sentence.

“National application,” “national law,” and “designated Office,” are defined in Article 2(vi), (x), and (xiii), respectively.

PARAGRAPH (2): The fee is the designation fee part of the international fee (Rule 15.1(ii)). The time limit is one year from the priority date (Rule 15.4(b)).

As to the amount, mode of payment, allocation in the case of partial payment, and refund, see Rules 15.2(b), 15.3, 15.5, and 15.6, respectively.

As to the consequences of failure to pay or paying only part of the fee, see Article 14(3).

PARAGRAPH (3): The “other kinds of protection referred to in Article 43” are inventors’ certificates, utility certificates, utility models, patents or certificates of addition, inventors’ certificates of addition, and utility certificates of addition.

“Patent” is defined in Article 2(ix).

PARAGRAPH (4): See the notes under paragraph (1)(v).

## 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 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.

### NOTES ON ARTICLE 5

SOLE PARAGRAPH: See Rules 5 (The Description), 9 (Expressions, Etc., Not To Be Used), 10 (Terminology and Signs), 11 (Physical Requirements of the International Application).

### NOTES ON ARTICLE 6

FIRST AND SECOND SENTENCES: See Rules 6 (The Claims), 9 (Expressions, Etc., Not To Be Used), 10 (Terminology and Signs), 11 (Physical Requirements of the International Application).

The applicant is entitled to one opportunity to amend the claims before the International Bureau (Article 19). The description and the drawings as well as the claims may be amended before the designated Offices (Article 28) and, where the applicant demands international preliminary examination, before the International Preliminary Examining Authority (Article 34(2)(b)), and before the elected Offices (Article 41).

THIRD SENTENCE: Where the description refers to drawings and where the nature of the invention is such that the only practical way to express clearly certain features of the disclosure is through a combination of the description and the drawings, it will be necessary to consider the description in conjunction with the drawings in determining whether the claims are fully supported by the description. They are in such case still fully supported by the description since the drawings necessary to express certain features of the disclosure which cannot as a practical matter be described in words are, in fact, incorporated by reference in the description.

### NOTES ON ARTICLE 7

PARAGRAPH (1): As to the physical requirements of drawings, see Rule 11, particularly Rule 11.13 (Special Requirements for Drawings). See also Rules 7 (The Drawings), 9 (Expressions, Etc., Not To Be Used), and 10 (Terminology and Signs).

Inventions in the chemical field are among inventions which may generally be understood without drawings.

PARAGRAPH (2): Inventions in the chemical field frequently do not admit of illustration by drawings. However, flow sheets and diagrams are considered drawings (Rule 7.1).

As to the time limit, see Rule 7.2.

“Designated Office” is defined in Article 2(xiii).

## 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.

### NOTES ON ARTICLE 8

PARAGRAPH (1): Consequently, the priority claim may be based on earlier national and international applications (as to the effect of the priority claim in the country in which – by filing of, or designation in, the earlier application – the priority has been established, see paragraph (2)(b)). “Earlier” should be construed according to Article 4 of the Paris Convention, particularly Sections C(2) and C(4). As to the declaration, see Rule 4.10 (Priority Claim). See also Rule 17 (The Priority Document).

“Application” is defined in Article 2(i) and (viii).

PARAGRAPH (2)(a): Article 4 of the Stockholm Act reads as follows:

“A. (1) Any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed.

(2) Any filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.

B. Consequently, any subsequent filing in any of the other countries of the Union before the expiration of the periods referred to above shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, the publication or exploitation of the invention, the putting on sale of copies of the design, or the use of the mark, and such acts cannot give rise to any third-party right or any right of personal possession. Rights acquired by third parties before the date of the first application that serves as the basis for the right of priority are reserved in accordance with the domestic legislation of each country of the Union.

C. (1) The periods of priority referred to above shall be twelve months for patents and utility models, and six months for industrial designs and trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application concerning the same subject as a previous first application within the meaning of paragraph (2), above, filed in the same country of the Union, shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, if, at the time of filing the subsequent application, the said previous application has been withdrawn, abandoned, or refused, without having been laid open to public inspection and without leaving any rights outstanding, and if it has not yet served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

D. (1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country shall determine the latest date on which such declaration must be made.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (description, drawings, etc.) previously filed. The copy, certified as correct by the authority which received such application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each country of the Union shall determine the consequences of failure to comply with the formalities prescribed by this Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

Any person who avails himself of the priority of a previous application shall be required to specify the number of that application; this number shall be published as provided for by paragraph (2), above.

E. (1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be the same as that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application, and vice versa.

F. No country of the Union may refuse a priority or a patent application on the ground that the applicant claims

(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.

## 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.

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multiple priorities, even if they originate in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the application or applications whose priority is claimed, the filing of the subsequent application shall give rise to a right of priority under ordinary conditions.

G. (1) If the examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H. Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

I. (1) Applications for inventors' certificates filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall give rise to the right of priority provided for by this Article, under the same conditions and with the same effects as applications for patents.

(2) In a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate, an applicant for an inventor's

certificate shall, in accordance with the provisions of this Article relating to patent applications, enjoy a right of priority based on an application for a patent, a utility model, or an inventor's certificate."

PARAGRAPH (2)(b): "Application" is defined in Article 2(i) and (viii) whereas "national application" and "national law" are defined in Article 2(vi) and (x), respectively.

### NOTES ON ARTICLE 9

PARAGRAPH (1): As to "resident" and "national," see the notes concerning paragraph (3).

As to the question of which receiving Office is competent according to the residence or nationality of the applicant or applicants, see Rule 19.

PARAGRAPH (2): A majority of two-thirds is required for the decision of the Assembly (Article 53(6)).

As to the question which Office is competent to act as a receiving Office, see Rule 19.1(c) and 19.2.

"Assembly" is defined in Article 2(xvii).

PARAGRAPH (3): See Rules 18.1 (Residence), 18.2 (Nationality), 18.3 (Several Applicants: Same for All Designated States), 18.4 (Several Applicants: Different for Different Designated States), and 18.5 (Change in the Person or Name of the Applicant). See also Rule 4.8 (Representation of Several Applicants Not Having a Common Agent).

## 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,

### NOTES ON ARTICLE 10

SOLE PARAGRAPH: As to the question which is the “prescribed” receiving Office, see Rules 19.1 and 19.2. The duties of the receiving Office may be delegated (see Rules 19.1(b) and 19.3).

Checking is for possible failure to meet requirements under Articles 11(1) or for possible defects under Article 14(1)(a), (2) and (3). See Rules 26.1, 26.3 and 27. The receiving Office may note lack of compliance with Rule 9.1 (see Rule 9.2).

Processing includes:

giving a date and a number to the papers received (Rules 20.1 to 20.3);

communication with the applicant if requirements are not met or are unfulfilled or if defects have been discovered (Articles 11(2)(a) and 14(1)(b), (2), and Rule 26), including the fixing of the time limit for corrections (Rule 26.2);

determination whether corrections have been offered and whether they are acceptable and drawing the conclusions (see Rules 20.4 to 20.8, 26.5, 26.6 and 91.1), that is:

- according or denying an international filing date (Article 11(1) or (2)(b); Rules 20.4, 20.5, 20.7);
- declaring, where appropriate, the international application to be considered withdrawn (Article 14(1)(b), (3) and (4));
- changing the accorded international filing date in the case of Article 14(2)(see Rule 20.2(a)(iii));
- ignoring references to drawings in the case of Article 14(2) (see Rule 26.6);
- preparing copies of the international application (Rule 21);
- keeping the home copy (Article 12(1) and Rule 93.1);

- forwarding the record copy (Article 12(1) and Rule 22) and the search copy (Article 12(1) and Rule 23);
  - giving certified copies of the international application to the applicant on request (Rule 20.9).
- “Receiving Office” is defined in Article 2(xv).

### NOTES ON ARTICLE 11

PARAGRAPH (1) (in general): See Rule 20 (Receipt of the International Application), which provides, *inter alia*, that the applicant will be promptly notified whether or not an international filing date was accorded to his application (Rule 20.5(c)). Even where no such filing date is accorded the possibility for review by the designated Offices under Article 25 exists. The international fee and the search fee shall be refunded to the applicant if the determination under this paragraph is negative (see Rules 15.6 and 16.2).

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (1)(i): As to nationality and residence, see Article 9 and Rule 18. As to the receiving Office, see Article 10 and Rule 19.

PARAGRAPH (1)(ii): See Article 3(4)(i) and Rule 12 (Language of the International Application).

PARAGRAPH (1)(iii): The designation of at least one Contracting State is indispensable (see (b)) but otherwise the international filing date will be accorded even if the other elements enumerated in this provision do not comply with the requirements of form and contents provided for in the Treaty and the Regulations. Thus:

as to (a), it will not matter, in particular, if the petition is not worded as in Rule 4.2, as long as the intent to ask for processing according to the Patent Cooperation Treaty is clear;

- (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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as to (c), it will not matter, in particular, if the name of the applicant is not indicated as prescribed in Rule 4.4, as long as his identity may be established (Rule 20.4(b));

as to (d) and (e) it will not matter, in particular, if the description does not comply with Article 5 (clarity, and completeness of the description) and Rule 5 (manner of description), or if the claims do not comply with Article 6 (clarity, conciseness, etc., of claims) and Rule 6 (manner of claiming), or if neither the description nor the claims comply with the prescribed physical requirements (Rule 11) or with the requirements of unity of invention (Rule 13). All the receiving Office is allowed to do is to check whether the application contains passages which, on their face, appear to be a description and a claim or claims.

PARAGRAPH (2)(a) and (b): See Rule 20.6 (Invitation to Correct). As to the time available for correction, see Rule 20.6(b). In this connection, see also Rules 20.2 (Receipt on Different Days) and 20.3 (Corrected International Application).

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (3): The said effect is acquired if the international filing date has been accorded under paragraph (1). Whereas the international filing date cannot be taken back, the effect described in paragraph (3) – that is, that the international application has the effect of a national application in each designated State – depends on whether the provisions of the Treaty and the Regulations have been complied with. If it is later discovered by the national Office or the courts of the designated State that the said provisions have not been complied with, there will be no such effect in that State (see, however, the safeguards contained in Article 26).

The effect described in paragraph (3) will or may cease – that is, be lost *ex nunc* – in the following situations:

it will cease in all designated States if the international application is withdrawn by the applicant, and it will cease in any particular designated State whose designation is withdrawn by the applicant (see Article 24(1)(i));

it will cease in any designated State if the international application or the designation must be “considered withdrawn” (see three paragraphs further on) unless a review

to which the applicant has a right – in that State maintains such effect (see Article 25);

it will cease in any designated State if the applicant fails to furnish the required copy of the international application and its translation or to pay the required national fee to the designated Office or, in certain cases, the name and other prescribed data of the inventor, within the prescribed time limit (generally 20 months from the priority date) (see Article 24(1)(iii)).

Any designated State may, even in the above cases, maintain the effect under Article 11(3) (see Article 24(2)).

An international application will be “considered withdrawn” if the *International Bureau* finds that the record copy was received after the expiration of 13 or 14 months from the priority date (see Article 12(3) and Rule 22) or if the *receiving Office* – after having accorded an international filing date – finds certain defects, that is to say: finds, within 6 months, defects which should have prevented the according of the international filing date (see Article 14(4) and Rule 30.1); finds that the prescribed fees were not paid in time (see Article 14(3)(a)); or finds that, notwithstanding an invitation to correct them, the following defects were not corrected (Article 14(1)(b)): lack of signature, defects in the indications concerning the applicant, lack of title of the invention, lack of abstract, lack of compliance with the requirements of physical presentation preventing reasonably uniform international publication (Article 14(1)(a) and Rule 26.3). A designation will be “considered withdrawn” in the case of Article 14(3)(b).

The absence of an international search report will not cause the loss of the effect provided for in paragraph (3). However, the national law of any designated State may provide that, if part of the international application was not searched because of the applicant’s attitude (he failed to pay additional search fees), that part may be considered withdrawn unless a special fee is paid by the applicant to the designated Office (Article 17(3)).

Article 64(4) provides for the possibility, under certain conditions, of considering a date other than the international filing date for prior art purposes.

“National application” is defined in Article 2(vi).

(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.

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PARAGRAPH (4): The applicable provision of the Stockholm Act of the Paris Convention is Article 4A(2), which provides that “Any filing that is equivalent to a regular national filing under... multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.” The Patent Cooperation Treaty is a multilateral treaty covered by the quoted provision.

Thus, the significance of paragraph (4) is that an international application may be the basis of a priority claim in: (i) any Paris Union country not party to the Patent Cooperation Treaty, and (ii) any country party to that Treaty which the applicant did not designate.

NOTES ON ARTICLE 12

PARAGRAPH (1): Depending on the prescriptions of the receiving Office, the international application must be filed in one, two or three copies (Rule 11.1). If filing of one or two copies is required, the other two copies or one copy will be prepared by the receiving Office (Rule 21).

As to the transmittal of the record copy, see Rule 22: transmittal may be direct (from the receiving Office to the International Bureau) or, where the receiving Office so provides, indirect (from the receiving Office to the applicant and from the applicant to the International Bureau). See also Rule 24 (Receipt of the Record Copy by the International Bureau).

As to the transmittal of the search copy, see Rule 23. See also Rule 25 (Receipt of the Search Copy by the International Searching Authority).

As to the question of which International Searching Authority is competent, see Article 16(2) and Rule 35.

“Receiving Office” and “International Bureau” are defined in Article 2(xv) and (xix), respectively.

PARAGRAPH (2): –

PARAGRAPH (3): The time limit is prescribed in Rule 22.3. See also Rule 24 (Receipt of the Record Copy by the International Bureau).

NOTES ON ARTICLE 13

PARAGRAPH (1): Since the international application has the effect of a national application in the designated State (see Article 11(3)), it seems to be justified that a copy thereof be made available to the designated Office as soon as possible. Although the designated Office will be obliged to delay the processing of the application in question (see Article 23), it may need a copy for processing *other* applications.

It is to be noted that this Article gives the right to receive a copy, and *not* to receive a translation, of the international application.

It is to be noted further that the designation fee part of the international fee is higher for designated States which ask for copies under Article 13 than for designated States which do not ask for such copies (see Rule 15.2(b)(i) and (ii)).

As to procedure, see Rules 31.1(a) and 31.2.

“Priority date” and “designated Office” are defined in Article 2(xi) and (xiii).

(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.

#### 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.

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PARAGRAPH (2)(a): "Designated Office" is defined in Article 2(xiii).

PARAGRAPH (2)(b): See Rules 31.1(b) and 31.2.

"Designated Office" is defined in Article 2(xiii).

PARAGRAPH (2)(c): Any national Office has also the right to receive copies of all publications of the International Bureau relating to the Treaty, see Rule 87.2.

"National Office" is defined in Article 2(xii).

##### NOTES ON ARTICLE 14

ARTICLE 14 (in general): The receiving Office does not check whether the international application complies with the requirements of the Treaty and the Regulations except with regard to the requirements under Article 11(1) and to the possible defects referred to in paragraphs (1) to (3) of the Article under consideration.

Only the defects enumerated in paragraph (1) call for an invitation to correct. Even if they are not corrected, the international filing date is not lost.

The lack of a stated drawing does not give rise to an invitation to file it (although the applicant's attention is called to the absence of the drawing; see paragraph (2)), and the lack of payment of the international fee payable on filing and the search fee does not require that the receiving Office invite the applicant to pay (see paragraph (3)), although it may allow him to pay the basic fee part of the international fee and the search fee later but not later than one month (see Rules 15.4(a) and 16.1(b)), and the designation fee part of the international fee later but not later than one year from the priority date (Rule 15.4(b)).

"Receiving Office" is defined in Article 2(xv).

PARAGRAPH (1)(a)(i): See the notes concerning Article 4(1) (in general).

PARAGRAPH (1)(a)(ii): See the notes concerning Article 4(1)(iii).

PARAGRAPH (1)(a)(iii): See the notes concerning Article 4(1)(iv).

PARAGRAPH (1)(a)(iv): See the notes concerning Article 3(2).

PARAGRAPH (1)(a)(v): See Rule 11 (Physical Requirements of the International Application).

PARAGRAPH (1)(b): See Rule 26 (Checking and Correcting Certain Elements of the International Application). Certain defects may be noted by the International Searching Authority or the International Bureau, but all they can do is to call them to the attention of the receiving Office, which is sovereign in deciding whether to ask for correction and whether to accept the correction offered (see Rule 28). As to the procedure where the correction is not made or not accepted, see Rule 29.1.

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Offices may be asked for by the applicant (Article 25).



(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.

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PARAGRAPH (2): The prescribed time limit is 30 days from the date on which the incomplete papers were filed (Rules 20.2(a)(iii) and 26.6(b)). As to an indication in the application of drawings referred to but not included, see Rule 26.6(a).

PARAGRAPH (3)(a): As to the meaning of “fees prescribed under Article 3(4)(iv),” see Rule 27.1(a), and of “the fee prescribed under Article 4(2)(iv),” see Rule 27.1(b). The former means the transmittal fee (Rule 14), the basic fee part of the international fee (Rule 15.1(i)), and the search fee (Rule 16), whereas the latter means the designation fee part of the international fee (Rule 15.1(ii)). As to the procedure where the international application is considered withdrawn, see Rule 29.1(a).

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Offices may be asked for by the applicant (Article 25).

PARAGRAPH (3)(b): The “fee prescribed under Article 4(2)” means the designation fee part of the international fee (Rule 15.1(ii)). As to the procedure where the designation of any given State is considered withdrawn, see Rule 29.1(b).

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Offices may be asked for by the applicant (Article 25).

PARAGRAPH (3)(a) and (b): As to the meaning of “fees” see Rule 27. As to the due date of the transmittal fee, see Rule 14.1(b), of the basic fee part of the international fee, see Rule 15.4(a), of the designation fee part of the international fee, see Rule 15.4(b), of the search fee, see Rule 16.1(b).

PARAGRAPH (4): As to the procedure where the international application is considered withdrawn, see Rule 29.1(a). The International Bureau or the International Searching Authority may call relevant facts to the attention of the receiving Office (see Rule 29.3). The receiving Office must notify the applicant of its intent to issue declaration (Rule 29.4). The prescribed time limit is 6 months from the international filing date (Rule 30).

Even where the receiving Office declares that the international application is considered withdrawn, review by the designated Office may be asked for by the applicant (Article 25).

GENERAL OBSERVATIONS: As to errors in transcription, see Rule 91.1 (Obvious Errors of Transcription; Rectification).

As to written communications, see Rules 92.1 (Correspondence: Need for Letter and for Signature), 92.2 (Correspondence: Languages), 92.3 (Correspondence: Mailings by National Offices and Intergovernmental Organizations).

**Article 15**  
**The International Search**

(1) Each international application shall be the subject of international search.

(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.

NOTES ON ARTICLE 15

PARAGRAPHS (1) and (2): See Rules 33.1 (Relevant Prior Art for the International Search) and 33.2 (Fields to be Covered by the International Search).

PARAGRAPH (3): See Rule 33.3 (Orientation of the International Search).

PARAGRAPH (4): See Rule 34 (Minimum Documentation).

PARAGRAPH (5)(a): See Rules 4.11 (The Request (Contents): Reference to Earlier International or International-Type Search) and 41.1 (The International-Type Search: Obligation to Use Results; Refund of Fee).

"National application," "national law," and "national Office" are defined in Article 2(vi), (x) and (xii), respectively.

PARAGRAPH (5)(b): "National application," "national law," and "national Office," are defined in Article 2(vi), (x) and (xii), respectively.

PARAGRAPH (5)(c): As to the question which International Searching Authority is competent, see Article 16(2).

The language prescribed for international applications results from Rule 12.

As to the form prescribed for international applications, see Articles 3 to 8 and the Rules cited in the notes referring to those Articles, particularly Rules 3 to 13.

As to which International Searching Authority is competent, see Rule 35.

"National application" is defined in Article 2(vi).

## 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.

(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.

#### NOTES ON ARTICLE 16

PARAGRAPH (1): The International Patent Institute is an intergovernmental organization, established in 1947, with its seat in The Hague (Netherlands), and having (in 1970) eight member States (Belgium, France, Luxembourg, Monaco, Netherlands, Switzerland, Turkey, United Kingdom).

“Application” is defined in Article 2(i) and (viii), whereas “national Office” is defined in Article 2(xii).

PARAGRAPH (2): As to the question which Authority is, or which Authorities are, competent, see Rules 35.1 and 5.2.

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (3)(a): See Article 53(2)(a)(ii) and (6).

“National Office” is defined in Article 2(xii).

All International Searching Authorities have the right to receive copies of all publications of the International Bureau relating to the Treaty, see Rule 87.1.

PARAGRAPH (3)(b): See Article 53(2)(a)(ii) and (6).

“National Office” is defined in Article 2(xii).

As to some conditions to be provided for in the agreement, see Rules 16.3, 41.1 and 44.3(b).

PARAGRAPH (3)(c): See Rule 36.1 (Minimum Requirements for International Searching Authorities: Definition of Minimum Requirements).

PARAGRAPH (3)(d): Extension is decided by the Assembly (see also paragraph (3)(e) of this Article).

(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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PARAGRAPH (3)(e): "National Office" is defined in Article 2(xii).

#### NOTES ON ARTICLE 17

PARAGRAPH (1): See, in particular, paragraphs (2) and (3), and Article 18 (The International Search Report) and Rules 25 (Receipt of the Search Copy by the International Searching Authority), 37 (Missing or Defective Title); 38 (Missing [or Defective] Abstract), 42 (Time Limit for International Search), 43 (The International Search Report), 44 (Transmittal of the International Search Report, Etc.), 45 (Translation of the International Search Report), and 91 (Obvious Errors of Transcription).

PARAGRAPH (2)(a)(i): As to the subject matter in question, see Rule 39.

PARAGRAPH (2)(a)(ii): As to the requirements for the description, claims, and drawings, see Articles 5, 6, 7, and the Rules cited thereunder.

PARAGRAPH (2)(a), final phrase: The declaration does not affect either the international filing date or the effect under

Article 11(3). The international application will be communicated to the designated Offices (Article 20(1)(a)) and will be published (Article 21) albeit with the declaration rather than an international search report (Rules 48.2(a)(v), 48.2(c), and 48.3(c)). The acts referred to in Article 22(1) will have to be performed within 2 months from the notification of the declaration to the applicant (Article 22(2)), unless a later time limit is fixed in the national law (Article 22(3)). Some other procedural matters relating to the declaration are found in Rules 62.1(b) and 69.1(b)(iv).

PARAGRAPH (2)(b): In other words, in the case of partial search, there will be an international search report and no "declaration" under paragraph (2)(a), and none of the consequences of such a declaration will apply.

(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.

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PARAGRAPH (3)(a): The concept of unity of invention is defined in Rule 13, and the procedure before the International Searching Authority in case of lack of unity of invention is governed by Rule 40. See Rule 40.3, for the prescribed time limit for payment of the additional fees. The additional fees may be paid under protest (see Rule 40.2(c)). There is no possibility of dividing the international application in the international phase.

It goes without saying that any designated Office or the courts of any designated State may disagree with the interpretation that the International Searching Authority gives to Rule 13 in any given case. Consequently, for example:

(i) The International Searching Authority has asked for additional fees: the designated Office or the courts of the designated State may still consider that there is unity of invention, even if the applicant has complied with the invitation of the Authority.

(ii) The said Authority has asked for X number of additional fees: the designated Office may still ask for a division of the application into Y number of parts, even if the applicant has complied with the invitation of the Authority.

(iii) The said Authority has not asked for additional fees: the designated Office or the courts of the designated

State may still find that there is no unity of invention, with the consequences which its national law provides for such cases.

PARAGRAPH (3)(b): The consequences provided for in this paragraph are the only consequences of not complying with the invitation issued under paragraph (3)(a).

“National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

#### NOTES ON ARTICLE 18

PARAGRAPH (1): See Rules 42 (Time Limit for International Search) and 43 (The International Search Report).

PARAGRAPH (2): See Rule 44 (Transmittal of the International Search Report, Etc.). See Article 20(3), as to the transmittal of copies of cited documents to the designated Offices and to the applicant.

PARAGRAPH (3): As to the language of the translation, see Rule 45.1.

**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.

**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).

NOTES ON ARTICLE 19

PARAGRAPH (1): See Rule 46 (Amendment of Claims Before the International Bureau). The time limit is prescribed in Rule 46.1. The statement is governed by Rule 46.4.

Publication of the amendments of the claims or a statement are governed by Rules 48.2(f) and 48.2(h). The statement is considered to be a part of the international application, see Rules 49.3 and 76.3. Some other procedural matters relating to amendment of the claims are to be found in Rules 62.2(a), 62.2(b), 69.1(b)(i), 69.1(b)(ii) and 69.1(c).

PARAGRAPHS (2) and (3): The International Bureau is not empowered to check whether the amendments stay within the limits prescribed in paragraph (2). Only the designated Office or the competent courts may pass judgment on whether the amendments go beyond the disclosure as filed and whether this is permissible under its national law.

“National law” is defined in Article 2(x).

NOTES ON ARTICLE 20

PARAGRAPH (1)(a): See Rule 47 (Communication to Designated Offices).

“Designated Office” is defined in Article 2(xiii).

PARAGRAPH (1)(b): See Rule 45 (Translation of the International Search Report).

PARAGRAPH (2): Article 19(1) deals with the amendment of the claims before the International Bureau.

(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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PARAGRAPH (3): See Rule 44.3 (Copies of Cited Documents).

“Designated Office” is defined in Article 2(xiii).

#### NOTES ON ARTICLE 21

PARAGRAPH (1): The details are governed by paragraphs (1) to (4). Exceptions may follow from paragraph (5) or Article 64(3). Certain expressions or drawings may be omitted from the publication (see paragraph (6)).

PARAGRAPH (2)(a): Paragraph (2)(b) provides for earlier international publication on the applicant’s request. Article 64(3) deals with the situation in which only such States have been designated as have declared that international publication is not required.

“Priority date” is defined in Article 2(xi).

PARAGRAPH (2)(b): As to earlier publication on the applicant’s request, see Rule 48.2(g) and 48.4.

PARAGRAPH (3): See Rules 48.2(a)(v) and (g).

PARAGRAPH (4): See Rule 48 (International Publication), particularly Rule 48.1 (Form), 48.2 (Contents), and 48.3 (Language).

PARAGRAPH (5): As to the withdrawal of the international application, see Rule 32. As to the cases in which an international application is considered withdrawn, see Articles 12(3), 14(1)(b), 14(3)(a) and 14(4).

As to the procedure in cases where the withdrawal arrives too late to prevent publication, see Rule 48.6(a) and (c).

PARAGRAPH (6): See Rule 9 (Expressions, Etc. Not To Be Used).

**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.

NOTES ON ARTICLE 22

PARAGRAPH (1): See Rule 49 (Languages of Translations and Amounts of Fees under Article 22(1) and (2)).

As to the request, see Article 4.

The time limits for performing these acts also apply to the furnishing of the translations of the protest and the decision (Rule 40.2(c)).

As to the publication of any information on the question whether the requirements provided for under this Article have been complied with, see Rule 86.1 (The Gazette: Contents).

“National application,” “national law,” “priority date,” “national Office,” and “designated Office” are defined in Article 2(vi), (x), (xi), (xii) and (xiii), respectively.

PARAGRAPH (2): The declaration under Article 17(2)(a) is made if the subject matter is not required to be searched and is not searched, or if the international application is “unclear” to the extent that no meaningful search can be carried out.

PARAGRAPH (3): See Rule 50.1 (Faculty Under Article 22(3): Exercise of Faculty). As to notification of applicant of applicable time limits in different designated Offices, see Rule 24.2(a).

“National law” is defined in Article 2(x).

NOTES ON ARTICLE 23

PARAGRAPH (1): The “applicable time limit” is generally 20 months from the priority date Article 22(1). But it may be less (when the International Searching Authority refuses to establish an international search report; see Article 22(2)), or more (when the designated State so allows; see Article 22(3)). See also Rules 6.5 (The Claims: Utility Models) and 13.5 (Unity of Invention: Utility Models).

“Designated Office” is defined in Article 2(xiii).



(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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PARAGRAPH (2): The applicant would address such a request direct to the designated Office. As to submission of “the priority document” to the International Bureau by applicant making express request, see Rule 17.1(a).

“Designated Office” is defined in Article 2(xiii).

#### NOTES ON ARTICLE 24

PARAGRAPH (1), introductory sentence: The effect provided for in Article 11(3) is, in essence, that the international application has the effect of a national application in the designated State. Article 25 provides, in essence, that the applicant may ask the designated Office to review any finding of the receiving Office or the International Bureau that the international application is considered withdrawn. “Cease” means ceasing *ex nunc*, that is, from the date on which the events described in cases (i) to (iii) occur. This follows also from the word “maintain” in paragraph (2).

“National application” is defined in Article 2(vi).

PARAGRAPH (1)(i): See Rule 32 (Withdrawal of the International Application or of Designations).

PARAGRAPH (1)(ii): Article 12(3) deals with the case where the record copy reaches the International Bureau after the expiration of the prescribed time limit (13 or 14 months from the priority date; see Rule 22.3). Article 14(1)(b) deals with the case where the applicant fails to correct certain defects. Article 14(3)(a) deals with the case where the fees are not paid in time. Article 14(4) deals with the case where the receiving Office finds defects which should have prevented it from according an international filing date. Article 14(3)(b) deals with the case where the designation fee part of the international fee is not paid in time in respect of any given designated State.

PARAGRAPH (1)(iii): The acts that may have to be performed under Article 22 are: the furnishing of a copy of the international application, the furnishing of a translation of such application, the payment of the national fee, and the furnishing of the name and other prescribed data concerning the inventor. As to the “applicable time limit,” see the note relating to Article 23(1).

Where the effect of the international application ceases by virtue of this paragraph, the designated Office notifies the International Bureau (Rule 29.2) and the International Bureau publishes the essence of such a notification in the Gazette and in certain cases also in the pamphlet (Rule 48.6(b)).

PARAGRAPH (2): The effect provided for in Article 11(3) is, in essence, that the international application has the effect of a national application in the designated State. Article 25(2) obligates the designated Offices to review, on the applicant’s request, refusals to accord an international filing date, findings to the effect that the record copy has arrived too late, and declarations that – because of certain defects left uncorrected – the international application is considered withdrawn.

Where the effect of the international application is maintained, the designated Office notifies the International Bureau (Rule 29.2) and the International Bureau publishes the essence of such a notification in the Gazette and in certain cases also in the pamphlet (Rule 48.6(b)).

“Designated Office” is defined in Article 2(xiii).

**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.

NOTES ON ARTICLE 25

PARAGRAPH (1)(a): The receiving Office refuses to accord an international filing date to an application failing to meet the requirements referred to in Article 11(1), or declares that the international application is considered withdrawn in the case of defects referred to in Article 14(1)(a) remaining uncorrected, or where the prescribed fees are not paid (Article 14(3)(a)), or where it discovers defects which should have prevented the according of an international filing date (Article 14(4)).

The finding under Article 12(3) is that the record copy of the international application has not been received by the International Bureau within the prescribed time limit (which time limit, under Rule 22.3, is either 13 or 14 months from the "priority date" (defined in Article 2(xi)).

Where the request is based upon the refusal to accord an international filing date, a copy of the notice referred to in Rule 20.7(i) is required (Rule 51.2). As to the obligation of the receiving Office to send a copy of papers purporting to be an international application to the International Bureau, see Rule 20.7(iv).

"Designated Office" and "receiving Office" are defined in Article 2(xiii) and (xv), respectively.

PARAGRAPH (1)(b): The only case in which the receiving Office declares that the designation of any given State is

considered withdrawn is the case in which the designation fee part of the international fee has not been paid in time in respect of that State (see Article 14(3)(b)).

"National Office" and "receiving Office" are defined in Article 2(xii) and (xv), respectively.

PARAGRAPH (1)(c): As to the time limit, see Rule 51.1.

PARAGRAPH (2)(a): The time limit is fixed in Rule 51.3. Where the designated Office finds that the refusal, declaration, or finding was not justified, it notifies the International Bureau accordingly (see Rule 51.4).

"Designated Office" and "receiving Office" are defined in Article 2(xiii) and (xv), respectively.

(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.

### **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.

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PARAGRAPH (2)(b): The time limit prescribed under Article 12(3) is 13 or 14 months from the priority date (see Rule 22.3). Article 48(2) obligates any Contracting State to excuse, for reasons admitted under its national law, any delay in meeting any time limit and allows any Contracting State to excuse, for other reasons, any delay in meeting any time limit.

#### NOTES ON ARTICLE 26

SOLE PARAGRAPH: Since it may sometimes be difficult to maintain that a situation (in particular, a defect), within the terms of the Treaty, is the “same” as a situation within the terms of the national law of the designated State, the Article also speaks of “comparable” situations. This means that the opportunity to correct must be given also when the *kind* of defect (according to the Treaty) is correctable according to the national law. For example, if the national law of the designated State allows that in certain cases defects in the description may be corrected and the international application does in fact suffer from a defect in the description which is a defect under the Treaty but is not contemplated in the national law, the designated Office will have to allow the correction of the defect during the national processing of the application.

“National application,” “national law” and “designated Office” are defined in Article 2(vi), (x) and (xiii), respectively.

#### NOTES ON ARTICLE 27

PARAGRAPHS (1) to (8): Although inserted, for reasons of convenience, in Chapter I, Article 27 applies not only to designated States but also to elected States, since every elected State is *also* a designated State (see Article 31(4)(a), third sentence: “Election may relate only to Contracting States already designated under Article 4.”).

“National application,” “national law,” and “designated Office” are defined in Article 2(vi), (x) and (xiii), respectively.

PARAGRAPH (1): The requirements relating to form and contents are principally provided for in Articles 3 (The International Application), 4 (The Request), 5 (The Description), 6 (The Claims), 7 (The Drawings), and 8 (Claiming Priority), and the Rules pertaining to these Articles (mainly Rules 3 to 13). The words “form or contents” are used merely to emphasize something that could go without saying, namely, that requirements of substantive patent law (criteria of patentability, etc.) are not meant.

(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.

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PARAGRAPH (2), introductory phrase: Article 7(2) allows any designated Office to require that the applicant file drawings which are not necessary for the understanding of the invention but which, because the nature of the invention admits of illustration by drawings, may be useful (so – called “useful but – not – necessary drawings”).

PARAGRAPH (2)(i): For example, the director of the corporation, where the applicant is a corporation.

PARAGRAPH (2)(ii): The allegations or statements to be proved may relate to the date on which the invention was made, first used or published; to the fact that the invention is usable or operational for certain purposes; to the identity of the inventor; to the right of the applicant to file; etc. The documents supporting such allegations may be affidavits (oaths expressed in writing, with the signature legalized or certified), contracts, laboratory notes, etc. The signature required for “confirmation” (or, according to the United States of America terminology, “ratification”) may be required to be placed on the copy of the international application communicated under Article 20(1)(a) or furnished under Article 22(1) or on a separate document referring to the application.

PARAGRAPH (3): Under the national laws of most States, any owner of an invention may file an application but under the national laws of some States (for example, the United States) only the inventor may file an application. Thus, for example, the United States of America Patent Office could,

for its own purposes, reject the international application if it was filed by a person other than the inventor. It is to be noted that different applicants for different designated States may be indicated in the international application (see Article 9(3) and Rule 18.4) and that this is so mainly to make it possible for the international application to satisfy differences in national laws on the question who is qualified to file. Information on the national laws will be published in the Gazette (Rule 18.4(c)).

PARAGRAPH (4): The last portion (“except where...”) of this paragraph is there to deal with the case where there is a difference of opinion between the applicant and the organs of the designated State on the question which requirement is more favorable.

“National Office” is defined in Article 2(xii).

(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.

(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.

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PARAGRAPH (5): Prior art is referred to in Articles 15(2) and 33(2) and (3), and is defined in Rules 33 and 64. “Conditions of patentability” (other than requirements as to the form and contents of international applications) include novelty, inventive step (non-obviousness), industrial applicability, certain subject matter (for example, foods and beverages, chemical products, pharmaceutical products, and plant or animal varieties, are not patentable in some countries).

“Application” is defined in Article 2(i) and (viii).

PARAGRAPH (6): “Any substantive condition of patentability” includes, for example, the fact that the invention was not known, used, patented, described or abandoned by certain persons within certain time limits and in certain countries. It also includes, for example, the question whether the patent should go to the person who was the first to apply for protection or the first to invent, or whether a certain combination of these circumstances should obtain.

PARAGRAPH (7): An agent having the right to practice before the receiving Office shall be entitled to practice before the International Bureau, and the competent International Searching and Preliminary Examining Authority (Article 49). However, these Authorities may require proof of the right to practice (see Rule 83.1). In respect of any particular international application, an agent having the right to practice before the receiving Office does not consequently have the right to practice before the designated Office. Once processing starts in a designated Office, its national law determines who has this right.

“Receiving Office” is defined in Article 2(xv).  
PARAGRAPH (8): –

**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.

NOTES ON ARTICLE 28

PARAGRAPH (1): The time limit is fixed in Rule 52.1. In the situation under Rule 52.1(a), the right to amend may be exercised after the communication under Rule 47.1 and within one month from the fulfillment of the requirements under Article 22. Where such communication is effected after the time limit under Article 22, the right to amend may be exercised within 4 months after the expiration of that time limit. Amendments may of course be made at any later date, if the national legislation so permits.

“Patent” is defined in Article 2(ii) and (ix), whereas “designated Office” is defined in Article 2(xiii).

PARAGRAPH (2): “National law” is defined in Article 2(x).

PARAGRAPH (3): “National law” is defined in Article 2(x).

PARAGRAPH (4): The right to require a translation is provided for in Article 22(1).

“Designated Office” is defined in Article 2(xiii).

NOTES ON ARTICLE 29

PARAGRAPH (1): The word “compulsory” is primarily intended to exclude the kind of publication which is effected, for example in the United States, on the request of the

applicant, as a “defensive publication,” under the Rules of Practice of the United States of America Patent Office. The word “unexamined” is primarily intended to limit the effects of international publication to the kind of publication which is effected in Germany (Federal Republic) and other countries that provide for the publication of the application either before or after search but before examination.

“National application” and “national law” are defined in Article 2(vi) and (x), respectively.

(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.

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PARAGRAPH (2): The provision covers the typical conditions found in the national law of such countries as provide for so-called “provisional protection.”

“National law” is defined in Article 2(x).

PARAGRAPH (3): This provision is intended to establish the same treatment for purely domestic applications and international applications where, according to national law, “provisional protection” starts upon publication and national law does not allow publication earlier than 18 months from the priority date (e.g., Japan). As to the applicant requesting international publication before the expiration of 18 months from the priority date, see Article 21(2)(b).

“National law” and “priority date” are defined in Article 2(x) and (xi), respectively.

PARAGRAPH (4): “National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

#### NOTES ON ARTICLE 30

PARAGRAPHS (1) to (3): Paragraph (1) deals with the restrictions imposed on the International Bureau and the International Searching Authorities, whereas paragraphs (2) and (3) deal with the restrictions imposed on national Offices.

“Access” is defined in paragraph (4).

“National Office” and “receiving Office” are defined in Article 2(xii) and (xv), respectively.

PARAGRAPH (1)(a): International publication is the publication provided for under Article 21.

(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.

(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.

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PARAGRAPH (1)(b): Transmittals under Article 13 and communications under Article 20 are to the designated Offices.

PARAGRAPH (2)(a): The date of the international publication is determined under Article 21(2)(a) (18 months from the priority date) or Article 21(2)(b) (earlier, on the applicant's request) or Article 64(3) (later or never when all the designated States have "reserved" under Article 64(3)).

PARAGRAPH (2)(b): The information shall not contain the classification of the invention or the name of the inventor.

PARAGRAPH (2)(c): "Designated Office" is defined in Article 2(xiii).

PARAGRAPH (3): Article 12(1) deals with the transmittal of the record copy to the International Bureau and of the search copy to the competent International Searching Authority.

PARAGRAPH (4): "Priority date" and "national Office" are defined in Article 2(xi) and (xii), respectively.

GENERAL OBSERVATIONS: As to the keeping of records and files, see Rule 93.

As to the furnishing of copies of documents contained in the files, see Rule 94.

As to the availability of translations, see Rule 95.



## 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.

#### NOTES ON CHAPTER II

This Chapter, entitled “International Preliminary Examination,” contains 12 Articles (Articles 31 to 42).

The Articles are arranged in a sequence which follows, more or less accurately, the chronology of events in the procedure: Articles 31 to 38 deal with what could be called “the international phase,” whereas Articles 39 to 42 deal with what could be called “the national phase.”

The provisions concerning the international phase consist of provisions on the presentation of the demand for international preliminary examination (Article 31), on the International Preliminary Examining Authority (Article 32), and on the procedure before that Authority (Articles 33, 34, 35). Articles 36 to 38 deal with miscellaneous matters in the international phase.

The national phase (Articles 39 to 42) concerns what happens in the elected State in connection with the international application accompanied by an international preliminary examination report.

International preliminary examination is optional for the applicant: it will be carried out only if he so requests (see Article 31(1)). If he chooses to request international preliminary examination, the provisions of the international phase then, of course, come chronologically *after* the provisions on the international phase in Chapter I and *before* the provisions on the national phase in Chapter I.

The reason for which the Treaty does not follow this chronological order is that Chapter II is optional also for Contracting States. Any such State may avoid being bound by that Chapter if it makes the corresponding reservation (Article 64(1)). The separation of the provisions on international preliminary examination serves the sole purpose of permitting easy identification of the provisions which would not bind any State making the reservation in question.

#### NOTES ON ARTICLE 31

PARAGRAPH (1): The term “demand” has been chosen to distinguish the petition for international preliminary

examination from the petition which is made under Chapter I and included in the “request” part of the “application.”

The main applicable provisions of the Treaty are Articles 31 to 42, and the Rules issued thereunder (mainly Rules 53 to 78).

See Rule 53 as to the demand, and Rules 60.1 and 60.3 as to certain possible defects in the demand.

PARAGRAPH (2) (in general): See Rule 54 (The Applicant Entitled to Make a Demand). Contracting States having made the reservation under Article 64(1) are not bound by Chapter II.

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (2)(a): This provision means that, if Contracting State A is bound by Chapter II, whereas Contracting State B is not, and if the applicant is a national of A and a resident of B, and the international application was filed in B, no demand may be made (since it would have to be presented in B but cannot be presented there as B is not bound by Chapter II). Had the international application been filed in A, a demand could have been made. (Under paragraph (2)(b), however, the applicant might make a demand).

As to the competent International Preliminary Examining Authority, see Rule 59.1.

PARAGRAPH (2)(b): As to who are persons entitled to file international applications, see Article 9.

The decision requires a two-thirds majority in the Assembly (see Article 53(6)(a)).

See paragraph (4)(b) as to which Contracting States may be elected where the demand is made under paragraph (2)(b).

As to the competent International Preliminary Examining Authority, see Rule 59.2.

(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.

(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.

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PARAGRAPH (3): See Rules 53 (The Demand), 55 (Languages), and 60.1 (Defects in the Demand). There is no time limit provided for making a demand or an election since the matter appears to be self-regulatory. Unless the demand or election is made in time for the national processing not to start (see Article 40(1)) before the international preliminary examination is completed, the applicant would usually waste his money if he made a demand or election.

PARAGRAPH (4)(a): See Rule 53.7 (Election of States).

As to the designation of States under Chapter I, see Article 4(1)(ii) and (2), and Rule 4.9.

For later elections, see Rule 56 (Later Elections) and Rule 60.2 (Defects in Later Elections).

As to the election of non-designated States, see Rule 60.3 (Attempted Elections).

Contracting States which have made the reservation under Article 64(1) are not bound by Chapter II.

PARAGRAPH (4)(b): Only Contracting States bound by Chapter II of this Treaty may be elected. As to the election of a State not bound by Chapter II, see Rule 60.3 (Attempted Elections). This Rule may be considered as applying by analogy also to the case where the demand was made under paragraph (2)(b) and the applicant attempts to elect a State which, although bound by Chapter II, has not made a declaration under paragraph (4)(b).

PARAGRAPH (5): See Rules 57 (The Handling Fee) and 58 (The Preliminary Examination Fee). See also Rules 60.1(b) and 60.2(b).

PARAGRAPH (6)(a): See Rule 59 (The Competent International Preliminary Examining Authority).

PARAGRAPH (6)(b): See Rule 56 (Later Elections). See also Rules 57.2(b), 57.3(b), 57.5, 60.2, and 60.3.

PARAGRAPH (7): See Rule 61.2 (Notification of the Demand and Elections: Notifications to the Elected Offices).

"Elected Office" is defined in Article 2(xiv).

#### NOTES ON ARTICLE 32

PARAGRAPH (1): As to the procedure, see in particular Articles 34 to 36.

(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.

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PARAGRAPH (2): Demands under Article 31(2)(a) are demands made by residents or nationals of Contracting States bound by Chapter II. Rule 59.1 specifies the competent Authority.

Demands under Article 31(2)(b) are demands made by residents or nationals of a State not party to the Treaty or not bound by Chapter II whom the Assembly has decided to allow to make demands. Rule 59.2 specifies the competent Authority.

The agreement shall provide for the level of cost of preparing copies (Rule 71.2(b)).

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (3): Article 16(3) deals with the appointment of International Searching Authorities.

The minimum requirements for International Preliminary Examining Authorities are specified in Rule 63.

All International Preliminary Examining Authorities have the right to receive copies of all publications of the International Bureau relating to the Treaty (Rule 87.1).

#### NOTES ON ARTICLE 33

PARAGRAPH (1): The three criteria are defined in the following paragraphs: novelty, in paragraph (2); inventive step (non-obviousness), in paragraph (3); industrial applicability, in paragraph (4).

PARAGRAPH (2): See Rule 64 (Prior Art for International Preliminary Examination).

PARAGRAPH (3): See Rules 64 (Prior Art for International Preliminary Examination) and 65 (Inventive Step or Non-Obviousness). The relevant date is prescribed in Rule 65.2.

(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.

(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.

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PARAGRAPH (4): Article 1(3) of the Paris Convention (Stockholm Act) provides that "Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour."

PARAGRAPH (5): "Patentable" means not only that a patent may be granted but, alternatively, that an inventor's certificate, a utility certificate, or a utility model may be granted (see Article 2(ii)).

PARAGRAPH (6): As to the documents cited in the international search report, Rule 43.5(a) provides: "The international search report shall contain the citations of the documents considered to be relevant."

#### NOTES ON ARTICLE 34

PARAGRAPH (1): The main relevant provisions of the Treaty and the Regulations are contained in Articles 34 to 36, and Rules 66 to 74 and 91.

PARAGRAPH (2)(a): See Rule 66 (Procedure Before the International Preliminary Examining Authority), particularly Rules 66.2 (First Written Opinion of the International Preliminary Examining Authority), 66.3 (Formal Response to the International Preliminary Examining Authority), 66.4 (Additional Opportunity for Amendment or Correction), 66.5 (Amendment), and 66.6 (Informal Communications with the Applicant).

PARAGRAPH (2)(b): See Rule 66 (Procedure Before the International Preliminary Examining Authority). Amendment may be made before the international preliminary examination starts (Rule 66.1), after the first written opinion has issued (Rules 66.2(d) and 66.3), if additional written opinions issue, after such opinion has issued (Rule 66.4(a)), or on special request of the applicant (Rule 66.4(b)). For form of amendment, see Rule 66.8.

(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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PARAGRAPH (2)(c): See Rule 66.2 (First Written Opinion of the International Preliminary Examining Authority).

The criteria set forth in Article 33(1) are novelty, inventive step or non-obviousness, and industrial applicability.

The International Preliminary Examining Authority is not obliged to check whether the international application complies with any of the requirements of the Treaty or the Regulations. But if it notices any defect in the form or contents of the international application or if it considers that any amendment goes beyond the disclosure in the international application as filed, it must notify the applicant accordingly (Rule 66.2(a)(iii) and (iv)). If the International Preliminary Examining Authority is of the opinion that the claims, the description, or the drawings are not quite clear, or that the claims are not fully supported by the description it may notify the applicant accordingly (Rule 66.2(a)(v)); if, however, the lack of clarity or support is of such degree that no meaningful opinion can be formed on the question of novelty, inventive step or non-obviousness, and industrial applicability, notification of the applicant becomes obligatory (see Article 34 (4)(a)(ii)).

As to the observations under Article 35(2), last sentence, see Rule 70.8.

PARAGRAPH (2)(d): See Rules 66.3 (Formal Response to the International Preliminary Examining Authority), 66.4 (Additional Opportunity for Amendment or Correction), and 66.5 (Amendment). As to the time limit for response, see Rule 66.2(d).

PARAGRAPH (3)(a): The concept of unity of invention is defined in Rule 13, and the procedure before the International Preliminary Examining Authority in case of

lack of unity of invention is governed by Rule 68. See also Rules 69.1(a)(ii) and 70.13. The additional fee may be paid under protest (see Rule 68.3(c)). There is no possibility of dividing the international application in the international phase.

It goes without saying that any elected Office or the courts of any elected State may disagree with the interpretation of the International Preliminary Examining Authority on Rule 13. Consequently, for example:

(i) The International Preliminary Examining Authority has asked for restriction or additional fees: the elected Office or the courts of the elected State may still consider that there is unity of invention, even if the applicant has complied with the invitation of the Authority.

(ii) The said Authority has asked for X number of additional fees: the elected Offices may still ask for Y number of divisions (and national fees), even if the applicant has complied with the invitation of the Authority.

(iii) The said Authority has not asked either for restriction or for additional fees: the elected Office or the courts of the elected State may still find that there is no unity of invention, with the consequences (division or other) which its national law provides for such cases.

PARAGRAPH (3)(b): The consequence provided for in this paragraph is the only consequence of the lack of international preliminary examination of those parts which were left out on account of the restriction of the claims.

See also Rule 68.4 (Procedure in the Case of Insufficient Restriction of the Claims).

“National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

(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.

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PARAGRAPH (3)(c): The time-limit is specified in Rule 68.2, last sentence.

See also Rule 68.4 (Procedure in the Case of Insufficient Restriction of the Claims).

As to "main invention," see Rule 68.5.

The consequences provided for in this paragraph are the only consequences of not complying with the invitation issued under paragraph (3)(a).

"National law" and "national Office" are defined in Article 2(x) and (xii), respectively.

PARAGRAPH (4)(a)(i): As to the subject matter in question, see Rule 67.

PARAGRAPH (4)(a)(ii): As to the requirements for the description, claims, and drawings, see Articles 5, 6, 7, and the Rules cited thereunder.

PARAGRAPH (4)(a), final phrase: The questions referred to in Article 33(1) are the questions of novelty, inventive step or non-obviousness, and industrial applicability.

In the situations described in items (i) and (ii), the international preliminary examination report will merely state the opinion that the report cannot go into the said three questions (see Article 35(3)(a)). There is no other consequence: the report containing the said opinion will be communicated to the elected States and the national examination and other processing will start.

PARAGRAPH (4)(b): In other words, the report will go into the three questions in respect of some of the claims, whereas, in respect of others, it will merely express the opinion that it is not possible to go into the three questions.

**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.

(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).

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NOTES ON ARTICLE 35

PARAGRAPH (1): See Rules 69.1 (Time Limit for International Preliminary Examination) and 70 (The International Preliminary Examination Report).

PARAGRAPH (2): See Rule 70 (The International Preliminary Examination Report), particularly Rules 70.6 (Statement under Article 35(2)), 70.7 (Citations under Article 35(2)), 70.8 (Explanations under Article 35(2)), and 70.12 (Mention of Certain Defects).

“National law” is defined in Article 2(x).

PARAGRAPH (3)(a): The situations referred to in Article 34(4)(b) are that the international application relates to subject matter on which the International Preliminary Examining Authority is not required to carry out examination, and in fact has not done so (see Rule 67), or that the international application is “unexaminable” on account of lack of clarity or failure of the description to adequately support the claims. The statement provided for in paragraph (2) is the statement on the questions whether the invention is novel, involves an inventive step (is non-obvious), and is industrially applicable.

PARAGRAPH (3)(b): That is, if the situations described in the foregoing paragraph exist only in relation to some (not all) of the claims.

**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.

(2) If the election of all elected States is withdrawn, the demand shall be considered withdrawn.

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NOTES ON ARTICLE 36

PARAGRAPH (1): See Rule 71.1 (Transmittal of the International Preliminary Examination Report: Recipients). The annexes are the replacement sheets or letters containing amendments or corrections (Rule 70.16) and – on the applicant's request – the protest and the decision concerning unity of invention (Rule 68.3(c), last sentence).

PARAGRAPH (2)(a) and (b): See Rules 72 (Translation of the International Preliminary Examination Report) and 74 (Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof).

The number of translations of the international preliminary examination report required determines the amount of the handling fee (Rule 57.2).

PARAGRAPH (3)(a): See Rule 73 (Communication of the International Preliminary Examination Report). As to translations, see Rules 72 and 74.

“Elected Office” is defined in Article 2(xiv).

PARAGRAPH (3)(b): See Rule 74 (Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof).

“Elected Office” is defined in Article 2(xiv).

PARAGRAPH (4): See Rule 71.2 (Copies of Cited Documents).

NOTES ON ARTICLE 37

PARAGRAPH (1): See Rule 75 (Withdrawal of the Demand, or of Elections).

PARAGRAPH (2): –



(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.

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PARAGRAPH (3)(a): See Rule 75.1(b).

PARAGRAPH (3)(b): See Rules 75.2 (Notification of Elected Offices) and 75.3 (Notification of the International Preliminary Examining Authority).

“Elected Office” is defined in Article 2(xiv).

PARAGRAPH (4)(a): “National law” is defined in Article 2(x).

PARAGRAPH (4)(b): The time limit under Article 22 is generally 20 months from the priority date.

Article 37(4) means that if the demand or election is withdrawn inside the time limit applicable under Article 22, then the international application itself, and the designation of the State whose election is withdrawn, is not considered withdrawn since the withdrawal of the demand or of the election occurred inside the period during which the national Office cannot process the international application. Thus, such Office is in no different a position than if the demand or election had never been made. See also Rule 75.4 (Withdrawal of the Demand, or of Elections: Faculty Under Article 37(4)(b)).

“National law” and “national Office” are defined in Article 2(x) and (xii), respectively.

#### NOTES ON ARTICLE 38

PARAGRAPH (1): See the observations concerning paragraph (2).

“Elected Office” is defined in Article 2(xiv).

(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 19<sup>th</sup> 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.

(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.

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PARAGRAPH (2): The combined effect of paragraphs (1) and (2) is that information concerning the international preliminary examination will be given *only to an elected Office* and that such information will consist of the following and will normally occur in the following sequence:

- *the fact of election* will be notified (Article 31(7) and Rule 61.2),
- *the fact of withdrawal* will be notified (Article 37(3)(b) and Rule 75.2) and if there is withdrawal of the election of a given State such State will not be given any further information even if the international preliminary examination report later issues since such report is communicated only to elected Offices and the Office of the said State will have ceased to be an elected Office (see Article 38(1)),
- *the international preliminary examination report* will be communicated (Article 36(3)(a) and Rule 73),
- *the file of the international preliminary examination* will be accessible to the elected Office but only *after* the international preliminary examination report is established, that is, after the dialogue between the applicant and the International Preliminary Examining Authority has been concluded (Article 38(1)).

It is to be noted that neither the International Preliminary Examining Authority nor the International Bureau will give any information concerning the file to anyone other than the elected Offices at any time and that no information will be published either.

#### GENERAL OBSERVATIONS

As to the keeping of records and files, see Rules 93.3 and 93.4.

As to the furnishing of copies at the applicant's request, see Rule 94.1.

As to the availability of translations, see Rule 95.

#### NOTES ON ARTICLE 39

PARAGRAPH (1)(a): Article 22 provides for a 20-month time limit which is incompatible with the 25-month time limit fixed in this subparagraph.

See Rule 76 (Languages of Translations and Amounts of Fees Under Article 39(1); Translation of Priority Document).

As to the publication of any information on the question whether the requirements provided for under this Article have been complied with, see Rule 86.1 (The Gazette: Contents).

"Priority date" and "elected Office" are defined in Article 2(xi) and (xiv), respectively.

PARAGRAPH (1)(b): See Rule 77 (Faculty under Article 39(1)(b)).

As to notification of applicant of applicable time limits in different elected Offices, see Rule 61.3.

"National law" is defined in Article 2(x).

(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 19<sup>th</sup> 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.

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PARAGRAPH (2): The effect provided for in Article 11(3) is, in essence, that an international application has the effect of a national application in each designated State and – since only designated States may be elected (Article 31(4)) – in each elected State.

“National application” is defined in Article 2(vi).

PARAGRAPH (3): As to the effect provided for in Article 11(3), see the observations contained in the foregoing paragraph.

“Elected Office” is defined in Article 2(xiv).

#### NOTES ON ARTICLE 40

PARAGRAPH (1): Article 23 refers to a 20-month time limit which is incompatible with the 25-month time limit referred to in Article 39. See also Rule 78.3 (Amendment of the Claims, the Description, and the Drawings, Before Elected Offices: Utility Models).

The “applicable time limit under Article 39” will be 25 months from the priority date (Article 39(1)(a)) or more when the elected State so allows (Article 39(1)(b)).

“Priority date” and “national Office” are defined in Article 2(xi) and (xii), respectively.

PARAGRAPH (2): The applicant must address such a request direct to the elected Office.

“Elected Office” is defined in Article 2(xiv).

#### NOTES ON ARTICLE 41

PARAGRAPH (1): The time limit is fixed in Rules 78.1 and 78.2.

“Patent” is defined in Article 2(ii) and (ix), whereas “elected Office” is defined in Article 2(xiv).

PARAGRAPH (2): “National law” is defined in Article 2(x).

(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.

### 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.

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PARAGRAPH (3): "National law" is defined in Article 2(x).

PARAGRAPH (4): The right to require a translation is provided for in Article 39(1)(a).

"Elected Office" is defined in Article 2(xiv).

#### NOTES ON ARTICLE 42

SOLE PARAGRAPH: There is a growing tendency in examining Offices to obligate the applicant to produce copies, or information on the contents, of any papers connected with the examination of the same invention in *other* examining Offices. Sometimes it is even required that the applicant furnish translations of such papers. Such requirements may become extremely costly and vexatious for the applicant. Article 42 would exclude such requirements, provided the other Offices were also elected under Chapter II. Such other Offices would hardly lose anything because, instead of the said papers, they would receive the international preliminary examination report, which generally will be more valuable to them as it is prepared according to agreed international criteria.

On the other hand, nothing in this Article prevents any elected Office from asking any other elected Office to exchange with it – direct, that is, without the intervention of the applicant and without placing any burden on him – information on the examination results in the national phase, provided such exchange is permitted by the applicable laws.

"Elected Office" is defined in Article 2(xiv).

#### NOTES ON CHAPTER III

This Chapter, entitled "Common Provisions," contains seven Articles (Articles 43 to 49).

They consist of provisions which concern both Chapter I and Chapter II.

#### NOTES ON ARTICLE 43

SOLE PARAGRAPH: See Rule 4.12(a) (The Request (Contents): Choice of Certain Kinds of Protection).

"Patent" is defined in Article 2(ix).

#### **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.

#### **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.

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#### NOTES ON ARTICLE 44

SOLE PARAGRAPH: See Rule 4.12(b) (The Request (Contents): Choice of Certain Kinds of Protection).

For example, the law of Germany (Federal Republic) allows the same application to be for the grant of a patent and for the grant of a utility model.

"Application" is defined in Article 2(i) and (viii), whereas "patent" is defined in Article 2(ix).

#### NOTES ON ARTICLE 45

PARAGRAPH (1): "Regional patent" is defined in Article 2(iv).

PARAGRAPH (2): "Regional patent" and "national law" are defined in Article 2(iv) and (x), respectively.

#### NOTES ON ARTICLE 46

SOLE PARAGRAPH: The provision deals only with an

incorrect translation that results in a patent whose scope is *broader* than that of the international application. It goes without saying that, if the translation filed by the applicant under Articles 22 or 39 is incorrect and, because of such defect, *narrows* the disclosure as it appears in the international application as filed (i.e., in its original language), the translation may – although it does not have to – be considered by the designated (elected) Office as constituting an irrevocable renunciation of any part of the disclosure not contained in the translation. The cumulative effect of this understanding and Article 46 is that the valid scope of any national patent is limited by what is clearly comprised both in the international application in the original language and its translation.

In any case, no national Office will be obligated, during the national examination procedure, to refer to the international application in its original language. It may base its examination on the translation only.

"Patent" is defined in Article 2(ii) and (ix).

**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.

NOTES ON ARTICLE 47

PARAGRAPH (1): See Rules 79 (Calendar) and 80 (Computation of Time Limits).

Time limits are contained in the Articles enumerated in connection with paragraph (2)(a) below, and in Articles 57(5)(e); 61(1)(b), (3)(a)(c); 63(1)(a), (2); 64(3)(b), (3)(c)(ii), (4)(a), (6)(a)(b); 65(2); 66(2).

PARAGRAPH (2)(a): The following provisions of Chapters I and II fix time limits counted from the priority date:

Article 13(1) (copy of the international application available to the designated Office as soon as possible after one year);

Article 21(2)(a) (international publication promptly after 18 months);

Article 22(1) (copy of the international application, translation, national fee, and in certain cases, identification of the inventor, to the designated Office by the 20<sup>th</sup> month);

Article 23(1) (delaying of national procedure in the designated Office for not less than 20 months);

Article 29(3) (effects of international publication starting, in certain cases, at the expiration of 18 months);

Article 30(4) (general publication of an international application or its translation not allowed, in certain cases, before 20 months);

Article 37(4)(b) (withdrawal of the demand or of the election prior to the expiration of 20 months);

Article 39(1)(a) (copy of the international application, translation, and national fee, to the elected Office by the 25<sup>th</sup> month if the election is effected not later than the end of 19 months);

Article 40(1) (delaying of national procedure in the elected Office for not less than 25 months if the election is effected not later than at the end of 19 months).

The time limit (2 months) for furnishing the copy of the international application, translation, national fee, and, in certain cases, the identification of the inventor, to the designated Office where no international search report issues is counted from the date of the notification under Article 17(2)(a) (Article 22(2)).

The time limit before which a national Office generally cannot allow access to the international application is dependent upon the earliest of three dates (Article 30(2)(a)).

PARAGRAPH (2)(b): See Article 53(2)(a)(ii) and Rule 81 (Modification of Time Limits Fixed in [Chapters I and II of] the Treaty).

PARAGRAPH (2)(c): See Rule 81 (Modification of Time Limits Fixed in [Chapters I and II of] the Treaty).

NOTES ON ARTICLE 48

PARAGRAPH (1): See Rule 82 (Irregularities in the Mail Service).

With one exception, the "cases" include all situations in which mail may be used under the Treaty. The exception is constituted by the case where the record copy does not arrive, or arrives after the prescribed time limit, at the International Bureau (see Rule 22.3(b)). The "proof and other conditions" are spelled out in Rules 82.1 (Delay or Loss in Mail) and 82.2 (Interruption in the Mail Service).

PARAGRAPH (2)(a): See Rule 22.3(b).

"National law" is defined in Article 2(x).

(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.

### **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.

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PARAGRAPH (2)(b): See Rule 22.3(b).

#### NOTES ON ARTICLE 49

SOLE PARAGRAPH: See Rule 83 (Right to Practice Before International Authorities).

As to “agent,” see Rule 2.2 (Interpretation of Certain Words: “Agent”).

“National Office” is defined in Article 2(xii).

#### NOTES ON CHAPTER IV

This Chapter entitled “Technical Services” contains 3 Articles (Articles 50 to 52).

Article 50 deals with patent information services. Article 51 deals with technical assistance. Article 52 establishes the separation between the financial provisions in this Chapter with those in other Chapters of the Treaty.

#### NOTES ON ARTICLE 50

PARAGRAPH (1): “Application” is defined in Article 2(i) and (viii), whereas “patent” is defined in Article 2(ii) and (ix).

PARAGRAPH (2): –

PARAGRAPH (3): –

PARAGRAPH (4): –

(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.

(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.

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PARAGRAPH (5)(a): The sources referred to in Article 51(4) are international financing organizations and intergovernmental organizations.

PARAGRAPH (5)(b): "National Office" is defined in Article 2(xii).

PARAGRAPH (6): Decisions require a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (7): Recommendations require a two-thirds majority (see Article 53(6)(a)).

#### NOTES ON ARTICLE 51

PARAGRAPH (1): –

PARAGRAPH (2)(a): The decision requires a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (2)(b): "Director General" is defined in Article 2(xx).

PARAGRAPH (3)(a) and (b): –



(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.

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PARAGRAPH (4): The United Nations Development Programme and the International Bank for Reconstruction and Development are among such organizations.

PARAGRAPH (5): The decisions require a two-thirds majority (see Article 53(6)(a)).

#### NOTES ON ARTICLE 52

SOLE PARAGRAPH: Article 57 contains the principal financial provisions and it appears in another Chapter.

#### NOTES ON CHAPTER V

This Chapter, entitled "Administrative Provisions," contains six Articles (Articles 53 to 58).

The first four deal with four organs: the Assembly (Article 53), the Executive Committee (Article 54), the International Bureau (Article 55), and the Committee for Technical Cooperation (Article 56).

Article 57 deals with finances, and Article 58 with the Regulations.

Most of the provisions of this Chapter follow closely the administrative provisions of the Paris Convention as revised at Stockholm in 1967.

#### NOTES ON ARTICLE 53

PARAGRAPH (1)(a): "Contracting States" means "States party to this Treaty" (Article 1). According to Article 57(8) the State on the territory of which the Organization has its headquarters (i.e., Switzerland) has, under certain conditions, an *ex officio* seat in the Assembly.

PARAGRAPH (1)(b): See Rule 84 (Expenses of Delegations).

- (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;
  - (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.

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PARAGRAPH (2)(a)(i): –

PARAGRAPH (2)(a)(ii): These tasks, apart from the tasks enumerated in subparagraph (2)(a), are the following: allow residents or nationals of non-Contracting States which are party to the Paris Convention to file international applications (Article 9(2)); appoint International Searching Authorities (Article 16(3)(a)); approve agreements between the International Bureau and the International Searching Authorities (Article 16(3)(b)); hear the (prospective) International Searching Authorities and seek the advice of the Committee for Technical Cooperation (Article 16(3)(e)); perform similar tasks with respect to (prospective) International Preliminary Examining Authorities (Article 32(2) and (3)); allow certain persons to make a demand for international preliminary examination if they are not residents or nationals of a Contracting State or a State bound by Chapter II (Article 31(2)(b)); modify the time limits fixed in the Treaty (Article 47(2)(b)); implement the information services (see Article 50(4), (6) and (7)); establish the Committee for Technical Assistance (Article 51(1)) and fix the details concerning technical assistance (Article 51(5)); set up the Executive Committee (Article 53(9)); approve the annual programs and budget until the Executive Committee is set up (Article 53(10)); adopt its own rules of procedure (Article 53(12)); regulate the election of the members of the Executive Committee

(Article 54(5)(c)); create new publications by the International Bureau (Article 55(4)); direct the preparation of revision conferences (Article 55(7)(a)); establish and direct the Committee for Technical Cooperation (Article 56(1), (2)(a), (3)(iii), (5), (6)(b), (7), (8)); make certain financial decisions (Article 57(5)(b), (c), (d), (e), (7)(a), (b), (c), (9)); amend the Regulations (Article 58(2)(a)); exercise control over the Administrative Instructions (Article 58(4)); convene revision conferences (Article 60(2)); amend certain administrative provisions of the Treaty (Article 61(1), (2), (3)); adopt measures for the gradual application of the Treaty (Article 65(1), (2)); designate additional languages for official texts of the Treaty (Article 67(1)(b)).

PARAGRAPH (2)(a)(iii): See Article 60 (Revision of the Treaty).

PARAGRAPH (2)(a)(iv) to (x): –

PARAGRAPH (2)(b): “Organization” is defined in Article 2(xviii).

(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.

(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.

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PARAGRAPH (3): –

PARAGRAPH (4): –

PARAGRAPH (5)(a): –

PARAGRAPH (5)(b): See Rule 85.1 (Absence of Quorum in the Assembly: Voting by Correspondence).

PARAGRAPH (6)(a): The following acts call for unanimity: changing the time limits fixed in Chapters I and II of the Treaty (Article 47(2)(a)), amendment of certain Rules (Article 58(3)(a)(i)), exclusion of certain Rules from the requirement of unanimity (Article 58(3)(b)), and inclusion of Rules among the Rules which can be changed only unanimously or without the dissenting vote of certain Contracting States (Article 58(3)(c)).

Two acts call for no dissenting vote by certain Contracting States: amendment of certain Rules (Article 58(3)(a)(ii)), and exclusion of such Rules from the said requirement (Article 58(3)(b)).

Two acts call for a three-fourths majority: amendment of certain Rules (Article 58(2)(b)), and amendment of certain provisions of the Treaty (Article 61(1)(a)).

PARAGRAPH (6)(b): –

PARAGRAPH (7): Chapter II deals with international preliminary examination.

PARAGRAPH (8): –

PARAGRAPH (9): The election of the members of the Executive Committee requires a two-thirds majority (Article 53(6)(a)).

PARAGRAPH (10): –

(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.

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PARAGRAPH (11)(a) to (c): –  
PARAGRAPH (12): –

PARAGRAPH (3): –  
PARAGRAPH (4): –

#### NOTES ON ARTICLE 54

PARAGRAPH (1): See Article 53(9) concerning the establishment of an Executive Committee.

PARAGRAPH (2)(a): According to Article 57(8), the State on the territory of which the Organization has its headquarters (i.e., Switzerland) has, under certain conditions, an *ex officio* seat on the Executive Committee.

PARAGRAPH (2)(b): –

(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.

(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.

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PARAGRAPH (5)(a): As to the time of meeting of the Assembly in ordinary session, see Article 53(11)(b).

PARAGRAPH (5)(b) and (c): –

PARAGRAPH (6)(a)(i) to (v): –

PARAGRAPH (6)(a)(vi): These functions, apart from the functions enumerated in Article 54(6)(a), are the following express its view on the advice of the Committee for Technical Cooperation (Article 56(6)(b)); initiate proposals for the amendment of certain Articles (Article 61(1)).

PARAGRAPH (6)(b): –

PARAGRAPH (7)(a): As to the time of the meeting of the Coordination Committee of the Organization, see Article 8(4) of the Convention Establishing the World Intellectual Property Organization.

PARAGRAPH (7)(b): –

- (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.
- (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.

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PARAGRAPH (8)(a) to (e): –  
 PARAGRAPH (9): –  
 PARAGRAPH (10): –

#### NOTES ON ARTICLE 55

PARAGRAPH (1): –  
 PARAGRAPH (2): –  
 PARAGRAPH (3): –

PARAGRAPH (4): See Rule 86 (The Gazette). See also Rules 3.3(a)(iii); 19.3(b); 22.4; 23.1(c); 48.6(a)(b)(c); 49.1(b)(c); 50.1(b)(d); 72.1(b); 75.4(b); 76.1(b)(c); 77.1(b)(d); 87.1, 87.2(a); 89.3(a)(b).

PARAGRAPH (5): “National Office” is defined in Article 2(xii).

PARAGRAPH (6): –

PARAGRAPH (7)(a): As to revision conferences, see Article 60.

(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,

(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.

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PARAGRAPH (7)(b) and (c): –

PARAGRAPH (8): –

#### NOTES ON ARTICLE 56

PARAGRAPH (1): –

PARAGRAPH (2)(a): These decisions require a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (2)(b): “National Office” is defined in Article 2(xii).

PARAGRAPH (2)(c): –

PARAGRAPH (2)(d): It is to be noted that both international and national non-governmental organizations are meant. It goes without saying that they will receive the documents necessary for intelligent participation.

PARAGRAPH (3): –

(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.

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PARAGRAPH (4): –

PARAGRAPH (5): In other words, the Committee's advice and recommendations need not be cleared by the Executive Committee or the Assembly before communication to the International Searching or Preliminary Examining Authorities or the receiving Offices.

“Receiving Office” is defined in Article 2(xv).

PARAGRAPH (6)(a) and (b): –

PARAGRAPH (7): –

PARAGRAPH (8): The decisions require a two-thirds majority (Article 53(6)(a)).

#### NOTES ON ARTICLE 57

PARAGRAPH (1)(a) to (c): –



(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;

(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.

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PARAGRAPH (2): –

PARAGRAPH (3): –

PARAGRAPH (4): It is to be noted that the amounts of all the important fees to be collected by or for the benefit of the International Bureau are fixed in the Regulations and thus are fixed by the Assembly. Minor fees will be fixed in the Administrative Instructions, over which the Assembly has control (cf. Article 58(4)).

PARAGRAPH (5)(a) to (e): –

(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.

(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.

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PARAGRAPH (6): –

PARAGRAPH (7)(a) to (d): –

PARAGRAPH (8)(a) and (b): –

PARAGRAPH (9): –

## 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.
- (4) The Regulations provide for the establishment, under the control of the Assembly, of Administrative Instructions by the Director General.

### NOTES ON ARTICLE 58

PARAGRAPH (1)(i): See the following Articles: 2, 2(xii); 3(2), (4)(i)(ii)(iii)(iv); 4(1)(iii)(v), (2), (4); 7(2)(ii); 8(1); 9(3); 10; 11(1)(ii)(iii)(c), (2)(a)(b); 12(1), (3); 14(1)(a)(i)(ii)(v)(b), (2), (3)(a)(b), (4); 15(4), (5)(c); 16(3)(c); 17(1), (2)(a)(i)(ii), (3)(a); 18(1), (3); 19(1); 20(1)(a)(b), (3); 21(2)(b), (3), (4), (6); 22(1); 25(1)(c), (2)(a); 26; 27(1), (4), (5), (8); 28(1), (3); 31(1), (2)(a), (3), (5); 33(2), (3); 34(1), (2)(b)(c)(ii), (3)(a)(c), (4)(a)(i); 35(1), (2); 36(1), (2)(a), (3)(a)(b); 37(4)(b); 39(1)(a); 41(1), (3); 43; 44; 47(1), (2)(c); 48(1); 53(5)(b), (9); 55(4), (5), (6); 58(2)(a), (3)(a)(b)(c), (4), (5); 59; 63(3); 64(1)(b), (2)(a)(i), (3)(c)(i); 65(1); 68(2), (4).

PARAGRAPH (1)(ii) and (iii): –

PARAGRAPH (2)(a): See Rule 88 (Amendment of the Regulations).

PARAGRAPH (2)(b): –

PARAGRAPH (3)(a)(i): See Rules 88.1 (Amendment of the Regulations: Requirement of Unanimity) and 88.2 (Amendment of the Regulations: Requirement of Unanimity During a Transitional Period).

PARAGRAPH (3)(a)(ii): See Rule 88.3 (Amendment of the Regulations: Requirement of Absence of Opposition by Certain States).

“National Office” is defined in Article (2)(xii).

PARAGRAPH (3)(b) and (c): –

PARAGRAPH (4): See Rule 89 (Administrative Instructions). See also Rules 3.4; 5.1(c); 6.1(c); 20.1(b); 43.5(b), 43.10; 48.1(b), 48.2(b)(i), 48.2(i), 48.4(a); 53.1(c); 70.6(a), 70.8, 70.15; 86.1(i)(v), 86.4, 86.6.

(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.

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PARAGRAPH (5): –

#### NOTES ON CHAPTER VI

This Chapter, entitled “Disputes,” contains one Article (Article 59).

#### NOTES ON ARTICLE 59

SOLE PARAGRAPH: Under Article 64(5), any Contracting State may declare that it will not be bound by the provisions of this Article.

#### NOTES ON CHAPTER VII

This Chapter, entitled “Revision and Amendment,” contains two Articles (Articles 60 and 61).

Article 60 deals with the possibility of “revising” any provision of the Treaty in special “revision” conferences.

Article 61 deals with the possibility of “amending” certain provisions of the Treaty by the Assembly.

Whereas “revisions” bind only those Contracting States which ratify or accede to them, “amendments” bind also the other Contracting States party to the Treaty at the time the amendment enters into force, except if the amendment increases their financial obligations, and all States becoming party to the Treaty after the amendment enters into force.

Otherwise, the terms of “revising” and “amendment” mean the same, that is, changing the provisions of the Treaty.

#### NOTES ON ARTICLE 60

PARAGRAPH (1): –

PARAGRAPH (2): The decision requires a two-thirds majority (see Article 53(6)(a)).

PARAGRAPH (3): See the Note concerning Article 61(1)(a), below.

(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.

(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).

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PARAGRAPH (4): Article 53(5) deals with the quorum in the Assembly; Article 53(9) provides when the Executive Committee must be established; Article 53(11) regulates the convocation of sessions of the Assembly; Article 54 deals with the Executive Committee; Article 55(4) provides what publications the International Bureau must issue; Article 55(5) provides what services the national Offices must perform in order to assist the International Bureau and the International Searching and Preliminary Examining Authorities; Article 55(6) provides for the role of the International Bureau in meetings and as Secretariat; Article 55(7) provides for the role of the International Bureau in connection with revision conferences; Article 55(8) provides that "the International Bureau shall carry out any other tasks assigned to it;" Article 56 deals with the Committee for Technical Cooperation; Article 57 deals with finances.

#### NOTES ON ARTICLE 61

PARAGRAPH (1)(a): The Articles referred to deal with administrative matters of relatively minor importance. Article 53(5), (9) and (11) deals with the quorum of the

Assembly, the establishment of the Executive Committee, and the convocation of meetings, respectively. Article 54 deals with the Executive Committee. Article 55(4) to (8) deals with certain details of the tasks of the International Bureau. Article 56 deals with the Committee for Technical Cooperation. Article 57 deals with finances (see, however, Article 61(3)(b) and (c) which provides that any amendment increasing the financial obligations of the Contracting States shall bind only those States party to the Treaty at the time the amendment enters into force which have – expressly and individually – notified their acceptance of such amendment but that such amendment shall be binding on all States becoming party to the Treaty thereafter).

PARAGRAPH (1)(b): –

PARAGRAPH (2)(a) and (b): –

PARAGRAPH (3)(a) to (c): –

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.

NOTES ON CHAPTER VIII

This Chapter, entitled "Final Provisions," contains eight Articles (Articles 62 to 69).

The first two (Articles 62 and 63) deal with the question of becoming party to the Treaty and the entry into force of the Treaty.

Article 64 deals with reservations to certain provisions of the Treaty.

Article 65 deals with the gradual application after entry into force of the Treaty.

Article 66 deals with denunciation of the Treaty.

Articles 67 to 69 deal with formal matters (signature and languages; depositary functions; notifications).

NOTES ON ARTICLE 62

PARAGRAPH (1)(i): The Treaty could be signed only before January 1, 1971 (see Article 67(2)).

PARAGRAPH (1)(ii): –

PARAGRAPH (2): –

PARAGRAPH (3): Article 24 of the Stockholm Act of the Paris Convention reads as follows:

"(1) Any country may declare in its instrument of ratification or accession, or may inform the Director General by written notification any time thereafter, that this Convention shall be applicable to all or part of those territories, designated in the declaration or notification, for the external relations of which it is responsible.

(2) Any country which has made such a declaration or given such a notification may, at any time, notify the Director General that this Convention shall cease to be applicable to all or part of such territories.

(3)(a) Any declaration made under paragraph (1) shall take effect on the same date as the ratification or accession in the instrument of which it was included, and any notification given under such paragraph shall take effect three months after its notification by the Director General.

(b) Any notification given under paragraph (2) shall take effect twelve months after its receipt by the Director General."

PARAGRAPH (4): –

**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,

(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).

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NOTES ON ARTICLE 63

PARAGRAPH (1)(a): Publication of the statistics occurs each year in the December issue of “Industrial Property.”

“Application” is defined in Article 2(i) and (viii), whereas “national Office” is defined in Article 2(xii).

PARAGRAPH (1)(b): The definitions contained in Article 2(i) and (viii) apply subject to this exception.

PARAGRAPH (2): This paragraph deals with the States other than those which, as a group, cause the initial entry into force of the Treaty.

PARAGRAPH (3): –

## 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.

(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).

### NOTES ON ARTICLE 64

PARAGRAPHS (1) and (2): It results from these paragraphs that the attitude of each Contracting State with respect to Chapter II may be any of the following three:

(i) The State may decide to accept Chapter II with all its consequences; to achieve this, it merely has to accede to the Treaty and not make any reservations under paragraphs (1) or (2).

(ii) The State may decide not to accept any part of Chapter II; to achieve this, it has to make use of the possibility of reservation under paragraph (1). The consequences will be that such a State cannot be elected, that it will not receive international preliminary examination reports, and that its nationals and residents filing international applications cannot (unless they happen to be entitled to file, and do file, in a State bound by Chapter II or unless they fall under Article 31(2)(b)) ask for international preliminary examination.

(iii) The State may decide on a course which is between (i) and (ii), and which consists of accepting Chapter II but with a reservation; to achieve this, it has to make use of the possibility of reservation under paragraph (2). The consequences, roughly stated, will be the same as they would be if the State accepted Chapter II, except that the translation will have to be furnished to its national Office by the expiration of 20 (rather than 25) months from the priority date and that the international application may be *nationally* published any time

after 20 (rather than 25) months from the priority date.

PARAGRAPH (1)(a): Chapter II deals with international preliminary examination.

PARAGRAPH (1)(b): –

PARAGRAPH (2)(a)(i): Article 39(1) allows the applicant to delay the furnishing of the copy of the international application and its translation until the expiration of 25 months from the priority date.

PARAGRAPH (2)(a)(ii): Under Article 40, the delay is generally until the expiration of 25 months from the priority date. Article 30 limits the right of designated and elected Offices to allow access to the files of the international application. Article 38 limits the right of elected Offices to obtain access to the file of the international preliminary examination.

PARAGRAPH (2)(b): –

PARAGRAPH (3)(a): International publication is governed by Article 21 and the Rules thereunder.

PARAGRAPH (3)(b): Under Article 21(2), international publication would take place promptly after the expiration of 18 months from the priority date.

“Priority date” is defined in Article 2(xi).



(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.

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PARAGRAPH (3)(c)(i): As to earlier publication on the applicant's request, see Rules 48.2(g) and 48.4

PARAGRAPH (3)(c)(ii): See Rule 48.5 (Publication of the international application: Notification of national publication).

"Patent" is defined in Article 2(ii) and (ix) whereas "national application," "priority date" and "national Office" are defined in Article 2(vi), (xi) and (xii), respectively.

PARAGRAPH (4)(a): The declaration must be notified to the Director General (paragraph (6)(a)).

"Patent" is defined in Article 2(ii) and (ix) whereas "national law" and "priority date" are defined in Article 2(x) and (xi), respectively.

PARAGRAPH (4)(b): Article 11(3) provides that an international application has the effect of a regular national application in each designated State as of the international filing date, which date is to be considered to be the actual filing date in each designated State.

PARAGRAPH (4)(c): This statement must be notified to the Director General (paragraph (6)(a)).

PARAGRAPH (5): Article 59 stipulates the jurisdiction of the International Court of Justice in case of disputes.

(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.

### **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.

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PARAGRAPH (6)(a): The Director General notifies the declaration to all States members of the Paris Union (Article 69)(iv).

PARAGRAPH (6)(b): The declaration under paragraph (3) is to the effect that "international publication of international applications is not required."

PARAGRAPH (7): –

#### NOTES ON ARTICLE 65

PARAGRAPH (1): –

PARAGRAPH (2): Chapter II deals with international preliminary examination.

**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.

(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.

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NOTES ON ARTICLE 66

PARAGRAPH (1): –

PARAGRAPH (2): –

NOTES ON ARTICLE 67

PARAGRAPH (1)(a) and (b): –

PARAGRAPH (2): –

NOTES ON ARTICLE 68

PARAGRAPH (1): The Treaty was open for signature until the end of 1970 (see Article 67(2)).

PARAGRAPH (2): –

PARAGRAPH (3): –

PARAGRAPH (4): –

### 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).

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Treaty.

DONE at Washington, on June 19, 1970.\*

Algeria (A. Dahmouche); Argentina, December 21, 1970 (Pedro E Real); Austria, December 22, 1970 (Hans Georg Rudofsky); Belgium, December 30, 1970 (Walter Loridan); Brazil (Miguel A O de Almeida); Canada (A. M. Laidlaw); Denmark (E. Tuxen); Federal Republic of Germany (Rupprecht v Keller, Kurt Haertel); Finland (Erkki Tuuli); France, December 31, 1970 (Charles Lucet); Holy See (Mario Peressin); Hungary (E. Tasnádi); Iran, July 7, 1970 (Dr. A. Aslan Afshar); Ireland (M. J. Quinn); Israel (Z. Sher, Mayer Gabay); Italy (Giorgio Ranzi); Ivory Coast, December 3, 1970 (T. Ahoua); Japan (B. Yoshino, Y. Aratama); Luxembourg, December 30, 1970 (Jean Wagner); Madagascar, December 10, 1970 (Jules A. Razafimbahiny); Monaco, December 31, 1970 (Professor Dr. Charles Schertenleib); Netherlands, December 31, 1970 (R. B. Van Lynden); Norway (Leif Nordstrand); Philippines (Suarez); Romania, December 28, 1970 (Corneliu Bogdan); Senegal, December 29, 1970 (Cheikh I. Fall); Sweden (Göran Borggard); Switzerland (Dr. Walter Stamm); Syria, December 29, 1970 (George J. Tomeh); Togo, December 23, 1970 (Dr. Ohin); Union of Soviet Socialist Republics, December 23, 1970 (A. Dobrynin); United Arab Republic (Moh. Abdel Salam); United Kingdom of Great Britain and Northern Ireland (Edward Armitage, James David Fergusson); United States of America (Eugene M. Braderman, William E. Schuyler, Jr.); Yugoslavia (Prof. Dr. Stojan Pretnar).

\* *Editor's Note:*

All the signatures were affixed June 19, 1970, unless otherwise indicated. A written declaration that the Signatory State did not consider itself bound by Article 59 of the Treaty was made at the time of signing on behalf of Hungary, Romania and the Union of Soviet Socialist Republics.

#### NOTES ON ARTICLE 69

- ITEM (i): Article 62 deals with ways in which a State may become party to the Treaty;
- ITEM (ii): Article 62 deals with ways in which a State may become party to the Treaty;
- ITEM (iii): Article 63 deals with the entry into force of the Treaty;
- ITEM (iv): Article 64 deals with reservations;
- ITEM (v): Article 64 deals with reservations;
- ITEM (vi): Article 66 deals with denunciations;

- ITEM (vii): The declaration under Article 31(4) is to the effect that the State bound by Chapter II is prepared to be elected by residents or nationals of a State not bound by Chapter II but who are entitled to file international applications and to demand international preliminary examination pursuant to a decision of the Assembly (see Article 31(2)(b)).

## 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.

**PCT/PCD/5**      June 22, 1971(Original: English)  
WIPO BIRPI

#### **Notes on the Regulations under the Patent Cooperation Treaty**

##### *The present document*

The present document contains Notes on the Regulations under the Patent Cooperation Treaty (PCT). There are Notes concerning each of the 95 Rules of the Regulations.

The first Note concerning each Rule, introduced by the words “in general” refers to that provision or those provisions of the Treaty on which the Rule is based or is principally based. Occasionally, that Note also refers to other Articles or Rules which have a close connection with the Rule under consideration.

The rest of the Notes are intended mainly to serve the purpose of facilitating the reading of the text of the Rules by giving brief information on such Articles of the Treaty or other Rules as the Rule under consideration may refer to, so that the reader should generally be able to avoid turning to the page on which those Articles or Rules appear.

It is to be noted that the terms *application, patent, national patent, regional patent, regional application, national application, international application, national law, priority date, national Office, designated Office, elected Office, receiving Office, Union, Assembly, Organization, International Bureau*, and *Director General*, are defined in Article 2 of the Treaty, and that the terms *Treaty, Chapter, Article, applicant, agent*, and *signature*, are given certain interpretations in Rules 1 and 2 of the Regulations.

##### *Notes on Rule 1: Abbreviated Expressions*

In general: Article 58(1)(iii)

1.1            –

##### *Notes on Rule 2: Interpretation of Certain Words*

In general: Article 58(1)(iii)

2.1            Provisions concerning communications and transmittals between the applicant on the one hand and the receiving Office, the designated Office, the elected Office, the International Bureau, the International Searching Authority and the International Preliminary Examining Authority on the other hand are among the provisions where the agent (or representative) may be substituted for the applicant. The international application may be signed by the agent rather than the applicant (see Notes on Article 4(1) and the text of Article 27(2)(ii)). The amendments under Articles 19(1), 28(1), 34(2), and 41(1) may be filed by the agent rather than the applicant.

Among the provisions in the case of which the said substitution is not conceivable because of the wording or the nature of the provision, or the context in which the word is used, are not only provisions referring to the applicant’s residence or nationality, but also provisions referring to his name and address and provisions dealing with the question of whether the applicant is the inventor.

## 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.

### 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.

2.3	Persons having the right to practice before international authorities – that is, before the International Bureau and the International Searching and Preliminary Examining Authorities – are attorneys, patent agents and any other persons who have the right to practice before the national Office with which the international application was filed (see Article 49). Rule 4.8 deals with the representation of several applicants who have not appointed a common agent.	3.2	–
2.3	In Japan, a seal rather than a signature is required in certain cases.	3.3(a)(i)	As to the request, see Rules 3 and 4; as to the description, Rule 5; as to the claims, Rule 6; as to the drawings, Rule 7; as to the abstract, Rule 8.
		3.3(a)(ii)	As to the power of attorney, see Rule 90.3; as to the priority document, Rule 17; as to fees, Rules 14, 15 and 16.
		3.3(a)(iii)	As to the pamphlet, see Rule 48; as to the Gazette, Rule 86.

*Notes on Rule 3: The Request (Form)*

In general: Articles 3(2); 4; 27(1)

3.1 –

(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.

#### 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."

3.3(b)	–	4.1(b)(ii)	As to the reference to earlier international or international-type searches, see Rule 4.11.
3.4	As to the Administrative Instructions, see Rule 89.	4.1(b)(iii)	As to the choice of certain kinds of protection, see Rule 4.12.
<i>Notes on Rule 4: The Request (Contents)</i>			
In general:	Articles 3(2); 4; 27(1)	4.1(b)(iv)	See Articles 4(1)(ii) and 45.
4.1(a)(i)	As to the petition, see Rule 4.2.	4.1(b)(v)	As to parent applications and parent grants, see Rule 4.13; as to continuation or continuation-in-part, see Rule 4.14.
4.1(a)(ii)	As to the title of the invention, see Rule 4.3.	4.1(c)	See the notes on Rule 4.1(a)(v).
4.1(a)(iii)	As to the indications concerning the applicant, see Rule 4.5, and concerning the agent, see Rule 4.7. As to the names and addresses of both, see Rule 4.4.	4.1(d)	As to the signature, see Rules 2.3 and 4.15.
4.1(a)(iv)	As to the designation of States, see Rule 4.9.	4.2	See Article 4(1)(i).
4.1(a)(v)	As to the indications concerning the inventor, see Rule 4.6. As to the way to indicate his name and address, see Rule 4.4.		
4.1(b)(i)	As to the priority claim, see Rule 4.10.		

#### 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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- 4.3 See Article 4(1)(iv).
- 4.4 See Articles 4(1)(iii) and 11(1)(iii)(c), and Rules 4.16 and 20.4(b).
- 4.5 See Articles 4(1)(iii), 9, and 11(1)(iii)(c), and Rule 20.4(b).
- 4.6 See Article 4(1)(v) and (4). Rule 4.1(a)(v) applies 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.
- 4.7 See Article 4(1)(iii) and Rule 4.16.



#### 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 16<sup>th</sup> 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.

4.8(a)	The following persons are entitled to file an international application under Article 9: any resident of a State party to the PCT; any national of a State party to the PCT; residents and nationals of any State party to the Paris Convention but not party to the PCT where the Assembly of the International Patent Cooperation Union has decided that the residents and nationals of such State may file international applications. Article 9 is further clarified by Rule 18.	4.8(b) 4.9 4.10(a)  4.10(b) 4.10(c)	See the preceding note. See Article 4(1)(ii) and Rule 4.16(b). As to Article 8(1), see the note on Rule 17.1(a). The said Article is further clarified by Rule 17. – –
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(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.

#### 4.11 *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.

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4.10(d)	See the note on Rule 4.10(a).
4.10(e)	—
4.11	—
4.12	See Articles 4(3), 43, 44. The other kinds of protection specified in Article 43 are inventors' certificates, utility certificates, utility models, patents of addition, certificates of addition, inventors' certificates of addition, and utility certificates of addition. The case provided for in Article 44 is the case where the national law of the designated or elected State permits an international application to be for two kinds of protection (for example, for a patent and a utility model).
4.13	—

#### 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.

#### 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;

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4.14	–
4.15	–
4.16	–
4.17	–

#### *Notes on Rule 5: The Description*

In general: Articles 3(2); 5; 27(1); Rule 88.2(i)

5.1(a)(i)	
to (v)	–

(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.

(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.

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5.1(a)(vi) Article 1(3) of the Stockholm Act of the Paris Convention provides that "Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products, for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers, and flour."

5.1(b) –

5.1(c) As to the Administrative Instructions, see Rule 89.

#### *Notes on Rule 6: The Claims*

In general: Articles 3(2); 6; 27(1); Rule 88.2(ii)

6.1(a) –

6.1(b) –

6.1(c) As to the Administrative Instructions, see Rule 89.

6.2 –

### 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.

(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.

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6.3	–
6.4	–
6.5	The time limit under Article 22 is normally 20 months from the priority date.

#### *Notes on Rule 7: The Drawings*

In general: Articles 3(2); 7; 27(1)

7.1 –

### 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.

### 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.

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7.2 The time limit referred to in Article 7(2)(ii) concerns the case where the designated Office requires the applicant to file drawings which are not necessary for the understanding of the invention (drawings necessary for the understanding of the invention must be filed in any case, see Article 7(1)). The filing of such drawings may be required only where the nature of the invention admits of illustration by drawings.

8.2 The indication referred to in Rule 3.3(a)(iii) is 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.

8.3 —

#### *Notes on Rule 8: The Abstract*

In general: Articles 3(2), (3); 27(1)

8.1 —

## **Rule 9** **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 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.

### 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.

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#### *Notes on Rule 9: Expressions, Etc., Not To Be Used*

In general: Articles 3(2); 21(6)

9.1 –

9.2 –

9.3 Under Article 21(6), the International Bureau may omit from its publications disparaging statements appearing in the international application.

#### *Notes on Rule 10: Terminology and Signs*

In general: Article 3(2)

10.1 –

## 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.

(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) 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 (request, description, claims, drawings, abstract) 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

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10.2 —

*Notes on Rule 11: Physical Requirements of the International Application*

In general: Article 3(4)(ii)

11.1 —

11.2 —

11.3 —

11.4 —

11.5 —



### 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

(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.

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11.6	–
11.7	–
11.8	–
11.9	–

#### 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.

(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.

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11.10	—
11.11	—
11.12	—
11.13	—

(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.

#### 11.15 *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”).

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11.14	Rule 10 deals with terminology and signs, as well as the consistency of their use.	<i>Notes on Rule 13: Unity of Invention</i>
11.15	See Article 27(1).	In general: Article 3(4)(iii)
	<i>Notes on Rule 12: Language of the International Application</i>	13.1 –
In general:	Article 3(4)(i)	
12.1	–	
12.2	–	

### 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

(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.

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13.2	—
13.3	—
13.4	—
13.5	The time limit under Article 22 is normally 20 months from the priority date.

#### *Notes on Rule 14: The Transmittal Fee*

In general: Article 3(4)(iv); Rule 88.1(i)

14.1 —

## **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) 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.

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#### *Notes on Rule 15: The International Fee*

In general: Article 3(4)(iv); 4(2)

15.1	–
15.2	–
15.3	–
15.4	–

### 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.

### 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.

15.5

—

15.6

The determination under Article 11(1) is negative if the purported international application does not comply with any of the requirements listed in that Article (see the note concerning Rule 20.2(a)(i)). See also Rule 20.7 (Negative Determination).

#### *Notes on Rule 16: The Search Fee*

In general: Article 3(4)(iv)

16.1(a)

—

16.1(b)

Under Rule 15.4(a), the fee is due on the date of the receipt of the international application,

the receiving Office having the right to give, at the most one month more, to the applicant for paying the fee.

16.2

The determination under Article 11(1) is negative if the purported international application does not comply with any of the requirements listed in that Article (see the note concerning Rule 20.2(a)(i)). See also Rule 20.7 (Negative Determination).

### 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.

### 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.

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16.3 The agreement under Article 16(3)(b) is the agreement between the International Bureau and the International Searching Authority.

#### *Notes on Rule 17: The Priority Document*

In general: Article 8

17.1(a) Article 8(1) provides that 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. The case referred to in Article 23(2) is the case where the applicant

expressly requests the designated Office to process or examine his international application prior to the applicable time limit for starting such processing or examination.

17.1(b) –

17.1(c) –

17.2(a) The time limit under Article 22 is normally

20 months from the priority date.

17.2(b) –

17.2(c) –

## 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.

(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.

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#### *Notes on Rule 18: The Applicant*

In general: Article 9

18.1 –

18.2 –

18.3 As to the question who is entitled to file an international application according to Article 9, see the note on Rule 4.8(a).

18.4(a) As to Article 9, see the preceding note.

18.4(b) –

18.4(c) –

18.5 See Article 58(1)(iii).



## **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.

#### 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.

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#### *Notes on Rule 19: The Competent Receiving Office*

In general: Article 10

- 19.1(a) –
- 19.1(b) Article 15(5) deals with an international-type search carried out on a national application.
- 19.1(c) Under Article 9(2), the Assembly may decide to allow the residents and the nationals of any country party to the Paris Convention which is not party to the PCT to file international applications.
- 19.2(a) Rule 4.8 deals with the representation of several applicants not having a common agent.
- 19.2(b) As to Article 9, see the note on Rule 4.8(a).
- 19.3(a) –
- 19.3(b) As to the Gazette, see Rule 86.

## 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.

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#### *Notes on Rule 20: Receipt of the International Application*

In general: Articles 10; 11(1), (2)

20.1(a) –

20.1(b) As to the Administrative Instructions, see Rule 89.

20.2(a)(i) The invitation to correct, referred to in Article 11(2)(a) is issued if the receiving Office finds that the international application did not, at the time of receipt, fulfill the requirements listed in Article 11(1). Those requirements are that: (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.

20.2(a)(ii) As to the invitation to correct, see the preceding notes.

20.2(a)(iii) The case referred to in Article 14(2) is the case where the international application refers to drawings which, in fact, are not included in the application.

20.2(a)(iv) –

20.2(b) –

20.3 The case referred to in Article 11(2)(b) is the case where the applicant complies with the invitation to correct.

#### 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.

#### 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:

20.4(a)	As to the requirements under Article 11(1), see the notes on Rule 20.2(a)(i).	20.7	As to the requirements provided for under Article 11(1), see the notes on Rule 20.2(a)(i). Rule 93.1 deals with the keeping of records and files by the receiving Office. Article 25(1) deals with the review, by the designated Offices, of certain findings of the receiving Office or of the International Bureau.
20.4(b)	Article 11(1)(iii)(c) requires that the international application contain "the name of the applicant, as prescribed."		
20.5(a)	The determination under Article 11(1) is positive, and results in the according of an international filing date, if the requirements under Article 11(1) (see the notes on Rule 20.2(a)(i)) are fulfilled.		
20.5(b)	—		
20.5(c)	—		
20.6(a)	The invitation to correct under Article 11(2) refers to the correction of the international application. As to the requirements provided for under Article 11(1), see the notes on Rule 20.2(a)(i).		
20.6(b)	—		

- (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.

#### 20.9 *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.

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20.8 As to the requirements provided for under Article 11(1), see the notes on Rule 20.2(a)(i).

20.9 –

#### *Notes on Rule 21: Preparation of Copies*

In general: Articles 10; 12(1)

21.1(a) The “home copy” is the copy to be kept by the receiving Office; the “search copy” is the copy transmitted to the International Searching Authority (see Article 12(1)).

21.1(b) –

21.1(c) Under Rule 11.1(b), the receiving Office decides whether any international application must be filed in one, two, or three copies.

**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 13<sup>th</sup> 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 13<sup>th</sup> 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.

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.

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*Notes on Rule 22: Transmittal of the Record Copy*

In general: Articles 10; 12

22.1(a) The determination under Article 11(1) is positive and results in the according of an international filing date if the requirements under Article 11(1) (see the notes on Rule 20.2(a)(i)) are fulfilled.

22.1(b) Under Rule 24.2(a), the International Bureau must promptly notify the applicant of the fact and the date of receipt of the record copy.

22.1(c) –

22.2 See Rule 88.1(ii).

(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;

(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.

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22.3	See Rule 88.1(iii).
22.3(a)	Article 12(3) provides that "the international application shall be considered withdrawn if the record copy has not been received by the International Bureau within the prescribed time limit."
22.3(b)	Article 48 deals with delays in meeting certain time limits and excusing, under certain circumstances, such delays. Rule 82 deals with irregularities in the mail service.
22.4	As to the Gazette, see Rule 86.

### 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 13<sup>th</sup> 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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22.5 The following are among the documents referred to in Rule 3.3(a)(ii): power of attorney, priority document, receipt or check for fees, an international or international-type search report, a document evidencing that the applicant is the inventor’s successor in title.

*Notes on Rule 23: Transmittal of Search Copy*

In general: Articles 10; 12

23.1(a) Rule 22.2(d) deals with the case in which the applicant opts for transmitting, himself, the record copy to the International Bureau.

23.1(b) –

23.1(c) As to the Gazette, see Rule 86.

*Notes on Rule 24: Receipt of the Record Copy by the International Bureau*

In general: Article 12(3)

24.1 –

#### 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.

24.2(a)	Under Article 22(3) any national law may, for furnishing a copy of the international application and a translation thereof to the designated Office, and for paying to such Office the national fee, fix time limits which expire later than the time limit provided for in Article 22(1) (i.e., 20 months from the priority date) or Article 22(2) (i.e., 2 months from the date of the notification sent to the applicant of the declaration under Article 17(2)(a) that no international search report will be established).	<i>Notes on Rule 26: Checking and Correcting Certain Elements of the International Application</i>	
		In general: Articles 10; 14	
24.2(b)	The time limit fixed in Rule 22.3 is 13 months – or, under certain circumstances, 14 months – from the priority date.	26.1(a)	The invitation to correct provided for in Article 14(1)(b) is issued if the international application contains any of the following defects: “(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” (Article 14(1)(a)).
	<i>Notes on Rule 25: Receipt of the Search Copy by the International Searching Authority</i>	26.1(b)	As to Article 14(1)(a)(iii) and (iv), see the preceding note.
In general:	Article 17(1)		
25.1	–		



### 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.

### 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.

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26.2	The time limit referred to in Article 14(1)(b) concerns the time given to the applicant to correct any of the defects referred to in the preceding note. See also the note on Rule 26.1(a).
26.3	The physical requirements referred to in Rule 11 are the physical requirements of the international application.
26.4	—
26.5	—
26.6(a)	—

(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)).

### **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.

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26.6(b) The notification provided for in Article 14(2) is a notification by the receiving Office to the applicant to the effect that the drawings referred to in the international application were, in fact, not included in that application. Rule 20.2(a)(iii) allows 30 days (from the date on which the incomplete papers were filed) for the missing drawings to reach the receiving Office.

#### *Notes on Rule 27: Lack of Payment of Fees*

In general: Article 14(3)

27.1 –

#### *Notes on Rule 28: Defects Noted by the International Bureau or the International Searching Authority*

In general: Article 14(1)

28.1(a) The defect referred to in Article 14(1)(a)(i) is that the international application is not signed as provided in the Regulations; the defect referred to in Article 14(1)(a)(ii) is that the international application does not contain the prescribed indications concerning the applicant; the defect referred to in Article 14(1)(a)(v) is that the international application does not comply to the extent provided in the Regulations with the prescribed physical requirements.

28.1(b) Article 14(1)(b) provides that the receiving Office must invite the applicant to correct any defect referred to in Article 14(1)(a) (see the note on Rule 26.1(a)). Rule 26 deals with the details of the same question.

**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.

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*Notes on Rule 29: International Applications or Designations Considered Withdrawn under Article 14(1), (3) or (4)*

In general: Article 14

29.1(a) The prescribed fees under Rule 27.1(a) means: the transmittal fee, the basic fee part of the international fee, and the search fee. The requirements listed in items (i) to (iii) of Article 11(1) are that the applicant does not obviously lack, for reasons of his residence or nationality, the right to file an international application with the receiving Office; that the international application is in the prescribed language; and that the international application contains at least the following elements: an indication that it is intended as an international application, the designation of at least one Contracting State, the name of the applicant (as prescribed), a part which on the face of it appears to be a description, a part which on the face of it appears to be a claim or claims.

29.1(b) Rule 27.1(b) concerns the designation fee part of the international fee.

29.2 The effect ceases by virtue of Article 24(1)(iii) if the applicant fails, within the prescribed time

limit, to furnish a copy of the international application and a translation thereof to the designated Office, and to pay the national fee to that Office. Article 24(2) provides that any designated Office may maintain the effect of the international application even where such effect is not required to be maintained by virtue of Article 25(2).

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.

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.

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- |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |         |                                                                                                                                                                           |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 29.3 | Article 14(4) provides that if, after having accorded an international filing date, the receiving Office finds, within 6 months from the international filing date, that any of the requirements listed in items (i) to (iii) of Article 11(1) was not complied with at that date, the international application must be considered withdrawn and the receiving Office must so "declare." The said items are quoted in the notes concerning Rule 20.2(a)(i), above. | 31.1(b) | Article 13(2)(b) provides that the applicant may, at any time, ask the International Bureau to transmit a copy of his international application to any designated Office. |
| 29.4 | As to Article 14(4), see the preceding note.                                                                                                                                                                                                                                                                                                                                                                                                                        | 31.2    | The copies required under Article 13 are the copies needed for transmittal to any designated Office when such transmittal is requested under that Article.                |
- Notes on Rule 30: Time Limit under Article 14(4)*
- In general: Article 14(4)
- 30.1 As to Article 14(4), see the note on Rule 29.3.
- Notes on Rule 31: Copies Required under Article 13*
- In general: Article 13
- 31.1(a) Article 13(1) provides that any designated Office may ask the International Bureau to transmit to it a copy of the international application after the expiration of one year from the priority date and prior to the communication provided for in Article 20.

**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.

(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.

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*Notes on Rule 32: Withdrawal of the International Application or of Designations*

In general: Articles 21(5); 24(1)(i)

32.1(a) –

32.1(b) –

32.1(c) Rule 4.8(b) deals with the case where there is more than one applicant and the request does not refer to an agent, or one of the applicants, representing all the applicants.

32.1(d) The declaration referred to in Article 17(2)(a) is issued where the International Searching Authority considers that the international application relates to a subject matter which it is not required to search and decides not to search, or 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.

*Notes on Rule 33: Relevant Prior Art for the International Search*

In general: Article 15(2), (4); Rule 88.1(iv)

33.1 Article 15(2) provides that “the objective of the international search is to discover relevant prior art.”

(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.

(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.

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33.2       —

33.3       —

*Notes on Rule 34: Minimum Documentation*

In general: Articles 15(4); 16(3)(c); Rule 88.3(i)

34.1       —

(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,

(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.

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*Notes on Rule 35: The Competent International Searching Authority* 35.1

In general: Article 16

The agreement referred to in Article 16(3)(b) is the agreement between the International Bureau and the International Searching Authority.

### 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.

(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.

35.2(a)	As to Article 16(3)(b), see the preceding note.	36.1(i)	—
35.2(b)	—	36.1(ii)	Rule 34 lists the documents that constitute the “minimum documentation.”
<i>Notes on Rule 36: Minimum Requirements for International Searching Authorities</i>		36.1(iii)	As to Rule 34, see the preceding note.
In general:	Article 16(3)(c)	<i>Notes on Rule 37: Missing or Defective Title</i>	
36.1	Article 16(3)(c) provides that any national Office or intergovernmental organization must satisfy the requirements prescribed by the Regulations before it can be appointed as an International Searching Authority and which it must continue to satisfy while it remains appointed.	In general:	Articles 4(1)(iv); 14(1)(a)(iii); 17(1)
		37.1	—



### 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.

## **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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37.2	Rule 4.3 requires that the title of the invention be short (preferably from two to seven words when in English or translated into English) and precise.	38.2(b) –	
	<i>Notes on Rule 38: Missing [or Defective] Abstract</i>	<i>Notes on Rule 39: Subject Matter under Article 17(2)(a)(i)</i>	
In general:	Articles 3(2), (3); 14(1)(a)(iv); 17(1)	In general:	Article 17(2)(a)(i); Rule 88.3(ii)
38.1	–	39.1	–
38.2(a)	Rule 8 prescribes the form and contents of the abstract.		

**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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*Notes on Rule 40: Lack of Unity of Invention (International Search)*

- In general: Articles 3(2), (4)(iii); 17(3)(a); Rule 13
- 40.1 Article 17(3)(a) provides that if the International Searching Authority considers that the international application does not comply with the requirement of unity of invention, it shall invite the applicant to pay additional fees.
- 40.2(a) As to Article 17(3)(a), see the preceding note.
- 40.2(b) As to Article 17(3)(a), see the note on Rule 40.1.
- 40.2(c) —
- 40.2(d) —
- 40.3 As to Article 17(3)(a), see the note on Rule 40.1.

### **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 18<sup>th</sup> 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.

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#### *Notes on Rule 41: The International-Type Search*

In general: Article 15(5)

41.1 The “form” provided for in Rule 4.11 consists of a statement in the request to the effect that an international or international-type search has been requested, and of the identification of the application to which such request related. Article 15(5) provides who may ask for an international-type search and in what cases and by whom and how such a search is carried out. The agreement referred to in Article 16(3)(b) is an agreement between the International Bureau and the International Searching Authority.

#### *Notes on Rule 42: Time Limit for International Search*

In general: Article 18(1)

42.1 As to the declaration referred to in Article 17(2)(a), see the note on Rule 32.1(d).

#### *Notes on Rule 43: The International Search Report*

In general: Article 18

43.1 –

43.2 –

### 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.

### 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.

43.3	—	43.6	—
43.4	As to the declaration referred to in Article 17(2)(a), see the note on Rule 32.1(d).	43.7	According to Article 17(3)(a), the "main invention" is the invention first mentioned in the claims.
43.5(a)	—		
43.5(b)	As to the Administrative Instructions, see Rule 89.	43.8	—
43.5(c)	—		
43.5(d)	—		
43.5(e)	—		

#### 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.

### **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.

43.9	The matters enumerated in the following provisions are: written disclosures of oral disclosures, uses, exhibitions, etc. (Rule 33.1(b)); applications and patents published after a certain date (Rule 33.1(c)); identifications, dates, classification, citations, fields searched, remarks concerning unity of invention, signature (Rules 43.1 to 43.3 and 43.5 to 43.8); remarks concerning title and abstract (Rule 44.2(a) and (b)); indication that no international search report is established in respect of certain claims (Article 17(2)(b)).	44.2(a)	Rule 37 provides that, under certain circumstances, the title of the invention is established by the International Searching Authority. Rule 38 provides that, under certain circumstances, the abstract is established by the said Authority.
		44.2(b)	–
		44.2(c)	–
43.10	As to the Administrative Instructions, see Rule 89.	44.3(a)	Article 20(3) provides that at the request of the designated Office or the applicant, the International Searching Authority must send to the said Office or the applicant, respectively, copies of the documents cited in the international search report.

*Notes on Rule 44: Transmittal of the International Search Report, Etc.*

In general: Article 18(2)

44.1 As to Article 17(2)(a), see the note on Rule 32.1(d).

(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.

##### 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.

44.3(b)	The agreement referred to in Article 16(3)(b) is an agreement between the International Bureau and the International Searching Authority	46.1	According to Article 19(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 <i>within the prescribed time limit</i> " (emphasis added).
44.3(c)	—		
44.3(d)	—		
<i>Notes on Rule 45: Translation of the International Search Report</i>		46.2	—
In general:	Article 18(3)	46.3	As to Article 19, see the note on Rule 46.1.
45.1	As to Article 17(2)(a), see the note on Rule 32.1(d).		
<i>Notes on Rule 46: Amendment of Claims Before the International Bureau</i>			
In general:	Article 19		

#### 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.

(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).

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46.4(a)	According to Article 19(1), the applicant may, when filing amendments, file a brief statement explaining the amendments and indicating any impact that such amendments might have on the description or drawings.	47.1(a)	The communication provided for in Article 20 is the communication of the international application, together with the international search report or the declaration referred to in Article 17(2)(a) (see the note on Rule 32.1(d)) to each designated Office.
46.4(b)	–		
46.5(a)	As to Article 19, see the note on Rule 46.1.	47.1(b)	The time limit provided for in Rule 46.1 is 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.
46.5(b)	–		
46.5(c)	–		

*Notes on Rule 47: Communication to Designated Offices*

In general: Article 20

(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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<p>47.1(c) –</p> <p>47.1(d) As to Article 17(2)(a), see the note on Rule 32.1(d). The translation referred to in Rule 45.1 is a translation into English.</p> <p>47.1(e) As to Article 20, see the note on Rule 47.1(a).</p> <p>47.2 –</p> <p>47.3 As to Article 20, see the note on Rule 47.1(a).</p> <p><i>Notes on Rule 48: International Publication</i></p> <p>In general: Article 21</p> <p>48.1(a) –</p> <p>48.1(b) As to the Administrative Instructions, see Rule 89.</p>	<p>48.2(a) As to Article 17(2)(a), see the note on Rule 32.1(d). As to Article 19(1), see the note on Rule 46.4(a). Rule 46.4 prescribes the language and the length of the statement and prohibits the statement from containing comments on the international search report or on the relevance of the citations contained in that report.</p>
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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; 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.

48.2(b)	–		the international search report or on the relevance of the citations contained in that report.
48.2(b)(i)	As to the Administrative Instructions, see Rule 89.		
48.2(b)(ii)	–	48.2(g)	Under Article 21(2)(b), the applicant may ask for international publication before the expiration of 18 months from the priority date. Under Article 64(3)(c)(i), the applicant may ask for international publication where, without such request, the publication would not be effected
48.2(b)(iii)	–		
48.2(c)	As to Article 17(2)(a), see the note on Rule 32.1(d).		
48.2(d)	Rule 8.2 entitles, in certain circumstances, the International Searching Authority to select a figure or figures.		
48.2(e)	The translation referred to in Rule 48.3(c) is a translation into English.	48.2(h)	See the note on Rule 48.2(f).
48.2(f)	As to Article 19, see the notes on Rules 46.1 and 46.4(a). Rule 46.4 prescribes the language and the length of the statement and prohibits the statement from containing comments on		

(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.

#### 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.

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48.2(i)	As to the Administrative Instructions, see Rule 89.	48.4(a)	As to Articles 21(2)(b) and 64(3)(c)(i), see the note under Rule 48.2(g), and as to Article 17(2)(a), see the note on Rule 32.1(d).
48.3(a)	–		As to the Administrative Instructions, see Rule 89.
48.3(b)	The communication under Article 20 is a communication to the designated Offices, Rule 16.1(a) provides that the search fee covers all the tasks entrusted to the International Searching Authority.	48.4(b)	See the note on Rule 48.2(g).
48.3(c)	As to Article 17(2)(a), see the note on Rule 32.1(d).		

#### 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.

### **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.

48.5	Article 64(3)(c)(ii) deals with the case where the international publication is to be preceded by a national publication.	<i>Notes on Rule 49: Languages of Translations and Amounts of Fees under Article 22(1) and (2)</i>
48.6(a)	The notification under Rule 29.1(a)(ii) relates to the receiving Office's declaration that the international application is considered withdrawn. As to the Gazette, see Rule 86.	In general: Article 22 49.1(a) – 49.1(b) As to the Gazette, see Rule 86. 49.1(c) As to the Gazette, see Rule 86.
48.6(b)	The notification under Rule 29.2 relates to the case where the effect of the international application ceases by virtue of Article 24(1)(iii), or where such effect is maintained by virtue of Article 24(2). As to the Gazette, see Rule 86. The notification under Rule 51.4 relates to the case where the designated Office decides that the refusal, declaration or finding referred to in Article 25(1) was not justified.	
48.6(c)	As to the Gazette, see Rule 86.	

#### 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.

(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).

- 
- 49.2 –  
49.3 As to Article 19, see the note under Rule 46.4(a).

*Notes on Rule 50: Faculty under Article 22(3)*

- In general: Article 22(3)  
50.1(a) The time limit under Article 22(1) is 20 months from the priority date. The time limit under Article 22(2) is two months from the date of the notification that no international search report will be established.  
50.1(b) As to the Gazette, see Rule 86.  
50.1(c) –  
50.1(d) As to the Gazette, see Rule 86.

*Notes on Rule 51: Review by Designated Offices*

- In general: Article 25  
51.1 The time limit referred to in Article 25(1)(c)

concerns the time limit for the applicant to present to the International Bureau a request to send copies of any document in the file to the designated Offices. Rule 20.7(i) provides that the receiving Office shall promptly notify the applicant that his purported international application will not be treated as an international application since it does not fulfil the requirements provided for under Article 11(1). Rule 24.2(b) provides that the International Bureau shall promptly notify the applicant that his record copy was received after the expiration of the time limit fixed in Rule 22.3. Rule 29.1(a)(ii) provides that the receiving Office shall promptly notify the applicant that his international application is considered withdrawn. Rule 29.1(b) provides that the receiving Office shall promptly notify the applicant that the designation of any given State is considered withdrawn.

### 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.

(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).

51.2	The negative determination under Article 11(1) is made by the receiving Office if the purported international application does not comply with certain requirements. Article 25 deals with the possible review, by the designated Office, of such determination. The notice referred to in Rule 20.7(i) is the notice by the receiving Office to the applicant informing him of the negative determination.	<i>Notes on Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices</i>
		In general: Article 28
51.3	The time limit referred to in Article 25(2)(a) concerns the furnishing of a translation, and the payment of the national fee, to the designated Office requested to review certain decisions of the receiving Office or the International Bureau.	52.1(a) The right under Article 28 is the right to amend the application before any designated Office. The requirements under Article 22 are those of furnishing a copy and a translation of the international application, and of paying the national fees. The communication under Rule 47.1 is the communication to the designated Office under Article 20. The time limit under Article 22 is normally 20 months from the priority date.
51.4	As to Article 25, see the note on Rule 51.2.	52.1(b) As to Article 28, see the preceding note.

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*.

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.

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*Notes on Rule 53: The Demand*

In general: Article 31

- 53.1(a) —
- 53.1(b) —
- 53.1(c) As to the Administrative Instructions, see Rule 89.
- 53.1(d) —
- 53.2 —
- 53.3 —
- 53.4 Rule 4.4 deals with the manner in which names and addresses must be indicated. Rule 4.16 prescribes the transliteration or translation of certain words. Rule 4.5 deals with indications concerning the applicant.

53.5

Rule 4.4 deals with the manner in which names and addresses must be indicated. Rule 4.7 provides that if agents are designated, the request must so indicate, and must state the names and addresses. Rule 4.16 prescribes the transliteration or translation of certain words. Rule 4.8 deals with the representation of several applicants not having a common agent.

53.6

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### 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.

53.7	–		
53.8	–		
<i>Notes on Rule 54: The Applicant Entitled to Make a Demand</i>		54.2(ii)	Article 31(2)(b) provides that 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.
In general: Article 31(2)			
54.1	Article 31(2) specifies residents and nationals of which States are allowed to make demands for international preliminary examinations. Rules 18.1 and 18.2 deal with the concepts of residence and nationality.	54.3(a)(i)	As to Article 31(2)(a), see the note on Rule 54.2(i).
54.2	The demand under Article 31(2) is a demand for international preliminary examination.	54.3(a)(ii)	As to Article 31(2)(b), see the note on Rule 54.2(ii).
54.2(i)	Article 31(2)(a) provides that 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	54.3(b)	–
		54.4	–

**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.

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*Notes on Rule 55: Languages (International Preliminary Examination)*

In general: Article 31(3)

55.1 –

55.2(a) –

55.2(b)(i) The time limit under Rule 46.1 concerns the time limit for amending claims before the International Bureau and expires 2 months after the date of transmittal of the international search report to the applicant and the International Bureau or, when the transmittal took place before the expiration of 14 months from the priority date, 3 months after the date of such transmittal.

55.2(b)(ii) –

55.2(c) –  
55.2(d) –

*Notes on Rule 56: Later Elections*

In general: Article 31(4)(a), (6)(b)

56.1 –

56.2 According to Rule 53.6, 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.



### 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:..."

### 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.

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56.3 –  
56.4 –  
56.5 –

#### *Notes on Rule 57: The Handling Fee*

In general: Article 31(5)

57.1 –

57.2(a) According to Article 36(2), the international 57.2(b)  
57.3

preliminary examination report and its annexes must be translated into the prescribed languages (see Rules 70.17 and 72.1). The report must be translated by or under the responsibility of the International Bureau, whereas the annexes must be translated by the applicant.

As to Article 36(2), see the preceding note.

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#### 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.

(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.

57.4(a)	–	date later than the date the supplement to the handling fee is received.
57.4(b)	Under Rule 60.1(b), a later date will be applicable if the correction is received on a date later than the date the handling fee is received.	57.5(c) – 57.6 –
57.4(c)	–	<i>Notes on Rule 58: The Preliminary Examination Fee</i>
57.5(a)	–	In general: Article 31(5)
57.5(b)	Under Rule 60.2(b), a later date will be applicable if the correction is received on a	58.1 –

**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.

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*Notes on Rule 59: The Competent International Preliminary Examining Authority*

In general: Article 31(2), (b)(a); 32

59.1 Demands made under Article 31(2)(a) are demands made for international preliminary examination by applicants who are residents or nationals of Contracting States bound by Chapter II and whose international applications have been filed with receiving Offices of or acting for such States. The agreement referred to in Article 32(2) and (3) is an agreement between the International Bureau and the International Preliminary Examining Authority. According to Rule 19.1(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.

Rule 35.2 deals with the case in which several International Searching Authorities are competent.

59.2 Demands made under Article 31(2)(b) are demands made for international preliminary examination by applicants who are entitled to file international applications but who are residents or nationals of a State not party to the PCT or not bound by Chapter II, but in respect of whom the Assembly has decided that they are entitled to make such demands.

*Notes on Rule 60: Certain Defects in the Demand or Elections*

In general: Article 31

60.1(a) Rule 53 deals with the form and contents of the demand. Rule 55 specifies the language in which the demand and the international application must be.

60.1(b) Rule 57.4(b) deals with the case where the handling fee is paid later than the submission of the demand.

(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.

(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.

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60.1(c)	—	61.1(b)	The demand must be considered as if it had not been submitted if the handling fee is not paid in time (Rule 57.4(c)) or where the invitation to correct certain defects in the demand is not complied with in time (Rule 60.1(c)).
60.1(d)	—		
60.2(a)	Rule 56 deals with the form and contents of the notice of later election.		
60.2(b)	Rule 57.5(b) deals with the case where the supplement to the handling fee is paid later than the submission of the notice of later election.		
60.2(c)	—		
60.3	—		
<i>Notes on Rule 61: Notification of the Demand and Elections</i>			
In general: Article 31(1), (b), (7)			
61.1(a)	The date referred to in Rule 60.1(b) is the date on which the correction, or late payment of the fee, was received.		

(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 18<sup>th</sup> 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.

#### 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.

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61.1(c)	The date referred to in Rule 60.2(b) is the date on which the correction of the defects in the notice of later election or the belatedly paid supplement to the handling fee was received. The notice of later election must be considered as if it had not been submitted if the supplement to the handling fee is not paid in time (Rule 57.5(c)) or where the invitation to correct certain defects in the notice of later election is not complied with in time (Rule 60.2(c)).	Notes on Rule 62: <i>Copy for the International Preliminary Examining Authority</i>
		In general: Articles 31(1); 34(1)
		62.1(a) –
61.2(a)	Under Article 31(7), each elected Office is notified of its election.	
61.2(b)	–	
61.2(c)	–	
61.3	Under Article 39(1)(b), any national law may, for furnishing the copy and translation of the international application and for paying the national fee, fix time limits which expire later than the 25 <sup>th</sup> month from the priority date.	

(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;

(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.

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62.1(b)	As to the declaration referred to in Article 17(2)(a), see the note on Rule 32.1(d).	<i>Notes on Rule 63: Minimum Requirements for International Preliminary Examining Authorities</i>
62.2(a)	Amendments filed under Article 19 are amendments of the claims filed with the International Bureau within the time limit provided for in Rule 46.1.	In general: Article 32(3)
62.2(b)	Rule 46.1 provides that 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.	63.1 Article 32(3) refers to Article 16(3). Subparagraph (c) of the latter specifies the minimum requirements. 63.1(i) – 63.1(ii) Rule 34 lists the documents that constitute the "minimum documentation." 63.1(iii) As to Rule 34, see the preceding note.

## 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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#### *Notes on Rule 64: Prior Art for International Preliminary Examination* 64.3

In general: Article 33(2), (3); Rule 88.1(v)

64.1(a) “For the purposes of Article 33(2) and (3)” means for the purposes of international preliminary examination as to novelty and inventive step (non-obviousness).

64.1(b) –

64.2 “For the purposes of Article 33(2) and (3)” means for the purposes of international preliminary examination as to novelty and inventive step (non-obviousness). Rule 70.9 provides that 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.

“For the purposes of Article 33(2) and (3)” means for the purposes of international preliminary examination as to novelty and inventive step (non-obviousness). Rule 70.10 provides that 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.

**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,

*Notes on Rule 65: Inventive Step or Non-Obviousness*

In general: Article 33(3)

65.1 "For the purposes of Article 33(3)" means for the purposes of international preliminary examination as to inventive step or non-obviousness. 66.2(a)(i)

65.2 As to Article 33(3), see the preceding note. The date prescribed in Rule 64.1 is the international filing date; however, where the priority of an earlier application is claimed, the date prescribed in Rule 64.1 is the filing date of such earlier application.

*Notes on Rule 66: Procedure Before the International Preliminary Examining Authority*

In general: Article 34

66.1 Article 34(2)(b) provides that 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, 66.2(a)(ii) to (v) –

before the international preliminary examination report is established. The amendment must not go beyond the disclosure in the international application as filed.

The defects described under Article 34(4) are 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 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.



- (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,

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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66.2(b)	–
66.2(c)	–
66.2(d)	–
66.3	–
66.4	–
66.5	–
66.6	–

### 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:

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66.7(a)	Rule 17.1(a) provides that the priority document, unless already filed with the receiving Office, must be submitted by the applicant to the International Bureau not later than 16 months after the priority date or, where, on the request of the applicant, processing or examination starts earlier, not later than at the time the processing or examination is requested.	Notes on Rule 67: <i>Subject Matter under Article 34(4)(a)(i)</i> In general: Article 34(4)(a)(i); Rule 88.3(iii) 67.1 —
66.7(b)	—	
66.7(c)	—	
66.8	—	

- (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 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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*Notes on Rule 68: Lack of Unity of Invention (International Preliminary Examination)*

In general: Article 34(3)

68.1 Article 34(4)(b) provides in effect that if any of the defects referred to in the note on Rule 66.2(a)(i) is found to exist in, or in connection with, certain claims only, the International Preliminary Examining Authority will, in respect of the said claims, not go into the questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), and to be industrially applicable.

68.2

—

68.3(a)

The additional fee due under Article 34(3)(a) is due when the international application does not comply with the requirement of unity of invention.

68.3(b)

As to Article 34(3)(a), see the preceding note.

(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

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68.3(c)	–	69.1(b)(i)	Rule 62.2(a) deals with the situation where the claims were amended under Article 19, that is, before the International Bureau.
68.3(d)	–		
68.4	Proceeding as provided in Article 34(3)(c) in essence means that the International Preliminary Examining Authority establishes the report only on the main invention.	69.1(b)(ii)	Rule 62.2(b) deals with the situation where no use was made of the right to amend the claims under Article 19, that is, before the International Bureau.
68.5	As to Article 34(3)(c), see the preceding note.		
<i>Notes on Rule 69: Time Limit for International Preliminary Examination</i>			
In general:	Article 35(1)		
69.1(a)(i)	–		
69.1(a)(ii)	Article 34(3) deals with the case where the international application does not comply with the requirement of unity of invention.		

(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

(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.

69.1(b)(iii)	–	70.2(a)	–
69.1(b)(iv)	As to Article 17(2)(a), see the note on Rule 32.1(d).	70.2(b)	The report is established – pursuant to Rule 66.7(c) – as if the priority had not been claimed when the priority document and its translation (where required) are not furnished within the prescribed time limit.
69.1(c)	The time limit allowed under Article 19 is fixed in Rule 46.1.	70.2(c)	–
<i>Notes on Rule 70: The International Preliminary Examination Report</i>		70.3	–
In general:	Article 35	70.4	–
70.1	–		

### 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.

### 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.

70.5(a)	Under Rule 43.3, the International Searching Authority must indicate, in the international search report, the classification of the subject matter, at least according to the International Patent Classification.	70.7(b)	Rule 43.5(b) provides that the method of identifying any cited document is regulated by the Administrative Instructions. Rule 43.5(e) provides that 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 such passages appear.
70.5(b)	—		
70.6(a)	The statement referred to in Article 35(2) is a statement on the question whether the claim appears to satisfy the criteria of novelty, inventive step (non-obviousness) and industrial applicability. As to the Administrative Instructions, see Rule 89.	70.8	The explanations referred to in Article 35(2) are "such explanations as the circumstances of the case may require." As to the Administrative Instructions, see Rule 89.
70.6(b)	As to Article 35(2), see the preceding note.	70.9	—
70.7(a)	As to Article 35(2), see the note on Rule 70.6(a).		

#### 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.

#### 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.

#### 70.15 *Form*

The physical requirements as to the form of the report shall be prescribed by the Administrative Instructions.

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70.10	–
70.11	–
70.12(i)	The defects referred to in Rule 66.2(a)(iii) are defects in the form or contents of the international application.
70.12(ii)	The observations referred to in Rule 66.2(a)(v) are observations on the clarity of the claims, the description, and the drawings, or the question whether the claims are fully supported by the description.
70.13	International preliminary examination is restricted under Article 34(3) to the claims which the applicant chose as complying with the requirement of unity of invention, or which the International Preliminary Examining Authority considers to be the main invention.
70.14	–
70.15	As to the Administrative Instructions, see Rule 89.

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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70.16	The markings required by Rule 66.8(b) are the international application number, the date on which the replacement sheet was received, and a stamp identifying the International Preliminary Examining Authority.	71.2(b)	–
		71.2(c)	–
		71.2(d)	–
70.17	–		
	<i>Notes on Rule 71: Transmittal of the International Preliminary Examination Report</i>		
In general:	Article 36(1), (4)		
71.1	–		
71.2(a)	The request under Article 36(4) is a request for the sending of copies of the documents additionally cited in the international preliminary examination report (cf. Article 20(3)).		



**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.

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*Notes on Rule 72: Translation of the International Preliminary Examination Report*

In general: Article 36(2)

72.1(a) –

72.1(b) As to the Gazette, see Rule 86.

72.2 –

72.3 –

*Notes on Rule 73: Communication of the International Preliminary Examination Report*

In general: Article 36(3)(a)

73.1 The documents to be communicated under Article 36(3)(a) are the international preliminary examination report, its translation (where one is required), and its annexes (if any).

73.2 The communication provided for in Article 36(3)(a) is the communication of the documents referred to in the preceding note by the International Bureau to each elected Office.

**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.

**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.

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*Notes on Rule 74: Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof*

In general: Article 36(2)(b), (3)(b)

74.1 The replacement sheet referred to in Rule 70.16 is a sheet containing amendments and/or corrections. Amendments referred to in the last sentence of Rule 70.16 are amendments communicated in a letter (rather than on a replacement sheet). A translation of the international application is required under Article 39 and according to Rule 76. The furnishing of such translation is governed by Article 64(2)(a)(i) where a State, although accepting Chapter II, has declared, in effect, that it wishes its national Office to be furnished with a translation by the expiration of the 20<sup>th</sup> (rather than the 25<sup>th</sup>) month from the priority date. The translation required under Article 22 must normally be furnished by the expiration of the 20<sup>th</sup> month from the priority date.

*Notes on Rule 75: Withdrawal of the Demand, or of Elections*

In general: Article 37

75.1(a) —

75.1(b) The case of Rule 4.8(b) is the case of several applicants not having a common agent and not having appointed one among themselves as their common representative.

75.2 —

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.

(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.

75.3	–	76.1(a)	Article 39(1) provides that the applicant must furnish to each elected Office, not later than at the expiration of the 25 <sup>th</sup> month from the priority date, a copy and a translation of the international application, and must pay to it (by the same time) the national fee.
75.4(a)	The faculty provided for in Article 37(4)(b) is the faculty described in the second sentence of the said provision. The first and the second sentences of that provision read as follows: “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.”	76.1(b)	As to the Gazette, see Rule 86.
75.4(b)	As to the Gazette, see Rule 86.	76.1(c)	As to the Gazette, see Rule 86.

*Notes on Rule 76: Languages of Translations and Amounts of Fees under Article 39(1); Translation of Priority Document*

In general: Article 39

### 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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76.2	–
76.3	“For the purposes of Article 39” means for the purposes of furnishing to each elected Office. The statement under Article 19(1) is the statement explaining the amendments of the claims filed with the International Bureau and indicating the impact that such amendments might have on the description and drawings.
76.4	The applicable time limit under Article 39 is normally 25 months from the priority date.

#### *Notes on Rule 77: Faculty under Article 39(1)(b)*

In general:	Article 39(1)(b)
77.1(a)	The time limit provided for in Article 39(1)(a) is 25 months from the priority date.
77.1(b)	As to the Gazette, see Rule 86.
77.1(c)	–
77.1(d)	As to the Gazette, see Rule 86.

**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 19<sup>th</sup> 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 19<sup>th</sup> 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 19<sup>th</sup> 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 19<sup>th</sup> 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.

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*Notes on Rule 78: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices* 78.3

In general: Article 41

78.1(a) The right under Article 41 is the right to amend the application before the elected Offices. The transmittal under Article 36(1) is a transmittal by the International Preliminary Examining Authority to the applicant. The time limit under Article 39 is normally 25 months from the priority date.

78.1(b) The time limit applicable under Article 39 is normally 25 months from the priority date. As to the right under Article 41, see the preceding note.

78.2 Amendments under Article 41 are amendments made before elected Offices. The time limit for making amendments under Article 28 is fixed in Rule 52.1.

Rule 6.5 deals with the manner of claiming in the case of utility models. Rule 13.5 deals with the concept of unity of invention in the case of utility models. The time limit under Articles 22 and 39 are, normally, 20 months and 25 months, respectively, from the priority date.

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 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.

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*Notes on Rule 79: Calendar*

	80.3	—
In general: Article 47(1)	80.4	—
79.1		—

*Notes on Rule 80: Computation of Time Limits*

In general: Article 47(1)	
80.1	—
80.2	—

### 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.

### 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.

80.5	–		
80.6	–		
80.7	–		
<i>Notes on Rule 81: Modification of Time Limits Fixed in the Treaty</i>		81.1(b)	–
In general:	Article 47(2)(c); Rule 88.1(vi)	81.2	–
81.1(a)	Article 47(2)(a) and (b) provide that all time limits fixed in Chapters I and 11 may, outside	81.3	–

a revision conference, be modified by a unanimous decision of the Contracting States made in the Assembly or through voting by correspondence.

(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.

## **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 5 days after the mail service was resumed. The provisions of Rule 82.1(c) shall apply *mutatis mutandis*.

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#### *Notes on Rule 82: Irregularities in the Mail Service*

In general: Article 48(1)

82.1(a) Rule 22.3(b) provides that Article 48(1) and Rule 82 are inapplicable to the transmittal of the record copy. In other words, the 13 and 14 months time limits provided for the transmittal of the record copy to the International Bureau cannot be prolonged on account of irregularities in the mail service. Rule 22.3(b) also provides that Article 48(2) remains applicable. That provision obliges the Contracting States to excuse, for reasons admitted under their national laws, any delay

in meeting any time limit, and allows the Contracting States to excuse delays which they are not obliged to excuse under the Treaty or their national laws.

82.1(b) –

82.1(c) –

82.2(a) As to Rule 22.3, see the note on Rule 82.1(a).

82.2(b) –



**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.

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.

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*Notes on Rule 83: Right to Practice Before International Authorities*

In general: Article 49

83.1 Article 49 provides that any attorney, patent agent, or other person, having the right to practice before the national Office with which the international application was filed, is entitled to practice before the International Bureau and the competent International Searching Authority and competent International Preliminary Examining Authority in respect of that application.

83.2

—

*Notes on Rule 84: Expenses of Delegations*

In general: Article 58(1)(iii)

84.1 —

*Notes on Rule 85: Absence of Quorum in the Assembly*

In general: Article 53(5)(b)

85.1 The case provided for in Article 53(5)(b) is the case where there is no quorum in the Assembly. (One-half of the Contracting States constitutes a quorum (see Article 53(5)(a)).

## 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,

(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.

### 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 de brevets," respectively.

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#### *Notes on Rule 86: The Gazette*

In general: Article 55(4)

86.1 Article 55(4) provides that the International Bureau must publish a Gazette.

86.1(i) Rule 48 deals with the publication of the international application in the form of a pamphlet. As to the Administrative Instructions, see Rule 89.

86.1(ii) —

86.1(iii) The notices the publication of which is required under the Regulations are referred to in Rules 4.10(c), 19.3(b), 22.4, 23.1(c), 34.1(b), 35.2(b), 48.6, 49.1(b)(c), 50.1(b), 59.1, 72.1(b), 75.4(b), 76.1(b)(c), 77.1(b), 89.3.

86.1(iv) The requirements provided for in Articles 22 and 39 are the requirements of furnishing a copy and a translation of the international

application to the designated (elected) Office and of paying the national fee to such Office normally, within 20 (25) months from the priority date.

86.1(v) As to the Administrative Instructions, see Rule 89.

86.2 —

86.3 —

86.4 As to the Administrative Instructions, see Rule 89.

86.5 —

### 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.

## **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).

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86.6 As to the Administrative Instructions, see Rule 89.

#### *Notes on Rule 87: Copies of Publications*

In general: Article 58(1)(iii)

87.1 –

87.2 –

#### *Notes on Rule 88: Amendment of the Regulations*

In general: Article 58(3)(a)(b)

88.1(i) and (ii) –

88.1(iii) The time limit under Article 12(3) is the time limit (13 or 14 months from the priority date) within which the record copy must reach the International Bureau.

88.1(iv) to (vii) –

### 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.

88.2	–	<i>Notes on Rule 89: Administrative Instructions</i>
88.3	The States referred to in Article 58(3)(a)(ii) are the Contracting States whose national Offices act as International Searching or Preliminary Examining Authorities and that Contracting State which is authorized to represent an International Searching or Preliminary Examining Authority which is an intergovernmental organization.	In general: Article 58(4) 89.1(a)(i) The Administrative Instructions are expressly referred to in Rules 3.4, 5.1(c), 6.1(c), 20.1(b), 43.5(b), 43.10, 48.1(b), 48.2(b)(i), 48.2(i), 48.4(a), 53.1(c), 70.6(a), 70.8, 70.15, 86.1(i), 86.1(v), 86.4, 86.6.
88.3(i)	–	89.1(a)(ii) –
88.3(ii)	–	89.1(b) –
88.3(iii)	The subject matter under Article 17(2)(a)(i) is the subject matter which the International Searching Authority is not required to search.	
88.3(iv)	The subject matter under Article 34(4)(a)(i) is the subject matter on which the International Preliminary Examining Authority is not required to carry out an international preliminary examination.	
88.4	–	

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.

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89.2	–	90.1(ii)	The applicant referred to in Rule 4.8 is the applicant who, where there are several applicants, represents all the applicants.
89.3(a)	As to the Gazette, see Rule 86.		
89.3(b)	–	90.2	–
<i>Notes on Rule 90: Representation</i>			
In general:	Article 58(1)(iii)		
90.1	–		
90.1(i)	The persons referred to in Article 49 are attorneys, patent agents, and other persons, having the right to practice before the national Office with which the international application was filed.		

### 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).

(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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90.3(a)	A common representative within the meaning of Rule 4.8(a) is, where there are several applicants, the applicant whom the other applicants have designated to represent all of them provided that such an applicant is a person entitled to file an international application with the receiving Office.	91.1(a)	–
		91.1(b)	–
		91.1(c)	–
		91.1(d)	–
90.3(b)	–		
90.3(c)	Rule 4.4 provides the manner in which names and addresses must be indicated.		
90.4	–		

*Notes on Rule 91: Obvious Errors of Transcription*

In general: Article 58(1)(iii)

- (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.

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91.1(e)	–	<i>Notes on Rule 92: Correspondence</i>
91.1(f)	–	In general: Article 58(1)(iii)
91.1(g)(i)	The communication under Article 20 is effected at the time provided for in Rule 47.1(b).	92.1 – 92.2(a) – 92.2(b) –
91.1(g)(ii)	As to the declaration under Article 17(2)(a), see the note on Rule 32.1(d).	
91.1(g)(iii)	–	
91.1(h)	–	

(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.

(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.

### 93.3 *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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92.2(c)	Rule 55.2(a) provides that "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."	<i>Notes on Rule 93: Keeping of Records and Files</i>
		In general: Article 58(1)(iii)
		93.1           —
		93.2           —
		93.3           —
		93.4           —
92.2(d)	—	
92.2(e)	—	
92.3	—	



**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).

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*Notes on Rule 94: Furnishing of Copies by the  
International Bureau and the  
International Preliminary Examining  
Authority*

In general: Article 58(1)(iii)

94.1 –

*Notes on Rule 95: Availability of Translations*

In general: Articles 55(5); 58(1)(iii)

95.1 –



# **FINAL ACT**



## 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.

Algeria (A. Dahmouche); Argentina (Pedro E Real); Australia (K. B. Petersson); Austria (Lorenz); Belgium (Walter Loridan); Brazil (Miguel A O de Almeida); Cameroon (Michel Koss Epangue); Canada (A. M. Laidlaw); Central African Republic (M. G-Douathe); Denmark (E. Tuxen); Federal Republic of Germany (Rupprecht v Keller, Kurt Haertel); Finland (Erkki Tuuli); France (G. Rastoin); Holy See (Mario Peressin); Hungary (E. Tasnádi); Indonesia (Achmad Dahlan Ibrahim); Iran (Dr. A. Aslan Afshar); Ireland (M. J. Quinn); Israel (Z. Sher, Mayer Gabay); Italy (Giorgio Ranzi); Ivory Coast (F. Coulibaly); Japan (B. Yoshino, Y. Aratama); Luxembourg (Jean Wagner); Madagascar (Jules A. Razafimbahiny); Malta (A. Mercieca); Monaco (Dr. Charles Schertenleib); Netherlands (Phaf); Niger (Joseph Amina); Norway (Leif Nordstrand); People's Republic of the Congo (Ekani); Philippines (Suarez); Poland (Jerzy Michalowski); Romania (Corneliu Bogdan); South Africa (T. Schoeman); Spain (Aurelio Valls Carreras); Sweden (Göran Borggård); Switzerland (Dr. Walter Stamm); Togo (A. J. Ohin M.D.); Union of Soviet Socialist Republics (Yevgeniy Artemiev); United Arab Republic (Moh. Abdel Salam); United Kingdom of Great Britain and Northern Ireland (Edward Armitage, James David Fergusson); United States of America (Eugene M. Braderman, William E. Schuyler, Jr.); Uruguay (M. E. Capurro-Avellaneda); Yugoslavia (Dr. Stojan Pretnar).



# **RESOLUTION**





## **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 up 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.



# **CONFERENCE DOCUMENTS**



# CONFERENCE DOCUMENTS OF THE “MAIN” SERIES

(PCT/DC/1 to PCT/DC/131)

## LIST OF DOCUMENTS

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
1	BIRPI	History of the Plan for a Patent Cooperation Treaty.
2	BIRPI	Summary of the Proposed Patent Cooperation Treaty.
3	BIRPI	Main Differences Between the 1968 and 1969 Drafts.
4	BIRPI	Patent Cooperation Treaty (Draft).
5	BIRPI	Regulations under the Patent Cooperation Treaty (Draft).
6	BIRPI	Glossary and Index.
7	Austria, Finland, Germany (Fed. Rep.), Israel, Japan, Norway, South Africa, Soviet Union	Observations on the Drafts.
8	Denmark, Hungary, Italy, Netherlands, Switzerland, United Kingdom	Observations on the Drafts.
9	AIPPI, APAA, CIFE, FICPI, ICC, UNICE	Observations on the Drafts.
10	Cameroon, United States of America	Observations on the Drafts.
11	BIRPI	Draft of the Treaty and Alternative Suggestions.
11/Add. 1	BIRPI	Addendum and Corrigendum to PCT/DC/11.
12	BIRPI	Draft of the Regulations and Alternative Suggestions.
12/Add. 1	BIRPI	Addendum and Corrigendum to PCT/DC/12.
13	Sweden	Observations on the Drafts.
14	BIRPI	Suggestion of Alternatives for Art. 17(3); Rules 40, 43.7.
15	IFIA	Observations on the Drafts.
16	United States of America	Art. 8.
17	Switzerland	Art. 11(3); Rules 5.1(a)(vi), 6.4, 8.1(b).
18	Soviet Union	Preamble, Art. 1, 2, 4.
19	France	Art. 4, 8, 13, 22; Rule 4.
20	Israel	Art. 1, new Chapter III <i>bis</i> .
21	France	Art. 15, 16, 27, 37, 44, 52; Rule 5.
22	Australia	Art. 6.
23	Poland	Art. 9, 27; Rules 4, 5, 44, 64, 70, 71.
24	International Patent Institute	Observations on Art. 16.

<i>Document Number</i>	Submitted by	Subject
25	United Kingdom	Art. 11, 12, 22, 28, 33, 34, 35, 41, 44, 57.
26	United Kingdom	Rules 6, 13, 46, 70, 91.
27	Japan	Art. 29(1).
28	Australia	Art. 14.
29	Netherlands	Art. 11(3).
30	United States of America	Art. 29.
31	Canada	Art. 16, 52.
32	Austria, Belgium, Denmark, Germany (Fed. Rep.), France, Ireland, Italy, Netherlands, Spain, Sweden, Switzerland, United Kingdom	Art. 27.
33	Argentina	Art. 13, 14, 18, 19.
34	Brazil	Art. 14, 16; Rule 43.
34 Rev.	Algeria, Argentina, Brazil, Ivory Coast, Madagascar, Togo	Art. 14, 16; Rule 43.
34 Rev./ Corr.	Algeria, Argentina, Brazil, Ivory Coast, Madagascar, Togo	Corrigenda to PCT/DC/34 Rev.
35	Australia	Art. 19, 29.
36	PIPA	Observations on the Drafts.
37	AIPPI	Observations in Continuation of PCT/DC/9.
38	EIRMA	Observations on the Drafts.
39	Netherlands	Art. 58, 63, 64, 65.
40	United Kingdom	Art. 8.
41	Israel	Art. 29, 31.
42	Argentina, Portugal	Art. 15, 20.
43	Japan	Rule 16.3.
44	Japan	Rules 18.3, 18.4.
45	Brazil	Art. 52; Rule 86.
46	Algeria, Argentina, Brazil, Ivory Coast, Madagascar, Togo, Uganda, United Arab Republic, Uruguay, Yugoslavia	Art. 13.
47	Working Group I, Main Committee I	Art. 8.
48	Japan	Rule 44.3.
49	Israel	Art. 53(4).
50	France	Art. 4, 22.
51	Argentina	Art. 28, 33, 47, 50, 54, 56.
52	Brazil	Rule 47.
53	Austria	Rule 36.
54	Argentina	Art. 22.
55	Switzerland	Art. 21, 30, 60.
56	Austria	Art. 30(2)(b).
57	Switzerland	Art. 63(1).
58	United States of America	Art. 50, 54, 55, 57, 58, 59, 63, 64.
59	Poland	Rule 4.10.
60	Switzerland	Rules 11, 13.
61	United Kingdom	Art. 56.
62	Brazil, Portugal	Art. 63.
63	Australia	Art. 53.
64	Argentina, Portugal	Art. 52.

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
65	Yugoslavia	Art. 50, 51, 52, 53, 54.
66	Japan	Art. 54.
67	United States of America	Rule 22.
68	Argentina, Portugal	Art. 15, 61.
69	Italy	Art. 58.
70	Portugal	Art. 47.
71	Argentina	Rules 17, 22, 36, 45, 47, 52.
72	Sweden	Rule 43.5.
73	Denmark, Finland, Norway, Sweden	Rule 48.3.
74	Italy	Rule 13.
75	Australia	Rule 33.
76	France, Italy	Art. 54.
77	Australia	Rule 81.
78	Japan	Art. 57, 60, 65.
79	Working Group on Art. 52(3), Main Committee II	Art. 52(3).
80	United States of America	Rule 88.
81	Yugoslavia	Art. 50, new Art. 50 <i>bis</i> .
82	Japan	Art. 54(5).
83	United States of America	Rule 42.
84	Belgium, France, Italy, Monaco, Netherlands, Switzerland, United Kingdom	Art. 16(1).
85	United States of America	Rule 49.
86	Austria, France, Japan, Netherlands, Switzerland, Zambia	New Article 62 <i>bis</i> .
87	Main Committee II	Art. 60(2).
88	Secretariat	Art. 20(3); Rules 44, 71.
89	Israel	Rules 44, 71.
90	Working Group III, Main Committee II	Art. 53(5), (7).
91	Secretariat	Art. 58(1).
92	Portugal	New Article 62 <i>bis</i> .
93	Working Group on Rule 88, Main Committee II	Rule 88.
94	Canada	Rule 47.
95	France, Netherlands	Art. 44.
96	Canada, Netherlands	Rule 52.
97	France	Art. 2.
98	United States of America	Art. 2, 43.
99	Soviet Union	Rule 34.1(e) .
100	Canada	Rule 47.
101	Poland	Corrigendum to PCT/DC/23.
102	Working Group VII	Art. 2.
103	Working Group VI, Main Committee I	Rules 47, 52.
104	Romania	Art. 1, 13, 16, 17, 50, 52, 58; Rules 22, 34, 44, 88, 89.
105	Brazil	General Observations on the Role of Patents in the Process of the Transfer of Technology.
106	Working Group IV, Main Committee I	Art. 11, 27, 60.

<i>Document Number</i>	<i>Submitted by</i>	<i>Subject</i>
107	Working Group V, Main Committee I	Art. 31, 32; Rule 59.
108	Drafting Committee of Main Committee II	Art. 50 to 65; Rules 84 to 95.
108/Corr.	Drafting Committee of Main Committee II	Corrigendum to PCT/DC/108.
109	Working Group II, Main Committees I and II	Preamble, Art. 1, new Chapter IV.
109/Corr.	Working Group II, Main Committees I and II	Corrigendum to PCT/DC/109.
110	Brazil	Rule 86.
111	Algeria	Art. 57.
112	Drafting Committee of Main Committee I	Art. 1 to 49.
113	Drafting Committee of Main Committee I	Rules 1 to 83.
114	Drafting Committee of Main Committee I	Preamble, Art. 50, 51, 52.
115	Main Committee I	Art. 36.
116	Drafting Committee of Main Committee I	Rules 5, 54.
117	United States of America	Art. 15.
118	Drafting Group on Art. 57(4) of Main Committee II	Art. 57(4).
119	Secretariat	Drafts submitted to General Drafting Committee.
120	Secretariat	Corrigendum and Addendum to PCT/DC/119.
121	General Drafting Committee	Proposals of General Drafting Committee.
122	Credentials Committee	Report of Credentials Committee.
123	Secretariat	Draft Treaty Prepared for General Drafting Committee.
124	Secretariat	Draft Regulations Prepared for General Drafting Committee.
125	United States of America	Draft Final Act of the Conference.
126	Algeria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden	Resolution Concerning Preparatory Measures for the Entry into Force of the Patent Cooperation Treaty.
127	General Drafting Committee	Report of General Drafting Committee to the Plenary of the Conference.
128	Plenary of the Diplomatic Conference	Patent Cooperation Treaty.
128 Rev.	Plenary of the Diplomatic Conference	Patent Cooperation Treaty.
128 Rev./Corr.	Plenary of the Diplomatic Conference	Corrigendum to PCT/DC/128 Rev.
129	Plenary of the Diplomatic Conference	Regulations Under the Patent Cooperation Treaty.
129 Rev.	Plenary of the Diplomatic Conference	Regulations Under the Patent Cooperation Treaty.
130	Plenary of the Diplomatic Conference	Resolution Concerning Preparatory Measures for the Entry Into Force of the Patent Cooperation Treaty.
131	Credentials Committee	Additional Report of the Credentials Committee to the Plenary.



## 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 14<sup>th</sup> 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 13<sup>th</sup> month; the applicant himself files the record copy with the International Bureau not later than by the end of the 13<sup>th</sup> month; should the applicant not receive the record copy from the receiving Office at least 10 days before the expiration of the 13<sup>th</sup> month, he may file with the International Bureau a "provisional" record copy (an uncertified copy) by the end of the 13<sup>th</sup> month; that copy must then be replaced by the record copy or a "substitute" record copy (certified) by the end of the 14<sup>th</sup> 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 18<sup>th</sup> 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 18<sup>th</sup> 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 20<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 17<sup>th</sup> 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),<sup>1</sup> whereas the possible Alternatives appear on the pages opposite the text of the 1969 Draft. Thus, the Alternatives appear on even-number pages.<sup>2</sup>

- (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.

<sup>1</sup> *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.

<sup>2</sup> *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 14<sup>th</sup> 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),<sup>1</sup> whereas the possible Alternatives appear on the pages opposite the text of the 1969 Draft. Thus the Alternatives appear on the even-number pages.<sup>1</sup>
- (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 19<sup>th</sup> month from the priority date because, if the election is made after the 19<sup>th</sup> 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*

<sup>1</sup> *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 17<sup>th</sup> 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,<sup>1</sup> 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).

<sup>1</sup> 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 20<sup>th</sup> 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 13<sup>th</sup> 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 Office<sup>1</sup> or an intergovernmental organization such as the International Patent Institute,<sup>2</sup> 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.”

<sup>1</sup> The term “national Office” is defined in Article 2(i) as an Office or an intergovernmental authority granting patents and inventors’ certificates.

<sup>2</sup> 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 XVIII<sup>th</sup> and XIX<sup>th</sup> 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]

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\* **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;

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(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.

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(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.

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**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.

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**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.

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**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.

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**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)].

**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.

(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 (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]

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\* 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]

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\* 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]

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\* **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.

## 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.

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(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 (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 19<sup>th</sup> 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 19<sup>th</sup> 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 19<sup>th</sup> 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 19<sup>th</sup> 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;

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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.

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\* **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 16<sup>th</sup> 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 16<sup>th</sup> 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]

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\* 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

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\* 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**

### 9.1 *Definition*

The international application shall not contain:

- (i) expressions or drawings contrary to morality;
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- (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 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.

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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.

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#### 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 13<sup>th</sup> 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 18<sup>th</sup> 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.

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(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 18<sup>th</sup> 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 18<sup>th</sup> 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]

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\* 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.*

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\* 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.

**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  
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.

## 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 19<sup>th</sup> 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 19<sup>th</sup> 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 19<sup>th</sup> 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 19<sup>th</sup> 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 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**

#### *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.

(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.

#### 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 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]

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\* **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

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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 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).

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# 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.

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\* 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 67<sup>1</sup>

*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 68<sup>2</sup>

*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.”

<sup>1</sup> This proposal is identical with that in Document PCT/DC/WG.II/2.

<sup>2</sup> 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> <p style="text-align: center;"><i>Chapter I: Objective, Composition and Organs</i></p> <p><i>Rule 1: Objective</i></p> <p>(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.</p> <p>(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.</p>
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*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 Bogsch, 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.*



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IN THE CONFERENCE**



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*Commission of the European Communities (CCE)*

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John R. Shipman, Director, International Patent Operations, International Business Machines Corporation, Armonk, New York.

Edgar W. Adams, Jr., Patent Attorney Director, Bell Telephone Laboratories, Inc., Holmdel, New Jersey.

Frederic O. Hess, Chairman of the Board, Selas Corporation of America, Dresher, Pennsylvania.

I. L. Wolk, Director of Patents, Merck & Company, Inc., Rahway, New Jersey.

Gerald D. O'Brien, Patent Counsel, Bendix Corporation, Arlington, Virginia.

H. Ono, Manager, Patent Operations, International Business Machines Japan, Ltd., Tokyo.

Thomas J. Plante, Chief Patent Counsel, Bendix Corporation, Southfield, Michigan.

Reynold Bennett, Vice President, National Association of Manufacturers, New York.

*Union of Industries of the European Community (UNICE)*

Ir. P. L. Hazelzet, Patent Attorney, Eindhoven, Netherlands.

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 (U.S. Department of State)

### FIRST MEETING

Monday, May 25, 1970, morning

Mr. BODENHAUSEN (Director of BIRPI):

1.1 Ladies and Gentlemen I declare the Washington Diplomatic Conference on the Patent Cooperation Treaty open and call it to order.

1.2 The Conference is honored by the presence of the Secretary, Mr. Stans, who will now address the Conference.

Mr. Stans (Secretary of Commerce of the United States of America):

2.1 Professor Bodenhausen and distinguished Gentlemen, on behalf of President Nixon I am honored to welcome you here to the United States of America for the Diplomatic Conference. We are pleased that you are holding this Conference on the Patent Cooperation Treaty in Washington, because not since May 1911 has the United States been host to a conference of the members of the International Union created by the Convention of Paris in 1883.

2.2 Looking back on the records of the 1911 meeting, I note that they contain a reference to an apology for the extremely warm weather in Washington. I suspect that history may repeat itself in the record of this Conference. The Weather Bureau, however, is part of the Department of Commerce in the United States, so I have instructed them to do their best to give you a perfect time while you are here. And if that does not work, then I remind you that since 1911 we have had the development of air conditioning, which came about since that time

because of the incentives that the patent system gives for innovation and invention.

2.3 Members of the International Union justly take pride in the distinguished record of the Paris Convention. Its members have been successful through the years in transcending political differences in order to establish and maintain relationships within the framework of the Union. Not only has the Paris Union continued, without interruption, for almost a century, but it is one of the oldest multilateral treaties in force today. Moreover, it has grown in size until there are now nearly 80 nation-members. Significant evidence of its strength is the fact that representatives of so many Union countries are assembled here this morning, more than twice as many as the member States which attended the Washington Conference of 1911. In addition, there are observer delegations from many Governments, intergovernmental organizations and non-governmental organizations here today, which indicates the international importance of this Conference.

2.4 So, with all that as background, again I repeat on behalf of President Nixon and the Government of the United States, we welcome all of you here.

2.5 A major reason for the success of the Paris Union is that it was founded on the principle of assuring the same treatment for all applicants both foreign and domestic. This principle of national treatment has made it possible for member countries to adhere to the Union despite the fact that there are national variations in the availability, the duration and the kinds of protection granted. If every State adhering to the Union were forced to conform its

\* In the alphabetical order of the names of the States.

national law to that of an international standard, we might very well wonder how many of them would be able to accede to the Treaty today. The fact that you are determined that the Patent Cooperation Treaty should follow this principle of the Paris Convention, leaving each State with control over its own substantive patent law, is a major indication that the Treaty will enjoy a similar success.

2.6 Now, at the time of the 1911 Conference in Washington, the United States Patent Office was under the jurisdiction of the Department of the Interior; today the Patent Office is an agency of major importance in the Department of Commerce, which we think is a very fitting place for it. The Department of Commerce has broad international interests as well as domestic ones, and in a sense the transfer of responsibility for the Patent Office to us highlights two important aspects of our patent system.

2.7 First, it is no longer possible to view the patent system of any nation solely as an internal matter. In 1969, for example, our Patent Office received 99,000 applications for patents. Of these, about 29,000 were filed by inventors residing outside the United States. Between 1959 and 1969, filings by foreign applicants doubled. These foreign applications contain valuable disclosures of advanced technology, which, when it is made available in this country, enrich our own store of scientific and technical information. For this reason we welcome the increased tendency of inventors from all nations to seek patents in the United States.

2.8 The statistics for most other countries tell the same story. In many cases, the number of patent applications received from other nations exceeds the number that are filed domestically. This is because inventors the world over are no longer satisfied with securing protection for inventions only in their own countries. Increasingly, the inventor seeks protection commensurate with the market potential of his invention; and this means filing patent applications in three or four and sometimes in many more countries. The result of this multinational filing phenomenon is that much of the administrative work performed in the Patent Office of one country is duplicated throughout the world. Each national patent system must process applications independently. So there is a serious question whether some existing national systems can endure this constantly increasing volume of patent applications. Today the situation has become so critical that we no longer can afford to rely on purely national measures to combat the problems.

2.9 Recognizing the necessity of international cooperation to combat this truly international problem, the United States, in 1966, proposed that the Executive Committee of the Paris Union request a study of the problem by the United International Bureaux for the Protection of Intellectual Property, with a view to reducing the duplication of efforts for national Patent Offices.

2.10 As I mentioned earlier, there is a second significant reason in the transfer of the United States Patent Office to the Department of Commerce. After all, it is the businessman, the entrepreneur, who makes

the results of research available to the public. Any patent systems, national or international, must be judged by how well it responds to the legitimate needs of the business community. In the United States, as an integral part of the Department of Commerce, the Patent Office performs its functions within the framework of the Department's broad mission, which is to serve the domestic and international needs of the American enterprise system.

2.11 In the Patent Cooperation Treaty before you we see advantages for inventors, for businessmen and for Patent Offices. We hope this Treaty will serve to reduce duplication of effort on the part of both applicants and Patent Offices, thereby making it easier to secure the protections needed in the commercial markets where inventions are valuable and will be utilized.

2.12 Because the Treaty will facilitate worldwide availability of protection for intellectual property, it will also contribute significantly to further development of international trade, which our Government is pursuing diligently, and which, of course, many of your Governments are as well.

2.13 Drafters of the original Paris Convention wisely allowed for the possibility of special agreements, such as the Patent Cooperation Treaty proposal, as well as other arrangements recently proposed in Europe, which we are following with great interest.

2.14 Participating Governments need the flexibility they have under this Convention to cooperate in meeting new challenges as they arise, limited, of course, by the principle of national treatment, which, as I have said earlier, lies at the very foundation of the Convention.

2.15 The third version of the proposed Treaty that you have before you represents a magnificent job in producing a negotiating draft which responds to the wishes of many States and which meets the legitimate desires of those representing the patent applicants of the world. A few significant issues remain to be resolved at this Conference, and I am confident that they can be resolved. Although your task will not be an easy one, the ultimate goals are worthy of your efforts.

2.16 So, Ladies and Gentlemen, Members, Delegates to the Washington Diplomatic Conference, I extend my sincere wishes for the successful completion of your work and repeat again the greetings and good wishes of President Nixon as well for your efforts. And in doing so may I express the hope that you will carry back to your own countries a memory of this occasion which will convey in a small way the warm feelings of the United States towards the Governments and the nations which you represent. My best wishes for success in this meeting. Thank you very much.

Mr. BODENHAUSEN (Director of BIRPI):

3.1 Your Excellencies, Ladies and Gentlemen, the Diplomatic Conference inaugurated in this session has been convened for the purpose of negotiating and concluding a Patent Cooperation Treaty and

Regulations relating to that Treaty. At the opening of this Conference, it is only natural that one should wish to look back, for a moment, on the past before looking forward to the future.

3.2 As far as the past is concerned, it is interesting to recall that this is not the first diplomatic conference on industrial property to meet in Washington. In 1911, an important revision of the basic Treaty, the Paris Convention for the Protection of Industrial Property, took place here and in 1929 Washington was the meeting place for the Pan-American Trade Mark Conference, which established a General Inter-American Convention for Trade Mark and Commercial Protection, as well as a Protocol on the Inter-American Registration of Trade Marks. However, these Conferences were held in a context and with a membership and purpose which differed widely from those of the present Conference. It can therefore truly be said that this Conference is in many respects a "first," particularly in that for the first time it will try to achieve, on a worldwide scale, substantial international collaboration in one of the most important fields of industrial property, namely, that of applications for patents or inventors' certificates, the search for their novelty, and possibly their examination as to other criteria of patentability or grant.

3.3 Looking back to the more recent past, we note that the preparations for this Conference started three and a half years ago, after the unanimous adoption by the Executive Committee of the Paris Union for the Protection of Industrial Property, on September 29, 1966, of a recommendation to that effect, proposed by the Delegation of the United States of America. That recommendation requested the Director of BIRPI to "undertake urgently a study on solutions tending to reduce the duplication of effort both for applicants and national Patent Offices, in consultation with outside experts to be invited by him and giving due regard to the efforts of other international organizations and groups of States to solve similar problems, with a view to making specific recommendations for further action, including the conclusion of special agreements within the framework of the Paris Union."

3.4 This was certainly a clear mandate, but little did we know, at that time, exactly where the requested studies would lead us, or even what would be the most appropriate procedure for carrying them out and what efforts would be necessary. We believe we are somewhat wiser now and we are confident that, after three and a half years of preparatory work, we have formulated proposals with a view – as the recommendation referred to has indicated – to the conclusion of a special agreement within the framework of the Paris Union, and that these proposals can face the scrutiny of this Conference with a reasonable chance of success.

3.5 However, we certainly did not arrive at this basis for final discussion solely by our own work – particularly that of our PCT team under the dynamic and inspiring leadership of Deputy Director Bogisch. As already suggested in the recommendation referred

to earlier, we have turned for advice to many outside our Organization. During the years of preparatory work, no fewer than five intergovernmental Committees of Experts of different composition, to two of which all member States of the Paris Union were invited, have met in Geneva in order to express their opinions on drafts and make counterproposals and suggestions. Between these meetings, we have worked in frequent contact with consultants both from those States which seemed to have the greatest interest in the preparation of the Treaty and from the International Patent Institute in The Hague, as well as with delegates of numerous international and even national organizations of inventors, private industry and the patent profession. Altogether, thousands of man/hours must have been spent on the subject by experts who were already entrusted with many other important duties but who, nevertheless, gave us unhesitatingly the full benefit of their knowledge and experience. We are deeply grateful for this guidance and assistance without which our work could not have reached the stage at which it is presented now.

3.6 However, all these efforts must still be crowned by final success, and this would not be possible if the United States Government had not followed up its original initiative by an invitation to hold this negotiating Conference here, in this magnificent capital and in the extremely suitable premises of the State Department. It gives me great pleasure to express, first in the name of BIRPI and also, I am sure, on behalf of all participants in this Conference, our heartfelt thanks to the United States Government for its initiative, generosity and hospitality.

3.7 But we must also look to the future. All present here will probably share my sincere hope that from this Conference a Patent Cooperation Treaty will emerge that will be signed, and later ratified or acceded to, by a great number of States, including those where patents or inventors' certificates play the greatest role. But even then the future of the Treaty will not yet be secure because a vast program of implementation must still be carried out with a view to achieving, among other things, the necessary technical cooperation between the envisaged International Searching Authorities. Moreover, in order to make the Treaty a living reality, inventors and industrial enterprises will have to use it.

3.8 The advantages of the Treaty for national Patent Offices on the one hand, and for inventors and industrial enterprises on the other hand, and particularly also for developing countries, have been spelled out so many times that I shall not refer to them here again. But some hesitation may still be felt and some national administrations, or even delegations present here, may be tempted to give great weight to concepts and practices to which they have been accustomed in the past and be reluctant to change them in the interests of international cooperation.

3.9 It may therefore be permissible to emphasize that the general salutary effect of a Patent Cooperation Treaty, as envisaged, may be much greater than that of simply facilitating the international filing of patent

applications and their processing by national Offices. Even now, it can already be said that the plans for the establishment of a Patent Cooperation Treaty have triggered, as a side effect, a revival of interest in the creation of a European patent, a device which will probably be important not only for the participating countries of Western Europe but also for others. Furthermore, the close collaboration between national Patent Offices envisaged in the Patent Cooperation Treaty will undoubtedly lead to further and continuous harmonization of national concepts and procedures, and even of law, in the field of patents; this is clearly in the interests of all concerned. It may very well be that in this way we will finally reach a stage where a much closer collaboration between States or groups of States, and even the granting of patents for wide areas of the world, will appear feasible and will ultimately be achieved.

3.10 We may therefore hope that, when in the future people look back to this Conference of Washington, they will find in it a modest but courageous first step toward far-reaching international harmonization of patent law and practice, and that this Conference will be marked as a historical milestone in the development of international protection of industrial property. That is why so much depends on the success of this Conference, for which I offer my warmest good wishes.

3.11 The Conference is now invited to elect its President. Are there any proposals? The Delegation of France has the floor.

Mr. SAVIGNON (France):

4. Mr. Chairman, the Delegation of France has the honor to propose as President of the Conference Mr. Braderman, Co-Chairman of the Delegation of the United States of America. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director of BIRPI):

5. Does any other delegation wish to speak on this subject? The Delegation of the Soviet Union has the floor.

Mr. ARTEMIEV (Soviet Union):

6. Mr. Chairman, Ladies and Gentlemen, the Delegation of the Soviet Union seconds the proposal made by the distinguished French Delegate, Mr. Savignon, to elect Mr. Braderman President of the Washington Diplomatic Conference.

Mr. BODENHAUSEN (Director of BIRPI):

7. Does any other delegation wish to speak? The Delegation of Argentina has the floor.

Mr. VILLALBA (Argentina):

8. Our Delegation also supports the proposal of the Delegation of France.

Mr. BODENHAUSEN (Director of BIRPI):

9. Does any other delegation wish to speak? The Delegation of Japan has the floor.

Mr. OTANI (Japan):

10. Thank you, Mr. Chairman. We also support the proposal of the Delegation of France. Thank you, Mr. Chairman.

Mr. BODENHAUSEN (Director of BIRPI):

11. Thank you. The Delegation of the Philippines wishes to speak.

Mr. GARCIA (Philippines):

12. Thank you, Mr. Chairman. The Delegation of the Philippines warmly seconds the nomination of Mr. Braderman as Chairman. To us who know him, who recognize his clear, logical mind, his sense of fairness, his patience, his equanimity, we have no doubt at all that he will prove to be a skillful and able Chairman of this Conference. Thank you.

Mr. BODENHAUSEN (Director of BIRPI):

13. Thank you very much. I call upon the Delegation of Iran.

Mr. NARAGHI (Iran):

14. We also support the proposal of the Delegation of France.

Mr. BODENHAUSEN (Director of BIRPI):

15. The Delegation of Mexico wishes to speak.

Mr. PALENCIA (Mexico):

16. We also support the proposal to nominate Mr. Braderman.

Mr. BODENHAUSEN (Director of BIRPI):

17. Any other proposals? The Delegation of Algeria has the floor.

Mr. DAHMOUCHE (Algeria):

18. I'm sorry, Mr. Chairman, I do not intend to propose anyone else. I simply wanted to say that the Delegation of Algeria also supports the candidature of Mr. Braderman as President.

Mr. BODENHAUSEN (Director of BIRPI):

19.1 Thank you very much. I repeat the question: Are there any other proposals?

19.2 There do not seem to be any other proposals. The proposal by the Delegation of France to elect Mr. Braderman Chairman of this Conference has been supported by many other delegations. Are there any objections?

19.3 There are no objections. I declare Mr. Braderman elected President of this Conference. I congratulate him very warmly on his election and I invite him to take the Chair.

Mr. BRADERMAN (President of the Conference):

20.1 Ladies and Delegates, Ladies and Gentlemen, and Fellow Delegates and Lady Delegates who are also colleagues of ours; my Government is highly honored that you have elected me as Chairman of this Diplomatic Conference to negotiate a patent

cooperation treaty, and I am personally deeply appreciative of this honor.

20.2 The project now before us, which has come to be known as the Patent Cooperation Treaty, was conceived a long time ago, but while there were some soundings over the years – some public disclosure, as we would say – the initiative and drive that was required to carry the idea forward was lacking. In the meantime, the problems grew and the need for a solution became more and more apparent. It was in this setting that our present undertaking was begun with affirmative action by the Paris Union Executive Committee In September 1966. I do not believe anyone then was bold enough to try to predict where the road we had embarked on would lead or when we would arrive at the end of the road. It is now May 1970, some three and a half years later, and I am happy to observe that the goal has been defined and its attainment is in sight. We all know well the courage and imagination displayed by BIRPI under the dynamic leadership of Professor Bodenhausen and Dr. Bogsch, and their associates.

20.3 While initially only a few Paris Union member States contributed to this project, it was not long before some 40 Paris Union countries were actively participating in the development of the Patent Cooperation Treaty. In addition, the International Patent Institute at The Hague and numerous intergovernmental and non-governmental organizations became involved. Out of these deliberations has come the present draft treaty, which we are to consider at this Conference. I might add, parenthetically, that I have rarely seen in my country as much discussion and interest among concerned parties in any project as I have seen in this one. And I think that is all to the good.

20.4 We would probably all agree that the PCT does not meet all our needs nor does it satisfy everyone. There are those who believe we are going too far too fast; they would settle for the goal of an extension of the priority period or no change at all. Others believe that we are not going far enough; they would like to see a harmonization of laws and the establishment of a single international search center. Would that man had the creativity to devise procedures or institutions that would satisfy everyone! We need only look about us to know that such achievement in this field, as in others, is not yet within our grasp. All of us here from government, from industry, from the patent bar, independent inventors or patent agents, know that we must deal with the art of the possible. I believe it is important that we bear this in mind as we deliberate together.

20.5 It has been my pleasure to be part of this effort since its beginnings in 1966. Many of you here have been similarly involved. Others have added their knowledge and experience more recently, but no less importantly. In any event, I believe we can all take pride in what has been accomplished today. We know we are embarked on a pioneer project. I am sure that with the same spirit of goodwill that has characterized their earlier meetings we will accomplish the purpose of this Washington Conference, the successful

negotiation of the first worldwide treaty on patent cooperation; and I look forward to working with all of you in the weeks ahead.

20.6 And now, with your permission, we will move to item 4 on the draft agenda, which is contained in document PCT/DC/MISC/2 (MISC stands for miscellaneous);, which is the adoption of the agenda itself.

20.7 Are there any motions with respect to the question of the agenda? I call on the Delegate of the United Kingdom.

Mr. ARMITAGE (United Kingdom):

21. Mr. Chairman, I have pleasure in moving the adoption of this agenda.

Mr. BRADERMAN (President of the Conference):

22. Thank you, Sir. Is there a second? The Delegate of Hungary has the floor.

Mr. TASNÁDI (Hungary):

23. Mr. President, we agree with the Delegation of the United Kingdom and wish to second this proposal.

Mr. BRADERMAN (President of the Conference):

24. Thank you very much. The Delegate of Zambia wishes to speak.

Mr. AKPONOR (Zambia):

25. We support the proposal by the British Delegation.

Mr. BRADERMAN (President of the Conference):

26.1 Thank you kindly. If there are no other comments, then we will consider that the draft agenda is now the firm, fixed agenda for the Conference.

26.2 Before we move to the next item of the agenda, I would like to call your attention to PCT/DC/INF/1-A. You are going to be here a good long time and we want you to know what facilities are available, and that particular document, to which I just called your attention, indicates the services and facilities which are available in this building for your use. For those of you who wish to have lunch here, for example, there is a cafeteria; it is not as fancy as some of the restaurants we have about town, but it will permit you to do your work here and get your meals quite easily; the information bulletin spells out the hours, and so on. There are also automatic vending machines for those of you who would like a snack now and then; we have health services available, I hope no one will find need to use them but they are here in the building. The Delegates' Lounge, I think you all know, is across the hall from this conference room. And the document goes on to define the various facilities and arrangements with respect to mail and messages and things of this sort. One thing it does not do, I believe, is to call attention to the fact that we have two conference rooms that will seat as many as 20 or 30 people. In case any of you wish to caucus with your own delegation or groups of delegations those rooms are available for that purpose,

and they are on this side of the building. Just let the Secretariat know what your wishes are, so that they can reserve a time for you.

26.3 I would also like to call your attention to this little bulletin, the Calendar of Social Events. A great many people in my country wanted to see to it that your visit here was not only mentally stimulating – the mental stimulation, I hope, will come through our meetings here in this room and in the Committee sessions – but also to take care of your needs for a good many of the evenings. There are also special events for the ladies, and I hope that a good many of you men here have brought your wives with you so that they can participate in that program. There will also, of course, be other events that others will wish to have; in those cases where you wish to reserve a date, please see the Secretary General or the appropriate member of his staff.

26.4 If we may then move to the next item of the agenda, which deals with the adoption of the Rules of Procedure. The Rules of Procedure are in document PCT/DC/MISC/1. It was distributed, I think, along with the original invitation. It is dated 11 February, 1970, so that all the delegations have had a chance to review it. Draft Rules of Procedure are, as customary, proposed by the Host Government; they are contained in this document. The main features of the Rules are the following. It is proposed that there will be two Main Committees; Main Committee I would examine Chapters 1, 2 and 3 of the Draft Treaty and all the Draft Rules relating to those Chapters; Main Committee II would examine Chapters 4 and 5 of the Draft Treaty and all the Draft Rules relating to those Chapters. There would be, as usual, a Credentials Committee; and there would be three Drafting Committees: one for Main Committee I, one for Main Committee II, and one for coordinating the draft texts established by the former two Drafting Committees. This will also be called the General Drafting Committee. There will also be a Steering Committee, mainly for the purpose of coordinating the work program of the various committees, for setting the time at which they will meet, etc. It would consist of the President of the Conference, the Chairmen of the two Main Committees, the Credentials Committee and the General Drafting Committee.

26.5 Otherwise, I think the proposed Rules are routine. They deal with credentials, and the credentials, as you may remember from the Rules proposed, it was hoped could be deposited today, if you have not already done so, with the Secretary General. They relate to Officers, the Secretariat, the conduct of business, voting, languages, and the other usual topics. They are very similar to the Rules of the two most recent Diplomatic Conferences, which were sponsored by BIRPI, namely, the Stockholm Conference of 1967 and the Locarno Conference in 1968. They proved to be highly satisfactory in those Conferences and there is no reason to believe they will not be the same in this meeting. Consequently, it is hoped that the proposed Rules will meet with the unanimous approval of the Plenary and that they will require little or no discussion.

26.6 So much for the Rules of Procedure. Since I see no objections, the Rules of Procedure may be considered as adopted. Thank you very much.

26.7 The next agenda item relates to the election of the Officers of the Conference, other than myself; it relates to the Vice-Presidents of the Conference; the members of the Credentials Committee, the General Drafting Committee and the two Drafting Committees; the Chairmen and the Vice-Chairmen of the two Main Committees and of each of the four other Committees referred to in the preceding item.

26.8 I have had a proposal which, in accordance with Rule 43 of the Rules of Procedure, I was to lay before the Conference for your approval, your consideration. The Rule itself provides that 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. And so, after consultation with the heads of delegations or members of delegations of everyone I could reach thus far, and with the Director of BIRPI, we have a list of candidates to propose. This document will be circulated. I think it might be useful. But why do I not read the proposals to all of you.

26.9 According to the Rules, there will be 16 Vice-Presidents of the Conference, and so I propose – as I say, after consultation – the following 16 Vice-Presidents of the Conference:

Argentina	Italy
Australia	Japan
Brazil	Philippines
Cameroon	Soviet Union
Ceylon	Spain
France	Sweden
Federal Republic of Germany	United Arab Republic
Hungary	United Kingdom

26.10 Why do I not, while the document is being distributed, read the remainder of the Officers which we are proposing. In Main Committee I: (which will meet in this room, incidentally, as we do not expect there will be simultaneous meetings of the Plenary and Main Committee I):

*Chairman:* United States of America  
*Vice-Chairman:* Federal Republic of Germany  
*Second Vice-Chairman:* Indonesia

It should be made clear that Main Committee I is the important substantive committee of this Conference and all member delegations are members and participants in Main Committee I. I am just speaking on the question of Officers in that Committee.

26.11 Now, the Officers of Main Committee II – and here again all delegations are members of Main Committee II. We propose as

*Chairman:* Netherlands  
*Vice-Chairmen:* Yugoslavia and Zambia

26.12 For the Credentials Committee we would propose as

*Chairman:* Japan  
*Vice-Chairmen:* Austria and Malagasy  
Republic

The Credentials Committee is to have 12 members and the other 9 members would be:

Denmark  
Dominican Republic  
Iran  
Ireland  
Israel  
Poland  
Portugal  
Uganda  
United States of America

26.13 Then, for the General Drafting Committee we propose as

*Chairman:* Soviet Union  
*Vice-Chairmen:* Canada and Switzerland

For the additional members of the Committee we propose:

France  
Federal Republic of Germany  
Italy  
Japan  
Monaco  
Sweden  
United Kingdom  
United States of America

26.14 Then, for the two Drafting Committees for each of our Main Committees. For Main Committee I:

*Chairman:* United Kingdom  
*Vice-Chairmen:* Australia and Belgium

And then, again according to the Rules, there are to be 7 additional members and we would propose:

Finland  
France  
Federal Republic of Germany  
Japan  
Romania  
Soviet Union  
United States of America

26.15 Finally, the Drafting Committee of Main Committee II. We propose as

*Chairman:* France  
*Vice-Chairmen:* Algeria and Nigeria

And the seven further members:

Federal Republic of Germany  
Japan  
Norway  
Soviet Union  
United Kingdom  
United States of America  
Yugoslavia

26.16 These, Ladies and Gentlemen, are the proposals we wish to present to you for Officers of this Conference. I think we might take a moment or two while the document is distributed so that you may have a chance to look at it.

26.17 Well, Ladies and Gentlemen, now you had a chance to look at the proposals before you; is there a second? The Delegate of Germany.

Mr HAERTEL (Germany (Federal Republic)):

27. Mr. President, the Delegation of the Federal Republic of Germany wishes to express its agreement with the proposals you have just made. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

28. Thank you, Sir. The Delegate of Indonesia wishes to speak.

Mr. IBRAHIM (Indonesia):

29. We feel very honored that Indonesia has been proposed as one of the Officers of Main Committee I, but since Indonesia has only one delegate, we would like to be excused from being nominated as Officer of Main Committee I. Thank you.

Mr. BRADERMAN (President of the Conference):

30.1 May I, before you decline, indicate that as it is the United States which, as proposed, supplies the Chairman of Main Committee I in the person of the co-Chairman of my Delegation, Mr. Schuyler, he expects to be here for most of the meetings of Main Committee I with perhaps a rare exception, so that we would like you to accept the honor because you will still be free to do the other tasks which you have before you. Would that be all right? Thank you.

30.2 The Delegate of Brazil wishes to speak.

Mr. NEVES (Brazil):

31. Mr. President, we agree in general with your proposal. We think that it represents a fairly good distribution of different areas in the different Committees, but we wish to indicate that in the General Drafting Committee we would like to see some representative of the so-called under-developed world. We see here a very competent group of countries, of course, but we feel that in this very fundamental Committee at least one representative of the group of under-developed countries should sit. We do have special interests that we want to see clearly stated in the final drafts, and in that sense I would like to make a suggestion that this Committee should be enlarged, so as to encompass a member of that group of countries. Thank you, Sir.

Mr. BRADERMAN (President of the Conference):

32. Thank you. I know that you did not mean to suggest that the Delegation of Brazil integrate this Committee, but may I ask if you would be willing to have your name added to the list?

Mr. NEVES (Brazil):

33. Of course, we would be very honored and ready to work with the colleagues already indicated.

Mr. BRADERMAN (President of the Conference):

34.1 Thank you. Without objection, then, we will add Brazil to the list of the General Drafting Committee.

34.2 Are there any other comments? Is there any other delegation that would like to be listed as a member of the Committee? I should remind the group

that any delegation is privileged to participate in the meetings of these Committees. We tried to suggest a small group because a small group can work better than a larger group, but any delegation feeling it has an interest in a particular item should, by all means, participate in the work of any of these Committees. Are there any other delegations that would wish to be named to sit on them – aside from the general knowledge that you can if you wish.

34.3 Well then, the proposal has been made and has been seconded by Germany, and, if there are no objections, we will consider the proposals for elections as adopted. Thank you all very much.

34.4 I would like to make one comment. In discussing this, as I had said, with a number of delegations, the German Delegation indicated, with respect to one of the vice-chairmanships of Main Committee I, that it had a problem, not the same problem as the Delegation of Indonesia, but another problem: that the Head of the Delegation would probably designate Dr. Haertel to sit as Vice-Chairman. Dr. Haertel is an expert in this field, as you know, but he feels more comfortable in dealing with technical subjects in his native tongue. So, on that rare occasion when he might take the Chair from Mr. Schuyler I trust that there is no objection if he presides and speaks German. Is there any problem with that? There will, of course, be simultaneous translation into all of the languages of the Conference. Thank you very much.

34.5 Dr. Bogsch has a statement to make, an observation.

Mr. BOGSCH (Secretary General of the Conference):

35. Mr. Chairman, as Secretary General of this Conference, I have received a letter from the Delegation of Hungary protesting against the non-invitation of the German Democratic Republic to this Conference, and requesting that this protest be included in the Conference documents of this meeting. As Secretary General, I propose to do so and if any other country wishes to associate itself with this declaration, it can do so by simply seeking me out after the meeting and the minutes will reflect their viewpoint.\*

Mr. BRADERMAN (President of the Conference):

36.1 And I also, as President of this Conference, wish to assure the Delegation of Hungary and any other delegations who wish to indicate their views on this subject that it will be fully recorded in the minutes of the meeting.

36.2 May we then move to item 7 of the agenda, which is the introduction of the Draft Patent Cooperation Treaty by the Secretary General of the Conference, Dr. Bogsch.

Mr. BOGSCH (Secretary General of the Conference):

37. Mr. Chairman, Ladies and Gentlemen, I have the honor to present to the Diplomatic Conference the Draft of the Patent Cooperation Treaty and Regulations under that Treaty. These Drafts were first published in July of last year, as BIRPI documents PCT/DC/4 and 5. Exactly the same texts were republished in documents PCT/DC/11 and 12, and they have been distributed to you in the hard-cover folders today. In addition to reproducing the July 1969 Drafts, documents PCT/DC/11 and 12 also contain possible alternative suggestions. Most of these suggestions are based on the work of the Study Group on the Regulations, which met two months ago in Geneva. Some of the possible alternative suggestions have other sources, as explained in the introduction of documents PCT/DC/11 and 12. The basis of the work of this Conference remains the 1969 Draft. Whether you prefer to take the alternative suggestions as a basis is a matter which I suppose will be decided in each case by the competent Main Committee. I shall not go into any details now, but when each Article and Rule is called up for discussion in Main Committee I or in Main Committee II, two Committees of which all countries are members and to the discussions of which all observers are admitted, the Secretaries of those Committees – Mr. Pfanner for Committee I and Mr. Voyame for Main Committee II, respectively – or I myself will be at your disposal to give any explanations the Committees may wish to have. That is all, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

38.1 Thank you very much. It is proposed that the Steering Committee will decide on the hours that we would meet and so on, but in the meantime I would like to make an initial suggestion so that you can know what your plans might be.

38.2 The next item of the agenda, as you will see, relates to introductory and general observations by Member Delegations. It was our feeling, as the Host Government, that perhaps this morning we might adjourn a little early so that those of you who arrived late or have not had a chance to really get together with your Delegations might have a little more time to do so. What we would do is adjourn shortly for lunch and then reconvene the Plenary this afternoon, when we would hear introductory and general observations by Member Delegations, as listed in item 8. And when we had concluded with item 8 we would then end the initial Plenary Session and start our Committee meetings tomorrow, on the assumption that we finished with all of the general statements that countries wish to make today.

38.3 I note that general observations and introductory statements are invited by Member Delegations. The Observer Organizations and the Observer Delegations will be welcome to make any statements they wish, in writing or orally, in line with the rulings of the Chairmen of those Committees in the Committees, but all Member Delegations are invited to make any statements which they wish to make when we resume this afternoon.

\* The Delegations of Bulgaria, Soviet Union, Yugoslavia, People's Republic of the Congo, and Poland indicated the wish to be associated with the Delegation of Hungary in their declaration.



38.4 I would propose that our general working hours, subject to approval by the Steering Committee, be from 9:00 in the morning until 12:30, and from 2:00 in the afternoon to 5:30. This will give delegations an hour and a half for lunch, which should be adequate here. You know, unlike the tradition in other countries (I am not so sure we are right); we do not take as much time for lunch; people are accustomed to serving much more rapidly than we do in other countries. I sometimes think this is one of the ways in which the United States is less developed and we ought to learn from other countries how to enjoy the luncheon period. But that would also permit us to adjourn in time to take part in the other functions which have been arranged. The one exception – assuming again that we finish this afternoon – will be the convening of Committee I tomorrow morning and we would propose that that would be convened at 10 o'clock, which would be the one deviation from the 9 o'clock beginning.

38.5 It has also been proposed – and again subject to the Steering Committee, but I throw this out so that you can be thinking about it – that Committee II would not meet this week. This is suggested for several reasons. One, some of the delegations are small and to the extent possible we want to avoid having meetings simultaneously. There will have to be some, of course, and particularly when we get into the drafting, but at least we want to start on a note where everyone who wishes can be sitting and meeting and participating in the sessions as they develop. A second reason would be that many of the things that will be done in Committee II will depend upon actions and decisions taken in Committee I. So, we thought after a week we would have the flavor of discussions in Committee I and this would facilitate the work of Committee II. The third is that Committee II does not have as many Articles or as many Rules to take up and the expectation is that perhaps one week of meetings of Committee II could probably resolve those issues.

38.6 So, this would be my general proposal with respect to our meeting times, but these will be confirmed by the decisions that are taken by the Steering Committee.

38.7 Now, before we break for luncheon, I would like to share with you an action which gives me special pleasure – and I am taking advantage of you being here, in one sense, but I know you are all interested in any event. As many of you know, I served as Chairman of the United States Delegation at the Stockholm Intellectual Property Conference in 1967, and on behalf of my Government I signed the World Intellectual Property Convention and the Stockholm revisions of the Paris Convention, subject to our ratification procedures. I am now happy to say that, in accordance with our constitutional provisions, the Senate of the United States has given its advice and consent to ratification, and President Nixon has ratified and confirmed these instruments, that is, the World Intellectual Property Organization Convention and the Stockholm revisions of the Paris Convention, except for Articles 1 to 12. The ratification of these Articles is awaiting enactment of implementing

legislation, which we are presenting to the Congress. Now, since Professor Bodenhausen is here and not in Geneva, it gives me great honor and pleasure to deposit these instruments on behalf of the United States with Professor Bodenhausen, the Director of BIRPI.

38.8 Now, I will call the Conference adjourned for lunch and we will reconvene at 2 o'clock.

38.9 One moment, the Delegate of Algeria wishes to speak.

Mr. DAHMOUCHE (Algeria):

39.1 Mr. President, I should like to thank you very briefly for what you have said on the subject of the meetings of Main Committee II. It had not escaped our notice that some delegations will find it physically impossible to take part in meetings of both Committees when they are held at the same time. That is why I wanted to thank you for the initiative you have taken in delaying the sessions of Main Committee II by one week.

39.2 And now, Mr. President, may I have some information on the Steering Committee (Comité directeur);, which you have mentioned several times. I should like to know, if possible, the names of the persons from countries which are participating in the said Committee. May I also ask you to see to it that when this Steering Committee makes decisions it shall, as far as possible, be able to make them sufficiently flexible to be amended later, if necessary, by the Conference. Thank you.

Mr. BRADERMAN (President of the Conference):

40.1 Thank you very much. According to Rule 15, the Steering Committee shall consist of the President of the Conference, the Chairmen of the Main Committees, of the Credentials Committee, and of the General Drafting Committee. These are the members of the Steering Committee. In any event, the proposals of the Steering Committee will, I am sure, be flexible and take into account the needs of the delegates, and if there is any problem the Conference will make suggestions regarding the proposals of the Steering Committee.

40.2 Are there any other comments before we adjourn for lunch? If not, we will reassemble at 2 o'clock in this room. Thank you.

*End of the First Meeting*

## SECOND MEETING

Monday, May 25, 1970, afternoon

Mr. BRADERMAN (President of the Conference):

41.1 Ladies and Gentlemen, would you be good enough to take your seats. I hope all of you had a pleasant luncheon.

41.2 We now move to agenda item 8, introductory and general observations by Member Delegations. I call your attention to the fact, as I indicated this morning, that this item was placed on the agenda to give member countries of the Paris Union an

opportunity to make any general statements that they may wish to make. Member States as well as Observer Delegations, of course, are welcome to comment or submit statements in each of the Main Committees. It will be the practice of the Chair to call on delegates in the order in which they indicate a desire to speak; that is in accordance with the Rules of Procedure. If I, and my colleagues here from the Secretariat, fail to notice anyone at a particular moment, we apologize in advance; I can assure you it will have been inadvertent. We will try, as I say, to keep that order. The floor is now open for any introductory statements and general observations that delegates may wish to make.

41.3 I call upon the Delegate of Australia.

Mr. PETERSSON (Australia):

42.1 Thank you, Mr. President. The Australian Government wishes to express its thanks to the Host Government for its invitation to take part in the Washington Diplomatic Conference, which it is hoped will formulate and finalize a Patent Cooperation Treaty. Despite the great distance that separates Canberra from Geneva, Australia has been represented at the earlier meetings of governmental experts and thereby demonstrated its real interest in the outcome of this Treaty. It has been a matter of regret that an Australian expert could not take part in the earlier and intermediate drafting committees, as it is felt that representation at this level would have been a distinct advantage.

42.2 At the same time, the Australian Government wishes to compliment BIRPI and its Officers, particularly the Director and Dr. Bogsch, and also those delegates who have taken a prominent part in formulating the Draft Treaty. The energy and enthusiasm that has carried the Treaty so far in such a short time is to be applauded and has earned our admiration. Nevertheless, it is realized that much still remains to be done and this Conference will undoubtedly be a busy one and we trust, Mr. President, a rewarding one.

42.3 The Patent Cooperation Treaty is seen by Australia not only as a possible means of saving time, effort and money but as a treaty between countries which, on the one hand, are exporters of inventions and countries which, on the other hand, are importers of inventions. From the viewpoint of applicants in exporting countries, simplification and uniformity of procedures and cheaper patents would have an obvious appeal; whilst individual applicants in an importing country may also view the Treaty with the same approval. When these are numbered not in thousands but in tens or hundreds, the appeal to that country as a whole cannot be very great unless there is some other attraction, some quid pro quo. The attraction which Australia perceives is that it may have its searching done for it, that foreign applications, which arrive in ever increasing numbers, will arrive complete with short and accurate lists of the prior art, and in some cases opinions on patentability. Countries which export inventions will see no advantage in a patent cooperation treaty that has few members. Countries which import inventions

will see little advantage in a treaty that does not provide them with an adequate search which preferably has included their own documentation, or at least makes provision in the future to include that documentation.

42.4 To achieve a treaty that will be attractive to all will need a spirit of compromise. An applicant will want freedom of amendment, but if that same freedom destroys the validity of a completed search, the attractiveness for countries which are going to depend on that search is lost. To make this Treaty a working reality will require some give and take and a willingness to amend the national laws if necessary. It would not necessarily be an argument against the provisions of the Treaty to say: our laws will not allow it. On the other hand, for every national law that has to be changed, so will the operation of the Treaty be delayed. The Australian Government is concerned with the complexity of the plan yet realizes that rights must be preserved and broad terms cannot spell out specific procedures. Australia is also concerned, like some other countries, about the possible cost of the PCT and the savings that may be made from the incomes of its patent attorneys. It notes that this problem is peculiar to those countries which are principally importers of inventions.

42.5 I have taken this opportunity, Mr. President, to express these ideas not because I think they are particularly novel, but mainly because it is against this background that we will wish to express some opinions during the course of the Conference. Once again, Mr. President, I want to express thanks on behalf of the Government of Australia for the invitation to participate, and I join with other delegations which, I am sure, will be wishing success to our deliberations. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

43. Thank you very kindly. May I call on the Delegate of the Federal Republic of Germany.

Mr. GROEPPER (Germany (Federal Republic)):

44.1 Mr. President, the Delegation of the Federal Republic of Germany is gratified to note that all the years of preparation for worldwide cooperation in the patent field have now reached the decisive stage with the beginning of this Conference. Our thanks on this occasion are due first and foremost to the Host Government of the United States of America. It was that Government which was the instigator of the recommendation, made on September 29, 1966, by the Executive Committee of the Paris Union for the Protection of Industrial Property, to the effect that BIRPI should undertake a study on solutions tending to reduce the duplication of efforts in the filing and examination of applications for patents, both for the applicants and for the national Patent Offices. When, in July 1969, the Draft Patent Cooperation Treaty was completed, it was again the United States Government which commendably took the initiative and expressed its willingness to invite the Diplomatic Conference on this Treaty to be held in Washington.

44.2 As we have already seen from the first few hours here, the preparations for this Conference by our American hosts have been excellent. I have no doubt that, as participants, our indebtedness towards the United States Government will continue to grow throughout the whole of the Conference.

44.3 Our special thanks are also due, however, on this occasion to the Director of BIRPI and his extremely competent associates. Anyone considering the elaborate system of the PCT plan in all its details would scarcely find it possible to believe that so much work could be done in barely three years, especially since in the same relatively short period BIRPI has held several full-scale consultations in meetings with experts from its member States and from many international organizations in the patent field, and as far as possible, has taken into account in its work on the Treaty the proposals for amendment put forward on those occasions. Such an extraordinary performance is deserving of our respect and appreciation.

44.4 As the Government of the Federal Republic of Germany has already stated in the introduction to its written comments on the Patent Cooperation Treaty, the Draft which is now before us seems on the whole to be a balanced and well thought-out text. It offers considerable advantages to the applicants, lightens the task of the Patent Offices, creates central authorities for the assembling of prior art, and represents a first step towards the achievement of a strong, worldwide protection for inventions. The Delegation of the Federal Republic of Germany is firmly convinced that, on the basis of such excellent preparations, it ought to be possible to bring our deliberations on the creation of an international patent cooperation treaty to a successful conclusion. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

45. Thank you, Sir, very very much. Are there other delegations that wish to make general observations? The Delegate of Japan wishes to speak.

Mr. OTANI (Japan):

46.1 Thank you, Mr. President. Ladies and Gentlemen, we have come to the final stage in the deliberations of the Patent Cooperation Treaty, the work having started three years ago in 1967 and chiefly been carried out by BIRPI.

46.2 At the current Conference, the last session of discussions will take place, each country making clear its final stand. Japan has participated in many of the PCT meetings in the past and has devoted herself to the study of the draft. Our basic attitude, as has always been indicated before, is in agreement with the principles of the PCT. At the moment, our common problem is inherent in the patent systems of the world, and its solution, on an international basis, is urgently required. In other words, the increased number of applications as well as more advanced and more complex inventions contained in the applications make the task of examining work more difficult for the countries that examine the applications before

granting patents. Further, in filing applications for the same inventions in many countries, the current system of filing individually with each country is not compatible with the demands of the present day, when technical intercourse among countries is very prevalent.

46.3 In the light of the above, Japan agrees in principle to the PCT Draft which is proposed in order to solve this problem on an international level. However, as the PCT is a multilateral agreement, the effect it will have on each participating country will vary. We wish to emphasize particularly that the burden, both in manpower and material resources, will be heavy for countries that become International Searching Authorities or International Preliminary Examining Authorities. Our Office is now studying the problem that may arise with the implementation of the PCT and we feel that an effective international cooperation is required especially in the field of documentation for the purpose of carrying out the PCT as envisaged. Therefore, we discussed this problem at the last meeting in Geneva and would now like to draw your attention again to the following in connection with the problem of documentation.

46.4 One problem is that of putting the IPC on the national patent literature. Most countries now classify their patent literature in accordance with a classification system of their own, but by the enforcement of the PCT the necessity increases of mutual searching of the patent literature of different countries. The quantity of documents to be searched is already large and is growing all the time. Such mutual searching should benefit from the establishment of the IPC Agreement and we consider that the putting of the IPC on patent literature by each issuing country, or at least on the documents designated for minimum documentation, should become mandatory. We consider this a primary condition for international cooperation in the field of documentation. Thus, we strongly advocate this course of action and request you to consider the matter of the use of the IPC by issuing countries on documents designated for minimum documentation and of the international exchange of information.

46.5 Next, we wish to come to the problem of families of patents, which is now being studied by the World Patent Index program and ICIREPAT. Eliminating duplication of patent documents in the world is a basic problem for simplifying work in the field of documentation for each country, and it should be studied without delay along definite lines established on an international level. And, further, all of us should be furnished with information concerning the problem, as we consider that elimination of duplication is vital for minimum documentation.

46.6 As stated above, Japan is in perfect agreement with the basic principles of the PCT Draft, but we think that in reality there are many problems that must be solved for its implementation, and what remains to be done is the solution by international cooperation of such problems as are likely to appear in the actual application of the Treaty.

46.7 Lastly, we agree that the PCT is epoch-making in that it will facilitate international filing procedures and make examination efficient in the world. To make the implementation of the PCT successful, we believe that each country must overcome its own international problem, step by step, dealing with the faults it is possible to solve. Needless to say, Japan is ready to spare no trouble to promote international cooperation by participating in the PCT and at the same time we shall endeavor to devise our patent registration so as to conform to the unity of formalities provided by the PCT. Thank you very much, Mr. President.

Mr. BRADERMAN (President of the Conference):

47. Thank you very much, Sir. I call now on the Delegate of the Soviet Union.

Mr. ARTEMIEV (Soviet Union):

48.1 Mr. President, Ladies and Gentlemen, I should like to acknowledge the deep interest of most States in the promotion of scientific and technological progress. In this connection, it is important to recall the active and useful work of experts of member States of the Paris Union on problems connected with the promotion of inventive activity throughout the world. Today, we have gathered together, thanks to BIRPI's efforts and to the invitation extended by the United States Government, to discuss the Draft which, for three years, has been under consideration both at the national level and within the framework of international meetings. The present text of the Draft is a good basis for discussion because to a certain degree it takes into consideration the particularities of the legal protection of inventions as applied in the different countries.

48.2 Without mentioning the advantages and disadvantages of the Draft embodying the ideal of patent cooperation, I should like to emphasize that the work done by the experts over a period of years has achieved its purpose. Besides the Draft Treaty, which will be discussed in detail during the Conference, experts in the course of preparatory meetings have been able to acquaint themselves with the patent legislation of different countries and with the practice of patenting and patent examination. It is now quite clear, for instance, that in most countries experts during the prosecution of applications apply in general, to a certain extent, the same criteria, which sometimes are interpreted, in practice, in different ways. It should be noted with satisfaction that, owing to this cooperation in the work on the proposed Treaty, a successful result has been achieved as to the unification of some very important concepts in the field of patent practice, such as unity of invention, structure of claims, and so on. However, we are faced with a number of very serious problems, which must be discussed because they have not been resolved during previous meetings. We hope that in the course of their consideration States will show the necessary flexibility and spirit of cooperation.

48.3 In this connection, difficulties may be expected during the discussions, particularly on problems the solving of which may greatly influence

the further fate of the Patent Cooperation Treaty. The mutual understanding which we expect to see here must be based on the existence of different forms of legal protection of inventions, such as patents, inventors' certificates and other forms of protection of inventions. Such an approach to this problem will create an opportunity for participation in the Patent Cooperation Treaty by the maximum number of countries, and will allow, to the greatest extent possible, the fulfillment of the ideal of patent cooperation. In the opinion of the Delegation of the Soviet Union, the Alternative Draft of BIRPI is the first step in this direction.

48.4 A spirit of cooperation permeated the Stockholm Conference throughout the discussions on all the questions relating to the protection of industrial property. The Delegation of the Soviet Union hopes that during the Washington Diplomatic Conference further progress will be made towards the achievement of cooperation and that it will be possible to bring our task to a successful conclusion. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

49. Thank you very much, Sir. I now have the pleasure of calling on the Delegate of Yugoslavia.

Mr. PRETNAR (Yugoslavia):

50.1 Thank you, Mr. President. Ladies and Gentlemen, among the 11 signatory States of the Paris Convention in March 1883 was included Serbia, which later, after the First World War, became part of Yugoslavia. It was anxious at that time to associate itself with the civilized world on achieving its independence after hundreds of years as a dependent territory. If Serbia was unable subsequently to keep up with the progress made by the industrialized countries, it was because – to use a modern expression – it was a developing country. The Yugoslav Government, in sending its Delegation to the Washington Conference, is fully conscious of the fact that the PCT plan and the Treaty that will emerge from it represent a step towards a formal framework for something that already exists: universal technology.

50.2 The rapid explosion, both quantitative and qualitative, in the field of science and the application of technology demands appropriate measures to cope with such progress.

50.3 From this point of view, one can only welcome all the efforts that have been expended in preparing the texts that will be discussed at this Conference. In view of the importance of the PCT plan, we must take into account not only the developed countries for whose benefit the new instruments issuing from the Conference will primarily have been made, but also the effects they may have on the developing countries. Although, officially, those countries may also benefit from the outcome of our Conference, the Delegation of Yugoslavia does not entirely share BIRPI's optimism on this subject. The legal issues are valid for developing countries only in the last resort. A legal

instrument is not in itself capable of solving the problems of our age among which one of the most striking is the separation which exists between the world of the industrialized countries and that of the poor and backward countries.

50.4 The intellectual potential of developing nations is no less than that of highly civilized countries. What the former need is the material conditions for educating their infrastructure, so that their intellectual potential can become the moving force of progress in their respective countries and of humanity as a whole, as it is already in the industrialized countries.

50.5 In the view of the Delegation of Yugoslavia, we shall not achieve the objectives of the PCT plan unless, after the close of the Conference, we give serious consideration to the problem of creating such material and effective conditions in developing countries as to enable them to share in the universal progress created by man's intelligence, the materialization of which is the main source of wealth in our time.

50.6 We cannot speak seriously about the universality of the Paris Union until the deep gulf which divides the world has been bridged. In preparing the text of the PCT as well as in other work in recent years, BIRPI has shown its ability to accomplish an enormous amount of work. The Paris Union, as represented here today, ought, in the view of the Delegation of Yugoslavia, to expend all its energies in the coming years on assisting the developing countries to achieve the aims proposed by the PCT in order to solve the major problems of mankind and its future.

50.7 I should like to finish this short statement by thanking the Host Government most particularly for its work and its generous hospitality. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

51. Thank you, Sir. May I now call on the Delegation of the United Kingdom.

Mr. ARMITAGE (United Kingdom):

52.1 Mr. Chairman, may I first express the thanks of the United Kingdom Delegation to the United States Government for the hospitality which we are enjoying at this Conference. And, secondly, may I pay a word of tribute to BIRPI, for all the spade work, the enormous spade work, which has gone into the preparation of this Treaty, to Professor Bodenhausen, to Dr. Bogsch, Dr. Pfanner, and all their men who from time to time have worked on this. It would be invidious to mention any more names – people have come and gone – but I know very well what an enormous amount of work has been involved in this.

52.2 The United Kingdom has supported the PCT proposal and has participated actively in its development from the earliest times, three and a half years ago, when this was first proposed on the initiative of the United States Government. I think it is well known that we support the PCT because of its interest both to our administration and our industry.

We are interested both in Part 1 and in Part 2 of this proposal; Part 1, for both our administration and our industry, equally firmly and forcibly; Part 2, perhaps rather more at present, as we see it, in the interests of our administration, though maybe the interests of industry will swing into the picture more if, in fact, Part 2 is activated and we can see just how it works.

52.3 We should not be modest about what we are now doing. This is the biggest breakthrough in patents since 1883. It is the first real exercise in cooperation at the working procedural level on patent processing. I think we should not expect perfection immediately. It is really quite important that we should approach this, as the Soviet Delegate has said, in a spirit of compromise. The first and really almost the last objective is to emerge with a workable treaty and that is what we should all direct our minds to here.

52.4 Once the Treaty is in operation, the way lies open to international harmonization in all sorts of directions which do not exist at the moment, procedurally, in terms of retrieval methods and so on, but first of all we have got to have the mechanics, we have got to have the base from which this harmonization can operate.

52.5 In sum, therefore, the United Kingdom Government hopes that this Conference will reach a successful conclusion and that a large number of States will become members of this Treaty, States both developing and developed, so that this paper plan can be converted into a living reality. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

53. Thank you very much. I now call on the Delegate of the Netherlands.

Mr. VAN BENTHEM (Netherlands):

54.1 Mr. Chairman, the preceding delegations have expressed their high esteem for the energetic and highly qualified work of BIRPI as to the preparation of this Treaty and, equally, for the hospitality of the United States Government. We would like, Mr. Chairman, to join wholeheartedly in their thanks.

54.2 As to the scope of the Treaty, the Director General has said, in his introductory speech, that this Treaty is more or less a new starting point for a substantive cooperation in the field of filing patent applications and, even more than that, it goes even relatively far in harmonizing national laws.

54.3 The Netherlands Government, Mr. Chairman, shares this view and we shall therefore cooperate wholeheartedly in the realization of this Patent Cooperation Treaty. In so saying, Mr. Chairman, may I add that we hope that the few modest observations we have made in writing could be met by the Conference. May I finally say that the Netherlands Government attaches the highest importance to the efforts made to make this Treaty compatible with the preparations for regional patents, like the European Patent. Thank you very much.

Mr. BRADERMAN (President of the Conference):

55. Thank you, Sir. I now call on the Delegate of Finland.

Mr. TUULI (Finland):

56.1 Mr. Chairman, Finland took part in the meetings of experts at which the plan was prepared, and approved the aim of the Treaty to provide a quick and uniform procedure in searching the novelty and patentability of inventions. Finland, however, wishes to stress the fact that it will participate in this development only as long as the final right and power of granting patents rests with the national Offices, as the present Draft Treaty presupposes. Considering that a common system must be adaptable to the legislation of all countries, and these often differ considerably, the Finnish Delegation wishes to express its high regard for the remarkable and competent work of BIRPI resulting in a Draft Treaty which, in the main, fills the requirements of all the member States and still attains the said important objectives.

56.2 The advantages of the plan for small and remote States, their industry, inventors, and patent authorities are not, however, quite clear. As regards Finland, there are questions which still need to be studied and settled before final adherence to the Treaty is possible; for instance, the languages of the majority, which completely differ from other languages, the projections from the planned Searching Authorities, and the fact that heretofore it has been impossible to calculate with satisfaction the cost of the PCT plan to member States and inventors.

56.3 However, in principle we are in favor of accepting the Treaty. Changes in the Treaty text have been proposed in writing by the various delegations; we are going to support some of these proposed changes as they form improvements and clarification of the text. For our part, we have expressed our anxiety, for the text lacks a definite statement that every participating country shall have the right referred to in Article 16 to make an agreement with some International Searching Authorities. The Offices which, it is planned, will act as such Searching Authorities are already overburdened with work and they may therefore be unwilling to accept new clients. The said right must, however, be guaranteed to small countries, even if the final aim and ideal solution may perhaps be one International Searching Authority only, or as few such Authorities as possible. During the transitional period, there must obviously be more of them than the Treaty provides for. Already, from the language point of view, the situation in the Nordic countries is such that we need an International Searching Authority of our own. We therefore support the proposal and attempt to nominate a Scandinavian Office as International Searching Authority. It may well be that the need for such Authorities is felt in other parts also.

56.4 To conclude, the Finnish Delegation regards the PCT plan as a form of cooperation in which all nations can participate and cooperate. This is a view of such importance that already it is most desirable

that the PCT Treaty should be agreed upon at this Conference. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

57. Thank you, Sir, and I have the pleasure of calling on the Delegate of Hungary.

Mr. TASNÁDI (Hungary):

58.1 Mr. Chairman, first of all, I should like, on my own behalf and on behalf of my Delegation, to offer my congratulations on your election as Chairman of this Conference. Your well-known and outstanding background and your great international experience will undoubtedly contribute to a large extent to the success of our Conference in solving, in a spirit of cooperation, the great and important tasks confronting us. Moreover, I should like to take this opportunity to express the gratitude of my Government to the United States Government for the work involved in convening this Conference.

58.2 Mr. Chairman, I believe that, thanks to the Patent Cooperation Treaty, a new page is being turned in the history of international patent cooperation. My Government has, from the very start, strongly supported the conception of this Treaty. Experts from my country took an active part in working out the Draft of the Treaty.

58.3 Let me now express my gratitude to the Directors and staff of BIRPI, who have performed such remarkable work without counting their time and effort. I am convinced that this Conference, which has been so thoroughly prepared, will be characterized by aspirations towards an understanding of mutual interests and readiness to reach an agreement. As for myself and my Delegation, I can assure you, Mr. Chairman, that we will strive in that direction. In concluding, I wish you, Mr. Chairman, Ladies and Gentlemen, success in your work. Thank you.

Mr. BRADERMAN (President of the Conference):

59. Thank you very much, Sir. I now call on the Delegate of Switzerland.

Mr. STAMM (Switzerland):

60.1 Mr. President, Ladies and Gentlemen, right from the start, the PCT plan has been a source of great interest in Switzerland, both among the competent authorities themselves and in industrial circles. This is scarcely surprising since it represents the first concrete attempt at achieving a worldwide cooperation by means of which national Offices and applicants will at last be able to spare themselves some of the innumerable tasks that at present complicate the filing of applications for national patents and the obtaining of those patents. Some of those concerned find that the PCT plan does not go far enough; they would have preferred that it aim higher. But, are they not forgetting the familiar adage "Grasp all, lose all"?

60.2 For our part, we can only congratulate BIRPI on its attempt, within the limits of what is at present possible, to make the first move, albeit a very modest one when compared with the final objective of the optimists, which is the unification of substantive law

on patents, and even the grant of a universal patent by one single world office. The Delegation of Switzerland is convinced that the PCT plan, as outlined in the BIRPI Draft, offers tremendous advantages compared with the present situation. Not the least of its merits is to take as much account of the needs of industrialized States as of the problems of developing countries. It is of course not easy, and in fact probably impossible, to satisfy everybody. Switzerland, for its part, regrets sincerely that it is apparently not possible at this stage to satisfy such wishes as the centralization of search. The Delegation of Switzerland admits that a decentralized search would have advantages during the lead period, but it wishes to repeat here, on behalf of its Government, the principle which it has often maintained, namely, that the final goal can only be a centralized search entrusted to one single, supranational authority. We note with satisfaction that the Draft to be discussed does not exclude *a priori* the possibility of a development in this direction.

60.3 The Draft we are about to study bears the promising title: "Cooperation Treaty". The Delegation of Switzerland hopes that this spirit of cooperation will already prevail throughout the present Conference. Cooperation necessarily presupposes searching for and facilitating compromise solutions and refraining from defending positions that are too individualistic. It would in any case be most regrettable if the Treaty were to be burdened with exceptions arising from the peculiarities inherent in national systems. The Delegation of Switzerland accepts the essentials of the Draft in its present form. It looks forward to seeing this work of international scope achieve the results that all are hoping for. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

61. Thank you very much. I now call on the Delegate of Sweden.

Mr. BORGGÅRD (Sweden):

62.1 Mr. Chairman, allow me, on behalf of my Government, to associate myself with the previous delegates who have expressed their gratitude to the United States Government for the invitation to this Conference, and for the hospitality we are enjoying. Let me also express my Government's congratulations to Professor Bodenhausen and to Dr. Bogsch, and their collaborators in BIRPI, for the splendid preparatory work that is now presented before this Conference.

62.2 In the view of my Government, the Treaty as now proposed presents a most valuable foundation for international patent cooperation on a worldwide basis. We think it a great advantage that the plan has been drawn up with considerable flexibility to allow further examination of applications which have passed the international stage to take place on the national level. It is of great importance for the widest possible adherence to 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 gain confidence.

62.3 As we see it, Mr. Chairman, the real effect of the PCT plan can best be achieved if both phases are adopted and if the majority of the big industrial countries accede to both of these phases.

62.4 Once again, Mr. Chairman, our warm thanks to the United States Government for sponsoring this Conference of paramount importance to the international patent system. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

63. Thank you, Sir. I have now the pleasure of calling on the Delegate of France.

Mr. SAVIGNON (France):

64.1 Thank you, Mr. President. Mr. President, in the name of the French Government, I should like first of all to associate myself with all the previous speakers who have thanked the United States Government and BIRPI, particularly Dr. Bogsch, both of whom have been mainly responsible for the preparatory work on the Draft Treaty before us today – a Draft Treaty one of whose greatest merits in our eyes is that it has put new life into the idea of international patent cooperation and opened the way to progress and internationalism in this field. It is, in fact, well known that this Draft has awakened from its slumber the dormant plan for a European patent, and perhaps other projects for regional patents, less ambitious in substance and less far-reaching in geographical scope.

64.2 We very much hope that consideration will be given in the course of this Conference to a number of recommendations, which I shall not list here, the Delegation of France reserving the right to return to them when the Articles are discussed in one or other of the Main Committees. You will not, however, be surprised if I say here and now that I wish to associate myself with what the Delegation of Finland and the Delegation of Switzerland have said regarding the trend towards a centralized search, an idea which France has already defended in the course of the preparatory meetings.

64.3 We are therefore persuaded that, provided we are able to make some progress thanks to the cooperation of all concerned, the Governments will succeed in establishing a truly useful diplomatic instrument. I should like, however, to draw attention to the fact that in the last resort it is not the Governments who will be the judge of the usefulness of the PCT plan and who will make it a success, but the users, the applicants themselves. It is therefore most important that we should hear their opinions and thereafter give our Draft a form and the sort of requirements for applications that will satisfy the wishes of the applicants.

64.4 It would seem to be equally important that we should realize that the work done here by this Diplomatic Conference on the Patent Cooperation Treaty should not stop in mid-career. Indeed, if the

purpose of the Treaty is achieved, that is to say, if the conditions for obtaining protection for the same invention in a number of countries are facilitated and made less costly, it is certain that there will be an increase in the tendency already observed in the case of the system of protection at the national level where one and the same invention will be protected in a greater number of countries. This fact has repercussions on the transfer of technology and considerable financial implications. It was doubtless no part of the PCT plan to deal with such repercussions but the fact remains that when one touches on any legal field economic repercussions are inevitably involved, repercussions affecting in particular the developing countries which must also be taken into account at the international level.

64.5 This is therefore an extremely important step we are about to take – and I think we are all aware of the fact – in a field where all past attempts to break through the too rigid barrier of national protection have failed. It is thus in a reasonably optimistic mood that the Delegation of France approaches this international Conference and wishes it every success. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

65. Thank you, Sir. I now call on the Delegate of Israel.

Mr. GABAY (Israel):

66. Thank you, Mr. Chairman. It gives me great pleasure to take the floor at this advanced stage of the thorough preparations of what might become a milestone in international patent cooperation.

66.2 I should like here to pay a tribute to the Host Government and to BIRPI, especially to Professor Bodenhausen and Dr. Bogsch and Dr. Pfanner, who for some time have been trying to mobilize support for an effective institutional system which would alleviate the present difficulties in patent administration faced by the larger and the smaller countries alike.

66.3 While we shall have a number of comments on specific items and specific provisions of the Treaty, we should like at this stage to indicate the support, in principle, of the Government of Israel to the Treaty in its two parts. The Government of Israel supports the underlying idea of a reorientation of the search and examination of patent applications on an international basis. Indeed, the difficulty lies in the embarrassment of wealth caused by the constant rise in the rate of innovation and the number and variety of processes and new products. The capacity for examination at the disposal of most countries, industrialized as well as developing, is already stretched to the point of collapse. It is therefore apparent that international arrangements and coordination are essential. However, an effective international system would call for an adjusted machinery of international search and examination by a centralized system, which would be generally international in character. While the present difficulties in establishing such a system are understood, it would be essential in the final analysis to strive in that direction, possibly through

strengthening the operations machinery of the Hague Institute.

66.4 The other point of a general nature concerns the cost, and here I should like to refer to the problem of the cost especially for the smaller and developing countries. It is our feeling that sufficient attention has not been given to this problem, which merits further analysis and evaluation. The establishment of an international system of search and examination is an important step forward, but it would still require some further work towards harmonization of legislation in the area of patents.

66.5 In principle, we should think that this Treaty would improve the national and the international role of the patent system in the context of technological and economic development. We shall follow with great interest the deliberations of this Conference and should like to attempt to contribute as much as we can of our own experience. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

67. Thank you, Sir. I now call on the Delegate of the United States of America.

Mr. SCHUYLER (United States of America):

68.1 Thank you, Mr. Chairman. Speaking on behalf of the Delegation of the United States, I would like to add our welcome to each of you and to supplement the welcome expressed by Secretary Stans this morning in the name of President Nixon. It is our sincere wish that you find your stay in the United States, during this Conference, an enjoyable one and, to assist towards that end, the Delegation of the United States stands at your service to do anything we can to help you enjoy your visit to our country.

68.2 Other delegates have already mentioned the interest of the United States in the Patent Cooperation Treaty and I need not repeat the manifestations of that interest that we have shown since the deliberations began. We agree with those who say that the results of our deliberations here must find acceptance among applicants in order that the Treaty be used to a maximum extent and in order that it finds acceptance by a maximum number of nations. It is a Treaty designed to assist applicants who seek patent protection in many nations. Its effort to facilitate the desires of such applicants should be recognized but not confused with other matters of substantive law, which must remain within the power of each Contracting State.

68.3 The Government of the United States wishes to align itself with the views expressed by other delegations in commending the outstanding efforts of BIRPI, the Director General, and the entire staff in providing us in documents PCT/DC/4 and 5 with an instrument which offers the flexibility necessary to accommodate the varying viewpoints and substantive laws which are represented by the countries here today.

68.4 We certainly hope that this Conference continues its deliberations in the atmosphere of minimizing the changes in national law which may be necessary in order for States to adopt the Treaty. And



we certainly agree completely with the Director General and others who recognize this Treaty as a first step, certainly a giant step, but nonetheless only a first step, towards more complete cooperation and even harmonization. We most sincerely join those who have expressed the wish for a successful conclusion of the deliberations. Thank you Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

69. Thank you, Sir. I now call on the Delegate of Spain.

Mr. FERNÁNDEZ-MAZARAMBROZ (Spain):

70.1 Mr. President, the Spanish Delegation wishes to endorse the declarations made by other delegations which have expressed their gratitude to the United States Government for the invitation extended to us to take part in this Conference, and for the hospitality offered to us. It must be remembered that it was this country which, at a meeting of the Executive Committee of the Paris Union on September 26, 1966, took the initiative of proposing that BIRPI should assume the task of preparing the documents which now, after much study, have become the working document of this Conference.

70.2 I should also like to endorse the expressions of thanks addressed to BIRPI for the arduous task which it has taken on and carried out with such perseverance, in between the attendance and organization of numerous meetings, and for its achievement in providing us with these documents, which are really of extraordinarily high quality and eminently suitable for the task which we have set ourselves.

70.3 Indeed, in the opinion of the Spanish Delegation, there is one exceptional quality of the documents which has come to light during the discussions, namely, their flexibility. The same principle is also a feature of the Paris Convention, another instrument of international cooperation in the field of industrial property, which has shown over the years that it is the principle of flexibility that has been the reason for its success. Indeed, we consider such flexibility to be absolutely essential in view of the fact that, as many have already said and as other delegations are now repeating, not all countries party to these conventions are equal: there are industrialized countries, countries with examining offices, countries with official languages, and others in totally different circumstances. For that very reason we consider that the principle of flexibility is a most necessary feature of the Treaty and the Regulations, and we hope that the progress achieved in the preparation of these documents will continue and improve in the actual cases in which improvement is necessary.

70.4 We consider, as we have already said, that this principle of flexibility will make the Washington Conference a mile-stone in the history of international cooperation in the field of industrial property. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

71. Thank you very much. I now call on the Delegate of Italy.

Mr. RANZI (Italy):

72.1 Mr. President, the Italian Government would like, first and foremost, to express its thanks to the United States Government for organizing this Diplomatic Conference and for its generous hospitality. The Delegation and Government of Italy would also like to express their appreciation to BIRPI, and in particular to its Director General, Professor Bodenhausen, and to Dr. Bogsch, for the excellent work they have done and also for the remarkable speed with which the preparations leading to this Conference have been completed.

72.2 In principle, the Delegation of Italy is in favor of the Patent Cooperation Treaty. It would, however, like to reaffirm its marked preference for a centralized search but, as it realizes that this would not be possible at the very start, it hopes at least that a statement of principle in this connection will be inserted in the Treaty.

72.3 The Italian Government wishes this Conference every success. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

73. Thank you very much. I now call on the Delegate of Austria.

Mr. LORENZ (Austria):

74.1 Mr. President, Ladies and Gentlemen, in my general opening remarks I shall confine myself to what, in our view, seem to be the essentials – the fundamentals.

74.2 The origin of these meetings – and the main objective of the PCT plan – is to avoid duplication of effort in Offices effecting examination. The plan itself bears the title: “Plan for a Patent Cooperation Treaty.” Several delegations have stressed the importance of such cooperation. My country is greatly interested in achieving this objective and will, in a general way, be prepared to contribute towards its attainment.

74.3 May I take this opportunity to express our sincere thanks for the invitation extended to us by the United States Government and our appreciation to the Host Government and to BIRPI for the excellent preparations for this Conference.

74.4 It is our hope that the objective which I have already mentioned should not be lost sight of in the course of the Conference and that our work should be directed, above all, to the achievement of this objective, so that our country may play its part in carrying out the envisaged project. May I add our best wishes for the success of the Conference. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

75. Thank you. I now call on the Delegate of Zambia.

Mr. AKPONOR (Zambia):

76.1 The Government of the Republic of Zambia wishes to thank both the Government of the United States and the Director and staff of BIRPI for making possible this important, if not the most important, meeting on patent cooperation since the founding of the Paris Union in 1883.

76.2 So much has been said about the advantages of this Organization in the field and the annals of patent administration and cooperation, but much more should be done as regards the attitude of this new Organization towards developing countries. Owing to the scarcity of qualified men and the inadequate resources available to most developing countries, they are faced with the dilemma of granting such patent rights without adequate means of patent examination. This fact has also led most developing countries to abandon the desirable idea of establishing Patent Offices.

76.3 It is against this background that the importance of the PCT Treaty as regards developing countries should be emphasized and appreciated. It is therefore the wish of the Government of the Republic of Zambia that this Organization should harmonize patent administration between the developed and developing members of the Organization. The task before us is great, but I am convinced that in a spirit of cooperation this meeting will be a great success. Once more, Mr. President, I thank you and all those that have made this meeting possible today. Thank you.

Mr. BRADERMAN (President of the Conference):

77. Thank you very much. I now call on the Delegate of Canada.

Mr. LAIDLAW (Canada):

78.1 Thank you, Mr. President. Canada is interested in any international proposal designed to reduce the duplication of searching work now experienced in all countries conducting any novelty examination of patent applications, and to improve the quality of searches, in this way furthering the object of limiting the grant of patents to developments that are really new and truly inventive. We are also prepared to play our part in an international arrangement which will simplify and hence reduce the expense of obtaining patent protection for any such developments in a number of countries, even though at present we would not, because of the relatively few domestic patents issued compared to the number issued to non-residents, be substantial beneficiaries of such an arrangement. Finally, we appreciate the usefulness of an international arrangement designed to provide a convenient central international publication of new inventions, of which the existing publications are scattered and hence not always readily and generally available. The Draft Patent Cooperation Treaty that we have come together to consider, which appears to be directed to all of these three objectives, is thus worthy of a most careful and cooperative consideration by all of us, because I am sure there is no disagreement on the desirability of these objectives.

78.2 In our view, by far the most important of these objectives is the reduction of search duplication and the improvement of search quality. From the point of view of ultimate efficiency and quality of result there can be little doubt that the ideal searching organization would be a single international one. It could have the maximum documentation with minimum duplication. We in Canada recognize of course that practical realities appear to preclude this solution at present and that we must, for the time being, make the best use of searching facilities now available, with the result that, as an interim measure, the solution of having a limited number of examining national Patent Offices and the International Patent Institute act as International Searching Authorities may well be the only practical one. We are, however, somewhat concerned that the Draft Treaty, though it does not exclude the ideal solution, contains no provisions calculated to bring it about. Without them, inertia is likely to lead to apathy, and the interim solution to become the permanent one. As the French saying goes: "*Il n'y a rien qui dure comme le provisoire*". Canada's interest in becoming a Contracting State would be greater if the Treaty appeared designed to lead in a reasonable time to the ideal solution of a single Searching Authority, and as a Contracting State Canada would be prepared to play its part toward that end.

78.3 Canada is one of a number of countries represented here which conduct a novelty search, essentially directed, in our case, to Canadian patents, but are not equipped to be International Searching Authorities. For such countries the benefits of the Treaty with respect to applications originating from other member countries would be greatly increased if the search conducted by the International Searching Authority or Authorities extended to their own domestic – originating patents. Thus, in the case of Canada, we would like the search to extend to Canadian patents which have no foreign counterparts. We would hope that some provision might be made in the Treaty for including patents of this kind in the International Searching Authority documentation, these to be selected and provided by the countries concerned. The inclusion of those patents in that documentation would improve the scope and hence the quality of the search.

78.4 The principal benefit of the Draft Treaty for applicants is to have the results of a thorough international search in time for consideration before they have to incur substantial expenses for applications in all the countries where, if the invention is really novel, they would want protection. It will consequently be of capital importance that the time limits in the Treaty for making the international search are definite and that they are adhered to, unless the Treaty includes a provision, undesirable from other points of view, that a delay in the search report will extend the period for paying national fees and supplying translations in the designated countries. Otherwise, the use of the PCT route, and hence the whole value of the scheme, is likely to be substantially reduced.

78.5 The Draft Treaty and Regulations which we have before us are elaborate documents containing many provisions which, it appears from comments already circulated, give rise to disagreement. It is noteworthy that the areas of apparent disagreement relate mainly to provisions which are not necessarily essential to the concept of an international search. In Canada's view, the other two objectives that I mentioned at the outset are not necessarily linked with the objective of solving search problems. We think it most important that this be borne in mind in considering the Draft and that complexities and expense connected with these other objectives be carefully scrutinized. There is nothing and there could be nothing in this proposed Treaty compelling applicants to use the route it offers for multi-country patenting. The Treaty will be of value only to the extent that the route it offers has clear advantages to applicants over present procedures, so that it is, in fact, used by applicants for patents. If the Treaty route is too complex and involves disadvantages by comparison with the present route, while offering substantial savings only where protection in a relatively large number of countries is involved, the Treaty is unlikely to be used to such an extent as to go far in solving the search problem, which in Canada's view is the primary objective.

78.6 Thus, if we find that we may not be able to solve the difficulties and disagreements concerning the international application and international publication aspects of the draft, let us not go home empty-handed but try to solve at least the search problem to a simplified system not involving these other features, perhaps one basing the international search on a national application and extending a priority period for corresponding applications in pre-designated countries, which are accompanied by an international search report when they are filed.

78.7 In conclusion, we would like to join the other delegations in thanking the host country and BIRPI for making this Conference possible. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

79. Thank you, Sir. I now call on the Delegate of Brazil.

Mr. NEVES (Brazil):

80.1 Mr. President, I shall start by expressing my Delegation's gratitude for the warm reception given us by our host country, the United States of America. Allow me also to join with the previous speakers in expressing my congratulations on your election. Under your experienced guidance we feel sure that this Conference will be able to achieve a positive step forward in the field of patents; and, I must add, we also hope that the results of our endeavors will facilitate the international transfer of technology to the underdeveloped countries of the world.

80.2 In fact, Mr. President, the Brazilian Government views this Conference as an extremely important landmark in the crucial problem of economic development. We want to see more than a

mere coincidence in the fact that we are assembled here to approve a treaty on patents on the very threshold of the second United Nations Development Decade. This Conference is a first concrete indication of the satisfaction on the part of the international community with the present state of the institutions that regulate the wider Rule of patents and the transfer of technology. We have come to it with the hope that the serious concern of both the developed and underdeveloped countries will be given adequate consideration.

80.3 It is also no coincidence that the institutions that discipline the international concession of patents aim at joining the United Nations as a new specialized agency. This fact in itself could be sufficient to indicate the willingness of all parties concerned to expand the conceptual framework for the examination of patents so as to encompass their full significance in the field of the adequate protection not only of the rights of the patent holder but also of the rights of the developing nations to innovate, at their respective historical stages, without undue hindrance or overburdening costs.

80.4 As we all know, the United Nations and its Specialized Agencies have already taken great steps forward in the realization of the necessary changes of the international institutional framework required to accelerate the economic development of three-fourths of mankind. The Brazilian Government believes that this Conference offers a great opportunity for practical steps in the crucial field of the role of patents in the transfer of technology and that this should be done under the philosophy set forth by the United Nations. It is in this spirit that the Brazilian Government welcomes the convening of this Conference to negotiate the Patent Cooperation Treaty. Mr. President, as you are fully aware, the Secretary-General of the United Nations has singled out technology as the most powerful force in the world for the achievement of higher standards of living. In fact, no additional amount of financing or of foreign exchange earnings, however substantial, can be adequate substitutes for the full availability of modern technology; and few of the underdeveloped countries are able to devise through their own unhindered research the technological solutions that most adequately fill their specific needs. They will depend almost exclusively on an increasing volume of imported technology. The process of economic development has a logic of its own which follows such a narrow path that it would be almost impossible for the laggards in development to devise entirely new and unhindered technological solutions for their problems. Being thus basically precluded from *bona fide* innovation, they should not be overburdened by limitations in the use of well-proven technology. Their treading of beaten paths in the technological field should not bring about a disquieting disequilibrium in their balance of payments nor add to the process of development an international burden that was not applied to the countries in the vanguard of development.

80.5 Having made these basic points as a necessary background for the consideration of our

problem, permit me, Sir, to elaborate in a general way on my Delegation's understanding of the role of patents in the transfer of technology. Mr. President, the patent is much more than a mere legal protection for industrial property. Its most important function is, in actual fact, economic in nature, since it is the instrument through which technical knowledge ceases to be a closely guarded secret and becomes an economic good. Knowledge is thus sold in the market place and is subject to economic laws. In this sense, the patent is itself a necessary condition of relative scarcity. It is paramount, however, that it should not give the technological knowledge the characteristic of a full, worldwide monopoly. It should not give its owner all the advantages of a monopolistic situation while, on the other hand, confronting the prospective international buyers of technology with the all-encompassing disadvantages of a total lack of alternatives: both the impossibility of legitimating reinvention of the industrial process and the absence of competition on the supply side of the market. Under conditions where buyer and seller frequently switch places and in addition have comparable purchasing power, such a monopoly situation might be tolerable, since it would impose no unilateral sacrifice on either one. The truth, however, is that we are dealing with a world market for technology where there is a striking discrepancy between the purchasing and bargaining powers of developed and developing countries, where the former are usually the sellers and the latter tend to be the buyers. Under these market conditions, Mr. President, to treat the subject of patents exclusively from the standpoint of the legal protection of the inventor's rights, while abstracting the internationally accepted right of underdeveloped countries to the full access within their means to the necessary development media, would run against the United Nations Charter and would run against the long-term interests of world prosperity, equilibrium and peace. It would be tantamount to discriminating against those very countries whose need to absorb technology as a necessary condition for their development is the greatest and whose capacity to incur the high costs of absorbing it is admittedly the smallest.

80.6 The Brazilian Government firmly believes that it is up to the international community to set in motion the wheels of cooperation with a view to compensating for this unfair economic situation. The conditions I have outlined require an economic approach which would contemplate special measures tailored to the specific needs of the developing countries among us and, to go about this task, there is no better moment than when the countries of the world get together to negotiate a Patent Cooperation Treaty.

80.7 Along with the invitation to attend this Conference, we received a Draft of the proposed Treaty as well as its Regulations. It is a formidable, commendable and, for the non-initiated, a forbidding piece of international legislation. This Draft aims at obtaining an economy of time and effort and a reduction of costs for the applicant for an international patent, while simultaneously increasing the solidity of the monopolistic legal protection implied by

international patents. No thought has been given, at least at this drafting stage, to any possibility of reducing the costs of the transfer of technology to its international buyers or of decreasing the imbalance in the relative positions of sellers and buyers of international technology. Extrapolations from intellectual property to patented technology are clearly discernible, regardless of the fact that the normal client of intellectual property, at least in underdeveloped countries, is a highly developed intellectual minority, while the international client of industrial know-how is basically the whole population of the underdeveloped communities.

80.8 The analysis of the Draft Treaty shows that, even though much thought has been given to it, the result is still the increase of rather narrow monopolistic goals without any compensatory balancing elements. Mr. President, I hope that I have made abundantly clear that my Government feels that the time has come when the problem of patents, as an important determinant of the volume of technology transferable to developing countries, should be viewed not only through its traditional, legalistic aspects but also in its economic perspective. It is necessary to consider, in relation to this problem, both the legal micro-problem of the great majority of patent holders and the macro-problem of national development. In other words, my Government thinks that trade in patents should be directly related to the economic development of developing nations; that trade in patents should be approached by the international community in the same manner as trade in other goods; that, consequently, developing nations should be granted the same special treatment they are given in all other economic forums today, that is, that they should not be expected to offer full reciprocity in their relations with the highly industrialized nations.

80.9 I fully realize, Mr. President, that all this prolegomena would have been a waste of your valuable time if I did not end this intervention by indicating what could be useful lines of change in the Draft. In his recent visit to Brazil, Dr. Bodenhausen encouraged us by stating that, if means could be found to improve the system of operation of the Paris Convention in order to further facilitate the transfer of technology, these means could be explored and put into practice as soon as possible. It is thus now incumbent upon my Delegation to draw the attention of the Conference to some of the directions in which the Draft Treaty could be improved, with a view to making it satisfactory to developing countries like my own.

80.10 The common thread of this discussion, Sir, is to render the Treaty less one-sided by expanding its scope to include provisions of interest to the developing countries. I will consider these changes from a broad standpoint in this general debate. My Delegation may be in a position to elaborate further on any one of them at the appropriate committee stage of our work.

80.11 The first of the changes that seem to be necessary encompasses measures that will reduce the degree of protection for technology that has already

lost its significance through the appearance of new developments in developed countries, while still representing adequate technological levels for developing nations.

80.12 Another point of great importance to developing countries is the expansion of the information content of the patent and of the international report. It seems fundamental to transform the patent from an instrument that contains the absolute minimum of information necessary to secure for its owner a virtual monopoly into an instrument which, while guaranteeing the protection of the rights of the inventor or of the patent holder, will transmit enough information to give the prospective clients in underdeveloped countries a clear notion of technological availabilities and alternatives.

80.13 It is also necessary to secure, internationally, measures that will provide, at adequate intervals, complete worldwide lists of patents that have fallen into the public domain and these lists should be fully informative, so as to permit a rapid choice of the new means thus made available.

80.14 And, as a fourth point, it is necessary to obtain much greater assistance for underdeveloped countries in the establishment of Patent Offices that will respond more fully to their specific needs and, especially, to their needs for the ample absorption of technology at low costs.

80.15 At this juncture it also seems convenient and desirable that both the developed and developing international communities arrive at a consensus on the need for taking, in their respective areas of interest, the necessary measures – physical, monetary or otherwise – to reduce the total amount of royalties presently being exacted from underdeveloped countries.

80.16 As may be seen, Sir, some of these suggestions aim at increasing the degree of competition on the suppliers' side of the international market, so that developing countries are offered a wider choice of more appropriate technology at costs more compatible with their possibilities and means. Competition would tend to reduce the increasing costs of the transfer of patented technology, thereby allowing for its absorption on a larger scale with mutual benefits to both developing and developed countries. Others relate to measures or commitments that would entail operational activities by the International Patent Cooperation Union or by the Governments that will have subscribed to this Treaty.

80.17 In conclusion, Sir, I must once more make it very clear that the Brazilian Delegation comes to this Conference with one basic attitude, namely, to cooperate in the improvement of the institutional framework relating to patents so as to obtain for it an appropriate balance. This may permit many underdeveloped countries to reduce or eliminate their misgivings in relation to the Draft as it now stands, and, we hope, allow the desirable accession of a greater number of countries to the Treaty and, at a later stage, to the Paris Union. If our general position is acceptable to other delegations, we shall be ready to work with them at a more concrete level. Whatever

we say or do, Sir, must not be construed as an attack against the world patent system or against the institutions that manage this system; on the contrary, we feel that the patent is a fundamentally necessary instrument in the transfer of technology to developing countries, but we also feel that a better balance between the positions of sellers and buyers of technology through patents would work to the benefit of both parties and, in the long run, would work in favor of a better balanced world economy. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

81. Thank you, Sir. Let us see how much more time we should allow for this session. I have one more delegation that wishes to speak. Now I see a second. I would suggest that, since there are a number of delegations that wish to speak, we adjourn for coffee. It is now about thirteen minutes of four; suppose we reconvene at 4:15. Now, before we break, I would like to speak to the members of the Steering Committee, which will comprise, in accordance with Rule 15 of the Rules of Procedure, the President of the Conference, the Chairmen of the Main Committees, the Chairman of the Credentials Committee, and the Chairman of the General Drafting Committee, that is, the United States of America, the Netherlands, France, Japan, and the Soviet Union. Would the members of the Steering Committee be good enough to meet now, as we adjourn, in Dr. Bodenhausen's office, which is Room 1212. As you go out, go to the right and it is one of the first doors on the other side of that aisle. The general Plenary will reconvene at 4:15. Thank you.

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Mr. BRADERMAN (President of the Conference):

82. Ladies and Gentlemen, may we resume our session, please. I would like to request once again the delegates who wish to speak to raise their cards. I have Algeria, Ireland, Denmark, Norway, Belgium, and South Africa. Have I missed anyone? All right, thank you. May I now call on the Delegate of Algeria.

Mr. DAHMOUCHE (Algeria):

83.1 Thank you, Mr. President. Mr. President, I was greatly impressed, a few moments ago, by the stirring and extremely sensible speech made by the distinguished Delegate of Brazil, and I should like, if I may, very briefly to philosophize on the subject for perhaps two or three minutes.

83.2 But first of all I want to say that I am not taking this opportunity to congratulate you on your election as President in view of the extremely ancient ties that bind Algeria and the United States. If I remember rightly, no later than last century the United States Government was accustomed to pay fees to the Government of Algeria to enter the Mediterranean, which shows how much relationships between forces has changed since then – I am now being philosophical, of course. What I mean is that in the field of economic power nothing is eternal.

83.3 I say this with some regret, Mr. President, because I have the impression that this Conference is

becoming more and more a technical conference. Of course, the subject of our discussions is technical. Nevertheless, this is a diplomatic conference attended by representatives of governments, representatives of States, who are bound to take into consideration not only the immediate interests, the so-to-speak financial interests of each country, but also a gradual development in the international community. And this development, by definition, means that things never remain as they are and that as far as our Conference is concerned we should avoid institutionalizing and freezing the present state of international relations and international institutions, particularly in the patent field, and that we should pay a little more attention to what international relations and international society could be in a few decades.

83.4 You have witnessed in the last ten or twenty years the emergence of a very large number of African, Asian and Latin Americans nations, and you have seen that they are extremely anxious to be given the chance of developing and that they will be able to do so only if a certain amount of assistance is afforded to at least a great many of them on an international scale. One of the obstacles to this development is the extremely high cost of transferring technology by means of patents. To be practical and express the matter clearly, there are in this room perhaps 15 or at most 20 countries – 20 representatives of 20 countries – capable of exporting technology to the entire international community, that is to say, those countries which contribute to inventive activity. All the rest – and I don't mean to be pejorative – form a host, to which we belong, of countries that are simply the clients of the major inventor countries. I shall not name any of the latter but it is certain, Mr. President, that the country to which you belong is undoubtedly one of the best known in this connection.

83.5 That is why, Mr. President, I believe we are witnessing a gradual transformation of international political geography and international relations, and that it would be very realistic to take this evolution into account and realize that we are not here today to inaugurate a meeting of experts, who have come only to work out some mechanism for the benefit of certain professional categories at a corporate conference. We are not here for that purpose.

83.6 I think we are here to see what we, as representatives of our States, can best do for the international community in this particular field. Nor are we the first to act in this manner. I believe that some bodies, such as the United Nations Conference on Trade and Development, have already been concerned with the transfer of such benefits and, according to the majority of the participants at these conferences, there should be no question of any such transfer being based on the reciprocity principle.

83.7 Mr. President, I said I would be brief and I shall keep my word. I want simply, in conclusion, to recall that when one speaks of patents one is always concerned with know-how, a know-how which has to be made available to the international community, a know-how which belongs, in the narrow sense of the word, to someone who has perhaps invented some

technical or technological process, but at the same time forms part of the whole sum of knowledge of the entire international community and – to put it strongly – of humanity itself, so that we cannot meet here simply to discuss mechanisms, centralization, and decentralization. There will, of course, be opportunities here for making practical improvements to certain existing mechanisms, but I think we should rise a little above that limited objective.

83.8 I believe it was the Delegate of Finland who said just now that when he read the Treaty it seemed to him that it would benefit both the industrialized and the developing countries. I am by no means as optimistic as he. I am trying vainly to reach a better understanding of this document and I can only hope that in the course of the proceedings – and despite the fact that it is not the exact purpose of our work – advantage will be taken in the coming days of the thousand and one opportunities there will be of reorientating our work a little to make it slightly more acceptable to the developing countries, which are in process of becoming the majority, at least as far as numbers are concerned, and to enable them to view the future with more confidence.

83.9 Mr. President, before concluding I should like to say that in a very general way – on matters of principle, at least – our Delegation strongly supports what has just been said by the distinguished Delegate of Brazil.

83.10 There is just one small final point, a matter of secondary importance. This morning we rather hastily adopted a number of documents on the agenda: the elections of the Chairman and Vice-Chairmen. Now, I know that this was done correctly – I should not like to be misinterpreted on this point – and that the Governments had been informed beforehand. But you know as well as I do, Mr. President, that often when delegations arrive here they are a little lost and are not always very sure what documents have been received by their Governments, and that delegates of a number of developing countries are frequently not informed at all. So I shall tell you quite frankly that when our Delegation learned this morning that there were already 40 appointments we did not of course want to make any objections – and we are still not protesting – but we know that some of these committees are very important. I referred this morning to the Steering Committee, for example. Now that we have been able to study these documents a little, we see a number of things that displease us. We see, for example, that this Steering Committee copies to some extent the structure of the Security Council, where there are permanent members, big powers, industrialized countries – perhaps not all of them, but we note the regular absence of the developing countries. This, Mr. President, does not seem to me to be a good thing because it tends to sanction the idea that this Conference is in fact reserved for some 15 countries. I believe that it is of interest to all of us, that it is perhaps of more special interest to the developing countries, and that they should be given the physical possibility to take part in all its proceedings. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

84.1 Thank you, Sir. I might just comment with respect to your last remark that I had not thought of the way in which the membership of the Steering Committee had worked out in that sense until you mentioned it. It was certainly not the intention of the Host Government to have it come out that way. When I announce the kinds of conclusions that we have reached at our first meeting in a moment, I do not think you will be at all concerned that you or any other countries, developed or developing, were not there. The matters are purely procedural and of no substantive consequence. I do certainly wish to say that, as far as the Host Government is concerned – and I am sure I speak for everyone – we want every Government, regardless of its size, regardless of its importance in any particular or no particular scale of measurements, to participate fully in all the work of this meeting.

84.2 May I now call on the Delegate of Ireland.

Mr. QUINN (Ireland):

85.1 Thank you, Mr. Chairman. I merely wished to add my voice and the voice of my Government to the thanks which have been expressed by other delegations for the invitation to participate in this Conference.

85.2 I also wish to express the hopes which have already been expressed by other delegations for the success of the Conference. We have welcomed and applauded the initiative of the United States Government in 1966 in making the original suggestion for this exercise in international cooperation in the field of patents. With others we have admired the skill, energy and dynamism with which BIRPI has developed this project and our papers to the stage at which we now have them. We hope that the Draft Convention and Regulations which are before us represent a consensus which now has a good chance of being accepted. My Government hopes that this Conference will fulfill the high hopes of the Host Government and of all those who have contributed to the development of this great project. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

86. Thank you kindly. I call now on the Delegate of Denmark.

Mr. TUXEN (Denmark):

87.1 Thank you, Mr. Chairman. I would like to add the thanks of my Government to those expressed by previous speakers to the Host Government and to BIRPI, and my congratulations to you personally, Mr. President.

87.2 Then I would like, on behalf of the Danish Delegation and the Danish Government, to say that we highly appreciate the work done by and within BIRPI on the preparation of this Conference. We find that a convention along the lines of the proposed text of the Treaty and the Regulations will be of great advantage for our industry and for our inventors. And we think that if Chapter II, Phase 2, of the proposed text is

accepted by a considerable part of the most industrialized countries and used by applicants from these countries it should solve some of the problems of our Patent Office too. Therefore we hope for the widest possible acceptance of the Treaty. We ourselves will be able to accept the Treaty and the Regulations as proposed with only a few amendments. Thank you very much.

Mr. BRADERMAN (President of the Conference):

88. Thank you, Sir. I now call on the Delegate of Norway.

Mr. NORDSTRAND (Norway):

89.1 Mr. Chairman. I would like to join the previous speakers who have expressed their thanks to the United States Government for undertaking the arrangements of this Conference, and to BIRPI for the excellent work they have performed in presenting the Draft in its present form.

89.2 For the Norwegian Patent Office, the most important feature of the PCT plan is the expected reduction of the search work, since more than 80% of our patent applications come from foreign countries. We also note and are pleased that the PCT plan will have some impact in the direction of harmonizing the patent laws all over the world. As a whole, we find the PCT plan of such importance that I, on behalf of my Delegation, express my sincere hopes that the Conference will achieve a positive result. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

90. Thank you, Sir. I now call on the Delegate of Belgium.

Mr. SCHURMANS (Belgium):

91.1 I need hardly say, Mr. President, that the Delegation of Belgium joins in the tributes and thanks which have been so rightly expressed to all those, including our hosts and the authors of the PCT plan, who have assumed the heavy task of organizing this Conference.

91.2 The Delegation of Belgium has heard with particular interest certain statements of principle; in particular those of the Delegations of Italy, Canada and Switzerland concerning centralized search, and agrees with them fully, in the belief that the final success of the Treaty depends on this principle.

91.3 The Delegation of Belgium has also listened with as much – if not more – interest and a certain emotion to the statement of the Delegate of Brazil and, a few moments ago, to that of the Delegate of Algeria. Speaking personally, I must say that I endorse entirely all that the latter has said.

91.4 If the PCT is to have its full significance not only now but also in the future, it will only be on condition that it is truly an instrument of worldwide cooperation, ensuring to all, and particularly to the countries which seek to break through the technological barrier, the benefits of an ever expanding store of knowledge, because (while this is not the place to say it): a patent is not, or is not only, a

legal instrument. It must, above all, be a source of progress and a stimulus to civilization. If such is the result of our work, the Conference will have achieved its purpose. This, in any case, is what I am hoping for. Thank you.

Mr. BRADERMAN (President of the Conference):

92. Thank you, Sir. I now call on the Delegate of South Africa.

Mr. SCHOEMAN (South Africa):

93.1 Thank you, Mr. Chairman. Mr. Chairman, Ladies and Gentlemen, our Delegation, on behalf of the Government of South Africa, wishes to take this opportunity of thanking the Government of the United States for extending this invitation to attend the PCT Conference here in Washington; and I also wish to congratulate you, Mr. Chairman, on your election for this Conference.

93.2 Whilst we do not encounter the same patent examination problems as the highly developed countries, we do benefit from the great number of patent applications and registrations made in South Africa. We will be pleased to cooperate with all countries in the development of the patents plan, and in the solving of the problems faced by examining Offices. Although our examination system may be confined to formalities, we feel we could benefit from the large store of knowledge which would be made available to us through the PCT. Such information, properly used, would be of great benefit to us and, if I may say so, to every other country passing through the stages of development. We hope to derive many benefits from the PCT if the procedures do not become too cumbersome and onerous for the applicants, who in the final stage must pay the price for the protection of their inventiveness. I trust that these discussions here will lead to acceptable solutions which will result in the general acceptance of the PCT by all member States of the Paris Convention.

93.3 In conclusion, Mr. Chairman, I want to congratulate BIRPI, and in particular Dr. Bodenhausen and Dr. Bogesch and the PCT staff, on the presentation of the documents and the arrangements made for this and all the previous meetings that we have had on the PCT. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

94.1 Thank you, Sir. Well, that now concludes the list of Member Delegation spokesmen, but I would like to ask whether there are any other Member Delegations that have not yet spoken who would wish to speak.

94.2 Now, in order to make it possible for non-member countries to make some general observations – and I note one has already so indicated – it has been proposed, in order that we should not violate the rules which we adopted this morning yet make that possible, it has been proposed to you by the Steering Committee that in a moment or two we adjourn the Plenary and reconvene immediately, without a break, as Committee I for the purpose of hearing Observer

Organizations and Observer Delegations make general comments. So that will be our procedure to handle the statements which others may wish to make. Our Secretary General has a comment that he would like to make.

Mr. BOGSCH (Secretary General of the Conference):

95.1 Mr. Chairman, I think that it may be useful if, after this very interesting discussion, BIRPI makes comments on two points, two points of a non-legal nature, which have been brought up and for the discussion of which this Plenary seems to be particularly appropriate.

95.2 One of these questions is the matter of documentation, information, *connaissance* – as the distinguished Delegate of Algeria has put it – which is implicit in all patent documentation and is a prerequisite of effective transfer of technology to the developing countries. The Delegation of Japan has called our attention to the fact that much has yet to be done in order to make cooperation in the field of documentation really effective and efficient between the Searching Authorities and between the Searching Authorities and the cooperating countries.

95.3 The Delegations of Yugoslavia, Zambia, Spain, Brazil, and Algeria – and maybe other delegations too – all have insisted on the importance of the technical information aspect. We consider in BIRPI that the PCT is the vehicle, the framework, the preliminary condition, for creating this possibility of closer cooperation in the technical information field, in the technical transfer of technology field and other aspects which both the developing and the developed countries desire but which should be particularly beneficial to the developing countries. We cannot guarantee today, before it is in operation, how efficient this will be, but in order to test it, it is necessary to create the framework and this is the main objective of the search and preliminary examination aspects of the PCT. So, help us to create a framework, and with the same energy and devotion as in working out the legal framework we shall try to make it a really useful instrument in practice.

95.4 The other point on which I would like to make a brief observation is the point concerning the centralization of the search, particularly mentioned by the distinguished Delegates of France, Switzerland, the Netherlands, Canada, and Belgium. Some of the speakers very kindly remembered that the PCT was instrumental in awakening from its slumber and sleep the European Patent Treaty, and we are very glad that it is so, and we consider that the IIB, the International Patent Institute, which today has a very limited membership, will find in the PCT the opportunity and the challenge to affirm itself more than ever before. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

96.1 Thank you, Sir. Before I conclude this session of the Plenary, let me just suggest to the Conference the recommendations of your Steering Committee as to our meeting times and the conduct of our work. It is suggested that Committee I – and only



Committee I – meet this week. Committee II will begin its deliberations next Monday morning, so that small delegations will have only one committee to participate in this week.

96.2 It is proposed that the hours be from 9 to 12.30 in the morning, except tomorrow morning when the meeting will begin at 10; and the afternoons will run from 2 to 6, unless an earlier adjournment is necessary because of a reception or some other event. So, to repeat, the hours will be normally 9 to 12.30, except tomorrow morning, and 2 to 6, unless an earlier adjournment is necessary. That concludes the report I have to make to you on the deliberations of the Steering Committee.

96.3 With that, I want to thank you all for your superb cooperation. I think the fact that people said only what was necessary to say, things that carry forward both the practical and the philosophical bases of our deliberations here, and did not engage in polemics or any unnecessary work is a good augury for getting our work going rapidly so that hopefully we will not have to spend all our weekends and evenings in meetings in order to conclude this meeting.

96.4 I want to thank you all for your personal expressions of appreciation on my own election as President. I am very happy to serve as Chairman at this Conference. I now adjourn the first meeting of the Plenary Session and it will be reconvened in a moment as Committee I.

*End of the Second Meeting*

### THIRD MEETING

Wednesday, June 17, 1970, afternoon

Mr. BRADERMAN (President of the Conference):

97.1 I do not know whether anyone is very happy to be in the Chair, or to be back in the Chair, but at any rate I am your servant this afternoon. We have several items, actually, before us as we reconvene this Plenary Session, and I thought that I would note them for all of you so that you can be sure you all have the documents before you. As I have it, there are five items that we are going to take up this afternoon.

97.2 The first is an approval of changes in the list of Officers, and I will come to this in a moment and explain why. Second, the report of the Credentials Committee, which is a document PCT/DC/122. The third item is that very small matter of the adoption of the Treaty and the Regulations. The fourth item deals with the adoption of the Final Act, that is, document PCT/DC/125. And the fifth item is a resolution which has been recently presented to you concerning preparatory measures for the entry into force of the PCT, which was submitted by several delegations; it is document PCT/DC/126.

97.3 The first item deals with the Officers of the Conference and Committees. The reason we must take this up at this late stage is that two countries that planned to be here with us and who were proposed by the Host Government and then accepted by all of you

as Officers of the Conference found at the last minute that they could not come. Those countries were Ceylon and Nigeria. I might say, incidentally, that we have had word from Ceylon that part of the problem was that they were in the throes of an election. In the case of Nigeria, they planned to come and were willing to come late in the Conference, but decided against it at the last minute. Both of these countries had been designated Officers of the Conference. As a result, I would like to propose to the Plenary Session that we replace these Officers by others who have been with us during the Conference. First, as Vice-President of the Conference, to replace Ceylon, I would like to suggest the Ivory Coast. Is there any objection to this suggestion, that the Delegate of the Ivory Coast be the Vice-Chairman? I call on the Delegate of the Ivory Coast.

Mr. COULIBALY (Ivory Coast):

98. Personally, I have no objection.

Mr. BRADERMAN (President of the Conference):

99.1 Is that agreeable to the Plenary Session? Thank you.

99.2 The other Officer we need to replace is in the case of Nigeria, Vice-President of the Drafting Committee, Main Committee II. I would suggest that we replace Nigeria by Iran. Is this satisfactory to the Delegate of Iran? Thank you.

99.3 Is this agreeable to the Plenary Session? All right. Then, with those substitutions, the remainder of the list of Officers remains as you have it in the original document which was circulated; and I call to your attention that it was PCT/DC/MISC/8 that listed the Officers of Committees of the Conference. Thank you.

99.4 The next item on our agenda is the report of the Credentials Committee, and I would like to call on Mr. Yoshino, the Head of the Delegation of Japan, to present the report of the Credentials Committee.

Mr. YOSHINO (Japan):

100.1 Thank you, Mr. Chairman. As Chairman of the Credentials Committee, I am very glad to state that the task of the Committee is now completed. During the period of this Conference, the Credentials Committee has met three times in order to examine the credentials and full powers shown by the delegations, according to the Rules of Procedure adopted by the Plenary. Yesterday, in our last session, we adopted our final report, which is now before you, Mr. Chairman, for the consideration of this Plenary Meeting. The document is PCT/DC/122.

100.2 Please allow me, Mr. Chairman, to take this opportunity to express my gratitude to all the delegates who participated in the work of the Credentials Committee for their friendly cooperation. I must report to you, Mr. Chairman, that most of the members were present in the meeting of yesterday, although yesterday was generally understood to be holiday of the Conference. Furthermore, I should like to extend my deep appreciation to Mr. Lorenz, the Delegate of Austria, who took the trouble of presiding

at the meeting when I was absent; and also to Mr. Voyame, the Secretary of the Committee, whose kind assistance has contributed so much to the accomplishment of the task of the Committee. Thank you Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

101.1 Thank you very much, Minister Yoshino. You all have before you then the report of the Credentials Committee, document PCT/DC/122. May we consider the report adopted? I see no dissent; then we shall consider the report of the Credentials Committee adopted. Thank you.

101.2 We now come to the Treaty and the Regulations. Our countries have come a long way, starting back in 1966. We have drafted, we have re-drafted many, many times over. There have been compromises, there have been all kinds of solutions to difficult problems. We have consulted together over the years and then, at this Diplomatic Conference, we have again reviewed all of the work that we have performed. We have debated the issues. We have made many changes in our working groups, and we have given consideration to the results of these efforts in Main Committees I and II under our very able Chairmen, and in the Drafting Committees. We have also taken a final look at the details and the wording, as you have just done at the last meeting of the General Drafting Committee.

101.3 Now, the Chair recognizes that while most of the Treaty is probably acceptable to all who are assembled here, without qualification, there are sections which some have accepted by making concessions to others, and that is one reason why several delegations have told me this morning – and have emphasized the fact – that it is important to deal with the Treaty as a whole because it does represent those compromises and suggestions by one delegation to another. After all, this process which we have gone through is the essence of international cooperation and in this particular case, as we are dealing with a Patent Cooperation Treaty, that is exactly what we mean by it.

101.4 So, then, my fellow delegates, we now have the Treaty and the Regulations before us, and, in accordance with Rule 36(1): of the Rules of Procedure, I would like to call for a vote on adoption of the Treaty and the Regulations. May I ask for a show of hands, because according to that Rule a majority of two-thirds of the Member Delegations present and voting in the final vote is required for adoption of the Treaty. May I have a show of hands? Thank you. Are there any opposed to adoption? Are there any abstentions? Well, it looks like a unanimous motion. May I congratulate all of you on a tremendous job well done!

101.5 May I now turn to item 4 on our agenda, the Final Act. This is, as I have noted, PCT/DC/125, the Final Act of the Conference. Is there any objection to adoption of the Final Act? I see none, then we will consider the Final Act as adopted.

101.6 The last item on our agenda this afternoon is the resolution to which I have referred, PCT/DC/126.

This item, as you will notice, was submitted by a number of delegations – Algeria, the Federal Republic of Germany, Japan, the Soviet Union, and Sweden. It was, however, submitted at a late hour and I do not know how much time you have had to consider it. May I call first on the Secretary General with respect to it.

Mr. BOGSCH (Secretary General of the Conference):

102. Mr. Chairman, the Secretariat tried to contact several delegations in addition to those who are the sponsors of this resolution, but because of the excursion to Cape Kennedy we were unable to reach many. This resolution, in the view of the Secretariat, is most desirable, particularly because of its paragraph 2(a):, which speaks about the interim institution of the Committee for Technical Assistance. Some delegations, in private conversations, asked the Secretariat whether this resolution would entail any financial burden additional to what is contemplated in the framework of the voluntary contribution system, which has been in effect for the last three years and which is expected to be in effect for the next years until the Treaty comes into effect. I would like to give public assurance that there will be no change in this respect. In other words, the Secretariat is not going to propose any additional measures for voluntary contributions, which are outside the framework of the Paris Union, if this resolution is adopted. We see a great encouragement, particularly for Chapter IV of the Treaty, which, as you know, deals with Technical Assistance, if we do not have to wait four years or three years or two years, or whatever time it will take for the Treaty to come into effect, before we can study the possibilities of implementing the important decisions which you have taken in connection with Chapter IV. Thank you Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

103. Thank you. Is there a discussion? I call on the Delegate of the Soviet Union.

Mr. ARTEMIEV (Soviet Union):

104.1 Mr. President, Ladies and Gentlemen, in connection with the discussion of the resolution in document PCT/DC/126, the Delegation of the Soviet Union considers it advisable to draw the attention of the Conference to the question concerning the prospective International Searching Authorities.

104.2 As you are aware, International Searching Authorities are appointed by the Assembly. However, since the establishment of a single International Searching Authority for PCT purposes in the near future is practically impossible but, at the same time, too great a number of such Authorities could adversely affect uniformity and the value of international search, it seems to us advisable at this time to know what preliminary opinions are on this problem. These preliminary opinions concerning the question which International Searching Authorities are going to carry out international searches when the PCT procedure is first used are very important ones. It is necessary that they be known in order that the great means deployed and efforts made so far by

certain national Offices will not be wasted or frozen for a long time to come.

104.3 In this connection, the Delegation of the Soviet Union would like to emphasize that the appointment of one or other national Office will probably depend on a number of factors, including considerations of an economic, social or geographical character. A recommendation in the records of the present high-level Conference on the subject of the prospective International Searching Authorities could allow a number of countries to begin already preparations for carrying out the international search and to start talks on the conclusion of regional agreements regarding mutual aid for completing the necessary search files to meet PCT requirements. It might help prospective member States to choose one or other of the International Searching Authorities, and would be useful in many other respects.

104.4 The Delegation of the Soviet Union proposes to insert in the records a note to the effect that the Committee for Inventions and Discoveries of the USSR is able to assume the tasks of an International Searching Authority after signature of the PCT and its ratification by the USSR. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

105. Thank you. Are there other delegates who wish to speak? I call on the Delegate of Argentina.

Mr. VILLALBA (Argentina):

106. Thank you very much, Mr. President. With regard to the resolution under discussion, which was presented by Algeria, Germany and other countries, we are not opposed to it, bearing in mind the statement made by the Secretary General. What the Deputy Director of WIPO has said would be in accordance with the position held by the developing countries, which during the meeting of the Executive Committee last year objected to the fact that the costs of the PCT, ICIREPAT, the International Classification and other minor tasks would be borne by all the countries of the Paris Union, even those which were not directly interested in them. That is why, if the Organization considers that the costs will be maintained within the limits of the program of voluntary contributions, we have no objections, That is all, Mr. President.

Mr. BRADERMAN (President of the Conference):

107. Thank you. Are there other delegates who wish to speak? I think it might be advisable to have a vote on this proposal. Again I call your attention to Rule 36(1): of the Rules of Procedure, which provides that what we adopt is by a two-thirds majority. Will all those in favor of adopting this proposal please raise your hands. The Delegate of the United States wishes to speak.

Mr. SCHUYLER (United States of America):

108. I question the need for a two-thirds vote on this.

Mr. BRADERMAN (President of the Conference):

109.1 The Delegate of the United States is technically correct. I was just trying to seek an

expression of use. In view of the point of order that has been raised, I will ask whether there is any objection to the resolution as proposed. Is there any objection to the proposal? I see that there is.

109.2 I call on the Delegate of the Netherlands. Thank you.

Mr. PHAF (Netherlands):

110. Mr. Chairman, it is not because I want to make an objection, but I am not quite clear what the proposal is that we should vote upon now. Could you give some clarification?

Mr. BRADERMAN (President of the Conference):

111. We now have before us the proposal by the Delegations of Algeria, Germany, Japan, the Soviet Union and Sweden, in document PCT/DC/126. It is a resolution concerning preparatory measures for the entry into force of the Patent Cooperation Treaty, and it is in essence a recommendation of this Conference to the Assembly and the Executive Committee of the Paris Union and the Director of the World Intellectual Property Organization.

Mr. PHAF (Netherlands):

112. I have no objection at all.

Mr. BRADERMAN (President of the Conference):

113.1 Thank you.

113.2 Is there any objection? I call upon the Delegate of Brazil.

Mr. DINIZ (Brazil):

114.1 Mr. Chairman, the Brazilian Delegation is in full sympathy with the goals of the sponsors of this resolution. I am not going to express an objection to it, but just the fact that we had this text for the last three hours only and we are not able to work up in our minds the full significance of the paragraphs as they now stand.

114.2 For instance, we do not see very clearly the relationship of the last paragraph, No. 3, with subparagraph 2(b):. In other words, we feel that, even though the intentions are desirable, the document having reached us at the last moment, we have not been able to really work up exactly the full meaning of it; and in that sense my Delegation, the Brazilian Delegation, will have to abstain from voting. Thank you, Sir.

Mr. BRADERMAN (President of the Conference):

115.1 Thank you. Is there any other delegation that wishes to make a statement? Is there any objection to the adoption of this proposal?

115.2 With the understandings of the statements that have been made by the Secretary General and the observations thereon by the Delegate of Argentina and the other observations that have been recorded, there is no objection and this resolution is adopted.

115.3 Our next and final session will be held at 10:30 on Friday morning. Tomorrow will be used by the Secretariat, as well as this afternoon and tonight, I am sure, to get all the documents before us in final

working order. I would hope that we could meet promptly at 10:30 on Friday in this room. Let us decide that we will meet here in this room at 10:30 on Friday. Some of you had indicated that you wanted to catch planes to various points and so we would, at that time, try to move as rapidly as possible.

115.4 In order to facilitate the proceedings and particularly the signing ceremonies, if delegations could indicate to the Secretariat beforehand whether or not they plan to sign the Treaty and the Regulations as well as the Final Act, or the Final Act, preferably by tomorrow or no later than early Friday morning, it would be very helpful in facilitating the proceedings that we are planning to arrange for the signing ceremony. We would also plan to have whatever closing statements the delegations may wish to make on Friday morning, so that we would utilize that perhaps one hour or one and a half hours for closing statements by delegations and the signing ceremony.

115.5 If there is no objection, then I propose that this session of the Plenary Session be considered as adjourned until Friday morning. Thank you all very much.

*End of the Third Meeting*

#### FOURTH MEETING

Friday, June 19, 1970, morning

Mr. BRADERMAN (President of the Conference):

116.1 Ladies and Gentlemen, good morning. We are sorry that we did not have better weather for you yesterday, since that was your only full day off during this long Conference. I will try to do better another time, but we are happy that some of you were able to get around and see something of our lovely city.

116.2 This is our final Plenary Session. We have adopted the Treaty and its Regulations, and a Final Act. We will have our signing ceremony shortly and we will have a few words to say about our procedures.

116.3 At this time I would like to call on someone who, as a lawyer and as Secretary of State, has followed our deliberations with great interest. I am indeed pleased to present to you the Hon. William P. Rogers, Secretary of State.

Mr. ROGERS (Secretary of State of the United States of America):

117.1 Your Excellencies, Ladies and Gentlemen, the achievement of a new treaty among sovereign states is always an important event. I am pleased to be here to pay my respects to all of you whose patient and skillful work has led to the successful negotiation of the Treaty on Patent Cooperation.

117.2 As a lawyer, I know the important role of patents in economic life. The new Treaty will facilitate the protection of industrial property and will foster the inventiveness and innovative spirit that is necessary for economic progress. It will contribute to international trade and investment, and it will bring benefits to the citizens of all of our nations.

117.3 In its technical aspects the Treaty, doubtless, will be of principal interest to those concerned with the protection of industrial property around the world. But the Treaty is more than a document to preserve the rights of inventors and to simplify the work of specialists in patent law and procedure. It represents another strand in the growing web of international understandings and contracts that is slowly but surely making our world a more civilized place and our relationships more productive of good for our peoples.

117.4 I note that parties to this Conference have come from all the major regions of the world – the Americas, Africa, Western Europe, Eastern Europe, the Middle East and the Far East. It is no small accomplishment to have reached agreement among nations with such varying legal systems and differing economic philosophies. I can only think that it is an encouraging result for us all, and I am happy and proud that my own Government was able to act as your host for this most successful gathering. Thank you very much and best wishes.

Mr. BRADERMAN (President of the Conference):

118. I would now, Ladies and Gentlemen, call on Dr. Bogsch, Secretary General of the Conference, for a few observations.

Mr. BOGSCH (Secretary General of the Conference):

119.1 Mr. Chairman, Ladies and Gentlemen, the Washington Diplomatic Conference on the Patent Cooperation Treaty, which will close in a few minutes, was attended by some 300 delegates. Seventy-seven States were represented; 55 are members of the Paris Union for the Protection of Industrial Property, and 22 are not members of that Union. They belong, as the Secretary of State has just said, to all parts of the world. This, in my view, is the really sensational fact about this Conference. The number of international organizations represented was 22; 11 of them are inter-governmental, and 11 are non-governmental.

119.2 The deliberations lasted four weeks. They took place in 2 Main Committees, 8 Working Groups, 3 Drafting Committees and a Credentials Committee. A Steering Committee coordinated the work of the various bodies. These Deliberations were based on a Draft Treaty and annexed Regulations prepared by the United International Bureaux for the Protection of Intellectual Property, BIRPI. The Drafts were the fruit of four years of consultations and meetings both with representatives of governments and with representatives of inventors, industries and the patent profession. The present Conference has further improved these Drafts.

119.3 Among the many improvements effected by the distinguished Delegates attending this Conference, perhaps the most significant is the writing into the Treaty of a new Chapter – Chapter IV – which goes beyond the original goals of the Treaty, and provides the framework for technical assistance to developing countries. Assistance to developing countries is the main preoccupation of our times and the most difficult of the tasks of international organizations. The

technical assistance connected with the new Treaty will be in two fields: technological information and improvement of the national and regional patent systems. The task is an enormous one. Through your decision, the World Intellectual Property Organization has received a new mandate. The International Bureau will do its best to be worthy of the confidence you have placed in it.

119.4 As to the original goals of the Treaty, you have found, honorable Delegates, a most felicitous wording in which to express them, in a preamble which is also a new element in the Treaty, and one which was created by this Conference. The words in question are “contribution to the progress of science and technology,” “perfecting the legal protection of inventions,” and, finally, “rendering more economical the obtaining of protection for inventions where protection is sought in several countries.”

119.5 In the body of the Treaty itself, you have rewritten the article on definitions by giving due emphasis to the notion of inventors’ certificates. You have found an elegant solution to the old problem of naming the inventor in the application. You have established closer ties between the Treaty and the Paris Convention, by making membership in the Paris Union a condition for becoming party to the Treaty. You have solved the problem that exists because of the diversity of national laws in respect of the date of the prior art effects of applications.

119.6 You have given a completely new dimension to the concept of an international-type search. The Treaty itself now provides that countries may require such a search on purely national applications. Here is another feature of the Treaty which is capable of being useful to developing countries.

119.7 You have written into the Treaty the name of the International Patent Institute. The Treaty constitutes a unique opportunity for that Institute to expand.

119.8 You have written into the Treaty the right of any applicant and any national Office concerned in the application to obtain copies of the documents cited in the search report. This is a feature which will doubtless facilitate rapid documentary information.

119.9 The articles on the amendments in the application in the national Phase have been improved in a way which gives further assurances both to national Offices and to the applicants.

119.10 The Conference has fundamentally modified the article on regional patents. A certain interlocking effect has thus been established between international and regional applications which, it is hoped, will be beneficial to both.

119.11 As far as the Regulations are concerned, you have further perfected the two key rules concerning the form of description, and the form of claiming, in applications. You have also placed these rules among those whose future amendment requires unanimity, at least during the early stages of the Treaty. You have also perfected the rules on the time limits for search and for amendment of the application in the national phase.

119.12 As far as the administrative provisions are concerned you decided to write an article on an Executive Committee, and one on disputes. You have changed the provisions concerning the number and qualifications of the countries whose ratifications will bring the Treaty into force. Finally, in a true spirit of mutual understanding, you have found a solution to the question of the Treaty’s applicability to certain territories.

119.13 This, Mr. Chairman, is of course only an incomplete list of the many improvements which, as the result of almost 100 written proposals by Delegations, have been effected in the Treaty and the Regulations which, in a few minutes, will be opened for signature.

119.14 The fact that so much has been accomplished in such a short time is also due to the merit of those persons who have assisted us, both now and in the course of the preparatory work. The Secretariat has been helped most efficiently and most graciously by the men and women who were put at the disposal of the Conference by the State Department or the Commerce Department. Their tireless efforts and their dedication have made this Conference a success also in the purely technical sense. I would like to mention a hundred names at least but since time does not permit me to do so, I shall mention only two, Mr. William Keough, Assistant Secretary General for Administration of the Conference, and Miss Irene Piechowicz, the Documents Officer of the Conference. May I here publicly thank them and, through them, all their collaborators for the wonderful work they have done. The same goes for the interpreters. They are charming, willing and absolutely accurate in their work.

119.15 Finally, I ask for your permission, Mr. Chairman, to name a few of my collaborators so that the record should show the names of the individuals whose intelligence and devotion were indispensable elements in the preparation of the Treaty. Professor Bodenhausen, the Director of BIRPI, would, I am sure, welcome this, had his health permitted him to be with us today. Here, too, the list cannot be complete. But those who were with us during this Conference are: the Second Deputy Director of BIRPI and Assistant Secretary General of this Conference, Joseph Voyame; the Head of the Industrial Property Division of BIRPI, Klaus Pfanner; the Head of the PCT Section of BIRPI, Ivan Morozov; the Head of the General Section for Industrial Property in BIRPI, Richard Wipf; the Head of the Languages Services of BIRPI, Mrs. Grandchamp; the Head of the Documents Services of BIRPI, Henri Rossier; our administrative Officer, Magbool Quayoom; and our secretaries, Rosemary Bourgeois, Andrée Bernillon and Karin Wachs. Mr. Chairman, honorable Delegates, they too, like myself, have been proud to serve you in this Conference, and wish you a happy return to your respective countries. Thank you.

Mr. BRADERMAN (President of the Conference):

120.1 Thanks very much to you, Mr. Secretary General. Before calling on other delegations, I find we have one item of unfinished business; the

Credentials Committee met this morning and held its fourth session, under the chairmanship of Minister Yoshino, of Japan; and the Committee decided to make the following additions to its final report. The report we had before us on Wednesday was PCT/DC/122; this is PCT/DC/131. The additions are to add Cameroon to paragraph 5 and to add Peru to paragraph 7.

120.2 Is there any objection? I see none. Then we will regard that final report of the Credentials Committee as accepted.

120.3 I now invite any delegations who wish to comment to do so. Are there any that wish to comment? I call upon the Delegate of France.

Mr. RASTOIN (France):

121.1 Mr. President, Ladies and Gentlemen, on behalf of the Delegation of France, I should like at the close of the proceedings of this Conference, to thank the Government of the United States of America for its hospitality, which has been true to tradition. I should also like to thank most particularly the President of the Conference, Mr. Braderman, and, at the same time, all the staff for the excellent organization, which has, I believe, enabled us to do a good job.

121.2 The Draft Patent Cooperation Treaty, whose principles we have unanimously approved, is important. Its implementation may represent a considerable step forward compared with the situation as it stands. Indeed, the 1970s, like former decades, will be marked by further developments in the field of science and technology, and these developments are essential if members of the international community are to fulfill the twofold purpose they must keep in view. This purpose is, on the one hand, to increase world production to meet the needs of an expanding population still largely suffering from the ills attendant upon retarded development, and, on the other hand, to protect or restore our natural and social background, so gravely threatened today by the fall-out of developed industrial societies. The worldwide expansion of new technology will continue and that is why a treaty facilitating both the spread and the protection of inventions and innovations comes, I believe, in good time.

121.3 Apart from the substance of the provisions adopted, it is also encouraging to note that the proceedings of this Conference have provided the opportunity for a display of the spirit of true international cooperation, the spirit which already motivated our predecessors on the occasion of the conclusion of the Paris Convention in 1883. It was this spirit of cooperation that prompted the American proposal of September 1966. The same spirit has been the constant source of inspiration behind the work of the experts and the BIRPI team and its leader, the Secretary General of this Conference. And, finally, it is this spirit of cooperation that has made it possible to improve upon the initial Draft by adding new provisions enabling all States, particularly the developing countries, to benefit from the concrete

advantages of this cooperation which they so rightly aspired to.

121.4 Tomorrow, this same spirit of cooperation will have to ensure the harmonious coordination of the new Treaty with other diplomatic instruments, including the treaty on regional patents, to which France attaches special importance. It will have to help us, as it has done during this Conference, to overcome the inevitable differences of opinion and facilitate the solution of the problems connected with implementation.

121.5 Although, in view of its instructions, the Delegation of France will not be signing this Draft Treaty in a few moments, I can assure you that it will report faithfully to its Government on the atmosphere of moderation and mutual understanding that has prevailed throughout this Conference. We have reasonable hopes that the combined efforts of all will make the Patent Cooperation Treaty a daily living reality of international practice.

Mr. BRADERMAN (President of the Conference):

122. Thank you very kindly. I now call on the distinguished Representative of Germany.

Mr. HAERTEL (Germany (Federal Republic)):

123.1 Mr. President, Ladies and Gentlemen, the German Delegation is satisfied with the outcome of this Conference. It regards the conclusion of the Patent Cooperation Treaty as the most important event in the field of international patent law since the founding of the Paris Union in 1883. The Treaty has not of course fulfilled all our hopes. As our President has said, it is a compromise, but every workable international treaty must be a compromise.

123.2 In the view of the German Delegation, special importance attaches to the reservation provided for in Article 64(4):. We trust that those States – if any – which avail themselves of this reservation will do so with moderation and prudence, to avoid prejudicing the international application.

123.3 The uncertainty which still exists with regard to the future effects of the Treaty on certain States may influence the attitude of the Government of the Federal Republic of Germany when the Treaty is to be ratified. We are all the more pleased that the acceptance by the Conference of the resolution contained in document PCT/DC/130 makes it possible, irrespective of the date of entry into force of the Treaty, to start immediately to take measures concerning the cooperation provided for in the Treaty, in particular the technical assistance to be afforded to developing countries. The German Delegation reiterates the willingness of the Government of the Federal Republic of Germany to do whatever it can to make this technical assistance as effective as possible.

123.4 The successful conclusion of the Patent Cooperation Treaty today in Washington will give new impetus to the preparations for a European patent system, on which 17 European States are at present working and the aim of which is the creation of a European patent. We are convinced that the PCT and the proposed European patent system are not only

compatible with each other but will successfully complement each other.

123.5 The German Delegation will sign the Patent Cooperation Treaty here today in the hope that it will be another step towards a better understanding among nations.

123.6 In conclusion, may I associate myself with the thanks already expressed by the Head of the Delegation of France to our hosts and to BIRPI. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

124. Thank you, Sir, very much. I now call on the Delegate of Algeria.

Mr. DAHMOUCHE (Algeria):

125.1 Thank you, Mr. President. Mr. President, as pointed out a few minutes ago, a new Chapter has been inserted in the Treaty and adopted. Obviously, the International Bureau was not prepared to adopt this new chapter. In the circumstances, we are all the more grateful to the BIRPI team for the efforts they have made and to the delegations present here for their comprehension in adopting this new Chapter on cooperation between developed and developing countries. We can well understand the difficulties which a conference of this sort may have encountered in inserting this new Chapter in the Treaty. I am not speaking at the moment on behalf of all the developing countries but perhaps they will allow me to say, in their name, that we are satisfied with the results of this Conference. Speaking for the Delegation of Algeria, I wish to say that we shall be signing the Treaty in a few minutes.

125.2 I should not like to conclude without also congratulating all those who contributed to the success of this Conference, particularly and above all Mr. Braderman, Mr. Schuyler, Professor Bodenhausen, and Dr. Bogsch and all his team, without forgetting the staff and especially the Delegation of the United States of America and the United States Government, which once again has done justice to its traditional hospitality.

125.3 In conclusion, Mr. President, may I draw special attention to the remarkable qualities of someone who is absent – Mr. van Benthem, Chairman of Main Committee II. I had the pleasure of finding myself often on his right and I should like to ask you, Mr. President to convey to him, through the Delegation of the Netherlands, our appreciation of his competence, his kindness – and his cigars! Thank you.

Mr. BRADERMAN (President of the Conference):

126. I now call on the Delegate of the Netherlands.

Mr. PHAF (Netherlands):

127. Mr. Chairman, Ladies and Gentlemen, just a short declaration. In a few minutes, as you have said, we will begin the signing ceremony. At that moment, all delegations will sign the Final Act of this Conference. We shall not sign the Treaty, but we should like our reason for not doing so to go on record. It is not, Mr. Chairman, that we still have any

serious misgivings about certain provisions of the Treaty. We think it is a good, overall compromise treaty, as we have achieved it here at this Conference. The only reason is that, as a matter of general policy, our Government likes to brood a bit on the results of any diplomatic conference before taking the final decision to sign. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

128. Thank you very much. We understand the position of the Netherlands. I call on the Delegate of Japan.

Mr. ARATAMA (Japan):

129.1 Mr. Chairman, we are very glad to see that the Patent Cooperation Treaty has been unanimously adopted by this Diplomatic Conference and that the Treaty is now open for signature.

129.2 This Treaty is the result of continuous efforts on the part of a number of people from all the continents of the world. It is true that in the course of the preparation and also during this Conference we sometimes had difficulties, but nothing gives me greater pleasure than the fact that all the difficulties were overcome by the spirit of cooperation shown by all the participants. I am convinced, Mr. Chairman, that this Treaty, when it enters into force, will open up a new era of international cooperation in the field of patents and will contribute greatly to the development of technology. Also, it should not be forgotten, Mr. Chairman, that the discussion on the problems of the developing countries was one of the main issues of this Conference, and I welcome the fact that a solution has been found which is acceptable to all delegates.

129.3 Let me take this opportunity, Mr. Chairman, to express our deep appreciation for the work that has been done by everyone in the hard-working team of BIRPI.

129.4 Last, but not least, I should like to express my heartfelt gratitude, on behalf of the Japanese Delegation and all the other delegations, to our colleagues from the United States for their efforts in arranging such a successful conference, and for their hospitality, which has made our stay in Washington a most enjoyable one. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

130. Thank you very much. I now call on the Representative of the Malagasy Republic.

Mr. RAZAFIMBAHINY (Malagasy Republic):

131.1 Mr. President, Ladies and Gentlemen, the Delegation of Madagascar would like to express its satisfaction with this Treaty which is shortly to be signed. We believe that the very fact that the fundamental question – the question of the developing countries – has been largely taken into account can only give cause for satisfaction. The developing countries themselves have, at the same time, raised a number of problems, which have been taken into consideration in the text of the Treaty, and again we have every reason to be satisfied. It is not possible, of course, in any treaty or any convention to give full

satisfaction. Full satisfaction is not of this world. If you do obtain it, you are already in another world!

131.2 Now, Mr. President, as the Treaty is about to be signed we should like to explain why the Delegation of Madagascar and the Delegations of the Member States of the African and Malagasy Industrial Property Office, which is a specialized body of the joint African and Malagasy Organization, will not be able to sign it today. Our Office – OAMPI – and we ourselves take this opportunity to thank you for inviting the Director General of this organization to attend the Conference in an observer capacity. Ours is a regional organization, however, which has its own rules and its own structure by which we are bound. We must first present the text of the Treaty to our respective Governments, like a number of other delegations here, and then the Council of Ministers of the African and Malagasy Industrial Property Organization will see it and, within the time limits prescribed by that Organization, each of our Member States will sign it, with great pride, great satisfaction, and great pleasure, now that the spirit of international cooperation shines through the lines of the Treaty for all to see.

131.3 Before concluding, Mr. President, I should like, on behalf of the Delegation of Madagascar, to thank all those who have organized this Conference, from the top to the bottom of the ladder, and especially those who are usually forgotten, those who work in the background, behind the scenes, in Offices, and who have added their stone to the structure, and played their part in bringing the Treaty to a successful conclusion, those whose contribution to international solidarity we can be justly proud of. Thank you very much, Mr. President.

Mr. BRADERMAN (President of the Conference):

132. Thank you very much. I now call on the Delegate of Sweden.

Mr. BORGGÅRD (Sweden):

133.1 Mr. Chairman, on behalf of the Delegations of Denmark, Finland, Norway and Sweden, I want to express our satisfaction with the results which have been achieved at this Conference. The Scandinavian countries have, from the time of the adoption of the Paris Convention, actively engaged in efforts to improve the patent system through international cooperation. In conformity with this general attitude it was natural for our countries to welcome an international system such as the PCT system for the simplification of the procedure for obtaining patents in several countries, and for facilitating the task of national Patent Offices. We consider it a privilege to have been able to actively participate in the preparatory work for the PCT, and we hope that some benefits have been derived from our experience with the recently introduced common Scandinavian patent legislation.

133.2 The preparatory work has now resulted in a Treaty, which should greatly aid inventors and industry in the exploitation of improved technology. At the same time, the implementation of the Treaty

promises to relieve overburdened national Patent Offices and to assist administrations now lacking resources for the search and examination of patent applications. Moreover, by economizing the resources needed for the mere administration of patent applications, the plan should enable national Patent Offices to engage more actively in the diffusion of knowledge and use of modern technology, which is one of the paramount aims of the patent system.

133.3 We are particularly pleased that the benefits which developing countries may derive from the Treaty have been largely improved. However, much work remains to be done before this plan becomes effective. It is of great importance that during the period preceding the entry into force of the Treaty efforts should be pursued to make the Treaty a working instrument which will effectively serve the purposes for which it is intended. It should be emphasized that the success of the PCT plan depends, to a very large extent, on the loyalty of the Contracting States to the aims and purposes of the plan, and on the manner in which these States respect each other's interest in connection with the PCT.

133.4 The results of this Conference could not have been accomplished without the concerted efforts of a great number of people, from both government and private circles. The untiring efforts and the admirable work performed by the leadership of BIRPI have been a necessary prerequisite for these achievements. On this occasion, our particular thanks go to the Government of the United States of America, which took the original initiative to establish the Treaty and which through its splendid hospitality has made possible the success of this Conference. Thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

134. Thank you very much. I now call on the Delegate of Israel.

Mr. SHER (Israel):

135.1 Thank you, Mr. Chairman. Mr. Chairman, Ladies and Gentlemen, in its comments on the Draft Treaty, the Government of Israel stated that, although it served as a basis for discussion, the Treaty should be amended in order to meet the special needs of developing countries. We are happy to say now, at the close of the Conference, that our wishes have been fulfilled, and we are glad that we are able to sign this Treaty in the form it has acquired. The Treaty, once it enters into force, will not only be a useful tool for cooperation in the patent field, aiding both applicants and Patent Offices but also a means for development, offering new possibilities to developing countries for progress and advancement in the patent field and its administration.

135.2 It is our sincere belief that the information service, once established, and the Committee for developing countries, to which we hope to be able to contribute, will, when making their first recommendation – which we hope will be as soon as possible – enhance development and aid the



“developing Patent Offices” to become equally useful members of the family of Patent Offices.

135.3 The time has not come to assess the future impact of the Treaty or to evaluate its provisions, but I must make one comment. While harmonization of patent laws would appear useful in the long run, at this stage the principle of the Treaty in preserving national laws is essential and we are happy that we were able to assist in preserving this principle, in connection, for example, with the special reservation concerning prior art.

135.4 One last remark, but not the least important: this Conference has once again demonstrated that when dealing with cooperation political differences have not been set aside and each nation has been able to contribute to the best of its ability and to have its say in the course of reconciling positions. May I add, on behalf of our Delegation, some words of thanks to the Chairman of the Conference and the Main Committees, the Secretariat and, of course, the Host Government, who have all contributed to the success of our labors. Thank you very much, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

136. Thank you, Sir. I now call on the Delegate of the Soviet Union.

Mr. ARTEMIEV (Soviet Union):

137.1 Mr. President, Ladies and Gentlemen, on the occasion of our final meeting of the Diplomatic Conference, I want to make only a short statement.

137.2 The Soviet Union has always attached and still attaches great importance to international cooperation in all spheres of State activity. The present Diplomatic Conference is an excellent example of taking account, in a complete manner, of the interests of the various countries of the world in the field of international cooperation on the patenting of inventions. I should like to express the hope that the spirit of cooperation which prevailed at the Conference will spread to other spheres of relations among the different countries of the world.

137.3 Mr. President, on behalf of the Delegation of the Soviet Union – and I hope the other delegations will join me – I should like to express my great gratitude to you as President of our Conference for the capable and diligent manner in which you have presided over the meetings of the Diplomatic Conference.

137.4 I should like to express my gratitude to the organizers of the Diplomatic Conference for their fine organization of the work of the Conference, as a result of which much in the field of the protection of industrial property has been achieved. We believe, in fact, that this Conference will go down in history. I should also like to render BIRPI its due for its excellent organization of the work and for the tremendous efforts which have been made by the Secretariat to help produce the fruitful results of the Conference. Finally, I have great pleasure in expressing my gratitude to the technical personnel of our Conference, and especially to the interpreters of the Russian language who have helped the Delegation

of the Soviet Union very much in its work. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

138. Thank you, Sir. I now call on the Delegate of Italy.

Mr. RANZI (Italy):

139.1 Mr. President, I should simply like to say that the Patent Cooperation Treaty is not only the best one could have hoped for at the present time but, above all, it shows fair and reasonable promise for the future. It is in this spirit that the Delegation of Italy is preparing to sign the Treaty.

139.2 May I take this opportunity to express the thanks of the Delegation of Italy to the United States Government, to BIRPI, and to all those who have done so much to contribute to the success of this Conference, and done it so well. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

140. Thank you, Sir. I call on the Delegate of Romania.

Mr. IONITA (Romania):

141.1 Mr. Chairman, fellow Delegates, the Delegation of the Socialist Republic of Romania would like to join the other delegations in expressing its appreciation for the work done by the Diplomatic Conference on the Patent Cooperation Treaty. We believe that the Treaty and the Regulations, approved in the Plenary the day before yesterday, offer the possibility of serving better the advancement of science and technology in the world, the legal protection of inventions, and social and economic progress, in the only way possible today, through international cooperation among States on the basis of the unanimously recognized principle of international law, sovereignty, equality of rights, and mutual advantages.

141.2 Guided by the above considerations, the Romanian Delegation has tried to make its contribution to the Conference and we wish to express our satisfaction that some of our proposals and suggestions – many of them similar in letter and spirit with the proposals of other delegations – have found their place in the final text of documents PCT/DC/128 and 129. At the same time, of course, we regret that some of our proposals, which in our view would have enhanced the efficiency of the new Treaty, were not accepted. I am specifically referring to Rule 88, which we would have preferred to be in accordance with the spirit of the Treaty, namely, that any amendment to the Regulations as well as any amendment to the provisions of the Treaty would bind only the States accepting the relevant amendments.

141.3 On behalf of the Romanian Delegation, I would like to thank you personally, Mr. Chairman, for the manner in which you have conducted the proceedings of our Conference. I would like to thank the Government and the Delegation of the United States, who have served with traditional hospitality

and efficiency as the hosts of this Conference; as well as the other delegations for their cooperation and contributions to the positive results of the Conference. It goes without saying that our thanks are extended to the distinguished Secretary General, to the whole staff of the Secretariat, and to all the technical staff, whose smooth and tireless work greatly contributed to the successful completion of our work. I thank you, Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

142. Thank you, Sir. I now call on the Delegate of Togo.

Mr. OHIN (Togo):

143.1 Honorable Delegates, the spirit of comprehension which has prevailed throughout the four weeks of this Conference has produced a masterpiece of compromise. The major developed countries, with their interminable lists of inventions and their technological capacities, and the developing countries, like my own, which are only starting in this field, have both been given satisfaction. If the Delegation of Togo does not sign the Treaty today, it is not because there is any opposition on our part; it is simply a question of procedure, all the more important since the Ministers of the countries of OCAM, of which Togo is a member, will be meeting very shortly. Apart from this question of a general nature, it is of course understood that OCAM will give its full support to the declaration made here and I should like to add that I share entirely the views of my friend and colleague, the Ambassador of the Malagasy Republic, who, as former Secretary General of our Organization, has already confirmed that OCAM would not raise the slightest objection to signing the Treaty.

143.2 Mr. President, may I, in conclusion, offer my warmest congratulations to all the organizers of this Conference, to BIRPI, and, of course, to the United States Government for its untiring efforts to reflect on this occasion the well-known, traditional hospitality of its country. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

144. Thank you very much. I now call on the Delegate of Brazil.

Mr. DINIZ (Brazil):

145.1 Mr. Chairman, the Brazilian Delegation is going to sign the Patent Cooperation Treaty today. In so doing, we are convinced that we are associating ourselves with an important instrument for the economic development of the Contracting States and, especially, of the developing countries. In so doing today, we want to show our gratitude to all the delegations who have unanimously given their support to the special provisions contained in Chapter IV. Permit me to express our confidence in the efficient implementation by governments of the provisions of this Chapter, under the inspired leadership of Dr. Bodenhausen and Dr. Bogsch.

145.2 Our thanks go to you and to your Government, Sir, for the warm hospitality offered to us during this Conference. Thank you very much.

Mr. BRADERMAN (President of the Conference):

146. Thank you, Sir. I now call on the Delegate of Austria.

Mr. LORENZ (Austria):

147.1 Mr. President, Ladies and Gentlemen, you know as well as I do that we came here with a mixture of grave anxiety and great confidence. You also know that our confidence has been more than justified. That is why, unreservedly and without repeating everything in detail, I can associate myself with all the compliments and all the words of gratitude that have been expressed here today to the Host Government, to the Secretariat, and to all the delegates who have so loyally and so diligently contributed to the truly satisfactory results that have been achieved.

147.2 Unfortunately, I am in the same position as those delegations whose countries have what I might call "technical provisions" (in the broad sense of the term): which prevent them from signing here today the Treaty which is the outcome of all this splendid work. I must say that it is particularly painful for me to be unable to express in this way the gratitude which, I repeat, would be so entirely justified. All that I have been able to obtain – at the last moment – is the possibility of making a very small gesture of gratitude, by signing the Final Act. But, before leaving, I can assure you, with all my heart, that the efforts of the Delegation of Austria will not stop here and now, at this Conference. We shall continue our efforts, in order to make our gratitude as complete as possible, first of all by signing within the prescribed limits the Treaty which has emerged from this Conference in the hope of being able to take an active part in building up the system we have created. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

148. Thank you very much. I call on the Delegate of Australia.

Mr. PETERSSON (Australia):

149.1 Thank you, Mr. President. Mr. President, Ladies and Gentlemen, Australia has asked for the floor not because it feels it can say what has been so well said already but because it thinks that it should be heard for a number of special reasons.

149.2 Firstly, because Australia is placed in a remote situation on the globe and our neighbors, our Paris Union neighbors, are not closely related and, indeed, do not fall into a natural group; we feel that we would like to have our voice heard. Secondly, because Australia's admiration for the preparation and conduct of this Conference, which has resulted in a historic Treaty, is unbounded. And, Mr. President, if I may couple these two previous thoughts I would say that I think that our admiration is directly proportional to the distance we have travelled to come to this lovely city. I think that the Conference must have created a new standard in hospitality. We shall always remember the generosity and kindness of our most wonderful hosts.

149.3 The other reason, Mr. President, why I specially wanted to speak concerns the signature of this Treaty. We shall sign the Final Act, but we do not propose to sign the Treaty. This is not to be construed in the sense that Australia is not interested in this Treaty. It is interested, it is vitally interested and, indeed, I think our record would show how much we are interested in this Treaty. But, as a matter of policy, Mr. President, we would prefer to consider the question of the Treaty deeply, and consider it possibly for some time, as well as the question of our accession.

149.4 Mr. President, thank you once again for giving me this opportunity of saying publicly how much we have appreciated all that you have done, all that the Host Government has done, and of saying it with great sincerity. Thank you, Mr. President.

Mr. BRADERMAN (President of the Conference):

150. Thank you. I now call on the Delegate of the United States of America.

Mr. SCHUYLER (United States of America):

151.1 Mr. Chairman, speaking on behalf of the Government of the United States, it has been our pleasure to have the delegates of 77 nations and 22 organizations to visit our nation's capital on the occasion of this Diplomatic Conference. I think I may also speak on behalf of private circles in the United States in extending to you their pleasure in having you participate in this Conference, because it was their generosity which made possible the hospitality which so many delegates have indicated they have enjoyed. We are happy that the United States will be among those nations which will sign the Treaty today.

151.2 As has been indicated, our efforts cannot stop with the application of signatures to the document which is the Treaty. The true test of the Treaty, and the true test of the work that has been put into this Conference and into the preparation for it, lies ahead. The test is a twofold one: first, for the Treaty to become an effective international document it must be ratified, as provided in the text; and it is my personal hope that the United States may be among the first nations to ratify it, although, as I have previously indicated, it must undergo some legislative processes which require time. But the second test of this Treaty, and perhaps an even more important one, will be its use by the applicants from those nations which adhere to the Treaty. And again it is my personal hope that applicants from the United States will be among the first to utilize the avenues provided by this Treaty and to reap the benefits which we see in it.

151.3 Beyond that, I would like to say also that the United States looks on this Treaty as a beginning. While it is a giant step since the Paris Convention came into being, we hope that many other steps will follow, and that we will have further cooperative progress toward harmonization of the national requirements which are applied to protection of inventions internationally. It has been our pleasure to have you here and we hope that you will return soon again. Thank you. Mr. Chairman.

Mr. BRADERMAN (President of the Conference):

152. Thank you, Sir. I now call on the Delegate of Uruguay.

Mr. CAPURRO-AVELLANEDA (Uruguay):

153.1 The Delegation of Uruguay is honored to have been able to participate in this international forum and wishes to express its gratitude to the United States of America for its hospitality and to BIRPI and the other organizations that have taken part in the proceedings for their cooperation. We believe that it is the position of the Delegation of Brazil, leading to the inclusion of a paragraph in the preamble and the creation of Chapter IV, that has in the end made the Treaty acceptable to many developing countries and created a real possibility for them to accede to it.

153.2 The Treaty will, of course, be studied by the Government of our country and it is for that reason that we are not signing it today; but we would like to offer our best wishes for a really effective international cooperation in the future in this connection. Thank you very much, Mr. President.

Mr. BRADERMAN (President of the Conference):

154. Thank you, Sir. I now call on the Delegate of the United Kingdom.

Mr. ARMITAGE (United Kingdom):

155.1 Mr. Chairman, I said at the beginning of this Conference that I regarded this Treaty as potentially, at that stage, a major breakthrough in industrial property development. We still think that and we are very glad that the Conference has resulted in the Treaty that we now have before us. I think all delegations here should congratulate themselves and each other on the spirit of compromise that they have adopted towards this Treaty. There can hardly be one delegation here that has not made some concession at some time to enable a final, acceptable Treaty to be here in front of us for signature. It is really quite remarkable, it may be almost unique to have this unanimous adoption by the Conference of the text of a treaty here at the end of the Conference.

155.2 The United Kingdom will sign this Treaty, but I should like to endorse the remarks of Commissioner Schuyler in this sense that we think that signature is only the beginning of the road. We do hope that the Treaty will enter into force rapidly, or as rapidly as it is practicable, and that, when it has entered into force, it will be operated by countries in such a way that it will enable applicants to use it to their advantage and that it will also benefit all the member countries.

155.3 Finally, Mr. Chairman, I should like to add my few words of thanks to those which have already been expressed to all those who have participated in the organization of this Conference, particularly, of course, to the Host Government, to the members of the State Department, and especially to the Patent Office, for making our life so enjoyable in the few hours that we have had out of the Conference, and for showing us around the Patent Office and taking us around on the social programs. It has all worked extremely well,

extremely efficiently and very pleasurably. We would like to thank you, Mr. Chairman, and the Chairmen of the Committees and Working Parties, for making this a success. We are very interested to hear that Mr. van Benthem has started already his own private program of assistance to developing countries with Dutch cigars, and I hope that this is an augury of things to come. So, Mr. Chairman, thank you very much to the Host Government, to all those who have organized this Conference, to the interpreters, and of course to the Secretariat, to BIRPI, who have worked as always, enormously hard. Thank you very much.

Mr. BRADERMAN (President of the Conference):

156.1 Thank you. Well, your Excellencies, Ladies and Gentlemen, I think almost everything that should be said has been said by those who have already spoken. The Patent Cooperation Treaty, which has been in preparation for more than three and a half years is now a reality. We have achieved the goal of the first successful negotiation of a worldwide treaty for patent cooperation and, as has been noted, all delegations that have participated in this Conference are to be complimented and should take pride in this significant accomplishment. You have also noted that we here in Washington have taken the first step down the road of international patent cooperation. On the other side of the Atlantic, 17 nations are presently involved in the negotiation of the convention to establish a European system for the granting of patents. These, and other regional and international efforts, may well make the decade of the seventies an outstanding one for cooperation in the patent field.

156.2 Before closing, as your Chairman, I want to take particular note of the outstanding work of the Secretariat, BIRPI, which has contributed so much to the success of this Conference. I know that you join me in expressing appreciation to Professor Bodenhausen, who unfortunately cannot be with us; to Dr. Bogsch and to all of the BIRPI staff who have worked so long and so hard on this project.

156.3 I now formally close the Washington Diplomatic Conference on the Patent Cooperation Treaty.

*End of the Fourth Meeting*

### SIGNING CEREMONY

Friday, June 19, 1970, morning

Mr. BRADERMAN (President of the Conference):

157.1 Your Excellencies, Ladies and Gentlemen, we now open for signature the Patent Cooperation Treaty and the Final Act of the Conference.

157.2 Dr. Bogsch, the Secretary General of the Conference, and Mr. Charles Bevans, Assistant Legal Advisor, at the Department of State, for Treaty Affairs, will assist the delegations in signing the Treaty and the Final Act. Mr. Bevans and Dr. Bogsch have a few comments to make regarding the signing of the two documents. I first call on Mr. Bevans.

Mr. BEVANS (Assistant Legal Advisor for Treaty Affairs, Department of State of the United States of America):

158.1 In signing the Treaty or the Final Act, or both, the delegate may simply sign his name. There is no need to write in any date following his signature, because the Treaty is dated 19 June 1970 and all signatures affixed today will be considered as affixed on that date. There is also no need to write "subject to ratification" or "*ad referendum*," because the Treaty provides that it is subject to ratification.

158.2 The Final Act merely states that this Conference was held and that it adopted the Patent Cooperation Treaty. Signature of the Final Act does not, in any manner, constitute signature of the Treaty or imply any commitment whatsoever. Thank you.

Mr. BRADERMAN (President of the Conference):

159. Now I call on Dr. Bogsch.

Mr. BOGSCH (Secretary General of the Conference):

160.1 I am going to call the delegations in the English alphabetical order of the names of their countries. We shall ask them to come to this table, where the documents are placed. It is not difficult to differentiate between the Treaty, which has 400 pages, and the Final Act, which has one page. The name plate of the country is going to be placed on the table at the same time for the purpose of taking photographs, and the delegates who are signing for any country are requested to sit in this chair, whereas the other members of the delegation are invited to stand behind, so that pictures can be taken of the delegation as a whole.

160.2 We shall now proceed with the signatures.

161. *The following persons on behalf of the following States signed the Treaty:*

<i>Algeria</i>	<i>Holy See</i>
Mr. DAHMOUCHE	Mgr. PERESSIN
<i>Brazil</i>	<i>Hungary</i>
Mr. ALMEIDA	Mr. TASNÁDI
<i>Canada</i>	<i>Ireland</i>
Mr. LAIDLAW	Mr. QUINN
<i>Denmark</i>	<i>Israel</i>
Mr. TUXEN	Mr. SHER
	Mr. GABAY
<i>Finland</i>	<i>Italy</i>
Mr. TUULI	Mr. RANZI
<i>Germany (Federal Republic)</i>	<i>Japan</i>
Mr. VON KELLER	Mr. YOSHINO
Mr. HAERTEL	Mr. ARATAMA
<i>Norway</i>	<i>United Arab Republic</i>
Mr. NORDSTRAND	Mr. SALAM
<i>Philippines</i>	<i>United Kingdom</i>
Mr. SUAREZ	Mr. ARMITAGE
	Mr. FERGUSSON
<i>Sweden</i>	<i>United States of America</i>
Mr. BORGGÅRD	Mr. BRADERMAN
	Mr. SCHUYLER

<i>Switzerland</i> Mr. STAMM	<i>Yugoslavia</i> Mr. PRETNAR	<i>Central African Republic</i> Mr. GALLIN- DOUATHE	<i>Poland</i> Mr. MICHALOWSKI
162. <i>All the above persons on behalf of the above States and the following persons on behalf of the following States signed the Final Act:</i>			
<i>Argentina</i> Mr. REAL	<i>Malta</i> Mr. MERCIECA	<i>France</i> Mr. RASTOIN	<i>Romania</i> Mr. BOGDAN
<i>Australia</i> Mr. PETERSSON	<i>Monaco</i> Mr. SCHERTENLEIB	<i>Indonesia</i> Mr. IBRAHIM	<i>South Africa</i> Mr. SCHOEMAN
<i>Austria</i> Mr. LORENZ	<i>Netherlands</i> Mr. PHAF	<i>Iran</i> Mr. AFSHAR	<i>Soviet Union</i> Mr. ARTEMIEV
<i>Belgium</i> Mr. LORIDAN	<i>Niger</i> Mr. AMINA	<i>Ivory Coast</i> Mr. COULIBALY	<i>Spain</i> Mr. CARRERAS
<i>Cameroon</i> Mr. EPANGUE	<i>People's Republic of the Congo</i> Mr. EKANI	<i>Luxembourg</i> Mr. WAGNER	<i>Togo</i> Mr. OHIN
		<i>Madagascar</i> Mr. RAZAFIMBAHINY	<i>Uruguay</i> Mr. CAPURRO- AVELLANEDA



## MAIN COMMITTEE I\*

<i>Chairman:</i>	Mr. William E. SCHUYLER, Jr. (United States of America)
<i>Vice-Chairmen:</i>	Mr. Kurt HAERTEL (Germany (Federal Republic)) Mr. A. D. IBRAHIM (Indonesia)
<i>Secretary:</i>	Mr. Klaus PFANNER (BIRPI)

### FIRST MEETING

Monday, May 25, 1970, afternoon

#### General Discussion

163.1 The CHAIRMAN stated that the Main Committee would consider Chapter I of the Draft Treaty, article by article, together with the rules related to those articles. Thereafter, the Main Committee would consider the Articles of Chapter II and the rules related thereto. But first, representatives of observer States, intergovernmental organizations and non-governmental organizations were invited to make general observations, if they so desired. Representatives of States members of the Paris Union made such observations in the Plenary of the Conference.

163.2 The CHAIRMAN noted that no observer government had asked for the floor.

164.1 Mr. FINNISS (International Patent Institute) said that particular attention should be paid to the needs of developing countries. Most of them did not have institutions capable of making novelty searches. They would be well advised to pool their efforts and participate in an existing international organization like the International Patent Institute in which their representatives would have the same rights as those of the other member States.

164.2 The speaker added that when Article 16 of the Draft was discussed he would suggest that the objective of having a single International Searching Authority should be expressed with more clarity.

165.1 Mr. EKANI (African and Malagasy Industrial Property Office) said that the Draft Treaty under consideration was of great potential interest to developing countries. It would allow them to benefit from the high-quality novelty searches which, without outside help, most of them were unable to perform. It was most important that the Treaty should be so drafted that it be compatible with the regional arrangements of developing countries. Without such

compatibility, those countries could hardly benefit from it.

165.2 His Office had every reason to believe that the Treaty would achieve the said compatibility and, consequently, would fully cooperate in this Conference for whose success it expressed its sincere wishes.

166. Mr. LEE (Korea) said that his Observer Delegation was generally in agreement with the Draft Treaty. Although Korea was not a Paris Union member, it hoped to become one in the future.

167.1 Mr. MATHYS (International Chamber of Commerce (ICC)) said that industrialists were unanimous in supporting the proposed Treaty. After many proposals made in other circles without success – mainly because they had been too complicated – the PCT was an act of genius. It provided for a system which was simple and practical.

167.2 Industrialists welcomed the PCT because they generally favored international cooperation, because they recognized the vital role patents played in increasing international trade, and because the PCT would make it easier for industry to make sound and rapid decisions in the face of an overwhelming deluge of technical information and technical literature. Each and every day one thousand new technical documents were published by the Patent Offices alone.

167.3 The International Chamber of Commerce saw in the PCT a plan for international cooperation which would reduce duplication or, rather, multiplication, in the work of preparing applications; which would speed the processing of patent applications and the granting of patents; and which would achieve all this without calling on the nations to make that impossible or very difficult step of changing substantially their respective laws and philosophy. Furthermore, it would effectively assist the less developed countries, which cannot afford the costs of a full-scale patent office search.

167.4 The speaker expressed the hope that the Conference would be able to reach agreement since the Treaty would contribute to the raising of living standards everywhere and would reduce the tensions between the rich and the less rich.

168.1 Mr. LADAS (International Association for the Protection of Industrial Property (AIPPI), further to the comments of the Association to be found in PCT/DC/9, outlined the history of the growth of AIPPI over the last three-quarters of a century and the role that the Association has played in the promotion of international cooperation in the industrial property field. Since the members of the Association were

\* Note: In these summary minutes of Main Committee I:

(i) "Main Committee" means "Main Committee I";  
(ii) "Chairman" means Mr. William E. SCHUYLER, Jr. (United States of America) except in the case of the 12<sup>th</sup>, part of the 13<sup>th</sup> (from paragraphs 875 to 921), and the 27<sup>th</sup> meetings where it means Mr. Kurt HAERTEL (Germany (Federal Republic));  
(iii) "Secretary" means Mr. Klaus PFANNER (BIRPI);  
(iv) "Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/4 and 5;  
(v) "Alternative Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/11 and 12;  
(vi) unless otherwise indicated, the numbers and titles of Articles and Rules are those used in the Draft.

deeply involved in the problems of the international protection of inventions, they were greatly interested in the PCT and hopeful of its success. They had, however, some reservations about the Draft in that it provided for a plurality of International Searching Authorities and not a single central searching organization; that the time schedule for the issuance of international search reports, amendments, etc., might present serious difficulties; and that the principal advantage of giving applicants an appreciably longer time to decide to file in foreign countries might be more than offset by very limited possibilities of amending the specification originally filed.

168.2 The speaker acknowledged that the Draft was being favorably accepted by a number of national Patent Offices and government representatives but emphasized that acceptance and use of the Treaty in lieu of the conventional route by the inventor and applicant for foreign patents should be the paramount consideration. He stated that, while the PCT at best was not an ideal system, it was a step toward the desirable goal of international cooperation to be supplemented by further efforts at harmonization of law. AIPPI pleaded for efforts to minimize the danger of the PCT's floundering under the weight of its own complications and of its built-in international bureaucracy superimposed on national bureaucracy. The Treaty should allow private individuals to handle certain phases of the procedure.

169.1 Mr. SWABEY (Inter-American Association of Industrial Property (ASIPI)) stated that his Association comprised patent practitioners in North, Central and South America. As many developing countries were involved, ASIPI considered itself in the forefront of those earnestly looking for international patent cooperation. He fully agreed with the Delegations of Algeria, Belgium and Brazil that patents were not just monopoly grants but were also an important basis, if not the most important basis, for the transfer of technology from industrially developed countries to developing countries. This basis was recognized in the report of the Secretary General of the United Nations entitled "The Role of Patents in the Transfer of Technology to Developing Countries" and by many statements made by BIRPI in connection with the PCT Drafts and otherwise.

169.2 At the last meeting of ASIPI, held in Bogota in December 1969, ASIPI approved, in principle, the concept of standard requirements for the international application and centralized documentation. At the same time, it expressed the wish for the inclusion in such documentation of patents of all member countries, for the inclusion of Spanish and Portuguese as official languages, for the assurance that the multiplicity of International Searching Authorities was only temporary and would be replaced with the minimum delay by a single International Searching Authority, for simplification of the procedure by reducing the steps that would have to be taken by the different Authorities while giving the applicant the option of transmitting – himself or through his chosen patent attorney or agent – his application to the various national Offices, and for the assurance that the

traditional route, including the right to claim Paris Convention priorities, would remain open.

170. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) observed that during the preparatory work his Federation had called to the attention of BIRPI and the governmental delegations all those points which, in the various drafts, presented problems for the inventors and their potential competitors. The Federation's observations had always been carefully considered by BIRPI and the governmental delegations. His Federation was grateful for having been given a full opportunity to participate in the preparatory work. He felt that most of the problems had been solved in the course of that work and hoped for a successful conclusion of the Conference and for early implementation of the Treaty.

*End of the First Meeting*

## SECOND MEETING

Tuesday, May 26, 1970, morning

171. The CHAIRMAN opened the discussion on the Treaty as appearing in documents PCT/DC/4 and 11.

**In the Signed Text, Preamble** (no provision in the Drafts)

172. Mr. ARTEMIEV (Soviet Union) introduced his Delegation's proposal for a preamble contained in document PCT/DC/18. He said that a preamble would be useful because it would allow the objectives of the Treaty to be identified at a glance. Furthermore, it should state that the Treaty came under the Stockholm Act of the Paris Convention.

173. The CHAIRMAN suggested that discussion of this important matter be deferred since the document containing the proposal of the Delegation of the Soviet Union had only been distributed that same day.

174. Mr. ARTEMIEV (Soviet Union) agreed with the Chairman's suggestion.

175. *Discussion on a possible preamble was deferred.* (Continued at 1597.)

### Article 1: Establishment of a Union

176. The CHAIRMAN said that a number of delegations had made proposals concerning this Article but, as the documents containing them had been distributed only that same day, it would seem advisable to postpone discussion in order to allow delegations to study them.

177. *Discussion on Article 1 was deferred.* (Continued at 234.)

### Article 2: Definitions

178. Mr. BOGSCH (Secretary General of the Conference) suggested that the definitions contained in the Alternative Draft be accepted as a mere working hypothesis since, obviously, all the definitions would



have to be revised towards the end of the discussion when their implications in the context in which they were used became clear.

179. Mr. ARTEMIEV (Soviet Union) stated that inventors' certificates rather than patents were the main form of Protection in the Soviet Union. Consequently, it was of decisive importance for his country that Article 2 as well as any other provision of the Treaty deal with patents and inventors' certificates on the same footing.

180. Mr. VAN BENTHEM (Netherlands) said that "regional" should not be defined as it was in item (x), namely, "effective in more than one State" because a regional patent – for example, a European patent – may, if the applicant so chooses, be effective only in one State. Consequently, "regional patent" should rather be defined as "a patent granted by an international authority."

181. The CHAIRMAN said that the suggestions of the Delegations of the Soviet Union and the Netherlands would be kept in mind and reverted to, if necessary, when Article 2 was considered again.

182. *Further discussion on Article 2 was deferred.* (Continued at 1540.)

### **Article 3: The International Application**

183. Mr. CLARK (United States of America) said that his Delegation supported Article 3 as it appeared in the Alternative Draft. However, it might be preferable to speak about "technical information" rather than simply "information" since the purpose of the abstract was to enable Patent Offices and the public to determine quickly, on the basis of a cursory inspection, the nature and gist of the technical disclosure.

184. The CHAIRMAN said that the proposal would be referred to the Drafting Committee.

185. Mr. SAVIGNON (France) said that his Delegation supported the Article as it appeared in the Alternative Draft but suggested that in paragraph (3) the words "for any other purpose, particularly not" should be deleted. What was important in this paragraph was to state that the abstract could not be taken into account for the purpose of interpreting the scope of the protection. Whether, subject to this limitation, it could be used also for purposes other than information was irrelevant.

186. Mr. NEVES (Brazil) said that it would be preferable to allow applicants to file international applications in the language of their own countries in order to avoid the cost of translation. Furthermore, it should be provided that the fees could be paid in the currency of the country of the applicant since many countries had difficulty in procuring certain foreign currencies.

187.1 Mr. BOGSCH (Secretary General of the Conference) said that in some cases it would be necessary to draft the international application in a language other than the applicant's own language. That, however, seemed to be unavoidable since any one International Searching Authority could handle only a limited number of languages. It was to be

hoped that the International Patent Institute, as International Searching Authority, would be able to handle languages in addition to those which it handled today. In any case, the applicant would have to make only one translation at the outset and not several, as he had to today, when he filed in various national Offices.

187.2 As far as the fees were concerned, one must distinguish between those which remained in the country of the applicant and those which were paid for services to be performed in other countries. The first could always be paid in local currency. The latter would have to be convertible into the currency of the country in which the services were performed.

188.1 Mr. FINNISS (International Patent Institute) said that there were plans to establish agencies of his Institute in Rome and later in Madrid. These would allow the use of the Italian and Spanish languages. Although there were no immediate plans for the Portuguese language, its global importance was recognized and he had no doubt that sooner or later efforts would be made to equip the Institute also to deal with that language.

188.2 The speaker added that, because of the particularly important role of his Institute in that and other respects, he would later come forward with a suggestion that it be expressly referred to by name in the text of the Treaty.

189. Mr. PETERSSON (Australia) said that it might be better to deal with item (iv) of paragraph (3) ("be subject to the payment of the prescribed fees") separately and simply say that fees were payable.

190. *Subject to consideration by the Drafting Committee of the observations of the Delegations of the United States of America, France and Australia, Article 3 was adopted as appearing in the Alternative Draft.* (Continued at 1741.)

### **Article 4: The Request**

191. Mr. ARMITAGE (United Kingdom) said that those words which would allow an applicant to ask by means of a separate, later notice that he be granted in respect of certain countries a regional rather than a national patent should be deleted. In fact, if such a possibility were maintained it could lead to the following situation. An applicant could designate one of the European Common Market countries and ask for a national patent. Later he would state that he wished to obtain a regional patent. Under the European Convention to be concluded among the Common Market countries, designation of one State implied designation of all States of the Common Market. Thus, through the proposed provision of the PCT, an applicant could extend the effect of his application to countries originally not designated (namely, to those Common Market countries which were not named in his original PCT application). That would be an unacceptable result.

192. Mr. VAN BENTHEM (Netherlands) agreed with the suggestion of the Delegation of the United Kingdom. In any case, the choice between a national

and regional patent was a matter of such importance that it should be made at the time of filing.

193. Mr. BRENNAN (United States of America) said that paragraph (1)(ii) as it appeared in the Alternative Draft should expressly speak about the availability of regional patents and not only about the applicant's wish.

194.1 Mr. HAERTEL (Germany (Federal Republic)) suggested that in paragraph (1)(ii) language should be used which left it to the regional treaty to decide whether the designation of one of the member States had the effect of designation of all the member States of the regional treaty.

194.2 The speaker said that he did not share the opinion of the Delegations of the United Kingdom and the Netherlands since he was in favor of a more flexible solution, that is, a solution which allowed the applicant to opt for a regional patent even after he had filed his international application.

195. Mr. BRENNAN (United States of America) said that he saw some difficulties with the proposal of the Delegation of Germany (Federal Republic). The question of the effect of any designation under the PCT should be clarified in the PCT itself. The applicant should not be required to refer to the regional treaty in order to know what the effect of designation under the PCT was.

196. Mr. EKANI (African and Malagasy Industrial Property Office) expressed his Delegation's full support for the text of paragraph (1)(ii) as appearing in the Alternative Draft since it adequately covered both the case where national patents, whether granted by a national Office or by a regional Office, were sought and the case where regional patents were sought. His Office was the only regional Office in actual operation and the requirements of the system under which that Office was working were satisfactorily covered by the said draft provision.

197. Mr. HAERTEL (Germany (Federal Republic)) said that the text proposed in the Alternative Draft was fully compatible with the contemplated Common Market Treaty for a European Patent and that his Delegation's proposal was directed towards other possible regional treaties. Since no country seemed to be interested in the proposal, and the Common Market countries did not need it, he would not insist.

198. Mr. ARTEMIEV (Soviet Union) referred to document PCT/DC/18 in which his Delegation proposed that paragraph (4) read as follows: "The name and other data concerning the inventor shall be indicated in the request in any case." The Draft before the Main Committee provided that the request must contain the name of the inventor. However, paragraph (4) of the Draft excused the failure to indicate the inventor in respect of those countries whose national laws did not require an indication of the inventor. His Delegation was opposed to such qualification of the rule since it was important to know the identity of the inventor and it should always be required, even if the international application designated only those countries whose national law

did not require an indication of the name of the inventor.

199. Mr. SAVIGNON (France) referred to the proposal of his Delegation contained in document PCT/DC/19. Contrary to what the Delegation of the Soviet Union proposed, the Delegation of France believed that naming the inventor in the international application should not be mandatory. His Delegation, however, would be ready to accept a provision which would allow each country to require the naming of the inventor when the international application reached the national Office of such country. The proposal was made because the naming of the inventor was sometimes practically impossible or undesirable. That was why many national laws did not make it an obligation to indicate the name of the inventor.

200. Mr. SCHURMANS (Belgium) expressed support for the proposal of the Delegation of France. The matter of naming the inventor was a question more appropriate for laws regulating social relationships – relationships between employer and employee – than patent laws.

201. Mr. VAN BENTHEM (Netherlands) said that his Delegation had presented, in document PCT/DC/8, a proposal similar to that of the Delegation of France. Consequently, he supported the proposal of the Delegation of France. That proposal took into account the fact that the laws of many countries did not require the naming of the inventor. For those countries where it was required, it should suffice that the inventor be named in the national phase.

202. Mr. HAERTEL (Germany (Federal Republic)) expressed his Delegation's support for the proposal of the Delegation of France. It was in harmony with the general principles of the PCT that special requirements of national laws were to be fulfilled only in the national phase.

203. Mr. BORGGÅRD (Sweden) said that Scandinavian legislations gave a very dominant position to the person of the inventor. The naming of the inventor was therefore of the utmost importance to them and they wished him to be identified at the earliest possible moment, that is, when the international application was filed. Consequently, in principle, he fully agreed with the proposal of the Delegation of the Soviet Union. In practice, however, he would also be ready to accept the solution contained in the Draft since it took account of the legislation of countries which did not provide for the naming of the inventor. In any case, he could not accept the proposal of the Delegation of France under which the inventor could be named 20 months after filing or not at all.

204. Mr. LORENZ (Austria) expressed his Delegation's support for the proposal of the Delegation of France.

205. Mr. BRENNAN (United States of America) said that his Delegation shared the views expressed by the Delegation of Sweden. The naming of the inventor was a matter of the utmost importance also in the United States patent law. However, as that was not the position in the laws of some other countries,

the compromise formula suggested in the Draft would be acceptable.

206. Mr. BENÁRD (Hungary) said that in the Hungarian law indication of the name of the inventor was obligatory. Consequently, his Delegation agreed with the proposal of the Delegation of the Soviet Union as well as with those of the Delegations of Sweden and the United States.

207. Mr. TROTTA (Italy) expressed his Delegation's support for the proposal of the Delegation of France.

208. Mr. GIERCZAK (Poland) expressed his Delegation's support for the proposal of the Delegation of the Soviet Union since it was in harmony with the patent law of Poland.

209. Mr. OTANI (Japan) said that his Delegation agreed with the Delegations of Sweden and the United States in supporting the Draft.

210. Mr. NORDSTRAND (Norway) expressed his Delegation's agreement with the view of the Delegation of Sweden and opposition to the proposal of the Delegation of France.

211. Mr. VANTCHEV (Bulgaria) expressed his Delegation's support for the proposal of the Delegation of the Soviet Union.

212. Mr. SHER (Israel) said that the Draft represented a reasonable compromise and his Delegation supported it.

213. Mr. ARMITAGE (United Kingdom) said that his Delegation could, in principle, go along with the proposal of the Delegation of France since it was a fact that it might be very difficult to identify the inventor of some inventions, and the definition of who the inventor was might also vary from country to country. Nevertheless, as a practical matter, it must be recognized that in some countries the naming of the inventor from the outset was a matter of principle and an absolute requirement. Consequently, the compromise solution contained in the Draft seemed to be the only practical solution. His Delegation supported it.

214. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that the legislation of Spain required that the name of the inventor be indicated in the application whenever he was a person other than the applicant. Consequently, his Delegation supported the formula contained in the Draft.

215. The CHAIRMAN said that, since there were no other government delegations wishing to speak, observers would be welcome to take the floor.

216. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that the Paris Convention itself recognized the fundamental right of the inventor to be named. In view of the fact that patent applications were confidential during the first 18 months after their filing, it might be too late, when the application was published, for the inventor to protest against the filing of an application for an invention of which he was the inventor. Consequently, it was important that the inventor be named in the application from the outset. Naming of

the inventor was not a mere formality: it was the corollary of a fundamental right of a creative person.

217.1 Mr. PANEL (European Industrial Research Management Association (EIRMA)) said that, whereas it was true that in some countries the naming of the inventor from the outset was an obligation, it was equally true that in the majority of the countries such obligation did not exist. Consequently, he was astonished that the minority wanted to impose its system on the PCT.

217.2 The so-called compromise solution contained in the Draft implied a high degree of legal insecurity for applicants who did not indicate the inventor. Under the national laws of some countries it would be possible to accept the naming of the inventor in the national phase but only if such naming occurred before any publication. In such countries, naming the inventor in the national phase would not prevent a fatal mistake since international publication would occur before the national phase started. For all those reasons, his Association fully supported the proposal of the Delegation of France.

218. Mr. HESS (Pacific Industrial Property Association (PIPA)) expressed the view that the naming of the inventor was extremely important since it constituted a potent incentive for invention. On the other hand, his Association recognized that the greatest flexibility in the Treaty was desirable so that countries would accede to it without having to change their national laws. The Draft provided for such flexibility and its adoption seemed to be desirable.

219. Mr. HAZELZET (Union of Industries of the European Community) expressed his Union's full support for the proposal of the Delegation of France. The arguments for such a proposal were ably put forward in the comments of the Government of the Netherlands contained in document PCT/DC/8. His Union also endorsed those arguments.

220. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) expressed his Council's support for the proposal of the Delegation of France. Although it was true that an international application had, from the very beginning, the effect of a national application in each designated State, it was equally true that some requirements of the national law, such as possible translations and the payment of the national fees, were required to be effected only when the national phase started. The naming of the inventor should belong to the same category of obligations.

221. Mr. ARTEMIEV (Soviet Union), on a question from the Chairman, stated that since most delegations favored the compromise solution contained in the Draft he would not insist on the proposal contained in document PCT/DC/18.

222.1 Mr. SAVIGNON (France), on a question from the Chairman, said that his Delegation wished its proposal to be put to a vote.

222.2 He added that the proposal of his Delegation in no way prejudiced the right of the inventor to be named. It merely provided that the national law should apply in the national phase as the Draft provided, for example, in the case of the payment of

the national fees. Haste in naming the inventor might be prejudicial to the interest of the real inventor since in some cases the identification of the inventor was difficult and if it had to be done in a hurry mistakes might occur. Consequently, the requirement of naming the inventor in the national phase would be in the interest of the real inventor.

223. Mr. DAHMOUCHE (Algeria) said that he had not heard the Delegation of France ask formally for a vote on its proposal. As a matter of fact, it would be premature to take votes on any issues. It would be more useful to continue the discussion on the other provisions of the Draft so that a general picture could emerge showing what compromise solutions seemed to be possible on other points.

224. Mr. NARAGHI (Iran) expressed his Delegation's support for the views of the Delegation of Algeria.

225. Mr. HAERTEL (Germany (Federal Republic)) said that it would be preferable to avoid a vote and continue to seek a compromise solution. The question being of great importance and touching upon fundamental principles of national laws, there would be a risk that any extreme solution would make the Treaty unacceptable for countries which lost the vote. His Delegation found the compromise solution of the Draft flexible enough; however, it might be possible to make it even more flexible, and no effort should be spared to explore such a possibility. (Continued at 226.)

*End of the Second Meeting*

### THIRD MEETING

Tuesday, May 26, 1970, afternoon

#### **Article 4: The Request** (Continued from 225.)

226. Mr. VILLALBA (Argentina) said that it was one of the fundamental moral rights of the inventor to be named as such. National laws had different solutions for recognizing this right. The Draft had the merit of respecting the diversity of the national laws. His Delegation therefore supported the Draft and opposed the proposal of the Delegation of France.

227. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) wished to clarify a detail in the provisions of the Spanish patent law concerning the naming of the inventor. According to that law, the fact that the inventor was not named in the application was a correctable mistake. If the indication was given within the prescribed time limit, the application was valid.

228.1 Mr. SAVIGNON (France) said that there were three kinds of solutions. One provided that the inventor must be named if he so desired, and could not be named if he did not so desire. France had adopted this solution. The second solution was that the inventor must be named in the national phase. The third was that he must be named at the time of filing the international application. The second and the third solutions had this much in common that the inventor

had to be named in any case. They differed from each other in that the point in time was different. But even where the naming occurred only in the national phase, the fundamental principle was fully respected.

228.2 The solution of the French law should be treated in the PCT as a normal condition in the same manner that naming the inventor was treated as a normal condition because a requirement to name the inventor would have no consequences in countries having laws like that of France.

228.3 He wished to have the Treaty deal with the two possibilities not as a rule versus an exception, but in the form of two equivalent rules.

229. Mr. PRETNAR (Yugoslavia) proposed that a working group be established to try to find a compromise solution. The establishment of working groups was provided for in the Rules of Procedure. It would be an appropriate occasion to make use of such a possibility.

230. Mr. AKPONOR (Zambia) expressed the view that the solution contained in the Draft was a compromise under which no country would have to change its law. He supported the Draft.

231. Mr. BRENNAN (United States of America) shared the view expressed by the Delegation of Zambia.

232. The CHAIRMAN said that it seemed preferable to defer discussion on this issue to allow delegations to have informal contacts on a possible compromise. The establishment of a working group would be premature.

233. *It was decided to defer further discussion on the question of naming the inventor. Otherwise, Article 4 was adopted as appearing in the Alternative Draft.* (Continued at 701.)

#### **Article 1: Establishment of a Union** (Continued from 177.)

**In the signed text, Article 50: Patent Information Services** (no provision in the Drafts)

**In the signed text, Article 51: Technical Assistance** (no provision in the Drafts)

**In the signed text, Article 52: Relations with Other Provisions of the Treaty** (no provision in the Drafts)

234. Mr. ARTEMIEV (Soviet Union), referring to his Delegation's proposal contained in document PCT/DC/18, proposed that paragraph (1) speak about "applications for the protection of inventions" rather than "patent applications." Thus, applications for inventors' certificates and for patents would have the same status in the terminology of the Treaty.

235. Mr. BENÁRD (Hungary) supported the proposal of the Delegation of the Soviet Union.

236. Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of the Soviet Union was logical and he saw no difficulty in accepting it provided the title of the Treaty continued to feature the word "Patent."

237. Mr. ARTEMIEV (Soviet Union) said that his Delegation had no objection to giving the instrument under discussion the title of "Patent Cooperation Treaty."

238. Mr. CLARK (United States of America) said that the proposal of the Delegation of the Soviet Union affected also Article 2 on definitions. Consequently, he proposed that discussion of the proposal be deferred until Article 2 was discussed.

239. Mr. VILLALBA (Argentina) expressed the view that, since the Treaty would not deal with just any inventions but only with patentable inventions, "patents for inventions" would perhaps be the right expression to use.

240. Mr. VAN BENTHEM (Netherlands), while recognizing the logic of the proposal of the Delegation of the Soviet Union, seconded the proposal of the Delegation of the United States of America to defer discussion until Article 2 was reached.

241. Mr. SAVIGNON (France) said that if Article 1 used the expression "invention" it might be necessary to define that expression in Article 2, and define it as meaning only patentable inventions.

242. *It was decided to defer further consideration of the proposal of the Delegation of the Soviet Union concerning Article 1 until Article 2 was discussed. (See 1591.)*

243.1 Mr. SHER (Israel) referred to his Delegation's proposal contained in document PCT/DC/20 according to which paragraph (1) should provide that one of the objectives of the Treaty was to give information about patents and about the technical information patents contain.

243.2 Without such an extension of its scope, the Treaty would not sufficiently serve the interests of developing countries.

243.3 The PCT would create various documentation centers whose resources should be specially tapped for the benefit of developing countries. Some at least of the Searching Authorities should be able to furnish information on questions such as which patents are maintained in which countries, what patents relate to a certain technical problem, who is the owner of any given patent.

243.4 Since his Delegation's proposal introduced a new matter, it would be better to set up a working group to study it. The working group should include developing countries and countries whose national Offices were expected to serve as Searching Authorities. The details of the proposal of the Delegation of Israel were contained in a proposed new Chapter III*bis*, the text of which also appeared in document PCT/DC/20.

244. The CHAIRMAN said that he would later announce the composition of a working group.

245. Mr. PETERSSON (Australia) said that not all countries fell clearly under the notion "developed" or "developing." His country, for example, was developed in a certain sense and developing in another. Such countries should also be represented in the Working Group.

246. Mr. ARMITAGE (United Kingdom) said that the proposal of the Delegation of Israel dealt with an entirely new problem not discussed in the course of the preparatory work for the present Conference. It had many difficult aspects. Perhaps the best way to deal with it would be in a protocol annexed to the Treaty.

247. Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Israel for a Chapter III*bis* called for the establishment of a service very similar to what was called, in BIRPI circles, the World Patent Index. For several years, the possibility of setting up such a service had been studied but its practical realization had not been found possible. It was unrealistic to think that in the few days of the Conference all those difficulties could be solved. It might be better, as the Delegation of the United Kingdom had suggested, merely to attach a declaration or a protocol to the PCT urging the establishment of services of the kind suggested in the proposal of the Delegation of Israel.

248. Mr. OTANI (Japan) said that his Delegation shared the views expressed by the previous speaker.

249. Mr. FINNISS (International Patent Institute) said that he doubted whether the present Conference could deal with the new problems raised by the proposal of the Delegation of Israel. The proposal should be reserved for a later occasion and no working group should be set up. However, if one were set up, he hoped that representatives of his Institute would be able to participate in its discussions since the Institute, as a prospective International Searching Authority, would be directly affected by the proposal.

250. *Subject to further consideration of the proposals of the Delegations of the Soviet Union and Israel, Article 1 was adopted as appearing in the Draft. (Continued at 328.)*

#### **Article 5: The Description**

251. Mr. PETERSSON (Australia) said that it was a matter of concern to his Delegation that some important questions were dealt with in the Draft Treaty only in a general way, leaving details to the Draft Regulations. The Regulations would be subject to modification without a diplomatic conference and without ratification, so that countries accepting the Treaty might later find that the Regulations had been modified in a way which they did not approve of. He did not wish to make any proposal but merely wanted to call the attention of the Conference to the importance of the distribution of the provisions between the Treaty and the Regulations.

252. The CHAIRMAN said that the matter raised by the Delegation of Australia had bothered many of those who had participated in the preparation of the Drafts. He was sure that the Conference would bear in mind the advice of the Delegation of Australia.

253. *Article 5 was adopted as appearing in the Draft. (Continued at 1743.)*

**Article 6: The Claims**

254. Mr. PETERSSON (Australia) introduced a proposal by his Delegation, contained in document PCT/DC/22, to strike the words "subject to later amendments" appearing in the Draft. The meaning of the four words in question was not clear and could be interpreted as an invitation to the applicant to defer an accurate definition of the invention until some later date.

255. Mr. LEWIN (Sweden) said that his Delegation supported the proposal of the Delegation of Australia.

256. Mr. BOGSCH (Secretary General of the Conference), on a question from the Delegation of Germany (Federal Republic), said that the words "subject to later amendments" were not necessary for legal purposes since the right to amend the claims later was clearly provided for in other articles. The words were inserted in the Draft merely as a reminder of that right. They could be stricken from the text without changing the sense of the Treaty.

257. Mr. VAN DAM (Netherlands) said that his Delegation supported the proposal of the Delegation of Australia.

258. Mr. SAVIGNON (France) said that his Delegation also supported the proposal of the Delegation of Australia.

259. Mr. LORENZ (Austria) said that his Delegation also supported the proposal of the Delegation of Australia.

260. *The proposal to delete the words "subject to later amendments" was adopted.*

261. Mr. NORDSTRAND (Norway) said that, in order to maintain the sense of the note, in document PCT/DC/4, accompanying the Article under consideration, the Drafting Committee should consider whether the words "including the drawings" should not be added at the end of the Article.

262. *Subject to the deletion of the words "subject to later amendments," Article 6 was adopted as appearing in the Draft. (Continued at 1744.)*

**Article 7: The Drawings**

263. *Article 7 was adopted as appearing in the Draft, without discussion. (Continued at 1745.)*

**Article 8: Claiming Priority**

264. *Paragraph (1) was adopted as appearing in the Alternative Draft, without discussion.*

265. Mr. BRENNAN (United States of America) presented his Delegation's proposal appearing in document PCT/DC/16. It was proposed to omit, in the Draft, the introductory clause of paragraph (2)(a) consisting of the words: "Subject to the provisions of subparagraphs (b) and (c)" and to insert the following introductory clause at the beginning of subparagraphs (b) and (c): "Subject to the provisions of paragraph (2)(a)." The proposal would make it clear that it was the Paris Convention which governed the PCT and not the other way around.

266. Mr. VAN BENTHEM (Netherlands) said that his Delegation supported the proposal of the Delegation of the United States of America.

267. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation supported the proposal of the Delegation of the United States of America but wished to know whether the proposal related to the Draft or the Alternative Draft.

268. Mr. BRENNAN (United States of America) replied that the proposal related to the Draft.

269. Mr. BOGSCH (Secretary General of the Conference) called the attention of the meeting to difference between the Draft and the Alternative Draft. Whereas the Draft spoke about the right of priority under the Paris Convention, the Alternative Draft referred to the right of priority under the Stockholm Act of the Paris Convention. The difference was important because it meant that, under the Alternative, countries accepting the PCT would have to recognize inventors' certificates as a basis for priority since the Stockholm Act expressly recognized inventors' certificates for the said purpose.

270. Mr. BRENNAN (United States of America) said that his Delegation agreed to the reference to the Stockholm Act. The proposal of the United States of America contained in document PCT/DC/16 was equally applicable to the Alternative Draft.

271. Mr. HAERTEL (Germany (Federal Republic)) wished to ask the Secretary General of the Conference two questions

What would be the position of countries which acceded to the PCT without having accepted the Stockholm Act of the Paris Convention?

What would happen if a future revision conference of the Paris Union modified Article 4 of the Paris Convention concerning the right of priority?

272.1 Mr. BOGSCH (Secretary General of the Conference) said that it was not necessary for a country accepting the PCT to have accepted the Stockholm Act of the Paris Convention but such a country would have to recognize inventors' certificates as a basis for priority in the case of international applications.

272.2 On the second question, the speaker expressed the view that it was unlikely that any future revision of the Paris Convention would modify Article 4 of the Paris Convention in a way which would require revision of the PCT.

273. Mr. ARMITAGE (United Kingdom) agreed with the Alternative Draft as far as the reference to the Stockholm Act was concerned. That reference, in fact, was merely a shorthand expression of the obligation of each State accepting the PCT to recognize inventors' certificates as a basis for priority. He did not think any country would have difficulties in accepting this principle, which had been adopted without opposition in 1967 by the Stockholm Conference revising the Paris Convention.

274. Mr. VILLALBA (Argentina) expressed doubt concerning the wisdom of referring to the Paris Convention in the PCT since that Convention might

undergo in the future changes which were unacceptable to certain countries.

275. Mr. BOGSCH (Secretary General of the Conference) said that the issue was a much narrower one. It related only to the question of the right of priority as specifically contained in the Stockholm Act of the Paris Convention. By the very fact of referring to the Stockholm Act, it did not prejudice the attitude of any countries in respect of future revisions of the Paris Convention.

276. Mr. VAN BENTHEM (Netherlands) said that a country which did not ratify the Stockholm Act of the Paris Convention but ratified the PCT would have to recognize inventors' certificates as a basis for priority only if they were invoked in international applications.

277. Mr. BOGSCH (Secretary General of the Conference) suggested that for the other questions concerning paragraph (2), and in particular the proposal of the Delegation of the United States of America, the establishment of a working group might be desirable, since the matter involved rather complex questions of drafting.

278. *Paragraph (2) was adopted as appearing in the Alternative Draft, except that the proposal of the Delegation of the United States of America was referred to a working group whose composition would be announced later by the Chairman. (Continued at 327.)*

#### **Article 9: The Applicant**

279. Mr. GIERCZAK (Poland) called the attention of the Conference to a proposal by his Delegation concerning paragraph (1), contained in document PCT/DC/23.

280. The CHAIRMAN said that since the proposal had just been distributed it would seem to be preferable to postpone discussion on the said paragraph.

281. *Discussion on paragraph (1) was deferred. (See 332.)*

282. Mr. BOGSCH (Secretary General of the Conference) said that the Alternative Draft of paragraph (2) differed from the Draft of the same paragraph in that it limited the scope of the power of the Assembly to decide to allow residents or nationals of countries not party to the PCT to file international applications to countries members of the Paris Union.

283.1 Mr. BENÁRD (Hungary), referring to the observations of his Government contained in document PCT/DC/8, proposed that nationals of any country member of the Paris Union should be allowed to file international applications if they were entitled under the Paris Convention to file national applications in the Contracting State. In the present situation, any country could provide that its own nationals would be able to file abroad only under certain circumstances. Under the Draft, nationals of any country party to the PCT or authorized by the Assembly would have a right to file an international application even in situations in which they could not file national applications abroad.

283.2 Whereas the Alternative Draft was too generous on the said point, there was another point on which it was not sufficiently generous, namely, where it did not give nationals of all Paris Union countries the right to use the PCT route but only nationals of those Paris Union countries not party to the PCT which were authorized by the Assembly to use the PCT route. Such a restriction was unwarranted and contrary to the spirit of the Paris Convention. The European Patent Conventions were expected to allow nationals of any Paris Union country to use the European route; the PCT should do the same as far as the PCT route was concerned.

284.1 Mr. OTANI (Japan), referring to the observations of his Government contained in document PCT/DC/7, supported paragraph (2) as appearing in the Alternative Draft. Limiting the scope of the powers of the Assembly to Paris Union countries was logical since the PCT would be a Special Agreement under the Paris Convention.

284.2 The right of priority under the Paris Convention was recognized as operating between member States because it secured reciprocal treatment. Extending, through the PCT, the benefits of the Paris Convention to nationals of countries not members of the Paris Union would be contrary to the principle of reciprocal treatment.

285. Mr. ALMEIDA (Brazil) said that either paragraph (2) should be removed altogether or, if removal could not be agreed upon, the Alternative Draft should be adopted since it limited the scope of the powers of the Assembly to members of the Paris Union.

286. Mr. CLARK (United States of America) said that his Delegation supported the position of the Delegation of Japan. Furthermore, one should take into account the administrative difficulties that might be caused by paragraph (2) of the Draft with reference to Article 53 (5) relating to financial considerations.

287. Mr. ARMITAGE (United Kingdom) said that his Delegation supported paragraph (2) as appearing in the Alternative Draft.

288. Mr. PRETNAR (Yugoslavia) wished to ask two questions. What would be the criteria which the Assembly would adopt in permitting the residents and nationals of certain Paris Union countries not party to the PCT to file international applications? Would such permission not take away the incentive to accede to the PCT?

289. Mr. BOGSCH (Secretary General of the Conference) replied that no criteria were fixed in the Treaty. It was to be hoped that the Assembly would use its powers wisely, that is, only when the element of incentive to accede was of little relevance and when the financial implications for the administration of the PCT, if any, would be minimal.

290.1 Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Hungary could lead to the manifestly inequitable result, when the PCT entered into force after acceptance by five countries, nationals of all Paris Union member States could use the PCT in the five

countries but nationals of the five countries could not use the PCT in the 70 or more Paris Union countries not party to the PCT.

290.2 His Delegation did not share the views of the Delegation of Hungary according to which the Paris Convention would be violated by allowing only nationals of countries party to the PCT to file international applications. The predominant view in that respect was the following. If a treaty was open for acceptance to any State party to the Paris Convention, the use of the treaty could be restricted to nationals and residents of countries party to that treaty. On the other hand, if a special treaty concluded between certain members of the Paris Union was open for acceptance only to certain States, it must be permissible for nationals and residents of all Paris Union countries to use it. The PCT was in the first category, whereas the proposed European Conventions were in the second category. That was why the latter proposed to allow the filing of applications for European patents by nationals of any Paris Union country.

291. Mr. VILLALBA (Argentina) said that the matter had great importance in connection with the financing of the administrative organs which would process international applications. He presumed that such financing would be assumed by the countries party to the PCT and would be proportionate to the number of international applications emanating from each of them. Allowing nationals of countries not party to the PCT to file international applications would be incompatible with such a system of financing since the governments of such countries could not be asked to pay contributions in view of the fact that they were not party to the PCT.

292. Mr. SAVIGNON (France) asked whether paragraph (2) dealt only with residents or also with nationals.

293. Mr. BOGSCH (Secretary General of the Conference) replied that the intent was clearly that the paragraph should deal with both residents and nationals. The French translation of the Draft was defective.

294.1 Mr. BODENHAUSEN (Director of BIRPI) said that the limitation contained in paragraph (2) of the Alternative Draft to members of the Paris Union raised two questions whether such a limitation was compatible with the Paris Convention, and whether it was desirable.

294.2 The speaker had no doubt that the Alternative Draft was compatible with the Paris Convention and shared, in this respect, the views expressed by the Delegation of Germany (Federal Republic). Furthermore, there were precedents such as the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Deposit of Industrial Designs. The PCT would follow the same system as those two Agreements, whose compatibility with the Paris Convention had never been questioned.

294.3 Moreover, he was convinced that it was wise to limit paragraph (2) to countries members of the Paris Union and not to extend it to countries outside

the Paris Union. It would be very illogical to admit nationals or residents of countries outside the Paris Union to the benefits of the PCT since the said countries might be countries which did not recognize even the most elementary rules for the protection of industrial property.

295. Mr. VILLALBA (Argentina) said that, whereas the financial considerations might lead to one decision, other, more general considerations might lead to another decision. There might be countries which, because of their general economic situation or other reasons, did not wish to accede to the Paris Convention. Nationals and residents of such countries would, under the Alternative Draft, be precluded from using the PCT.

295.2 His Delegation would abstain from voting on paragraph (2).

296. The CHAIRMAN said that the proposal of the Delegation of Hungary related, or related also, to paragraph (1), discussion of which had been deferred. The Delegation of Hungary would therefore have the right to revert to its proposal when discussion on paragraph (1) was reopened.

297. *Paragraph (2) was adopted as appearing in the Alternative Draft.*

298. *Paragraph (3) was adopted as appearing in the Draft, without discussion. (Continued at 332.)*

#### **Article 10: The Receiving Office**

299. Mr. PETERSSON (Australia) said that the observations made by his Delegation in connection with Article 5 were applicable also in connection with the Article under discussion.

300. *Article 10 was adopted as appearing in the Draft. (Continued at 1748.)*

#### **Article 11: Filing Date and Effects of the International Application**

301. Mr. VILLALBA (Argentina) reserved the position of his Delegation as far as the languages in which the international application had to be written until such time as the corresponding rule of the Draft Regulations would be discussed.

302. Mr. ARMITAGE (United Kingdom) referring to the proposal of his Delegation, contained in document PCT/DC/25, which was submitted but not yet distributed, suggested that the Drafting Committee should examine whether the words "fulfilling the requirements of paragraph (1)" appearing in paragraph (3) were necessary.

303. Mr. LIPS (Switzerland) referred to the proposal of his Delegation contained in document PCT/DC/17, to the effect that the said paragraph should specify that the international filing date was equivalent to the effective national filing date in each designated State. However, since the proposal was connected with Article 27(5), last sentence, his Delegation would be satisfied if the proposal were taken up after Article 27(5) had been disposed of.

304. Mr. VILLALBA (Argentina) said that he assumed that when the international application



reached the designated Office, such Office would require that the application be completed according to the requirements of the national law.

305. Mr. VAN BENTHEM (Netherlands), referring to the observations of his Government contained in document PCT/DC/8, suggested that paragraph (3) be clarified to make it clear that the international filing date was to be considered the actual filing date in each designated State. The proposal had the same aim as that of the Delegation of Switzerland. He too was ready to postpone discussion on the proposal until Article 27(5) had been disposed of.

306. Mr. EKANI (African and Malagasy Industrial Property Office) said that his Office was in agreement with the suggestions made by the Delegations of Switzerland and the Netherlands. The matter was also important from the viewpoint of the fees to be paid to the designated Offices. He would come back to the matter when the fees were to be discussed.

307.1 Mr. BOGSCH (Secretary General of the Conference) suggested that the proposal of the Delegation of the United Kingdom be considered by the Drafting Committee.

307.2 As far as the observations of the Delegation of Argentina and the Representative of the African and Malagasy Industrial Property Office were concerned, if they related to the right of each designated Office to require the payment of the national fees – and he assumed that both interventions had dealt with this point and this point only – there was no doubt that such right existed. Article 22 expressly referred to the obligation of the applicant to pay the national fees. The renewal fees, due only after the national patent had been granted and thus falling entirely within a phase not regulated by the PCT, were also among those fees, payment of which any designated Office would continue to have the right to require.

308. The CHAIRMAN said that the proposal of the Delegation of the United Kingdom would be referred to the Drafting Committee.

309. Mr. ALMEIDA (Brazil) said that his Delegation preferred paragraph (4) as appearing in the Alternative Draft to the text appearing in the Draft.

310. Mrs. MATLASZEK (Poland) said that her Delegation too preferred the Alternative Draft of paragraph (4).

311. *Article 11 was adopted as appearing in the Alternative Draft, it being understood that the proposal of the Delegation of the United Kingdom was referred to the Drafting Committee and that discussions on paragraph (3) would be resumed after Article 27(5) had been disposed of.* (Continued at 756.)

#### **Article 12: Transmittal of the International Application to the International Bureau and the International Searching Authority**

312. Mr. PRETNAR (Yugoslavia) said that the applicant should have the right, if he so wished, to forward himself the record copy to the International

Bureau, and the copies meant for the designated Offices to those Offices. This proposal was similar to a proposal made by the International Association for the Protection of Industrial Property.

313. Mr. SHER (Israel) said that his Delegation agreed with the proposal made by the Delegation of Yugoslavia.

314. Mr. EKANI (African and Malagasy Industrial Property Office) said that it was essential that every designated Office receive a copy of the international application at the same time as such application was filed so that there should be tangible evidence of the application in each of the said Offices. He asked that the Drafting Committee be requested to look into the matter.

315.1 Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of Yugoslavia raised a question which had been under the most careful consideration from the very beginning of the preparatory work for the PCT. In any case, the proposal seemed to relate more to Article 20 than to Article 12.

315.2 As far as the observation of the Representative of the African and Malagasy Industrial Property Office was concerned, it should be noted that Article 13 gave to each designated Office the right to require the transmittal of a copy of the international application prior to the communication provided for in Article 20, communication which would normally occur 20 months after the priority date.

316. Mr. EKANI (African and Malagasy Industrial Property Office) said that it would be desirable that, under Article 13, any designated Office should be able to make a permanent arrangement with the International Bureau to receive copies of the international applications promptly. He would therefore come back to the matter in connection with Article 13.

317. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that his Association was primarily interested in the applicant's right to transmit himself, if he so wished, copies of his application to the designated Offices. As far as the transmittal of the record copy to the International Bureau was concerned, the same desire had been expressed by the International Association for the Protection of Industrial Property.

318. Mr. BOGSCH (Secretary General of the Conference) said that the only change in paragraph (3) between the Draft and the Alternative Draft was the omission of subparagraph (b). This was identical with the proposal of the Delegation of the United Kingdom contained in document PCT/DC/25.

319. *Article 12 was adopted as appearing in the Alternative Draft.* (Continued at 1750.)

#### **Article 13: Availability of Copy of the International Application to Designated Offices**

320. Mr. VILLALBA (Argentina) said that his Delegation might wish to present a written proposal in connection with the Article under discussion.

321. Mr. SAVIGNON (France) said that his Delegation had presented a proposal which was contained in document PCT/DC/19 but since it was merely a drafting proposal it could be referred to the Drafting Committee.

322. Mr. ARMITAGE (United Kingdom) said that his Delegation agreed with the proposal of the Delegation of France.

323. The SECRETARY said that in his view the proposal of the Delegation of France limited the scope of the Article because it would prevent countries from making a general request for copies. Under the proposal of the Delegation of France, specific requests would have to be made in the case of each international application.

324. Mr. ARMITAGE (United Kingdom) said that what his Delegation saw in the proposal of the Delegation of France was that it made it clear that any designated Office could place either a general order for copies or *ad hoc* orders in the case of specific applications.

325. Mr. CLARK (United States of America) wished to know whether the proposals of the Delegations of France and the United Kingdom would give any national Office the right to ask for copies even if it was not a designated Office.

326. Mr. YUASA (Asian Patent Attorneys Association (APAA)) said that the cost of sending copies under Article 13 should be borne by the designated Offices requesting such copies rather than by the applicant since the designated Office would receive a copy under Article 20 anyway. (Continued at 346.)

*End of the Third Meeting*

#### FOURTH MEETING

Wednesday, May 27, 1970, morning

**Article 8: Claiming Priority** (Continued from 278.)

327. The CHAIRMAN announced that the Working Party which had been requested to examine the reserved parts of Article 8 would consist of the Delegations of the following countries: France, Germany (Federal Republic), Netherlands, Soviet Union, Togo, United Arab Republic, United Kingdom, United States of America, Uruguay, Zambia. Any other country wishing to participate could attend the meeting of the Working Party. (Continued at 656.)

**Article 1: Establishment of a Union** (Continued from 250.)

**In the signed text, Article 50: Patent Information Services** (no provision in the Drafts) (Continued from 250.)

**In the signed text, Article 51: Technical Assistance** (no provision in the Drafts) (Continued from 250.)

**In the signed text, Article 52: Relations with Other Provisions of the Treaty** (no provision in the Drafts) (Continued from 250.)

328. The CHAIRMAN said that the Working Party to deal with a new Chapter III*bis* would consist of the Delegations of Algeria, Argentina, Brazil, Germany (Federal Republic), Israel, Japan, France, Soviet Union, United States of America, and of the Representatives of the International Patent Institute. Any other country interested in the Working Party could attend its meetings.

329.1 Mr. DAHMOUCHE (Algeria) said that he did not know who had made the decision to set up working parties. His Delegation had not been consulted in any case. The procedure surprised him because the Conference as such had not been consulted and had not made any decision on the question of setting up working parties.

329.2 He expressed the most emphatic reservations concerning such working parties. His Delegation would not participate in the Working Party for which it had been designated.

329.3 In any case, if in the future working parties were to be established, the Delegations to be appointed should first be asked whether they wished to participate in them or not.

330. The CHAIRMAN said that when Article 8 and Chapter III*bis* were discussed he had indicated that working parties would be established and that their membership would be announced by him. Because of the limited time only some of the Delegations could be consulted before the appointments were announced.

331. Mr. DAHMOUCHE (Algeria) said that he wished to underline that what was involved was a general principle. Initiatives must come from the countries members of the Conference. They were perfectly capable of establishing contacts among themselves and making suggestions to the Conference. It was not up to the Steering Committee or any individual to establish working groups and designate their members. Only in this way could diplomatic incidents be avoided. (Continued at 350.)

**Article 9: The Applicant** (Continued from 298.)

332. Mr. GIERCZAK (Poland), referring to the proposal of his Delegation contained in document PCT/DC/23, suggested that paragraph (1) of Article 9 be redrafted as follows: "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." The proposal had two objectives: (i) to make sure that the applicant had the same rights as under the Paris Convention, (ii) to ensure that, if the national law of the country of the applicant permitted filing abroad only after he had filed in his own country, such applicant should be allowed to file an international application also only if he had first filed in his home country.

333. Mr. TASNÁDI (Hungary) said that as the proposal of the Delegation of Poland was similar to that of his own Delegation, presented in document PCT/DC/8, he withdrew the latter and supported the former.

334. Mr. HAERTEL (Germany (Federal Republic)) asked the Delegation of Poland to illustrate by examples its proposal since it was not clear to him whether there was any difference between the proposal of the Delegation of Poland and the Alternative Draft.

335. Mr. LABRY (France) also asked the Delegation of Poland to explain its proposal. He said that his country like many others had written into its national law certain conditions which nationals and residents had to fulfill before they were entitled to file applications in foreign countries. It was desirable that the PCT should not require those countries to modify their national laws. That was why Article 9(1) should refer to national laws as well as to the Paris Convention.

336.1 Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of Poland, supported by the Delegation of Hungary, seemed to relate to the security provision to be found in the legislation of most countries. Certain inventions important for national defense could not be filed abroad or could be filed only with the special authorization of the competent authorities of the country of the applicant. In some countries, all applications had to undergo a security clearance before they could be filed in foreign countries.

336.2 He was of the opinion, however, that the objective of the proposal of the Delegation of Poland had already been achieved by Article 27(7) of the Draft Treaty and Rule 22 of the Draft Regulations.

337. Mr. ARTEMIEV (Soviet Union) supported the proposal of the Delegation of Poland since under Soviet law too an applicant wishing to file abroad had to obtain the authorization of the competent Soviet authorities.

338.1 Mr. LABRY (France) said that the situation was the same in France as far as the national law was concerned.

338.2 He wished, however, to have further explanations on the reason for which a reference to the Paris Convention was desired.

339. Mr. GIERCZAK (Poland) said that reference to the national law was necessary not only because of defense considerations but also for economic considerations. A country might prohibit the filing of applications abroad even for those latter considerations. Article 27(7) of the Draft did not cover that point.

340. Mr. HAERTEL (Germany (Federal Republic)) said that the goal of the proposal of the Delegation of Poland was justified. However, Article 9(1) did not seem to be the right place in which to deal with it. It would seem to be preferable to extend the scope of Article 27(7) of the Draft so as to cover all situations in which the national law limits the

right of its nationals to file patent applications in foreign countries.

341. Mr. ARMITAGE (United Kingdom) agreed with the objective of the proposal of the Delegation of Poland and with the solution to be given to it suggested by the Delegation of Germany (Federal Republic).

342. Mr. LABRY (France) said that he agreed with both the Delegations of the United Kingdom and of Germany (Federal Republic).

343. Mr. LULE (Uganda) asked at what stage a security clearance for international applications would take place.

344. Mr. BOGSCH (Secretary General of the Conference) replied that, since it was the national Office of the country of the applicant which was the receiving Office, such Office would have both the opportunity and the right to stop the application if it was against national security or necessary for economic considerations. Such application would, for all practical purposes, never become an international application and even its existence would remain unknown other than to the receiving Office and the applicant.

345. *It was decided to refer the proposal of the Delegation of Poland to the Drafting Committee in order to take it into account either in Article 9(1) or in Article 27(7) of the Draft. (Continued at 1747.)*

#### **Article 13: Availability of Copy of the International Application to Designated Offices** (Continued from 326.)

346. Mr. LABRY (France), in reply to a question asked by the Delegation of the United States of America, said that only designated Offices should be entitled to make use of Article 13. The proposal of his Delegation, contained in document PCT/DC/19, aimed at making requests for copies possible in a general way, that is, in such a way that it should not be necessary to repeat the request separately for each international application.

347. *The proposal of the Delegation of France was referred to the Drafting Committee.*

348. Mr. VILLALBA (Argentina), referring to his Delegation's proposal contained in document PCT/DC/33, suggested that the words "after the expiration of one year from the priority date," appearing in paragraph (2) of the Draft, be omitted. He saw no reason to wait until the end of the priority year for the transmittal of copies to the designated Offices. Such transmittal should be effected as soon as possible even if the priority year had not yet expired.

349. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Argentina. (Continued at 351.)

#### **Article 1: Establishment of a Union** (Continued from 331.)

**In the signed text, Article 50: Patent Information Services** (no provision in the Drafts) (Continued from 331.)

**In the signed text, Article 51: Technical Assistance** (no provision in the Drafts) (Continued from 331.)

**In the signed text, Article 52: Relations with Other Provisions of the Treaty** (no provision in the Drafts) (Continued from 331.)

350. The CHAIRMAN said that, after consultation with the Delegations concerned, the Delegations of Yugoslavia and Zambia had been added to the members of the Working Party set up to deal with Chapter IIIbis. (Article 1 continued at 1591, other provisions at 1690.)

**Article 13: Availability of Copy of the International Application to Designated Offices** (Continued from 349.)

351. *On the proposal of the Delegation of Brazil, it was decided to defer discussion of this Article.* (Continued at 526.)

**Article 14: Certain Defects in the International Application**

352. *Paragraph (1), as appearing in the Alternative Draft, was adopted without discussion.*

353. Mr. ALMEIDA (Brazil), referring to the proposal of his Delegation contained in document PCT/DC/34, suggested that paragraph (2) be modified to the effect that if the applicant furnished the missing drawings within the prescribed time limit then the original filing date should be preserved.

354. Mr. VILLALBA (Argentina) supported the proposal of the Delegation of Brazil.

355. Mr. BOGSCH (Secretary General of the Conference) said that drawings filed later might contain new matter. Preserving the original filing date could then have the effect of extending the priority period to include the time elapsing between the filing date given to the international application and the actual date on which the missing drawings were later filed.

356. Mr. HAERTEL (Germany (Federal Republic)) said that one had to distinguish between two cases, namely, whether the drawings were necessary for the understanding of the application or not. In the former case, maintaining the date notwithstanding the fact that the drawings were only filed later would give an international filing date to an application which could not be understood. Only if the drawings were not necessary for the understanding of the application could one, perhaps, regard the proposal of the Delegation of Brazil as acceptable.

357. Mr. SAVIGNON (France) said that his Delegation could not accept the proposal of the Delegation of Brazil for the reasons stated by the Delegation of Germany (Federal Republic).

358. Mr. LIPS (Switzerland) said that his Delegation was decidedly against the proposal of the

Delegation of Brazil for the reasons stated by the Delegation of Germany (Federal Republic). Furthermore, his Delegation was also opposed to the said proposal even if it were limited to drawings which were not necessary for the understanding of the application because such drawings could contain new matter, i.e., matter not contained in the other parts of the application. Such new matter would then, under the proposal, be antedated, and such antedating would run against all the generally accepted principles of patent law.

359. Mr. ARMITAGE (United Kingdom) said that his Delegation shared the views of the Delegations of Germany (Federal Republic), France and Switzerland. It also considered that the proposal of the Delegation of Brazil was difficult to apply in practice because drawings would have to be checked by technically qualified persons and, at the stage of filing in the receiving Offices, the system did not provide for intervention by such persons.

360. Mr. OTANI (Japan) said that his Delegation opposed the proposal of the Delegation of Brazil for the reasons stated by the Delegations who had spoken against it.

361. Mr. VAN BENTHEM (Netherlands) said that it was a fundamental rule of the patent laws of most countries that, in filing amendments or later documents concerning the patent application, the applicant was not allowed to go beyond the original disclosure for which the filing date had been certified. The proposal of the Delegation of Brazil would contravene this rule. Consequently, his Delegation opposed it.

362. Mr. BRENNAN (United States of America) said that his Delegation shared the views of the Delegations of Germany (Federal Republic), France, Switzerland, the United Kingdom, Japan, and the Netherlands.

363. Mr. ALMEIDA (Brazil) said that in view of the explanations given by the Secretary General of the Conference and the opposition of the majority of the delegations, he withdrew his Delegation's proposal.

364. The CHAIRMAN thanked the Delegation of Brazil for its cooperation and noted that the Delegation of Argentina had no objection to the withdrawal of the proposal.

365. *Paragraph (2) was adopted as appearing in the Alternative Draft.*

366. *Paragraph (3) was adopted without discussion as appearing in the Draft.*

367. Mr. PETERSSON (Australia), referring to his Delegation's proposal contained in document PCT/DC/28, said that paragraph (4) of the Draft was unduly harsh. Once the international filing date had been accorded, the international application should be processed even if the receiving Office had overlooked certain defects.

368. Mr. SHER (Israel) supported the proposal of the Delegation of Australia.

369. Mr. LORENZ (Austria) supported the proposal of the Delegation of Australia on the

understanding that it meant that, where certain defects were discovered later in the international application, that application would no longer be processed internationally but it would be processed nationally if it complied with the national requirements of the designated States.

370. Mr. BOGSCH (Secretary General of the Conference) said that it was not clear to him whether the proposal of the Delegation of Australia meant that further processing of the international application would be required in the international phase. For example, could it mean that an international application written in a language not admitted for an international application should be searched by the International Searching Authority and published by the International Bureau?

371. Mr. ARMITAGE (United Kingdom) said that the proposal of the Delegation of Australia would also mean that the lack of description and the lack of claims in the international application would be correctable defects. Such permissiveness would not be tolerable. Furthermore, the proposal of the Delegation of Australia would mean that an international filing date already granted would be taken away. This would also not be tolerable since, however defective, an application should be able to be the basis of a priority. Of course, how useful and effective such priority would be would depend on the degree of the defects of the application.

372. Mr. PETERSSON (Australia) said that his Delegation would be agreeable to reviewing its proposal in order to meet some of the objections made by certain delegations.

373. Mr. BRENNAN (United States of America) said that he agreed with the observations of the Delegation of the United Kingdom. The defects involved were fundamental defects which should prevent international processing. Applications having such fundamental defects should be refiled after correction.

374. Mr. ARMITAGE (United Kingdom) said that there were certain fundamental defects – and those referred to in Article 11(1) were of that kind – which should not be correctable.

375. Mr. MAST (Germany (Federal Republic)) agreed with the position taken by the Delegations of the United Kingdom and the United States of America and urged that paragraph (4) be maintained in the form in which it was proposed in the Draft.

376. Mr. GABAY (Israel) said that, once the international application had left the receiving Office, that Office should not be able to influence its fate.

377. Mr. LABRY (France) said that his Delegation was in full agreement with the view of the Delegation of Germany (Federal Republic).

378. Mr. PETERSSON (Australia) wished to know what would happen if the errors referred to in paragraph (4) were discovered later than the time limit mentioned in paragraph (4).

379. Mr. BOGSCH (Secretary General of the Conference) said that if the error was detected after the six-month time limit referred to in paragraph (4)

the international application would continue to be processed internationally. It was, however, highly unlikely that during those six months the very grave defects in question would remain undetected. In most cases, during that period the international application would reach the International Bureau and the competent International Searching Authority. Both could bring the defects that had not been detected by the receiving Office to the latter's attention.

380. The CHAIRMAN said that the Drafting Committee should look at paragraph (4) to see whether its language needed any clarification.

381. *Paragraph (4) was adopted as appearing in the Draft.* (Continued at 548.)

*End of the Fourth Meeting*

## FIFTH MEETING

Wednesday, May 27, 1970, afternoon

### Article 15: The International Search

382. Mr. SAVIGNON (France) presented the proposal of his Delegation contained in document PCT/DC/21. The main objective of the proposal was to ensure that the International Searching Authorities would be under an obligation to search not only the minimum documentation but also any additional material which they might have in their search files.

383. The CHAIRMAN noted that there was no opposition to the proposal of the Delegation of France. The Drafting Committee would find the proper wording.

384. Mr. VAN BENTHEM (Netherlands) said that as he understood the proposal of the Delegation of France it related only to documents which were classified for search purposes and not also to documents which were merely in the archives of the International Searching Authority.

385. Mr. SAVIGNON (France) replied that he agreed with the interpretation of the previous speaker.

386. Mr. PETERSSON (Australia) said that the last words (“with due regard to the description and the drawings (if any)”) of paragraph (3) were not entirely clear. The Drafting Committee should try to clarify the question whether the international search would be made on the basis of the claims only or also cover the description and the drawings. It was extremely important to know what the search was exactly covering since the claims might be amended after the search had been carried out and, if the search was exclusively based on the claims, it might be insufficient with regard to the amended claims.

387. Mr. ASCENSÃO (Portugal) presented the proposal which his Delegation, together with the Delegation of Argentina, has presented in document PCT/DC/42. It was proposed that a search similar to an international search (“an international-type search”) should be available in the case of any national application filed with the national Office of a Contracting State. The International Searching Authority competent to carry out the search would be

the same Authority as that which was competent in the case of international applications filed with the said national Office. International-type search would be carried out either at the request of the national Office or at the request of the applicant.

387.2 The main difference between paragraph (5) of the Draft and the proposal was that the international-type search would be carried out not only at the request of the applicant but also at the request of the national Office. The proposed measure should contribute to the harmonization of national laws and practices.

388. Mr. LORENZ (Austria) supported the proposal of the Delegations of Argentina and Portugal.

389. Mr. BORGGÅRD (Sweden) also supported the proposal of the Delegations of Argentina and Portugal. If adopted, that proposal would have the beneficial effect that there would be no difference, in a country making use of the proposal, between the treatment given to national applications and that given to international applications. Both kinds would be searched, and would be searched by the same Authority.

390. Mr. ARMITAGE (United Kingdom) said that the proposal had far-reaching practical consequences for the International Searching Authorities. Their work load could very considerably increase if countries receiving many national applications had to extend the obligation of search also to national applications. He would, therefore, like to hear the opinion of the prospective International Searching Authorities, particularly that of the International Patent Institute.

391. Mr. FINNISS (International Patent Institute) said that the proposal of the Delegations of Argentina and Portugal raised not only the question of increased work load but also the question of languages. Notwithstanding his Institute's efforts to extend its capabilities to the searching of applications in additional languages, it was a practical impossibility to cover all, or even most, of the languages of the world. For both those reasons, the proposal in question would be acceptable only if it were understood that its application would depend, in every case, on a freely negotiated contract between the International Searching Authority and the interested national Office.

392. Mr. BOGSCH (Secretary General of the Conference) wished to draw the attention of the meeting to the fact that the proposal in question dealt with purely national applications which might never become international applications and with searches which would be carried out at the sole request of the national Office, even if the applicants did not desire such a search.

393. Mr. BRENNAN (United States of America) said that the proposal called for great caution on the part of the prospective International Searching Authorities since it could very considerably increase their work load.

394. Mr. VAN BENTHEM (Netherlands) expressed the view that the proposal was outside the

scope of the PCT. Paragraph (5) in the Draft envisaged the situation in which the applicant intended to file an international application but, before doing so, he wanted to have an international-type search on his national application. Thus, there was some link with the international application and, hence, paragraph (5) had its proper place in the PCT. However, any such link was missing in the proposal of the Delegations of Argentina and Portugal as it envisaged the international-type search of purely national applications that were never intended to become international applications.

395. Mr. MAST (Germany (Federal Republic)) said that his Delegation had no objection to the proposal of the Delegations of Argentina and Portugal although it had only a very loose connection with the PCT.

396. Mr. VILLALBA (Argentina) said that he did not see any fundamental difference between paragraph (5) of the Draft and the proposal presented by his Delegation together with the Delegation of Portugal. After all, the Draft itself provided for the international-type searching of purely national applications. The proposal did the same, except that it extended it somewhat by allowing not only the applicant but also the national Office to ask for an international-type search. Consequently, the proposal seemed to be falling within the scope of the PCT.

397. Mr. ALMEIDA (Brazil) said that his Delegation favored the proposal of the Delegations of Argentina and Portugal. The underlying reason was to allow countries not having sufficient documentation to make searches themselves to use the services of the International Searching Authorities. There was nothing shocking in allowing the national Offices themselves to ask for international-type searches since the proposal expressly provided that they could do so only if their national laws so permitted.

398.1 Mr. LORENZ (Austria) said that he supported the proposal of the Delegations of Argentina and Portugal mainly for the reason that, as had been pointed out by the Delegation of Sweden, it would remove any difference in treatment between national and international applications from the point of view of searching in all countries which did not desire to have such a difference.

398.2 The proposal would not affect the International Searching Authorities which were national Offices since they made a search on all national applications in any case. It would affect only the International Patent Institute, whose work load it might increase. However, the proposal was perfectly compatible with paragraph (5) of the Draft. Nothing in the Draft guaranteed that a national application would, eventually, become an international application. Furthermore, any country could, under its national law, oblige the applicants to ask for an international-type search, and, if it did so, paragraph (5) of the Draft would already cover the situation.

399. The CHAIRMAN said that the proposal of the Delegations of Argentina and Portugal had great intrinsic merit. The only question before the

Conference was to decide whether the measure envisaged by the proposal was one for an international treaty, like the PCT, or merely for the national law of the various countries. The French law, for example, already provided, in fact, what the proposal aimed at: all applications filed in France were subjected to a search in the International Patent Institute.

400. Mr. EKANI (African and Malagasy Industrial Property Office) said that he was not convinced that the proposal in question was outside the scope of the PCT. On the contrary, as the Delegation of Austria had pointed out, the possibility for each national Office to ask for international-type searches on national applications was already implicit in paragraph (5) of the Draft. There was no good reason not to make that possibility explicit in the text of the Treaty.

401. Mr. VAN BENTHEM (Netherlands) wished to know the view of the Secretary General of the Conference on the question whether the proposal of the Delegations of Argentina and Portugal would oblige the International Patent Institute to search all the national applications which a national Office wished to be searched.

402.1 Mr. BOGSCH (Secretary General of the Conference) said that the reply was in the negative since the International Patent Institute would be obliged to make searches only to the extent that that obligation would be written into the agreement to be concluded between the Institute and the International Bureau. The agreement would be freely negotiated and could therefore be concluded only if both parties agreed to its terms.

402.2 The speaker wondered whether the proposal had its place in the PCT for the following reasons: the PCT was conceived in the spirit that it was an alternative route to the traditional route for filing national applications, and the choice between the two possibilities would always be a matter for the applicant to decide. The proposal deprived the applicant of the possibility of making a choice since he could be forced to obtain an international-type search even if he, himself, did not want it.

403. The CHAIRMAN suggested that the discussion on the proposal of the Delegations of Argentina and Portugal should be interrupted to allow delegations to further reflect upon it, and should be resumed a few days later.

404. *Article 15 was adopted as appearing in the Alternative Draft, with the exception of paragraph (5). Decision on the latter was deferred. (Continued at 551.)*

#### **Article 16: The International Searching Authority**

405. *Paragraph (1), as appearing in the Draft, was adopted without discussion. (See 1415.)*

406. Mr. ROBINSON (Canada) introduced his Delegation's proposal as contained in document PCT/DC/31. It was desirable that the PCT make it clear that the multiplicity of International Searching Authorities was merely a temporary solution and that

the ultimate goal was to have only one such Authority. It was therefore proposed that paragraph (2) be introduced by the following words: "Pending the establishment of a single International Searching Authority." Furthermore, Article 52(3) should provide that one of the tasks of the Committee for Technical Cooperation was to contribute, by advice and recommendations, to the establishment of a single International Searching Authority.

407. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that, in the view of his Association, it was indispensable that the PCT system eventually operate with a single International Searching Authority. The reasons for those views were technical and political. On the technical level, it was most unlikely that the various International Searching Authorities would make searches with the same degree of accuracy. On the political level, it would be found that it was much easier for any country to accept the searches made by an international authority than by national Offices since the objectivity of the search was guaranteed when it was done by an international authority.

407.2 For all those reasons, the Association would welcome the acceptance of the proposal made by the Delegation of Canada.

408.1 Mr. PRETNAR (Yugoslavia) said that his Delegation favored a system with one International Searching Authority as distinguished from a system with several International Searching Authorities since the uniformity of the results could be assured only if there was a single International Searching Authority. However, his Delegation was ready to recognize that, for a transitory period, several International Searching Authorities would be needed for practical reasons. It was nevertheless essential that the Treaty expressly provide that a multiplicity of International Searching Authorities was a temporary solution and that the ultimate goal was to have a single International Searching Authority.

408.2 Furthermore, it was the wish of his Delegation that, during the transitory period, each applicant should have the right to have his application searched by the International Patent Institute if he so desired, that is, if he preferred that it be searched by that Institute rather than by any other International Searching Authority.

409. The CHAIRMAN said that there was no written proposal before the Conference as far as the second point in the intervention of the Delegation of Yugoslavia was concerned.

410. Mr. CLARK (United States) said that his Delegation would agree to the inclusion in the Preamble of the Treaty of the ideas expressed in the proposal of the Delegation of Canada.

411. Mr. SHER (Israel) said that his Delegation favored the proposal of the Delegation of Canada. It would not be sufficient, however, to express the idea contained in that proposal in the Preamble. It should be expressed in the text of Article 16.

412. Mr. SAVIGNON (France) said that his Delegation fully supported the proposal of the

Delegation of Canada. It was extremely important that Treaty itself indicate, in clear terms, that the ultimate goal was the creation of a single International Searching Authority. Centralized search was in the interest of most of the applicants and the States since only an international authority could offer the guarantees implied in international control and supervision, and the centralization of all the modern methods of documentation retrieval.

413. Mr. PETERSSON (Australia) supported the proposal of the Delegation of Canada. The idea expressed should appear in the text of the Treaty rather than merely in the Preamble.

414. Mr. BORGGÅRD (Sweden) said that the text of the Draft was the result of a carefully negotiated compromise. His Delegation, therefore, supported the Draft rather than the proposal of the Delegation of Canada.

415. Mr. STAMM (Switzerland) said that the Government of Switzerland had always been in favor of a centralized search system. Consequently, it supported the idea expressed in the proposal of the Delegation of Canada. It would be satisfied if that idea were expressed in the Preamble.

416. Mr. CASELLI (Italy) said that his Government had always been in favor of centralized search and therefore supported the proposal of the Delegation of Canada.

417. Mr. LABRY (France) said that insertion in the Preamble of the idea expressed in the proposal of the Delegation of Canada would be insufficient and unacceptable. It must be expressed in the Treaty itself. Although the Government of France recognized that, in a transitory period, it would be unavoidable to have several International Searching Authorities, the ultimate goal – the single International Searching Authority – must find expression in the text of the Treaty itself. Rejection of that proposal would jeopardize the success of the Diplomatic Conference itself.

418. Mr. HAERTEL (Germany (Federal Republic)) said that, even if written into text of the Treaty itself, the proposal of the Delegation of Canada would be merely a wish rather than a contractual obligation. Consequently, it would be more logical to write that wish into the Preamble. His Delegation, therefore, proposed that the Preamble provide expressly that the ultimate goal was the creation of a single International Searching Authority, a goal which the Delegation of Germany (Federal Republic) had always been in favor of.

419. Mr. ROBINSON (Canada) said that his Delegation's proposal concerned not only Article 16 but also Article 52. Although the question whether the proposal would be written into the Preamble or into the Treaty itself was not of capital importance, it would be more fitting to put it in the Treaty if for no other reason than because it affected two articles.

420. Mr. ASCENSÃO (Portugal) said that he agreed with the proposal of the Delegation of Canada.

421. Mr. TRUONG (Ivory Coast) said that his Delegation supported the proposal of the Delegation of Canada.

422. Mr. BRAUN (Belgium) said that his Delegation agreed not only with the proposal of the Delegation of Canada but also with the declaration made by the Delegation of France. Consequently, the text proposed should appear in the text of the Treaty itself so that no one could say later that, because it was merely in the Preamble, it had no binding force.

423. Mr. OTANI (Japan) said that his Delegation had no objection to inserting the proposal of the Delegation of Canada in the Preamble.

424. Mr. ARTEMIEV (Soviet Union) said that his Delegation was not opposed to inserting the proposal of the Delegation of Canada in the Preamble.

425. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that his Association had always favored the idea that, eventually, there should be only one International Searching Authority. He would welcome it if the proposal of the Delegation of Canada were to be inserted both in the Preamble and in Article 16.

426. Mr. MATHYS (International Chamber of Commerce (ICC)) said that industrial circles would be happy to see an ideal written into the Treaty. However, neither in their own business nor in the matter of obtaining patents did they expect to obtain the ideal solution. Consequently, they would be very sorry indeed if the Conference foundered only because an attempt was made to write an ideal into the Treaty.

427. Mr. HAZELZET (Union of Industries of the European Community) said that his Union had no confidence in a system with several International Searching Authorities. Consequently, he would welcome it very much if the proposal of the Delegation of Canada were written into Article 16 itself, rather than merely into the Preamble.

428. Mr. ALMEIDA (Brazil) said that it might very well happen that in practice decentralized searching worked better than centralized searching. Even if there was only one International Searching Authority, it was probably going to be necessary that it have several branches in different parts of the globe. In any case, his Delegation preferred to see the proposal of the Delegation of Canada appear in the Preamble.

429. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)), said that his Federation fully agreed with the opinion expressed by the Representative of the Union of Industries of the European Community and the Inter-American Association of Industrial Property.

430. Mr. PANEL (European Industrial Research Management Association (EIRMA)) said that his Association had always been strongly in favor of centralized search. Consequently, it was of fundamental importance that the proposal of the Delegation of Canada appear in the text of the Treaty itself rather than merely in the Preamble. It was essential that the steps leading to a centralized search be taken right from the outset and that the principle of



a single International Searching Authority be incorporated in Article 16. As the Delegation of Brazil had intimated, limitation to a single International Searching Authority did not exclude the creation of several branches throughout the world as long as instructions and supervision came from a central point, because it was only in that way that uniform search results could be obtained.

431. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that he fully agreed with the declaration of the previous speaker.

432. *Sixteen Delegations voted for including the proposal of the Delegation of Canada in Article 16, paragraph (2).*

433. *Eighteen Delegations voted for including the proposal of the Delegation of Canada in the Preamble.*

434. Mr. DAHMOUCHE (Algeria) said that he did not consider the voting procedure entirely convincing. One should have asked for an expression of opinion not only in favor of each solution but also against it.

435. Mr. VILLALBA (Argentina) shared the views expressed by the Delegation of Algeria.

436. Mr. VAN BENTHEM (Netherlands), agreeing with the previous speakers, proposed that the proposal of the Delegation of Canada be put to the vote again and that votes both for and against the proposal be asked for.

437. *The proposal of the Delegation of Canada concerning paragraph (2), contained in document PCT/DC/31, was adopted by 18 votes in favor to 14 against, with 5 abstentions.*

438. *Subject to the decision reported on in paragraph 437, above, paragraph (2) was adopted as appearing in the Alternative Draft. (Continued at 439.)*

*End of the Fifth Meeting*

## SIXTH MEETING

Thursday, May 28, 1970, morning

### Article 16: The International Searching Authority (Continued from 438.)

439. Mr. SAVIGNON (France) moved the proposal of his Delegation contained in document PCT/DC/21 concerning paragraph (3)(e) to the effect that, before the Assembly made a decision on the appointment of any International Searching Authority, it should hear not only the interested national Office or international organization but should also seek the advice of the Committee for Technical Cooperation provided for in Article 52.

440. Mr. VAN BENTHEM (Netherlands) supported the proposal of the Delegation of France.

441. *The proposal of the Delegation of France concerning paragraph (3)(e), contained in document PCT/DC/21, was adopted.*

442. Mr. FINNE (Finland) said that Article 16 provided that each receiving Office had the right to

specify the International Searching Authority competent for the searching of international applications filed with such Office. On the other hand, the same Article provided that appointment of International Searching Authorities required an agreement between the national Office or the international organization which was a candidate for appointment and the International Bureau. He found no guarantee in the Article that every national Office would be able to specify which International Searching Authority it wished to be competent for the international applications filed with that Office.

443. Mr. BOGSCH (Secretary General of the Conference) said that, while it was true that any national Office could choose only an International Searching Authority which was willing to serve it, it was extremely unlikely that the International Patent Institute, which had been created for the purpose of making searches, should not agree to its being specified by any national Office. It was to be assumed – although the Treaty could not say so and although the International Patent Institute, which was not party to the Treaty, could not accept the obligation there and then – that the International Patent Institute would be available for all countries wishing to use its services.

444. Mr. ALMEIDA (Brazil) said that his Delegation had presented a proposal concerning Article 16, which was contained in document PCT/DC/34.Rev. But, since the document had been distributed only a few hours earlier, it might be premature to discuss it. He proposed that further discussion on Article 16 be deferred until a later time.

445. Mr. HAERTEL (Germany (Federal Republic)) said that, since document PCT/DC/34.Rev. differed only slightly from document PCT/DC/34, which had been distributed the previous day, he saw no difficulty in bringing it up for discussion.

446.1 Mr. ALMEIDA (Brazil) moved his Delegation's proposal, which consisted of the insertion of a new subparagraph in paragraph (3), reading as follows: "Any contracting party whose national Office fulfills the minimum requirements, especially as to manpower and documentation, may be designated as the seat of an International Searching Authority.

446.2 It would be a great asset for any country or region to have within its boundaries an International Searching Authority. The advantages were evident from the technological, administrative and language viewpoints. Although at the present time only a few underdeveloped countries could qualify, their aim was to improve their Offices so that they would be able to qualify. The proposal aimed at keeping the door open for such possibilities.

447. Mr. BRENNAN (United States of America) said that the wording of paragraph (3)(c) of the Draft already covered the situation referred to by the Delegation of Brazil. Furthermore, the proposal of the said Delegation, speaking as it did only about national Offices, would disqualify the International Patent Institute from becoming an International Searching Authority.

448. Mr. DAHMOUCHE (Algeria) said that there was a considerable difference of approach between paragraph (3)(c) of the Draft and the proposal of the Delegation of Brazil. The formula of the Draft was, in a sense, negative since it spoke of the obstacles which a national Office had to overcome before it could be considered qualified to become an International Searching Authority. The proposal of the Delegation of Brazil, on the other hand, stated in a positive way the right of any national Office, fulfilling certain conditions, to become an International Searching Authority.

449. Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Brazil was not necessary since what it stated was already implicit in Article 16. Furthermore, the proposal was in contradiction to the decision taken the previous day to the effect that the aim was to have a single International Searching Authority. The proposal of the Delegation of Brazil would rather give the impression that the number of International Searching Authorities was unlimited and would normally grow whenever a national Office assembled the documentation qualifying it to become an International Searching Authority.

450. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that his Delegation supported the proposal of the Delegation of Brazil because it made it clear that any national Office fulfilling the stated requirements had the right to become an International Searching Authority.

451. Mr. CAPURRO-AVELLANEDA (Uruguay) said that his Delegation supported the proposal of the Delegation of Brazil.

452. Mr. PETERSSON (Australia) asked for clarification of the meaning of the words "as a seat of."

453.1 Mr. ALMEIDA (Brazil) said that the proposal of his Delegation had spoken not of a national Office but of a contracting party, that is, a State. A State could not become an International Searching Authority, but it could become the seat of an International Searching Authority.

453.2 The request to become an International Searching Authority was, in a certain sense, a political matter since it was in the interest of the State or the region in question to have an International Searching Authority within its boundaries. The intention of the proposal was that, if there was a national Office or a regional Office on the territory of any Contracting State, then, on the request of that State, the said Office would become an International Searching Authority, provided it fulfilled the requirements as to minimum documentation and qualified staff.

453.3 The proposal did not use the words "right" or "entitlement"; it used the word "may." It was therefore merely a presumption that, if the minimum requirements were met, the request would be granted without, however, depriving the Assembly of the right to make a decision on the request.

454. Mr. CLARK (United States of America) said that his Delegation supported the observations made

by the Delegation of Germany (Federal Republic). It appeared that the question of centralized search was being argued again but with a seemingly different alignment of the same groups.

455. Mr. GABAY (Israel) said that his Delegation fully supported the proposal of the Delegation of Brazil. Centralization of the search was a far distance away. In the meantime, it was important, especially in the context of regional groupings of developing countries, to have the right to become the seat of an International Searching Authority. For example, as long as the Spanish and Portuguese languages could not be handled by the International Patent Institute, the Latin American countries might wish to institute their own regional Searching Authorities. His Delegation preferred to emphasize the possibility of setting up regional Searching Authorities, and would therefore welcome it if the proposal of the Delegation of Brazil spoke of "any national regional Patent Office" instead of "Contracting States."

456. Mr. ARMITAGE (United Kingdom) said that his Delegation shared the views of the Delegations of Germany (Federal Republic) and the United States of America. The proposal was unnecessary because the Draft, as it stood, already implied it. On the other hand, the proposal carried with it a strong indication that one should move towards the setting up of regional Searching Authorities and, hence, to a fractioning and proliferation of the searching machinery. It carried the implication that, whenever possible, one should set up a new Searching Authority.

457. Mr. SAVIGNON (France) said that he was convinced that the proposal of the Delegation of Brazil was not intended to encourage a proliferation of the International Searching Authorities. He also did not see any reason why one should not assert that those who qualified might become International Searching Authorities. There was no contradiction between the decision of the previous day and the proposal under discussion. In any case, it was necessary to revise the language of both the proposal of the Delegation of Brazil and the amendment proposed by the Delegation of Israel so that they did not exclude the International Patent Institute from becoming an International Searching Authority.

458. Mr. VAN BENTHEM (Netherlands) said that he shared the views expressed by the Delegation of France.

459. Mr. ALMEIDA (Brazil) said that the proposal of his Delegation was not intended to exclude the International Patent Institute.

460. Mr. LEWIN (Sweden) supported the views expressed by the Delegations of France and the Netherlands.

461. Mr. LORENZ (Austria) said that his Delegation also agreed with the proposal made by the Delegation of Brazil, provided that it covered also the International Patent Institute.

462. Mr. FINNISS (International Patent Institute) said that any reference in Article 16 to intergovernmental organizations should be so drafted

that it left no doubt that the International Patent Institute was included. Alternatively, one could mention the International Patent Institute by name. The countries members of the International Patent Institute would present a proposal to that effect unless the proposal was agreed upon there and then and referred to the Drafting Committee to work out the best formula.

463. Mr. SCHURMANS (Belgium) said that his Delegation agreed with the views expressed by the Representative of the International Patent Institute and that his Delegation proposed, for the reasons contained in document PCT/DC/24, that a reference to the International Patent Institute should be made in the text of the Treaty.

464. Mr. CASELLI (Italy) said that he fully supported the observations made by the Delegation of Belgium. The kind of search which was provided for in the PCT was the same as the searches carried out by the International Patent Institute. Consequently, it seemed to be appropriate that the Treaty mention that Institute *expressis verbis*.

465. Mr. SAVIGNON (France) said that he fully shared the views of the Delegation of Belgium.

466. Mr. KÄMPF (Switzerland) said that his Delegation, too, wished the Treaty to define more clearly what was meant by “intergovernmental organizations entrusted with international search.”

467. Mr. VAN BENTHEM (Netherlands) said that it might facilitate discussions if the Delegations which agreed with the proposal of the Delegation of Belgium presented a written proposal. His Delegation was ready to do so.

468. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation, also, wished the concept of “intergovernmental organizations” to be defined more clearly in the Article under discussion.

469. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that his Delegation supported the proposal of the Delegation of Belgium.

470. Mr. ARMITAGE (United Kingdom) said that he was also in sympathy with the proposal of the Delegation of Belgium and would be ready either to leave the matter to the Drafting Committee or wait for a written proposal by the original proponents of the idea.

471. Mr. QUINN (Ireland) suggested that the following words be added to paragraph (1): “which shall be a national Office or an intergovernmental organization”. This would make paragraph (1) clearer and its link with paragraph (3) smoother.

472. *Subject to the decision recorded under paragraph 441, above, paragraph (3) as appearing in the Draft, was adopted.* (Continued at 1415.)

#### **Article 17: Procedure Before the International Searching Authority**

473. Mr. BOGSCH (Secretary General of the Conference) introduced document PCT/DC/14 containing the possible alternative for paragraph (3) and Rules 40 and 43.7. The proposal had been

discussed at length in the Committee of Experts of March 1970. It would allow the International Searching Authority, if it was of the opinion that there was no unity of invention, to invite the applicant to pay an additional search fee and not proceed with searching until fee was paid, or, alternatively, it could immediately proceed with the searching of the main invention and, at the same time, invite the applicant to pay an additional search fee.

474. Mr. BRENNAN (United States of America) said that his Delegation supported the proposal of the Secretariat. The matter was entirely of a technical nature. It would allow more flexibility to suit the preferences of each International Searching Authority. It would facilitate the meeting of time limits set for completing the international search report.

475. Mr. FERGUSSON (United Kingdom) said that his Delegation would prefer to maintain paragraph (3) as it appeared in the Draft since the Draft gave more flexibility to the applicant: it allowed him to restrict the claims if he so desired.

476. Mr. SAVIGNON (France) said that he shared the view expressed by the Delegation of the United Kingdom.

477. Mr. LIPS (Switzerland) expressed support for the paragraph as it appeared in the Draft for the reasons mentioned by the Delegation of the United Kingdom.

478. Mr. ARTEMIEV (Soviet Union) said that his Delegation supported the proposal appearing in document PCT/DC/14 since it improved the procedure.

479. Mr. HAERTEL (Germany (Federal Republic)) said that whereas it was true that the proposal of the Secretariat contained in document PCT/DC/14 streamlined the procedure it was also true that it took away from the applicant the possibility of restricting the claims. The overriding consideration should be what served best the interest of the applicant. Consequently, the representatives of private circles should be heard on the matter.

480. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that the main merit of the proposal of the Secretariat was that it made it possible to speed up the procedure. That was an extremely important consideration for the applicant and therefore the proposal should be adopted.

481. Mr. HAZELZET (Union of Industries of the European Community) said that he fully agreed with the previous speaker. It was in the interest of the applicant to receive the search report at the earliest possible date.

482. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that his Association agreed with the two previous speakers.

483. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that his Association also agreed with the speakers for the private organizations.

484. Mr. HAERTEL (Germany (Federal Republic)) said that, in view of the declarations of the representatives of the private organizations, his Delegation supported the proposal of the Secretariat.

485. Mr. VAN BENTHEM (Netherlands) agreed with the declaration of the Delegation of Germany (Federal Republic).

486. Mr. BOGSCH (Secretary General of the Conference) said that, whereas it was true that the suggestion of the Secretariat formally deprived the applicant of the possibility of restricting his claims, in fact that possibility continued to exist since, if he was content with having only his main invention searched – and that he could achieve by not paying any additional fee – then, in effect, he had restricted his application to the main invention.

487. Mr. GIERCZAK (Poland) said that, for the reasons expressed by the Delegation of Germany (Federal Republic), his Delegation was also in a position to support the proposal of the Secretariat.

488. Mr. BORGGÅRD (Sweden) supported the proposal of the Secretariat.

489. Mr. SAVIGNON (France) said that, after having heard the explanations of the private organizations, his Delegation had no longer any objections to the adoption of the proposal of the Secretariat.

490. Mr. ARMITAGE (United Kingdom) said that, in view of the unanimous opinion of the private organizations, his Delegation would now also accept the proposal of the Secretariat.

491. *Article 17 was adopted as appearing in the Draft and, as far as paragraph (3) was concerned, as modified by document PCT/DC/14. (Continued at 1761.)*

#### **Article 18: The International Search Report**

492. Mr. CLARK (United States of America) said that paragraph (1) should speak of the “preparation” rather than the “establishment” of the international search report.

493. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation contained in document PCT/DC/33, proposed that a new paragraph be added to Article 18, reading as follows: “The designated Offices may require a translation from the applicant and legislate on the responsibilities which originate from the mistakes that it may contain.”

494. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Argentina.

495. Mr. BOGSCH (Secretary General of the Conference) said that the main reasons why the Draft did not provide for the translation of the international search report into the languages of all the designated States was that the international search report consisted, almost exclusively, of numbers, namely, the numbers of the cited documents. It was true that the international search report might also contain the title of an article or of a book, but it made very little sense to translate either since the article or the book could be consulted only in the language in which it was written.

Thus, there would be very little that would remain for translation, namely, the words “international search report” or “international application.” The translation would mainly consist of copying the numbers, a process which would easily produce errors. That was another reason why translations should not be required.

496. Mr. ARMITAGE (United Kingdom) said that his Delegation agreed with the explanation given by the Secretary General of the Conference.

497. Mr. CLARK (United States of America) said that his Delegation, too, agreed with the explanation of the Secretary General.

498. Mr. ALMEIDA (Brazil) said that his Delegation would propose, when the Rules were discussed, that the international search report should “also contain the relevant transcripts of the cited documents.” Should this proposal be adopted, then, of course, there would be quite a lot of text matter in the international search report and its translation would become very important.

499. Mr. VILLALBA (Argentina) said that it was extremely important for the designated Offices that they should receive the international search report in their own language. The Draft itself provided for the translation of the international search report into English whenever it was not originally prepared in English.

500. Mr. BOGSCH (Secretary General of the Conference) said that, as he had explained earlier, there were a few words in every search report, such as its title, “search report.” If that title appeared in Japanese or in Russian only, some Offices would not realize that the document was a search report. This was why it was proposed, in the Draft, that a translation into English should be required.

501. Mr. ALMEIDA (Brazil), on a question from the Chair, declared that he was ready to accept deferment of the discussion of the proposal of his Delegation until it had been decided whether the international search report would contain excerpts from the cited documents.

502. Mr. VILLALBA (Argentina) agreed with the proposal of the Delegation of Brazil.

503. *Article 18 was adopted as appearing in the Alternative Draft, it being understood that further discussion of the proposal of the Delegation of Brazil and the proposal of the Delegation of Argentina was deferred. (Continued at 1191.)*

#### **Article 19: Amendment of the Claims Before the International Bureau**

504. Mr. BOGSCH (Secretary General of the Conference) said that the change found in the Alternative Draft was mainly one of drafting. It was intended to make it clear that the claims could be amended only once before the International Bureau.

505. Mr. PETERSSON (Australia), referring to the proposal of his Delegation appearing in document PCT/DC/35, said that the word “amended” appearing at the beginning of paragraph (1) should be changed to

“proposed to amend” since amendments were allowed only by the national Office in the national phase. An applicant could not amend his application except with the consent of the Office granting the patent. All the applicant was entitled to do was to propose amendments which were either accepted or rejected.

506. Mr. BOGSCH (Secretary General of the Conference) said that any application, by its very nature, was merely a proposal or request for a patent. So, anything done by the applicant before the patent was granted was merely in the nature of a proposal or request. Even an original claim was merely a proposed claim and the same was true as far as any amendment was concerned.

507. The CHAIRMAN said that the proposal of the Delegation of Australia would be referred to the Drafting Committee.

508. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation as contained in document PCT/DC/33, proposed that the following sentence be added to paragraph (2): “The amendment shall not go beyond the disclosure of the international application as filed in accordance with the legislation of the designated Office.”

509. Mr. ASCENSÃO (Portugal) supported the proposal of the Delegation of Argentina.

510. Mr. ALMEIDA (Brazil) also supported the proposal of the Delegation of Argentina.

511. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) likewise supported the proposal made by the Delegation of Argentina.

512. Mr. LIPS (Switzerland) said that he foresaw some difficulties with the last part of the proposal of the Delegation of Argentina, which referred to the legislation of the designated States. The laws of the designated States might differ considerably and it would be extremely difficult for the applicant to respect them all in the same amendment.

513. Mr. BOGSCH (Secretary General of the Conference) said that one had to distinguish between amendments made in the international phase – which the Article under consideration dealt with – and amendments made in the national phase. In the international phase, the applicant could be required to comply with only one objective criterion, namely, that the amendment should not go beyond the disclosure. That, by the way, was a principle generally recognized by national laws. It was not practical, in such a case, to require compliance with all the laws since they were different. There was a second opportunity for the applicant to amend his claims, namely, the opportunity given to him before each of the designated Offices.

514. Mr. VILLALBA (Argentina) asked what would be the consequence if the applicant did not respect the prohibition contained in paragraph (2) of the Draft, namely, that the amendment must remain within the scope of the disclosure.

515. Mr. BOGSCH (Secretary General of the Conference) replied that there was indeed no immediate sanction for the violation of paragraph (2) because the International Bureau, before which the

amendment would be made, would not examine whether that amendment complied with paragraph (2). However, the sanction was merely deferred to a later stage, the stage of examination by the national Office. Any national Office could deny the grant of a patent if the amendment made before the International Bureau went beyond the disclosure.

516. Mr. HAERTEL (Germany (Federal Republic)) said that it was to be noted that Article 28 provided that amendments made in the national phase could go beyond the disclosure if the national law permitted them to do so. Perhaps the Drafting Committee should look into the matter and see whether a certain harmonization between Articles 19 and 28 was possible.

517. Mr. VILLALBA (Argentina) said that he desired that the text should clearly indicate that the decision on whether the claims had exceeded the disclosure was to be made by the national Offices.

518. Mr. LIPS (Switzerland) said that the main reason for allowing the applicant to amend his claims in the international phase was to permit him to see his claims published by the International Bureau in a form with which he was in agreement after having seen the international search report. Whether the claims were within the scope of the disclosure would be decided by each national Office as provided for in Article 28. Consequently, there was an important difference between the two Articles.

519. Mr. VILLALBA (Argentina) said that he agreed with the fundamental idea behind paragraph (2) but he wished to be sure that, if the national law allowed for amendments going beyond the disclosure contained in the application as filed, such law would remain applicable.

520. Mr. SAVIGNON (France) said that perhaps Article 19 should refer to Article 28 in order to satisfy the concern of the Delegation of Argentina.

521. Mr. ARMITAGE (United Kingdom) said that paragraph (2) was important because it gave assurance to the applicant that, as long as his claims remained within the scope of the original disclosure, they would be accepted. He thought that Article 27 took adequate care of the problem.

522. Mr. VAN BENTHEM (Netherlands) said that he shared the views expressed by the Delegation of the United Kingdom.

523. Mr. BOGSCH (Secretary General of the Conference) said that perhaps one could take care of the problem by providing, in Articles 27 or 29, that it was the national law of each designated State that applied in determining whether or not any claims went beyond the scope of the disclosure.

524. Mr. VILLALBA (Argentina) said that it made no difference to him whether the matter was regulated in Article 19 or some other article as long as it was made clear that the national law applied.

525. The CHAIRMAN said that the Drafting Committee would be invited to try to find adequate wording to express, in Articles 27 or 28, the applicability of the national law. (Continued at 556.)

*End of the Sixth Meeting***SEVENTH MEETING**

Thursday, May 28, 1970, afternoon

**Article 13: Availability of Copy of the International Application to Designated Offices**  
(Continued from 351.)

526.1 Mr. VILLALBA (Argentina) withdrew his Delegation's proposal contained in document PCT/DC/33 and introduced, instead, the proposal contained in document PCT/DC/46, sponsored by the Delegations of the following ten countries Algeria, Argentina, Brazil, Ivory Coast, Madagascar, Togo, Uganda, United Arab Republic, Uruguay, Yugoslavia. The proposal differed from the Draft mainly in so far as the designated Office could require transmittal of the copy of the international application before the expiration of one year from the priority date. There was no reason to wait for the expiration of the said date.

526.2 Another difference was that the copy could be transmitted direct by the applicant as well as by the International Bureau.

527.1 Mr. BOGSCH (Secretary General of the Conference) said that it was up to the delegations to decide whether their national Offices would recognize as authentic copies, copies which had not been certified by the International Bureau.

527.2 He also noted that the proposal seemed to allow designated Offices to ask for copies without any time limit, that is, even if the applicant did not want to have copies communicated before the expiration of one year from the priority date.

528. Mr. ARMITAGE (United Kingdom) said that, where the international application was filed at the end of the priority year, copies could not be sent until after the expiration of that year. Furthermore, he called attention to the fact that designations were not firm before the expiration of the said time limit because the designation fees were due only at the end of the priority year.

529. Mr. VAN BENTHEM (Netherlands) agreed with the observations made by the previous speaker.

530. Mr. PRETNAR (Yugoslavia) said that another difference between the proposal and the Draft was that the former put the emphasis on transmittal by the applicant. That would be the rule; transmittal by the International Bureau would be the exception.

531. Mr. MAST (Germany (Federal Republic)) said that many national Offices, and his country's Patent Office was one of them, would prefer not to receive such early copies since they could not be regarded as part of the prior art and therefore could serve no useful purpose.

532. Mr. VILLALBA (Argentina) said that he could accept the time limit of one year for requests by the designated Offices provided the applicant had the right to transmit a copy before the expiration of the time limit.

533. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that it might be in the interest of the applicant to transmit a copy as early as possible, for example, where a conflicting Application might be pending with the designated Office.

534. Mr. ONIGA (Brazil) agreed with the previous speaker.

535.1 Mr. BOGSCH (Secretary General of the Conference) said that, whatever was written into the Treaty, no national Office could prevent an applicant from mailing a copy of his application to it. Of course, the International Bureau could be prohibited from transmitting copies to national Offices not wishing to receive them.

535.2 As to the main question, there seemed to be agreement: the time limit would apply to requests by the designated Offices but would not apply to spontaneous transmittals by applicants.

536. Mr. MAST (Germany (Federal Republic)) wanted to know whether the proponents of the proposal had an objection to the time limit for transmittals by the applicant as distinguished from transmittals by the International Bureau.

537. Mr. VILLALBA (Argentina) replied that he had no objection to such a limitation.

538. Mr. MAST (Germany (Federal Republic)) wanted to know whether any designated Office could prohibit transmittals, before the expiration of the time limit, by or at the request of the applicant.

539. Mr. BRENNAN (United States of America) said that his Delegation favored Article 13 as appearing in the Draft.

540. Mr. FERGUSSON (United Kingdom) said that the position of his Delegation was the same as that of the Delegation of the United States of America. The proposal of the Delegations of the ten countries was not clear.

541. Mr. BOGSCH (Secretary General of the Conference) said that the Article could be made clearer if its first paragraph dealt only with requests by the designated Offices, and its second paragraph only with transmittals by or at the request of the applicant. The time limit would apply only in the case of paragraph (1). The prohibition by the designated Office could apply only in the case of paragraph (2).

542. Mr. VILLALBA (Argentina) said that he could agree to the presentation proposed by the Secretary General of the Conference.

543. Mr. VAN BENTHEM (Netherlands) said that the suggestion of the Secretary General of the Conference would mean that designated Offices could receive copies even when they did not wish to receive them. He would then prefer the Article appearing in the Draft.

544. Mr. ARMITAGE (United Kingdom) said that it would increase the expenses of the International Bureau if it had to transmit copies at the request of the applicant and that such increase would be totally unjustified if the designated Office did not wish to receive copies.

545. Mr. BOGSCH (Secretary General of the Conference) said that requests of the kind mentioned by the previous speaker would probably be so rare that the danger of increasing costs would be minimal.

546. Mr. VILLALBA (Argentina) said that he was not opposed to the Treaty's providing that designated Offices might indicate that they did not wish to receive copies under the Article being discussed.

547. The CHAIRMAN said that agreement had now been virtually reached and the Drafting Committee was requested to propose a wording. (Continued at 1751.)

**Article 14: Certain Defects in the International Application** (Continued from 381.)

548. Mr. VILLALBA (Argentina), referring to his Delegation's proposal contained in document PCT/DC/33, proposed that Article 14 be completed by a new paragraph (paragraph (5)) reading as follows: "The withdrawal of the application forfeits the filing of the international deposit." This was a principle which some might consider went without saying but it would be preferable to state it *expressis verbis*.

549. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, Article 24(1) of the Alternative Draft went as far as one should go in that matter. It provided that the consequences of the withdrawal of an international application were the same as the consequences of the withdrawal of a national application. If, in the proposal of the Delegation of Argentina, "forfeiture" related also to the filing date, it would be contrary to the Paris Convention, under which a withdrawn application might still be the basis of a priority claim.

550. *It was decided to defer further discussion on the proposal of the Delegation of Argentina until after Article 24 had been disposed of, at which time that Delegation could ask for further discussion if necessary.* (Continued at 1752.)

**Article 15: The International Search** (Continued from 404.)

551.1 Mr. ASCENSÃO (Portugal) said that he was ready to resume discussion of the proposal which his Delegation, together with that of Argentina, had introduced as document PCT/DC/42.

551.2 The proposal differed from the Draft only in one respect, namely, that international-type searches might be required by any national Office rather than only by the applicant. That difference caused no new problems as to form, languages and ability of the International Patent Institute or others mentioned when the proposal was first debated. It was not even sure whether the said difference was a difference in fact or only one of emphasis, since any national Office could, even under the Draft, require that the applicant ask for an international-type search.

551.3 If necessary, one could stipulate that international-type searches at the request of national Offices would have to be carried out only after a certain time, to allow the International Bureau to equip itself for handling them.

551.4 It should also be clearly understood that as to form and language the national applications subject to international-type search would have to obey the same rules as the international applications.

552. Mr. BOGSCH (Secretary General of the Conference) said that the proposal under discussion would have to be redrafted to express the latest, very important clarifications made by the previous speaker.

553. Mr. FINNISS (International Patent Institute) said that any International Searching Authority would have to get organized to be able to handle any additional number of applications. It would therefore be necessary that the Treaty state that the agreement of the interested International Searching Authority was required to its being named for the purposes of international-type searches to be carried out on the orders of a national Office.

554. Mr. ASCENSÃO (Portugal) said that the Article dealing with the gradual application of the Treaty could take care of the preoccupations of the previous speaker.

555. *On the proposal of the Delegation of Argentina, it was decided that further discussion would be deferred until the Delegations of Argentina and Portugal prepared, with the assistance of the Secretary General, a revised proposal.* (Continued at 1401.)

**Article 19: Amendment of the Claims Before the International Bureau** (Continued from 525.)

556. Mr. PETERSSON (Australia) moved the second of the amendments proposed in document PCT/DC/35. A new paragraph should be added to the Article under discussion reading as follows: "Where proposed amendments have the effect of broadening the scope of the claims so that the result of the search no longer represents a true statement of the prior art, any designated State shall have the right to charge a fee for carrying out a fresh search."

557. Mr. BOGSCH (Secretary General of the Conference) said that the proposed provision cast doubt on a basic principle of the PCT according to which the PCT did not touch the national fee structure of any Contracting State. National fees remained under the control of the Contracting States. The Treaty need say nothing about national fees.

558. Mr. DAHMOUCHE (Algeria) seconded the proposal of the Delegation of Australia.

559. Mr. VAN DAM (Netherlands) agreed with the observations of the Secretary General of the Conference. The proposal was superfluous. It was also dangerous because it would mean, *a contrario*, that if the claims were narrowed Contracting States had no right to ask for fees.

560. Mr. BRENNAN (United States of America) agreed with the observations of the previous speaker.

561. Mr. LIPS (Switzerland) also agreed with the observations of the Delegation of the Netherlands.

562. Mr. FERGUSSON (United Kingdom) agreed with the observations of the Delegations of the

Netherlands, the United States of America, and Switzerland.

563. Mr. VILLALBA (Argentina) said that the proposal of the Delegation of Australia should be broadened in order to allow for the freedom of Contracting States to ask for fees in any circumstances.

564.1 Mr. PETERSSON (Australia) said that he had no objection to broadening his proposal so that it should apply whenever the international search no longer covered the claims. It might be that Contracting States had the freedom to charge fees; but it was better to say so *expressis verbis* in the Treaty.

564.2 He would not ask for a vote, however, if there was not sufficient support for the proposed amendment. The record would show that the freedom in question existed without its being mentioned in the text of the Treaty. (Continued at 1763.)

#### **Article 20: Communication to Designated Offices**

565. *Paragraphs (1) and (2) were adopted as appearing in the Alternative Draft, without discussion.*

566.1 Mr. ASCENSÃO (Portugal), referring to the proposal that his Delegation made together with the Delegation of Argentina and which was contained in document PCT/DC/42, proposed that a new paragraph be added to the Article under discussion reading as follows: "At the request of the designated Office, the International Searching Authority shall send copies of the publications cited in the search report."

566.2 The proposal was essential to national Offices not having an adequate collection of documents. Without having copies sent to them, they could not intelligently use the international search report.

567. Mr. GABAY (Israel) supported the proposal of the Delegations of Argentina and Portugal for the reasons expounded by the Delegation of Portugal.

568. Mr. HAERTEL (Germany (Federal Republic)) wanted to know who would pay for the preparation of the copies in question.

569. Mr. OTANI (Japan) suggested that the proposal be discussed in connection with Rule 44.3 in the Alternative Draft providing for copies for the applicant.

570. Mr. GIERCZAK (Poland) supported the proposal of the Delegations of Argentina and Portugal as being similar to that presented by his own Delegation in document PCT/DC/23.

571. Mr. VAN BENTHEM (Netherlands) said that, if the proposal were to be adopted, it should be provided, for practical reasons, that a copy of the cited documents be sent by the International Searching Authority to the International Bureau. The latter would then send copies to whomever wanted to have them: any designated Office and the applicant.

572. Mr. AKPONOR (Zambia) supported the proposal under discussion.

573. Mr. LORENZ (Austria) also supported the proposal under discussion but wanted to know what the cost of preparing copies would be.

574. Mr. SHER (Israel) expressed the opinion that the cost would not be excessive in view of the rapid and simple means of reproduction now in use.

575. Mr. VAN WAASBERGEN (International Patent Institute) said that it was indispensable for the International Searching Authority to know in advance whether copies were desired since such copies would have to be made when the international search was made and the documents were in hand, and since it would be a waste to make copies when none was desired. Furthermore, it should be noted that no copies could be prepared of Articles and books under copyright protection, unless the owner of the copyright agreed. The International Searching Authority could not undertake the task of contracting with copyright owners.

576. *It was decided to defer further discussion on the proposal of the Delegations of Argentina and Portugal until Rule 44.3 had been reached.* (Continued at 1333.)

#### **Article 21: International Publication**

577. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

578. Mr. KÄMPF (Switzerland), referring to the observations of his Government contained in document PCT/DC/8, suggested that the reference in paragraph (2) to Article 60(3), and Article 60(3) itself, be stricken. The result would be that all international applications not withdrawn would be published after 18 months from the priority date. The system would thus be considerably simplified.

579. *It was decided to defer discussion on the proposal of the Delegation of Switzerland until Article 60 had been reached.* (See 2400.)

580. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) called the attention of the Conference to the observations of his Association contained in document PCT/DC/15, urging that the more flexible rule contained in Article 21(2) of the 1968 Draft of the PCT be adopted.

581. *Paragraphs (2) to (6) were adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1768.)

#### **Article 22: Copy, Translation, and Fee, to Designated Offices**

582. Mr. VAN BENTHEM (Netherlands) asked that the Drafting Committee clarify the meaning of the words "as required" in paragraph (1).

583. Mr. BOGSCH (Secretary General of the Conference) said that those words meant "as specified in the Regulations."

584. Mr. ARMITAGE (United Kingdom) suggested that the Drafting Committee clarify that the words "international application" in paragraph (1) covered also any amendments, and that the words "Contracting State" in paragraph (3) covered also the intergovernmental organizations, as suggested in the proposal of his Delegation, contained in document PCT/DC/25. The latter observation applied also to all



other analogous passages of the Draft and Alternative Draft.

585. *Article 22 was adopted as appearing in the Alternative Draft, on the understanding that the suggestions of the Delegations of the Netherlands and the United Kingdom would be referred to the Drafting Committee and that the proposal of the Delegation of France was deferred until discussion on Article 4 had been completed.* (Continued at 709.)

**Article 23: Delaying of National Procedure**

586. *Article 23 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1770.)

**Article 24: Possible Loss of Effect in Designated States**

587. *Article 24 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1771.)

**Article 25: Review by Designated Offices**

588. *Article 25 was adopted as appearing in the Draft, without discussion.* (Continued at 1772.)

**Article 26: Opportunity To Correct Before Designated Offices**

589. *Article 26 was adopted as appearing in the Draft, without discussion.* (Continued at 1773.)

**Article 27: National Requirements**

590. *Discussion on Article 27 was deferred.* (Continued at 743.)

**Article 28: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices**

591. Mr. FERGUSSON (United Kingdom) said that his Delegation withdrew its proposals contained in document PCT/DC/25 concerning Articles 28(2) and 41(2) as the Alternative Draft had already met the points raised by those proposals.

592. *Further discussion on Article 28 was deferred.* (Continued at 670.)

**Article 29: Effects of the International Publication**

593.1 Mr. HASHIMOTO (Japan), referring to his Delegation's proposal contained in document PCT/DC/27, proposed that the following sentence be inserted in paragraph (1): "A State which does not provide for a reservation under Article 60(3)(a) must guarantee to the applicant a right to provisional protection by stipulating it in its national law."

593.2 A State which did not desire international publication had the right to make a reservation under Article 60(3) of the Draft. If it did not make such a reservation, the State might be the cause of international publication. Such State should bear the consequences, that is, it should be obliged to grant

provisional protection. All countries whose national law provided for publication by the 18<sup>th</sup> month provided for provisional protection. Those countries would not make the reservation under Article 60(3).

594. Mr. BOGSCH (Secretary General of the Conference) said that there were two reasons for which the Draft did not follow the proposal under discussion. One was that "provisional protection" was a notion too vague to be written into a treaty without definition, and an attempt at defining it would be fruitless since countries meant very different things when they used the expression. The other reason was that the existing situation would be not worsened by the PCT. Today, if an application was published after 18 months in a country whose law provided for such publication, that application became known even in countries which did not provide for publication and did not give any provisional protection. Some might reply that the PCT should change and improve that situation. However, such an innovation would be too ambitious since it would require profound changes in national laws.

595. Mr. BRENNAN (United States of America) said that the proposal of the Delegation of Japan should be given serious consideration. Countries which provided for publication after 18 months should provide for provisional protection. The Delegation of the United States would probably make a reservation under Article 60(3) of the Draft.

596. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation was in sympathy with the proposal of the Delegation of Japan because it defended a just principle. Nevertheless, it could not support it for practical reasons. Requiring all Contracting States not providing for a reservation to grant provisional protection would mean asking for fundamental changes in the laws of some of them. Such changes would probably hinder acceptance of the PCT.

597. Mr. DAHMOUCHE (Algeria) expressed the view that the words "must guarantee" in the proposal of the Delegation of Japan did not seem precise enough to constitute an enforceable international obligation.

598. Mr. LORENZ (Austria) said that, subject to the possibility of improving the language, his Delegation supported the proposal of the Delegation of Japan.

599. Mr. VILLALBA (Argentina) said that, if the proposal under discussion implied – as it appeared to do – that the PCT would require States to assume obligations, in the field of substantive patent law, which the Paris Convention did not require them to assume, his Delegation would not approve it.

600. Mr. ASCENSÃO (Portugal) expressed agreement with the views of the previous speaker. (Continued at 601.)

*End of the Seventh Meeting*

## EIGHTH MEETING

Friday, May 29, 1970, morning

### Article 29: Effects of the International Publication (Continued from 600.)

601. Mr. HAERTEL (Germany (Federal Republic)) said that, whereas the proposal of the Delegation of Japan contained in document PCT/DC/27, pursued a laudable objective, it would be extremely difficult, for many States, to accept it since only Germany (Federal Republic), the Netherlands, the Scandinavian countries and perhaps one or two others had provisions in their national laws for provisional protection.

602. Mr. BRENNAN (United States of America), referring to his Delegation's proposal contained in document PCT/DC/30, proposed that paragraphs (2) and (3), as well as the reference to those paragraphs in paragraph (1), should be deleted. That proposal would complement the proposal of the Delegation of Japan, and both should be adopted. The proposal of the Delegation of the United States of America would mean that each Contracting State would apply its national law to international applications as far as provisional protection was concerned.

603. Mr. GABAY (Israel), referring to his Delegation's proposal contained in document PCT/DC/41, proposed that paragraph (1) speak about "*first compulsory national publication of national applications whether examined or not.*" The Draft spoke of compulsory publication of unexamined applications. The changes would bring the PCT into line with the national legislations.

604.1 Mr. VAN BENTHEM (Netherlands) said that there was a difference between the starting time of the provisional protection under the Draft and that under the proposal of the Delegation of the United States of America. Under the former, the protection would start when the international application was available in the language of the country giving the provisional protection; under the latter, when the international publication was made even if it was made in a language other than the language of the said country. He did not see why the Delegation of the United States of America did not wish to wait until the translations were available. In most cases the difference in time would be small, namely, the time elapsing between the 18<sup>th</sup> and the 20<sup>th</sup> month from the priority date.

604.2 The criterion – non-use of the faculty of making a reservation under Article 60(3) of the Draft – in the proposal of the Delegation of Japan was arbitrary. It was to be hoped that the idea of provisional protection would gradually be adopted by more and more countries when the PCT would cause most applications to be published within 18 months from the priority date.

605. Mr. PETERSSON (Australia) moved his Delegation's proposal contained in document PCT/DC/35 to the effect that a new paragraph be added to the Article under discussion reading as follows: "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." The proposal, said the speaker, was a logical extension of the principle that third parties should not be responsible as long as the document describing the invention was unavailable to them.

606.1 Mr. ARMITAGE (United Kingdom) said that he, too, was of the opinion that, if the Treaty provided for compulsory provisional protection, it should, at the same time, exempt from the obligation to grant such protection States which made a reservation under Article 60(3) of the Draft. But, even more important, the introduction of the principle of compulsory provisional protection did not seem to be realistic since it would require changing the domestic laws of most countries. The United Kingdom probably could accept changing its law, the more so as it would be required to do so under the draft European Conventions, but, even there delays might occur. For those reasons, he would not counsel the adoption of the proposal of the Delegation of Japan.

606.2 The proposal of the Delegation of the United States of America seemed to be unfair because it would require that countries give protection to applications published in a foreign language. It was misleading to state that the said proposal would not require any change in the national laws. It would require the very important change that publications in a foreign language would have to be treated in the same way as publications in the national language.

606.3 The proposal of the Delegation of Israel would also be unacceptable because it made a great difference whether provisional protection was triggered by the publication of an examined or an unexamined application.

606.4 The proposal of the Delegation of Australia was fair and equitable since easy access to the publications containing the invention enjoying provisional protection should, logically, be a condition for making third parties responsible. It had the disadvantage, however, that the date from which the protection would start would be difficult to ascertain or prove and would vary from country to country. That was why the proposals contained in the Draft seemed to be more practical.

607. Mr. SAVIGNON (France) said that the proposal of the Delegation of the United States of America was unacceptable because it would require the granting of provisional protection on the basis of a document which might be in a language not understood in the country in which the granting of the protection would be required.

608.1 Mr. BRENNAN (United States of America) said that countries which did not make a reservation under Article 60(3) of the Draft caused the international publication of the international application. It was only logical that, as a consequence, they should give provisional protection. The language problem existed in many areas, not only in that of the Article under discussion.

608.2 What was important was that, in a country giving provisional protection, applicants using the PCT should receive the same treatment as those using the traditional route.

608.3 The proposal of the Delegation of Israel might be acceptable to the Delegation of the United Kingdom if it spoke of “first compulsory national publication before grant.”

609. Mr. LEWIN (Sweden) said that the proposal of the Delegation of the United States of America was unacceptable also for the following reason. If an applicant did not maintain – by complying with the requirements of translation, etc., of Article 22 – his application in a given country, that country would still have to grant provisional protection *ad infinitum* and even if the application, for the stated reasons, was never translated into the language of the said country. Such a situation would probably arise quite frequently in smaller countries. Thus the proposal would be particularly prejudicial to such countries.

610. Mr. GABAY (Israel) said that he was ready to accept the amendment to his Delegation’s proposal proposed by the Delegation of the United States of America.

611. Mr. ARMITAGE (United Kingdom) said that the said amendment would not help since, in the United Kingdom, publication was before grant. He could not accept the proposal of the Delegation of Israel even as amended by the Delegation of the United States of America. The Draft, as it stood, was the only acceptable formula.

612. Mr. HAERTEL (Germany (Federal Republic)), on a question from the Chairman, said that under the proposed European Patent Convention each member State would grant provisional protection to applications published after 18 months from the priority date, and the said Convention did provide for such publication. However, the claims must be published in English, French and German, and the rest of the application in one of those three languages. Furthermore, in countries of other languages, the application, to enjoy provisional protection, must either be published in the language of the interested country or must be made available in such language to the infringer or potential infringer. Consequently, paragraph (2) of the Draft was indispensable and to strike it out, as proposed by the Delegation of the United States of America, was unacceptable both under the proposed European Convention and under the national law of Germany (Federal Republic).

613.1 Mr. OTANI (Japan) said that, in view of the opposition of several delegations, he would not insist on his Delegation’s proposal.

613.2 He found the proposal of the Delegation of the United States of America unacceptable for the same reasons as those expounded by the delegations which had opposed it.

614. Mr. FINNE (Finland) said that his Delegation shared the views expressed by the Delegation of Sweden and opposed the proposal of the Delegation of the United States of America.

615. Mr. KÄMPF (Switzerland) said that his Delegation could not agree to the striking of paragraph (2) of the Draft. It would mean that Switzerland would have to grant provisional protection to applications that practically nobody could understand in Switzerland because they were written in Japanese or other foreign languages. It was unthinkable that the Swiss law could ever be modified to admit of a system such as that proposed by the Delegation of the United States of America.

616.1 Mr. PETERSSON (Australia) said that, after having heard the arguments, he withdrew his Delegation’s support for the proposal of the Delegation of Israel. The amendment proposed to that proposal by the Delegation of the United States of America made things even worse, so that his Delegation could not support the said proposal even in its amended form.

616.2 As far as his own Delegation’s proposal was concerned, he had no fear that there would be any uncertainty as to the date on which the international publication was received in any given State. The courts of that State would, if necessary, determine the date.

617.1 Mr. VILLALBA (Argentina) said that the proposal of the Delegation of Japan would require certain States to assume obligations in the field of substantive patent law which, today, under the Paris Convention, they did not have. The PCT should not establish such new requirements.

617.2 For the same reasons, the proposal of the Delegation of the United States of America was unacceptable.

617.3 On the other hand, the proposal of the Delegation of Australia, which was respectful of local needs, was acceptable.

618. Mr. TUXEN (Denmark) said that, for the reasons stated by previous speakers, the proposal of the Delegation of the United States of America was unacceptable. The Article under discussion should remain as it was in the Draft.

619. Mr. BOGSCH (Secretary General of the Conference) said that it did not seem to be logical to assimilate the requirements of provisional protection to those of prior Art. It was generally admitted that a document which was published destroyed novelty irrespective of the language and the place in which it was published or was available. If that were not so, “novelty” would become a farce. On the other hand, obliging third parties to respect the rights of the inventor when the document describing the invention was in a language which they could not understand was generally regarded as impractical and national laws provided accordingly.

620. Mr. BRENNAN (United States of America) suggested the establishment of a working group whose mandate would be to try to reconcile the differing opinions.

621. Mr. DAHMOUCHE (Algeria) opposed the establishment of a working group since that would carry with it the implication that the majority desired a change in the Draft. On the other hand, he had no

objection to deferring further discussion in order to allow those delegations which desired an amendment to agree among themselves and come forward with a consolidated proposal.

622. Mr. HAERTEL (Germany (Federal Republic)) thought that the discussion had been exhaustive and the issues were ripe for decision. Most delegations seemed to oppose the proposals of the Delegations of the United States of America and Israel.

623. Mr. VAN BENTHEM (Netherlands) agreed with the previous speaker.

624. Mr. GABAY (Israel) withdrew the proposal of his Delegation.

625. Mr. BRENNAN (United States of America) said that his Delegation would not insist on its proposal. He added that the view of the delegations opposing the proposal of his Delegation was a derogation of Article 11(3) and meant that those delegations went on record as saying that, where Article 11(3) was inconvenient because of national laws, exceptions to that Article were in order.

626. Mr. ARMITAGE (United Kingdom) said that he disagreed completely with the views of the previous speaker. There was absolutely nothing in Article 29, as it stood in the Draft, that would be a derogation of Article 11(3). So, if there was anybody on record in that respect, it was the Delegation of the United States of America and certainly not the delegations which had opposed the proposal of that Delegation.

627. The CHAIRMAN said that the opinion was merely an opinion of the Delegation of the United States of America.

628. Mr. BRENNAN (United States of America) asked that the Delegation of Japan be asked to state whether it did not agree with the opinion of his Delegation.

629. Mr. MCKIE (United States of America) withdrew the proposal of his Delegation contained in document PCT/DC/30.

630. *Paragraphs (1) to (3) were adopted as appearing in the Draft.*

631. Mr. PETERSSON (Australia) said that the proposal of his Delegation for a new paragraph was a logical extension of the principles laid down in paragraphs (2) and (3).

632. Mr. HAERTEL (Germany (Federal Republic)) asked the Secretary General of the Conference how BIRPI planned to distribute the published international applications, particularly, how much time it would take for them to get from Geneva to, say, Australia.

633. Mr. BOGSCH (Secretary General of the Conference) replied that the copies would be airmailed on the day they were published. They should reach even the most distant national Offices within a week.

634. Mr. VAN BENTHEM (Netherlands) said that, the time between publication and receipt being only a few days, the proposal appeared to be

unnecessary. Furthermore, the exact date of receipt would be extremely difficult to verify.

635. Mr. ARMITAGE (United Kingdom) agreed with the view of the previous speaker.

636. Mr. SAVIGNON (France) said that fixing a definite date from which provisional protection started was important for reasons of legal security.

637. Mr. PETERSSON (Australia) said that documents sent by mail might get lost or substantially delayed so that the one week delay referred to by the Secretary General of the Conference would not always apply.

638. Mr. BRENNAN (United States of America) supported the proposal of the Delegation of Australia.

639. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation could accept the proposal of the Delegation of Australia. Such a position, however, did not by any means imply agreement with the view that it prejudiced the position on other articles, as had been suggested by one of the speakers earlier in the debate.

640. The CHAIRMAN said that it was not necessary to observe that anyone had prejudiced his position by making any comment on the Article under consideration. The sole matter of concern at that point was that Article.

641. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Australia.

642. Mr. HAERTEL (Germany (Federal Republic)) asked whether the Delegation of Australia would agree that its proposal be so modified as to require the publication of the date of receipt of the published copy of each international application. That would remove any uncertainty as to the starting date of the provisional protection, which would be the same as the published date of receipt.

643. Mr. PETERSSON (Australia) said that his Delegation was ready to accept the suggestion of the previous speaker. The date would be published in the official gazettes of the national Offices.

644. *The proposal of the Delegation of Australia, as contained in document PCT/DC/35 and as orally amended, was adopted. (Continued at 1781.)*

### **Article 30: Confidential Nature of the International Application**

645. Mr. BOGSCH (Secretary General of the Conference) called attention to the addendum contained in document PCT/DC/11/Add. 1.

646. Mr. KÄMPF (Switzerland) asked that discussion be deferred on paragraph (2) since his Delegation was about to present a written proposal.

647. *Subject to later consideration of the proposal of the Delegation of Switzerland, paragraphs (1) to (3) were adopted without discussion.*

648. Mr. VILLALBA (Argentina) opposed the proviso appearing in paragraph (4) of the Alternative Draft. Any national Office, he said, should have the right to publish an application at any time.

649. Mr. BOGSCH (Secretary General of the Conference) said that it was an important principle of the PCT that applications should not be published – except at the applicant's request – before the applicant received the international search report. On the basis of that report, he might decide to withdraw his application. Naturally, if the report was not completed by the time the national procedure started, national publication could, and international publication would, take place. However, such a delay should not and normally would not, occur.

650. Mr. ALMEIDA (Brazil) expressed agreement with the position of the Delegation of Argentina.

651. *Paragraph (4), as appearing in the Alternative Draft and as corrected in document PCT/DC/11/ Add. 1, was adopted by 16 votes in favor to 4 against.* (Continued at 714.)

652. Mr. DAHMOUCHE (Algeria) said that, in future, abstentions should also be asked for and counted.

653. The CHAIRMAN said that, although the Rules of Procedure did not call for it, he would, in future, ask also for abstentions.

654. Mr. VILLALBA (Argentina) said that Rule 37 of the Rules of Procedure provided that delegations which abstained should be considered as not voting. Consequently, the Regulations did provide for the possibility of abstaining. Delegations could avail themselves of such a possibility only if the Chair afforded them the opportunity of manifesting their abstention.

655. The CHAIRMAN said that the Rule required the counting of the votes only of those delegations which were present and cast a vote since theirs were the only votes to decide an issue.

**Article 8: Claiming Priority** (Continued from 327.)

656. Mr. ARMITAGE (United Kingdom), as Chairman of the Working Group to which the study of Article 8 had been entrusted, introduced document PCT/DC/47 containing that Group's proposal for the amendment of Article 8 of the Alternative Draft which was based on that Group's consideration of the Draft, the Alternative Draft, and the proposals contained in documents PCT/DC/16, PCT/DC/19, and PCT/DC/40.

657. Mr. ALMEIDA (Brazil) asked whether the priority of several applications filed in different countries could be invoked.

658. Mr. MESSEROTTI-BENVENUTI (Italy) replied in the affirmative.

659. Mr. LORENZ (Austria) asked whether the text proposed was in conformity with such a possibility.

660. Mr. ARMITAGE (United Kingdom) replied that he believed the text provided for that possibility as it had to since the Paris Convention so required. The Drafting Committee could make sure that the text was clear on that point.

661. The SECRETARY, on a question from the Delegation of Argentina, said that the priority claim

remained valid even if the application invoked was later withdrawn. The Paris Convention required that it be so.

662. Mr. BOGSCH (Secretary General of the Conference) said that reference to the Stockholm Act in paragraph (2)(a) had already been adopted by the Main Committee.

663. Mr. ARMITAGE (United Kingdom) said that the quotation marks around the words "subject to drafting," in point 3(c) of document PCT/DC/47, should not be around those words but around the last sentence.

664. Mr. VAN BENTHEM (Netherlands), Mr. HAERTEL (Germany (Federal Republic)), Mr. SAVIGNON (France), Mr. ARMITAGE (United Kingdom), and Mr. ASCENSÃO (Portugal), declared that, although they would have preferred the solution contained in the Alternative Draft, as far as paragraph (2)(b) was concerned, they were ready to accept the proposal of the majority of the Working Group as contained in point 3(c) of document PCT/DC/47.

665. *Subject to the possibility of the Drafting Committee's improving the language used, the recommendations of the majority of the Working Group concerning Article 8(1), (2)(a) and (b), contained in document PCT/DC/47, were adopted.* (Continued at 666.)

*End of the Eighth Meeting*

**NINTH MEETING**

Friday, May 29, 1970, afternoon

**Article 8: Claiming Priority** (Continued from 665.)

666. Mr. HAERTEL (Germany (Federal Republic)) suggested that the Drafting Committee be asked to examine whether paragraph (2)(c) was necessary at all or whether it could be taken care of by a modification in paragraph (2)(b).

667. Mr. VAN BENTHEM (Netherlands) supported the remarks of the previous speaker.

668. Mr. CLARK (United States of America) said that the contents of paragraph (2)(c) were needed since they represented important safeguards for the applicant. However, he had no objection to the substance of paragraph (2)(c) being written into paragraph (2)(b).

669. *It was decided that the Drafting Committee would transfer the substance of paragraph (2)(c) to paragraph (2)(b).* (Continued at 1746.)

**Article 28: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices** (Continued from 592.)

670. Mr. BOGSCH (Secretary General of the Conference) said that the difference between the Draft and the Alternative Draft as far as paragraph (1) was concerned was dictated by the desire that no

designated Office should, even if it fully accepted the application, be able to grant a patent immediately because it might happen that the applicant would wish to amend his application in the country of the designated Office for some special reasons.

671. Mr. VILLALBA (Argentina) said that his Delegation had proposed, in document PCT/DC/51, that paragraph (1) read as follows: "The designated Office has the authority to give the applicant the opportunity to amend the claims."

672. Mr. ONIGA (Brazil) supported the proposal of the Delegation of Argentina because he saw in it a means whereby the national Offices could avoid delaying tactics by the applicant.

673. Mr. BOGSCH (Secretary General of the Conference) said that the difference between the proposal of the Delegation of Argentina and the Alternative Draft was that, whereas the former left it to the national law of the designated State to permit or not to permit amendments to be made, the Alternative Draft gave to the applicant the right to amend his application in the national phase, i.e., before each designated Office. The reason for the system of the Alternative Draft was that some of the representatives of private circles found it extremely important that the applicant be able to change his application in each designated State so as to "tailor" it to the traditions and idiosyncrasies of that State.

674. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation could not accept the proposal of the Delegation of Argentina, which would leave it to the discretion of each national Office to decide whether or not the applicant should have an opportunity to amend his application in the national phase. It was a fundamental principle of the PCT that the applicant should have the right to make amendments in his application in the national phase so as to obtain the maximum degree of protection in each designated State.

675. Mr. CLARK (United States of America) said that he agreed with the position of the previous speaker.

676. Mr. VILLALBA (Argentina) said that the proposal of his Delegation was not intended to negate the rights of the applicant to amend his application in the national phase but that any amendments would have to conform with the national law of each designated State for the purposes of which the amendments were made. In that respect, both the Draft and the Alternative Draft were ambiguous because they simply stated that an applicant had the right to amend his application but did not stipulate that such right had to be exercised within the limits of the applicable national law.

677. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that perhaps the objection of the Delegation of Argentina could be met if the Treaty stated that any designated Office would have the right to refuse an amendment which went beyond the scope covered by the international search or that any designated Office could, in such a case, require an additional fee in

respect of any additional matter resulting from the amendments.

678. Mr. GILLIES (International Chamber of Commerce (ICC)) said that it was extremely important for applicants to have the right to amend their applications in the national phase. He thought that the Alternative Draft adequately covered that right and it was also compatible with the desire of the Delegation of Argentina. He said that it was important that the applicant should have the right to amend his application before each designated Office. However, the applicant should not be allowed to make such amendments as would leave the designated Office without a useful international search report.

679. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that it was of fundamental importance to the applicant to have the right to amend his application before each designated Office. If the amendment resulted in a situation in which the international search report would no longer be useful, he had no objection to requiring that the applicant pay a certain fee to the designated Office.

680. Mr. HAZELZET (Union of Industries of the European Community) supported the views expressed by the Representatives of the International Chamber of Commerce and FICPI.

681. Mr. VAN BENTHEM (Netherlands) said that his Delegation agreed with paragraph (1) as appearing in the Alternative Draft. That paragraph was not so important in designated States where the national law provides for examination since in such States the applicant would in any case be engaged in a dialogue with the Patent Office, but it was very important in so-called "registration countries" in which, without the proposed provision, a patent could issue before the applicant had had time to amend his application.

682. Mr. ASCENSÃO (Portugal) said that the designated Offices should have safeguards for the situation where the applicant amends his claims to claim an invention which has not been searched.

683. Mr. OTANI (Japan) expressed agreement with the point of view of the Delegation of the Netherlands.

684. Mr. VILLALBA (Argentina) said that he would not insist on acceptance of the wording of the proposal of his Delegation. What was important was that it be made clear that the amendments made before a designated Office must be in conformity with the national law applicable in that Office.

685. Mr. BOGSCH (Secretary General of the Conference) said that the main purpose of the provision was to enable applicants to exploit the possibilities in designated States which existed under their national laws and of which the applicants might not have been made aware until after they had received an international search report. Now, if in such a situation the amendments resulted in an international search report which did not fully cover the amended application, the need for an additional search would arise. It was thought, however, during the preliminary work that such situations would be rare, the more so as it was already provided in the

Regulations that the International Searching Authorities would have to try to anticipate possible amendments and cover them in the international search report. It was not necessary to provide for a special fee to be paid in the national phase to cover the expenses of any search where an additional search had to be made by the national Office. The Treaty did not provide for any limitation on the national fees and they would apply irrespective of the extent to which, in any particular case, the international search report was useful.

686. Mr. GILLIES (International Chamber of Commerce (ICC)) said that the amendments in the national phase would probably, in most cases, be in the nature of restrictions based on information obtained through the international search report or from other sources before the national phase started. In such cases, naturally, the international search report would still be entirely useful.

687. Mr. FERGUSSON (United Kingdom) supported the Alternative Draft. The proposal of the Delegation of Argentina only spoke about amending the claims. That was clearly insufficient. The Alternative Draft also permitted amending the description and the drawings. The need for a supplementary search report would probably be very rare and it was not necessary that the Treaty provide for such exceptional situations.

688. Mr. PETERSSON (Australia) said that the real difficulty might lie in the fact that it would not always be clear what had been searched by the International Searching Authority. He would come back to that point in connection with the relevant Rule of the Regulations.

689. Mr. PRETNAR (Yugoslavia) said that perhaps the way out of the difficulty was to add in the Alternative Draft a phrase to the effect that “the amendment would have to be according to the procedure described in the national Office.”

690. Mr. BOGSCH (Secretary General of the Conference) said that the proposal of the Delegation of Yugoslavia would be inapplicable in so-called “registration countries” because in such countries there was no procedure for amendments. Furthermore, he did not think that a reference to national laws was necessary. It went without saying that in the national phase the procedure was governed by the national law. To say it in the case under discussion would mean that it would have to be said also in many other places in the Treaty.

691. Mr. VILLALBA (Argentina) said that the proposal of his Delegation should be understood as referring not only to the amendment of the claims but also to that of the description and the drawings.

692. Mr. TUXEN (Denmark) said that the right of any applicant to amend his application before each designated Office was so important that, if that right were not guaranteed to them, applicants might simply decide not to use the PCT. As had been said by previous speakers, guaranteeing that right was particularly important with regard to the so-called registration countries because in examining countries

the opportunity to amend would, in practice, exist in any case.

693. Mr. VILLALBA (Argentina) said that he was ready to modify his Delegation’s proposal to provide that each designated Office must give an opportunity to the applicant to modify the claims, the description and the drawings in order to adapt them to the national requirements and practices.

694. Mr. ARMITAGE (United Kingdom) said that, although he preferred paragraph (1) as it appeared in the Alternative Draft, perhaps the way out of the difficulty would consist in leaving it to the national law of the so-called registration countries to allow or not to allow amendments in the national phase. Countries which would not allow amendments would probably be designated only infrequently. That would make the PCT much less attractive.

695. Mr. BOGSCH (Secretary General of the Conference) said that he thought it would be a real calamity to the PCT if the possibility of amending were lost in the case of the so-called registration country. Furthermore, he did not think that the proposal of the Delegation of the United Kingdom would mean anything to Argentina and Brazil, which were both examining countries. He suggested that the compromise be sought in the following direction. The Article could provide that the amendments must be “in accordance with the national law of the designated State, and subject to the provisions of this Treaty.” In other words, the national law would apply as long as it was not in conflict with the Treaty. In the case of the so-called registration countries, this would mean that although their national laws did not allow amendments after the application had been filed they would have to allow such amendments in the case of the international application because the Treaty so provided and the Treaty would override the national law.

696. Mr. ARMITAGE (United Kingdom) said that his Delegation’s proposal was not intended to refer to the national laws in every respect but only where national laws did not provide for amendments. Such countries could be allowed not to admit amendments in the national phase. But otherwise no reference should be made to the national law.

697. Mr. BODENHAUSEN (Director of BIRPI) said that his impression was that the Delegation of Argentina was not opposed to the idea that the Treaty would oblige every country, including so-called registration countries, to allow amendments in the national phase, but since such countries did not provide for amendments it was necessary to say – as the Secretary General of the Conference had proposed – that in such countries the opportunity guaranteed by the Treaty would apply even though the national law did not provide for such opportunity.

698. Mr. ONIGA (Brazil) indicated that his Delegation agreed with the compromise proposal of the Secretary General of the Conference.

699. *Subject to drafting by the Drafting Committee, the compromise proposed by the Secretary General of the Conference was adopted.*

700. *Subject to the foregoing, Article 28 was adopted as appearing in the Alternative Draft.* (Continued at 1780.)

**Article 4: The Request** (Continued from 233.)

701. Mr. SAVIGNON (France) introduced the proposal of his Delegation concerning the question of the naming of the inventor, contained in document PCT/DC/50. He said that, on that question, his Delegation would have preferred to maintain its original proposal. However, in a spirit of compromise it had now redrafted its proposal with the effect that countries requiring, and those not requiring, the naming of the inventor were treated on the same footing.

702. Mr. ARTEMIEV (Soviet Union) said that his Delegation agreed with the compromise proposal of the Delegation of France.

703. Mr. LIPS (Switzerland) supported the proposal of the Delegation of France.

704. Mr. VAN BENTHEM (Netherlands) said that his Delegation also agreed with the proposal of the Delegation of France except that the words "and if required" should be inserted after the words "in other cases" in the second paragraph of item (iv) so that in the case of any country in which an indication of the name of the inventor was not required the applicant could dispense completely with such indication.

705. The CHAIRMAN said that the proposal of the Delegation of the Netherlands would be referred to the Drafting Committee.

706. Mr. SCHURMANS (Belgium) supported the proposal of the Delegation of France.

707. Mr. ARMITAGE (United Kingdom) said that the Drafting Committee should be authorized to examine whether the provision should allow the applicant to include the data concerning the inventor in the request even in respect of designated States where the communication of such data would suffice if done in the national phase.

708. *Subject to the proposal by the Drafting Committee of language taking into account the proposals of the Delegations of the Netherlands and the United Kingdom, the proposal of France contained in document PCT/DC/50 was adopted.* (Continued at 1742.)

**Article 22: Copy, Translation, and Fee, to Designated Offices** (Continued from 585.)

709. Mr. SAVIGNON (France) moved the proposal of his Delegation concerning paragraph (1), contained in document PCT/DC/50. That proposal amended his Delegation's proposal contained in document PCT/DC/19. He said that the new proposal was a logical consequence of the proposal just adopted concerning Article 4(1).

710. *The proposal of the Delegation of France was adopted as contained in document PCT/DC/50, without discussion.*

711.1 Mr. VILLALBA (Argentina) moved the proposal of his Delegation concerning paragraph (1), contained in document PCT/DC/54.

711.2 The proposal was that the time limit of 20 months appearing in paragraph (1) should be reduced to 12 months. Reducing the time limit to 12 months would maintain the principle of the Paris Convention according to which an applicant wishing to obtain a patent in any given country with the priority of an earlier application filed in another country must file his application within 12 months. The speaker saw no reason to extend that period. Such an extension would not seem to be in conformity with the spirit of the Paris Convention and would increase the obligations of the member States in a way that was not provided for in the Paris Convention. The international search could start early during the priority year and could be completed before its expiration.

712. The CHAIRMAN said that Article 22 had already been approved by the Main Committee subject to the reserving of one point and one point only, namely, the proposal of the Delegation of France on the question of naming the inventor. The proposal of the Delegation of Argentina could therefore be ruled out of order. Nevertheless, he was ready to consult the Main Committee on the question whether the proposal of the Delegation of Argentina should be discussed.

713. *By 7 votes in favor to 15 against, with 9 abstentions, it was decided not to reopen discussion in order to consider the proposal of the Delegation of Argentina.* (Continued at 1769.)

**Article 30: Confidential Nature of the International Application** (Continued from 651.)

714. Mr. KÄMPF (Switzerland) introduced the proposal of his Delegation concerning paragraph (2)(a), contained in document PCT/DC/55. The proposal was that paragraph (2)(a) be completed by the following sentence: "The provision of the national law regarding legal assistance to the judicial authorities shall be reserved." The purpose of the proposal was to allow access to the international application throughout the period during which that application was otherwise confidential, where such access was necessary in court proceedings.

715. Mr. LORENZ (Austria) supported the proposal of the Delegation of Switzerland.

716. Mr. VAN BENTHEM (Netherlands) said that his Delegation was not opposed to the proposal of the Delegation of Switzerland.

717. Mr. SAVIGNON (France) also supported the proposal of the Delegation of Switzerland.

718. Mr. PRETNAR (Yugoslavia) also supported the proposal of the Delegation of Switzerland.

719. Mr. ARMITAGE (United Kingdom) said that in his view the proposal of the Delegation of Switzerland was not necessary. The Draft provided that access would be given to the international application when the applicant so requested or authorized. If the applicant was the plaintiff, he would



naturally so request or authorize. If he was the defendant, he could be ordered by the court to request or authorize access.

720. *The proposal of the Delegation of Switzerland contained in document PCT/DC/55 was adopted.*

721.1 Mr. LORENZ (Austria) moved the proposal of his Delegation contained in document PCT/DC/56. The proposal was to the effect that paragraph (2)(b) should allow the publication not only of the name of the receiving Office, the name of the applicant, the international filing date and the international application number, but also of the title of the invention.

721.2 Although his Delegation had not reserved the right to propose an amendment when Article 30 was discussed, he thought that its proposal might be in order in view of the fact that discussion on this Article had been reopened because of the proposal of the Delegation of Switzerland.

722. The CHAIRMAN said that, as in the case of the Delegation of Argentina on Article 22, he would consult the Main Committee on the question whether it wished to discuss the proposal of the Delegation of Austria.

723. *It was decided on the results of a vote, taken without counting, that the proposal of the Delegation of Austria would be open for discussion.*

724. Mr. BORGGÅRD (Sweden) seconded the proposal of the Delegation of Austria. An indication of the title of the invention would facilitate the task of identifying the Application for third parties without harming the applicant's interests.

725. Mr. VILLALBA (Argentina) supported the proposal of the Delegation of Austria.

726. Mr. TASNÁDI (Hungary), Mr. PETERSSON (Austria), Mr. MESSEROTTI-BENVENUTI (Italy), Mr. GIERCZAK (Poland), Mr. LIPS (Switzerland), and Mr. FERNÁNDEZ-MAZARAMBROZ (Spain), supported the proposal of the Delegation of Austria.

727. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation could not support the proposal of the Delegation of Austria because it was in conflict with the present German law. However, his Delegation would like to hear whether the representatives of the private organizations were of the opinion that an indication of the title of the invention would harm the interests of the applicant.

728. Mr. VAN BENTHEM (Netherlands) supported the suggestion of the Delegation of Germany (Federal Republic).

729. Mr. ASCENSÃO (Portugal) supported the proposal of the Delegation of Austria.

730. Mr. GABAY (Israel) supported the proposal of the Delegation of Austria and the suggestion made by the Delegation of Germany (Federal Republic).

731. Mr. DAHMOUCHE (Algeria) supported the proposal of the Delegation of Austria.

732. Mr. ONIGA (Brazil) supported the proposal of the Delegation of Austria. He did not think that the title would give away any secrets that the applicant

would wish to keep before the time for publishing his application came.

733. Mr. OTANI (Japan) said that his Delegation was not in favor of the proposal of the Delegation of Austria.

734. Mr. CLARK (United States of America) said that his Delegation found itself in the same position as the Delegations of Germany (Federal Republic), and Japan. Furthermore, the proposal might result in the applicant's using meaningless titles. He too would like to hear the representatives of the private organizations on the question.

735. Mr. VILLALBA (Argentina) said that he did not understand how the proposal could be contrary to the legislation of any of the countries since it did not ask them to do anything. The provision was a mere authorization, not an obligation. Furthermore, the publication would be effected by the International Bureau, not by the national Offices.

736. Mr. DAHMOUCHE (Algeria) said that he agreed with the observations of the Delegation of Argentina.

737. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that if the title given meant anything it would certainly facilitate industrial espionage so that it probably would be indicated in a way which would be meaningless. In such a case, indication of the title would be of no use either to the Patent Offices or to the general public.

738. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that he saw no likelihood of endangering the interests of the applicant if the title was indicated. Titles were published in many countries in the present system and experience had shown that such a system had no drawbacks for anybody. Therefore his Federation could support the proposal of the Delegation of Austria.

739. Mr. GILLIES (International Chamber of Commerce (ICC)) said that his Organization had no objection to revealing the title of the invention as provided in the proposal of the Delegation of Austria.

740. Mr. CLARK (United States of America) said that, if it was understood that national Offices would not be obligated but would merely have the right to publish titles, his Delegation would have no objection to the proposal of the Delegation of Austria.

741. Mr. HAERTEL (Germany (Federal Republic)) said that, if the interpretation given by the Delegation of Argentina was accepted, his Delegation was ready to withdraw its opposition to the proposal of the Delegation of Austria, particularly in view of the declarations just made by the representatives of the private organizations.

742. *The proposal of the Delegation of Austria was adopted as appearing in document PCT/DC/56. (Continued at 1782.)*

*End of the Ninth Meeting*

## TENTH MEETING

Saturday, May 30, 1970, morning

**Article 27: National Requirements** (Continued from 590.)

743. Mr. ROBINSON (Canada) said that paragraph (1) in the English spoke about the "form and contents" of the international application, whereas the word "contents" in the French was translated by "*contenu*". He wondered whether the translation was a correct one. Was the intent to cover everything in the application from the point of view of substance, or simply to refer to matters that were, so to speak, treated in the application?

744. Mr. BOGSCH (Secretary General of the Conference) replied that only the latter was intended.

745. Mr. VILLALBA (Argentina) asked whether the substantive question what amendments in the claims may be effected was covered by the paragraph under consideration.

746. Mr. BOGSCH (Secretary General of the Conference) replied that the substantive law applying to amendments was regulated by Article 28. The paragraph under consideration only dealt with the form of the international application and the elements it had to contain.

747. Mr. ROBINSON (Canada) said that the word "*contenu*" in the French had a double meaning. It could refer both to the form and the substance. The Drafting Committee should be asked to examine whether it could not find an expression corresponding more closely to the English word "contents."

748. Mr. VILLALBA (Argentina) said that, in view of the preceding interventions, the paragraph should be adopted on the basis of the English rather than the French text.

749. *Paragraph (1) was adopted on the understanding that the Drafting Committee would examine the question whether a better word than "contenu" could be found for the French text to translate the English word "contents."*

750. Mr. BOGSCH (Secretary General of the Conference) said that item (i) in paragraph (2) of the Alternative Draft was new. It was intended to cover those national laws which, in the case of legal entities, required that the name of a responsible natural person be indicated in the application as well, such as the chief executive, or a member of the board of directors, of a corporation. The Japanese patent law was one of such laws.

751. Mr. VAN BENTHEM (Netherlands) said that in paragraph (2), as well as in all other places where they appeared in the Article under discussion, the words "it is understood" should be deleted. These words were unusual in a treaty and unnecessary from a legal point of view.

752. Mr. DAHMOUCHE (Algeria) and Mr. SAVIGNON (France) supported the proposal of the Delegation of the Netherlands.

753. *Paragraph (2) was adopted as appearing in the Alternative Draft on the understanding that the words "it is understood" contained in that paragraph and in all other paragraphs of Article 27 would be deleted.*

754. *Paragraph (3) was adopted as appearing in the Alternative Draft, without discussion.*

755. *Paragraph (4) was adopted as appearing in the Draft, without discussion.*

756.1 The CHAIRMAN called the attention of the meeting to the fact that the proposals contained in documents PCT/DC/17, PCT/DC/21 and PCT/DC/23, presented respectively by the Delegation of Switzerland, the Delegation of France and the Delegation of Poland, as well as the proposal contained in document PCT/DC/32, presented jointly by the Delegations of Austria, Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, the Netherlands, Spain, Sweden, Switzerland and the United Kingdom, all asked for the deletion of the last sentence of paragraph (5).

756.2 That sentence read as follows: "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."

757. Mr. LIPS (Switzerland) said that Article 11(3) was the most important provision of the Treaty because it contained a fundamental principle. The sentence in question was in contradiction to that principle. Consequently, it was proposed to delete the sentence under discussion and, in order to remove any possible misunderstanding, to complete Article 11(3) by adding wording to the effect that the international filing date was to be regarded as the actual filing date of national applications.

758.1 Mr. SINGER (Germany (Federal Republic)) said that the aim of the Treaty was to give the applicant a new and better possibility of obtaining protection abroad than he had under the present system. The sentence in question, however, could lead to a less advantageous situation for the applicant. Presently, an applicant claiming a foreign priority date when filing an application in some states did not receive the priority date but was instead given the actual filing date in that state as the date from which his application was considered to be prior Art. This date might be as much as 12 months after his first or priority filing, whereas the applicant filing first in that state was given as the effective prior art date, the date of his first filing. This prejudicial delay of up to 12 months in the awarding of an effective date for prior art purposes after a first filing could be increased to 20 months under the PCT as the PCT would allow applications to reach the designated States 20 months after the priority date.

758.2 His delegation agreed with the principle that the PCT should not require the modification of the substantive patent law of any country. Neither, however, should the PCT, in an attempt to preserve any country's substantive patent law, operate in such a

manner as to place the foreign priority claiming applicant in a more disadvantageous position than he was in presently. The success of the PCT would be seriously jeopardized if either many States or even one major State would avail itself of the possibility now offered by the Treaty of further deferring the awarding of the effective prior art date.

759. Mr. VILLALBA (Argentina) said that, as he had repeatedly stated, the PCT should not increase the obligations of any of the Contracting States assumed under the Paris Convention. If paragraph (5), without the last sentence, were to increase such obligations, then the last sentence should be maintained.

760.1 Mr. CLARK (United States of America) said that it was a fundamental principle invoked frequently both during the preparatory work for the PCT and in the present Conference that the PCT should not require major or significant changes in the national laws of Contracting States. He took issue with those speakers who decried the last sentence of Article 27(5) as being "an unfortunate departure" from the spirit of Article 11(3) and suggested that, to the extent Art. 11(3) requires a change in any State's national law, it is an unfortunate departure from the spirit of PCT.

760.2 He pointed out the dilemma faced by U.S. patent owners and applicants because of conflicting pressures in the U.S. system. In the United States of America, the Supreme Court demanded in its decisions that the Patent Office should increase the reliability of the patents it granted, and the Congress insisted that the Patent Office must speed up the issuing of patents. Legislative proposals were pending which required that patent applications should normally be disposed of within 18 months from their filing date. Under Article 11(3), however, this speed-up would result in patents being issued before the U.S. Patent Office had even received all the pertinent prior art.

760.3 The concepts of priority and prior art were two completely different concepts. There was no doubt that, under Section 119 of the US patent law and under Article 11(3) of the PCT, the United States of America would be obliged to accord the right of priority to the applicant as from the international filing date of his application.

760.4 The prior art effect was a completely different question. It had nothing to do with the right of the applicant in obtaining a patent under the PCT. Rather it was part of the substantive law dealing with the criteria to be considered in determining whether an invention had been made in the light of what others had been done before. For prior art purposes, the governing date was the date of filing in the United States of America. This was the law as laid down by the Supreme Court in the Davis-Bournonville case of 1926. It was codified in the US Patent Statute in 1952. The Hilmer decision of 1966 merely straightened out a temporary aberration in the law, restating what the law had been for four decades.

760.5 The question was not whether the law of the United States of America was right or wrong. There were some persons in the United States of America

who thought that the law, as restated in the Hilmer decision, should be changed but the question now under consideration was whether the PCT should be an instrumentality for necessitating a change. On the basis of the principle recalled earlier in his speech, the reply to the latter question should be in the negative.

761.1 Mr. ARMITAGE (United Kingdom) said that, if he understood the interpretation of the Delegation of the United States of America correctly, it was that Delegation's understanding that, upon ratifying the PCT, the US law must and should give priority effect as from the filing date abroad. That certainly did remove one part of the problem.

761.2 However, there remained the problem of the prior art effect. Just as in the case of the priority effect, so also in the case of the prior art effect, it was indispensable for the success of the PCT that it should not put the applicant in a situation worse than that in which he found himself without using the PCT.

761.3 The view that the Hilmer decision had corrected a temporary aberration could be regarded by some as an unfortunate return to an earlier aberration. Opinions might very well differ on whether the correct interpretation was that prevailing just before the Hilmer decision or the one which the Hilmer decision had put on the US Patent Statute.

761.4 In the speaker's view, the PCT created a new situation, which was not governed by the Hilmer decision. It would be most reassuring for the delegations opposing the last sentence of paragraph (5) if they could hear some declaration to the effect that, in order to provide for the new situation, the United States of America intended to consider the international filing date as the effective date also for prior art purposes. In other words, the authors of the proposals under discussion did not want to change national laws but to implement the PCT in a certain way in a new situation created by the PCT.

761.5 Whereas a distinction between prior art effect and priority effect might very well be possible in the United States of America, such distinction just did not mean anything in most of the other countries since they did not distinguish between the two effects. An American applicant filing in Europe could use his priority dates both for defending himself against other applicants and also for attacking other applicants.

762.1 Mr. VAN BENTHEM (Netherlands) said that the basic understanding underlying the PCT was that an international filing had the same effect as filing national applications in each of the designated States. That principle should suffer no exceptions; otherwise it could place the applicant in a worse situation than that in which he would be if he did not use the PCT but made a separate filing in each of the States which he would designate under the PCT. It was not proposed that the United States of America change its present law, which did not deal with international applications. What was urged was that the United States of America give full effect to the principle of equivalence of the international filing with national filings.

762.2 It would help if the Delegation of the United States of America would reply to the question of the

Delegation of the United Kingdom concerning the intentions of the United States of America in using the last sentence of paragraph (5) if such sentence were to be maintained.

763. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that the distinction between prior art effect and priority effect simply did not exist in European countries. In any case, the last sentence of paragraph (5) was so broad that it could accommodate not only the Hilmer doctrine but also national laws which would make the situation of the applicant even more disadvantageous than under the said doctrine. What his Association was concerned with was more what use other countries would make of the last sentence of paragraph (5) than the maintaining of the Hilmer decision in the United States of America.

764. Mr. GABAY (Israel) said that some way should be found to reconcile the opposing views. It would be useful if a working group were set up to look into the possibilities of a compromise solution.

765. Mr. ARMITAGE (United Kingdom) said that it would be very useful if the views of the Chairman could be ascertained on the question raised by him earlier, namely, the foreseeable intentions of the United States of America in using the possibilities offered by the last sentence of paragraph (5), should that sentence be maintained.

766. Mr. HAERTEL (Germany (Federal Republic)) also asked the Chairman to reply to the question raised by the Delegation of the United Kingdom.

767.1 The CHAIRMAN said that, since he had been invited to do so and since no objection had been made, he would reply to the question asked not as the Chairman of the meeting but as Commissioner of Patents of the United States of America. According to his interpretation of Articles 11(3) and 27(5) as appearing in the Draft, the one-year grace period established by the Patent Statute of the United States of America would precede the international filing date. There was nothing in the PCT that would permit the United States of America not to apply the one-year grace period in the case of international applications in the same way as it now did in the case of applications filed under the Paris Convention.

Consequently, all applicants in all countries would have a period of one year of public use of an invention before the international filing date; so it was possible that they could use inventions for 32 months before the application reached the United States.

767.2 As far as contests between conflicting applications for the same invention were concerned, the reservation of the last sentence of Article 27(5) did not apply to pending applications. The US Patent Statute did not give prior art effect to a pending application but only to an issued patent, so that the reservation of the last sentence of paragraph (5) would, if used under the present US Statute, apply only to patents that issued in the United States of America and not to pending applications. As to the last specific question of the Delegation of the United Kingdom, it should be noted that before a treaty which

was not a self-executing treaty was ratified in the United States of America – and the PCT was to be considered a non-self-executing treaty – the Patent Statute would have to be modified. The implementing legislation could adopt either of two extremes or any intermediate solution between such extremes. It could sustain or continue the present law or it could consider the filing date abroad, whether under the Paris Convention or the PCT, to be the effective date also for prior art purposes. One of the intermediate solutions would be that the date of filing abroad would be recognized for prior art purposes only in the case of international applications. Another possibility would be to consider the date on which an English translation reached the US Patent Office as the date from which the prior art effects would start. It was, of course, not possible to predict what decision the US Congress would take on the matter; it was under active consideration by both government and private circles in the United States of America. The only assurance that could be given was that the prior art date would be some specific date. Before the President of the United States of America deposited the instrument of ratification of the PCT, the US Patent Statute would specify the date from which the prior art effect would start.

768. Mr. ARMITAGE (United Kingdom) thanked the Chairman for his explanation. If he understood him correctly, assurance was given that for priority purposes the United States of America would recognize the international filing date but for prior art purposes no assurances could be given other than that there would be some specific date indicated in the US Statute before the instrument of ratification was deposited.

769. The CHAIRMAN, still speaking as the US Commissioner of Patents, replied that he could give no absolute assurances in any respects but his Delegation was substantially unanimous that the Treaty did not give any alternative but to accord the international filing date the same effect as a filing date in the United States of America so far as the grace period and the priority effect were concerned. It was his Delegation's interpretation that the one-year grace period under the present provisions of the Draft would precede the international filing date just as it preceded at that time the US filing date.

770. Mr. CLARK (United States of America) said that the Delegation of the United States of America merely wished to support the statement made by the US Commissioner of Patents.

771. Mr. VAN BENTHEM (Netherlands) said that the international filing date had effects also in fields other than the field of priority and prior art. For example, it had effect as a possible starting point for computing the term of protection, at least in countries in which that term was counted from the date of filing. It should be understood that for such and any other purposes, with the possible exception of the prior art effect – which was still an open question – the international filing date had the same effect as a national filing date. That was why his Delegation had suggested in document PCT/DC/29 that Article 11(3)

be completed by the words "which shall be considered to be the actual filing date in each designated State."

772. Mr. BOGSCH (Secretary General of the Conference) said that it had always been his understanding that the only question at issue was the question of the prior art effect. For all other purposes, Article 11(3) applied. The fact that the last sentence in paragraph (5) contained, between parentheses, the words "as distinguished from priority purposes" was merely intended to bring out the difference between prior art and priority and should not be understood as an indication that the Treaty dealt only with these two problems.

773.1 Mr. LORENZ (Austria) said that there were three dates which were important in connection with every patent application: the priority date, the filing date, and the date of grant.

773.2 The PCT instituted a special procedure for filing and assimilated the international filing to national filing. Such assimilation should be complete, that is, it should also relate to the date of filing.

773.3 Rules concerning priority and grant were not affected by the PCT and required no new regulation by the national laws. However, as far as filing was concerned, the PCT created a new situation for which present national laws provided nothing. The void was filled by Article 11(3), which, by way of an irrefutable presumption, stated that an international filing was a national filing.

774. Mr. HAERTEL (Germany (Federal Republic)) said that he would appreciate it if the Delegation of the United States of America would answer the following question. Could the last sentence of paragraph (5) mean that the disadvantages which a foreign applicant already had under the present US law as stated in the Hilmer decision would be increased under that sentence? Under the present law, in the case of an applicant filing in the US Patent Office an application invoking the priority of an earlier application filed abroad 12 months before the filing of the US application, the prior art effect would start 12 months later than the priority effect. If, under the PCT, the copy of the international application reached the US Patent Office 20 months after the priority date, would the prior art effect not start eight months later than it would without using the PCT?

775. Mr. ARTEMIEV (Soviet Union) said that his Delegation's position was similar to that of those delegations which had asked for the deletion of the last sentence of paragraph (5). Whatever happened in the United States of America, that sentence might encourage other countries to make use of the faculty provided under that sentence and thereby place the applicant in a worse position than he would be in without the PCT.

776. Mr. PETERSSON (Australia) said that his Delegation was worried by the last sentence of paragraph (5) because it might result in putting international applications in a different, less favorable position than applications not using the PCT route. It was to be hoped that a compromise solution could be found.

777. Mr. ONIGA (Brazil) said that he favored maintaining the last sentence of paragraph (5) not for the specific reasons invoked by the Delegation of the United States of America but for the general reason that the greatest flexibility was needed so as to give the greatest possible freedom to national laws.

778.1 Mr. ROBINSON (Canada) said that, whereas it was very important for practical purposes that it be made crystal clear in the PCT that the international filing date would have the same effect as a national filing date for the purposes of obtaining patents, that is, as far as the United States of America was concerned, in respect of the statutory bar and being inside the priority year, an exception to the principle in Article 11(3) in the case of prior art purposes was, from a practical point of view, of much less importance. As a practitioner, he was convinced that the cases would be extremely rare in which the latter question would have any practical importance in the sense that it would cause any harm to the applicant. For that reason, his Delegation would be willing to accept a provision which would allow the United States of America to legislate on the matter as it wished.

778.2 The provision allowing such an exception would, however, probably have to be drafted somewhat differently and should probably not be placed in Article 27(5). That was a question to be looked into after there was agreement on the substance of the matter.

779. The CHAIRMAN proposed that discussion should continue after the lunch break.

780. Mr. VAN BENTHEM (Netherlands) said that he wished to remind the meeting that the Delegation of Germany (Federal Republic) had asked a very clear question from the Delegation of the United States of America and that his Delegation would very much appreciate it if in the afternoon meeting the Delegation of the United States of America could give a reply to that question. (Continued at 781.)

*End of the Tenth Meeting*

## ELEVENTH MEETING

Saturday, May 30, 1970, afternoon

**Article 27: National Requirements** (Continued from 780.)

781. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that the last sentence of paragraph (5) served the purpose of ensuring not only that the United States could maintain its present law if it so desired but also that other countries could adopt in complete freedom whatever solutions they wished in connection with the date of the prior art effect of applications. It was because of similar flexibility that the Paris Convention was attractive to so many countries. It was to be hoped that the PCT would also maintain a high degree of flexibility.

782. Mr. HØST-MADSEN (International Federation of Patent Agents (FICPI)) said that his Federation would prefer it if the last sentence of paragraph (5) were omitted. On the other hand, one should not exaggerate the practical importance of that sentence as far as its use by the United States of America was concerned. It was to be hoped that the United States would find a solution which would be clear and equitable to foreign applicants. However, what was important was to find a more precise formulation of the exception if it was to be maintained.

783. Mr. GILLIES (International Chamber of Commerce (ICC)) said that the last sentence was not really necessary. Without it, countries could put an interpretation on Article 11(3) which would allow even the present US Statute to be maintained.

784. Mr. HAZELZET (Union of Industries of the European Community) said that his Union was very much concerned about the last sentence of paragraph (5). While it might be true that the cases were rare in which the delaying of the prior art effect would hurt an applicant, those rare cases might be very important ones. Furthermore, what was involved was not only the present US law but also the unlimited freedom of any country to choose any date it wished for prior art purposes. Such misuse and such freedom could become very harmful to applicants.

785. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that the last sentence of paragraph (5) would put the applicant in a less favorable position than he would be without using the PCT. Furthermore, his organization regretted that the sentence in question was not limited to the situation existing in the US law.

786. Mr. BRENNAN (United States of America) said that the last sentence of paragraph (5) did not affect the foreign applicant's right to obtain a patent, or to sue any infringer of his patent, in the United States of America.

787. Mr. VILLALBA (Argentina) said that the more flexible the PCT was, the more freedom it allowed to Contracting States to legislate in patent matters and the more adherents to the Treaty there would be.

788. Mr. HAERTEL (Germany (Federal Republic)) said that he wanted to record that the Delegation of the United States of America had not replied to the question he had asked.

789. Mr. BRENNAN (United States of America) said that, in connection with Article 29, the Main Committee had put aside the principle laid down in Article 11(3). Trying to maintain that principle in connection with paragraph (5) of the Article under discussion was in contradiction to the attitude adopted in connection with Article 29. An exception to Article 11(3) in Article 27(5) was just as important to some countries as the exception to Article 11(3) in Article 29 was to others.

790. Mr. HAERTEL (Germany (Federal Republic)) said that the question to which he had asked the Delegation of the United States of America

to reply was whether paragraph (5) of the Article under discussion would or would not place an applicant in a worse position than that in which he would be if he did not use the PCT.

791. Mr. BRENNAN (United States of America) said that the question was one which each applicant would have to answer for himself. If he felt that the PCT route would put him in a worse position, he could choose not to use that route. The position was similar to that under Article 29: if the applicant felt that delay in the provisional protection under that Article would put him in a less favorable position, he would have to forgo the PCT route.

792. Mr. SAVIGNON (France) said that, in his view, the analogy was a false one. Provisional protection did not depend on the filing date dealt with in Article 11(3). It depended on publication, with which Article 11(3) did not deal.

793. Mr. VILLALBA (Argentina) said that the whole problem would never have arisen had the Conference followed his suggestion that the international phase should end on the expiration of the priority year.

794. Mr. VAN BENTHEM (Netherlands) said that he fully agreed with the views of the Delegation of France.

795. Mr. CLARK (United States of America) said that, by looking at the effect upon the applicant as an applicant and then confusing the issue by turning to the effect of the issued patent as prior art, discussion on the last sentence of paragraph (5) was being unnecessarily prolonged. Unless the concepts of priority and prior art were kept apart, one got into a labyrinth from which there was no extricating oneself. As far as the question of priority was concerned, there was no harmful effect to the applicant *qua* applicant under the last sentence of paragraph (5).

796. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) agreed with the last part of the intervention of the previous speaker.

797. Mr. ARMITAGE (United Kingdom) said that as far as the prior art effect was concerned – as distinguished from the priority effect – the last sentence of paragraph (5) did put the applicant in a less favorable position than he would be in if he did not use the PCT. The difference was a small one but there was a difference.

798. The CHAIRMAN said that the setting up of a working group to try and find a compromise solution would be desirable at this point of the discussion.

799. Mr. ARMITAGE (United Kingdom) agreed with the Chairman.

800. Mr. SHER (Israel) expressed the hope that the working group would come up with a solution which would be somewhere between the two extreme positions expressed in the discussion.

801. Mr. SAVIGNON (France) said that although he did not see on what basis the working group would try to solve the problem he had no objection to the setting up of such a group.

802. Mr. LIPS (Switzerland) agreed with the previous speaker.

803. The CHAIRMAN proposed that a working group be set up and that it comprise the Delegations of Germany (Federal Republic), the United States of America, the Netherlands, the Soviet Union, the United Kingdom, Argentina, Australia, Israel, Zambia, and Canada.

804. Mr. SAVIGNON (France) said that his Delegation wished to be a member of the working group.

805. The CHAIRMAN said that the Delegation of France and that of Switzerland – the latter having also indicated its desire to be a member of the working group – would be added to the list of members of the working group.

806. Mr. ROBINSON (Canada) suggested that the terms of reference of the working group include Article 11(3) as well as Article 27(5), last sentence.

807. The CHAIRMAN indicated that the working group could deal with any question related to the last sentence of Article 27(5).

808. Mr. VAN BENTHEM (Netherlands) said that his Delegation's proposal for clarifying Article 11(3) might not be regarded as strictly related to Article 27(5), last sentence. Nevertheless, the working group should have the right to deal with it because it was only if Article 11(3) was crystal clear that one could usefully discuss any exceptions to it.

809. *It was decided that the members of the Working Group would be the Delegations named by the Chairman, and that it would deal both with Article 27(5), last sentence, and with the proposal of the Delegation of the Netherlands concerning Article 11(3) contained in document PCT/DC/29.*

810. *On a question from Mr. CLARK (United States of America) and a reply by Mr. VAN BENTHEM (Netherlands), it was understood that the proposal of the Delegation of the Netherlands would come under the mandate of the Working Group without prejudice to the question whether the last sentence of Article 27(5) would be omitted, modified, or maintained. (See 1604.)*

811. *Paragraph (5), with the exception of the last sentence thereof, was adopted as appearing in the Draft.*

812. *Paragraph (6) was adopted as appearing in the Draft, without discussion.*

813. *Paragraph (7) was adopted as appearing in the Alternative Draft without discussion.*

814. *Paragraph (8) was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1604.)*

*End of the Eleventh Meeting*

## TWELFTH MEETING

Monday, June 1, 1970, morning

### Rule 1: Abbreviated Expressions

815. *It was decided to defer discussion on this rule. (Continued at 1621.)*

### Rule 2: Interpretation of Certain Words

816. *It was decided to defer discussion on this rule. (Continued at 1622.)*

### Rule 3: The Request (Form)

817. *Rule 3 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1817.)*

### Rule 4: The Request (Contents)

818. Mr. GAJAC (France) said that the proposals of his Delegation concerning the naming of the inventor, contained in document PCT/DC/19, had been superseded by the fact that Article 4 of the Treaty had been modified on the same point. The Delegation of France would present a new proposal for amending Rule 4 in order to bring it into harmony with the decisions concerning Article 4.

819. *It was decided that the consequential proposals referred to by the Delegation of France would be transmitted direct to the Drafting Committee.*

820. Mr. HADDRICK (Australia) suggested that the Drafting Committee should look into the question whether the title of Rule 4.1: "Mandatory and Optional Contents" was correct since what was described as optional was, under certain circumstances, becoming mandatory.

821. *It was decided to refer the suggestion of the Delegation of Australia to the Drafting Committee.*

822. Mr. FERGUSSON (United Kingdom) said that Rule 4.3 contained a clause introduced by the word "preferably." Since the use of such, or similar, expressions deprived the provision of any binding force and made it simply a recommendation, the question arose whether it should be maintained in the Regulations or included in an agreed explanatory memorandum.

823. Mr. BOGSCH (Secretary General of the Conference) said that, although the Delegation of the United Kingdom was right in its interpretation of the legal nature of the provision in question, it would still be preferable to leave the provision in the Regulations, even though it was in the nature of a recommendation. It constituted a very useful guide for the applicant. Putting it into a separate instrument would complicate the task of everyone wishing to consult the provisions of the PCT, which would then be contained not in three documents (Treaty, Regulations, Administrative Instructions) but in four documents (the said three plus an explanatory memorandum).

824. Mr. ONIGA (Brazil) said that Rule 4.3 should either speak of ten rather than seven words, or should not specify the number of words which the title of the invention should not exceed.

825. The CHAIRMAN said that, in his view, Rule 4.3 was merely a recommendation as far as the number of words was concerned and therefore if a title

consisted of, say, 15 words and could not express the content of the invention precisely by fewer words, 15 words would still be compatible with the Rule in question.

826. Mr. FERGUSSON (United Kingdom) said that his Delegation would not insist on establishing an explanatory memorandum to which the provisions which were in the nature of recommendations would be transferred.

827. Mr. GIERCZAK (Poland) referring to this Delegation's proposal contained in document PCT/DC/23, proposed that Rule 4.6(c) be deleted. The question who was the inventor was a question of fact and did not depend on any legislation. It was unthinkable that, in different countries, different persons would be inventors of the same invention.

828. Mr. BOGSCH (Secretary General of the Conference) said that the provision would probably be rarely applied. Nevertheless, it was a fact that the national laws of several countries contained presumptions on the question who the inventor of an invention was. Those presumptions were not the same in all such countries. Consequently, there would be cases in which the inventor would not be the same for the purposes of all countries.

829. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)), referring to the observations presented by his Federation in document PCT/DC/15, said that he shared the view expressed by the Delegation of Poland. His Federation would welcome it if Rule 4.6(c) were deleted.

830. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) said that it would be most undesirable to eliminate Rule 4.6(c) since, for example, it could happen that in one country only one inventor was to be indicated, whereas in another country several had to be indicated.

831. Mr. GIERCZAK (Poland) said that he wished to maintain his proposal. Perhaps another way of achieving the desired result would be to refer to the national legislations involved.

832. Mr. BOGSCH (Secretary General of the Conference) said that the last suggestion of the Delegation of Poland might solve the problem. One could indeed refer, in Rule 4.6(c), to the national legislations in the sense that different persons could be named as inventors when such differences were caused by differences in the national laws of the various designated States.

833. Mr. MORTON (United States of America) supported the suggestion made by the Secretary General of the Conference.

834.1 Mr. CASELLI (Italy) said that if the claims were restricted, or if the application was divided in one country but not in the others, some of the inventors named in the former country might no longer be named in the latter countries.

834.2 If the last suggestion of the Delegation of Poland as expounded by the Secretary General of the Conference could take care of such situations, his Delegation would be in favor of the said suggestion.

835. Mr. GIERCZAK (Poland) said that, if an invention was made by an employee, and according to the national law, the employer was to be presumed to be the inventor, then the employee rather than the employer should be indicated as the inventor in the international application. In other words, a reference to the national law should be qualified by the said restriction.

836. Mr. BOGSCH (Secretary General of the Conference) said that he saw no possibility of accepting the said restriction. It was in contradiction to the principle that national laws must be respected.

837. Mr. ARMITAGE (United Kingdom) said that the question under discussion was not a question of principle, but merely a question of what was practical. It was a fact that national laws differed in certain cases as to defining who the inventor was. The PCT could not ignore those differences; neither could it pretend to harmonize the laws of the various countries on the point in question.

838. Mr. ASCENSÃO (Portugal) said that his Delegation supported the proposal of Poland as expounded in the last instance.

839. Mr. HAZELZET (Union of Industries of the European Community) said that another reason for which it was essential to be able to name different persons as inventors for different countries was the following: according to the law of some countries, the application could name as inventor only the person who had invented the gist of the invention; according to the laws of other countries, persons who contributed, to a certain extent, to the act of inventing were also considered to be inventors. In such cases, for some countries only one person could be named as inventor, whereas for others several persons would have to be named as inventors.

840. Mr. DAHMOUCHE (Algeria) said that his Delegation supported the proposal of the Delegation of Poland and the Secretary General of the Conference. One could perhaps further refine the provision by stating that one person must be named for all countries, whereas additional persons could be mentioned for certain countries.

841. Mr. HADDRICK (Australia) said that his Delegation supported the suggestion made by the Secretary General of the Conference. The language of the Draft as it stood might very well be regarded as too permissive. Reference to the requirements of national laws would make it clear that the applicant had no discretion of his own in naming different persons for different countries, but all that he was allowed to do was to conform to the various national laws.

842. Mr. ASCENSÃO (Portugal) supported the suggestion made by the Delegation of Algeria.

843. The CHAIRMAN said that it was not necessarily the case that at least one person would have to be considered the inventor in all designated States.

844. The SECRETARY, in order to illustrate the statement made by the Chairman, said that if, for example, an international application related to a



process and to a product which were invented by different persons, then, in countries in which only the product was patentable, the inventor would be necessarily different from the inventor in countries in which only the product was patentable.

845. Mr. MCKIE (United States of America) said that his Delegation supported the penultimate proposal of the Delegation of Poland as expounded by the Secretary General of the Conference.

846. Mr. SINGER (Germany (Federal Republic)) said that the provision concerning different inventors for different countries was necessary also because, according to the laws of some countries, only natural persons could be designated as inventors whereas, under the laws of other countries, legal entities could also be designated as inventors. His Delegation, therefore, supported the penultimate proposal of the Delegation of Poland as worded by the Secretary General of the Conference.

847. Mr. VILLALBA (Argentina) said that what might have been irritating in the Draft was that it seemed to leave it to the whim of the applicant to name different persons as inventors in different countries. This undesirable element of the Draft would be removed by a reference to national laws. He thus supported the penultimate proposal of the Delegation of Poland as worded by the Secretary General of the Conference.

848. The CHAIRMAN said that there seemed to be agreement in the Main Committee that Rule 4.6(c) should refer to the requirements of national laws. What was still under discussion was whether it should also state that at least one person must be identical for each country.

849. Mr. BENÁRD (Hungary) said that his Delegation would be ready to accept the penultimate proposal of the Delegation of Poland but would like to see a small change in the wording proposed by the Secretary General of the Conference. The change would be that the provision should speak of persons "deemed" to be inventors under the various national laws.

850. Mr. FINNE (Finland) said that his Delegation strongly supported the wording suggested by the Secretary General of the Conference. There could be abuse in naming the inventor whatever the wording of the Rule might be.

851. Mr. GIERCZAK (Poland) said that he would agree to transmit the proposal, as worded by the Secretary General of the Conference, to the Drafting Committee. He would, however, maintain the right of his Delegation to revert to the matter if the Drafting Committee did not report back a text with which it could agree.

852. *Rule 4.6(c) was adopted as appearing in the Draft, subject to a reference to the requirements of national laws.*

853.1 Mr. GIERCZAK (Poland), referring to the proposal of his Delegation concerning Rule 4.10, said that the proposal being moved was the proposal contained in document PCT/DC/59 and not the

proposal in document PCT/DC/23, which had been superseded by the former.

853.2 The proposal was that a new paragraph be added to Rule 4.10 reading as follows: "If the priorities of several earlier applications are claimed, it is strongly recommended that requests contain a statement indicating the consecutive numbers of the patent claims of the international application for which the particular priority dates are claimed in the international application." In other words, wherever the priority dates were not the same for all the claims, it should clearly appear from the international application which priority dates were claimed for which claims.

854. Mr. LORENZ (Austria) said that he supported the proposal of the Delegation of Poland and wished to call attention to the fact that the proposal was not a mandatory rule but merely a recommendation.

855. Mr. GABAY (Israel) said that he also supported the proposal of the Delegation of Poland. He would even prefer it if it were made a mandatory rule rather than a mere recommendation.

856. Mr. GYRDYMOV (Soviet Union) said that his Delegation, too, supported the proposal of the Delegation of Poland.

857. Mr. LIPS (Switzerland) said that his Delegation shared the views of the Delegation of Israel.

858. Mr. BENÁRD (Hungary) also supported the proposal of the Delegation of Poland.

859. Mr. VAN DAM (Netherlands) said that his Delegation would prefer it if the proposal of the Delegation of Poland were not adopted. However, it could also accept the proposal provided it remained in the nature of a recommendation.

860. Mr. MCKIE (United States of America) said that his Delegation shared the views of the previous speaker. If the proposal were to be changed to make it mandatory, his Delegation would have to oppose it.

861. Mr. FERGUSSON (United Kingdom) said that his Delegation's position was the same as that of the Delegation of the United States of America. The proposal presented a difficulty in that it was incomplete because, even where only one priority document was invoked, it was possible that it might relate to only one rather than to all the claims or to only part of a certain claim.

862. Mr. SAVIGNON (France) said that his Delegation was of the same opinion as the Delegation of the United States of America.

863. Mr. LEWIN (Sweden) said that he doubted whether the proposal of the Delegation of Poland was in conformity with the Paris Convention. Furthermore, he also foresaw a difficulty, namely, that whatever statement was made in the application as filed, it could be that it was no longer correct after the application had been amended.

864. Mr. PETERSSON (Australia) said that a similar requirement in his country's law had been abandoned since it was found to be impractical. The

statement made in the Application as filed might be of no relevance after the Application had been amended.

865. Mr. ARMITAGE (United Kingdom) said that he entirely shared the view expressed by the Delegation of Australia and would prefer it if the proposal of the Delegation of Poland were not adopted. In the national phase, each designated Office could ask the applicant to specify what priorities related to what claims once the final form of the claims was about to be established.

866. Mr. GIERCZAK (Poland) said that he did not share the views of the Delegations of Australia and the United Kingdom. Nor was he of the opinion that the proposal violated the Paris Convention.

867. Mr. GABAY (Israel) said that the advantages of the proposal of the Delegation of Poland outweighed any difficulties which it might cause. Consequently, his Delegation continued to support the proposal.

868. Mr. LORENZ (Austria) said that, since the provision would be in the nature of a recommendation, the applicant who did not follow it would not suffer any prejudice. Consequently, the proposal of the Delegation of Poland should be accepted.

869. Mr. TUXEN (Denmark) said that his Delegation could accept the proposal of the Delegation of Poland provided that it would be completed by a provision to the effect that the non-observance of the recommendation would not affect the priority right of the applicant.

870. Mr. SINGER (Germany (Federal Republic)) said that his Delegation shared the views expressed by the Delegation of the United Kingdom. The proposal of the Delegation of Poland was dangerous for the applicant. Any statement made by the applicant pursuant to the proposal of the Delegation of Poland might, in the national phase, be held against him. For example, where the applicant made an error, under some national laws he might not, in the national phase, plead error but would have to stand by the declaration made in the international application.

871. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would prefer not to accept the proposal of the Delegation of Poland.

872. Mr. OTANI (Japan) said that his Delegation shared the views expressed by the Delegation of the United Kingdom.

873. *The proposal of the Delegation of Poland was rejected by 10 votes against to 9 in favor, with 10 abstentions.*

874. *It was decided to defer discussion on Rules 4.12(a) and 4.13, last sentence, until Article 2 had been disposed of, and to defer discussion on Rule 4.2(b) until Article 45(2) had been disposed of. (Continued at 875.)*

*End of the Twelfth Meeting*

### THIRTEENTH MEETING

Monday, June 1, 1970, afternoon

**Rule 4: The Request (Contents)** (Continued from 874.)

875. Mr. GYRDYMOV (Soviet Union) said that, although his Delegation would have preferred that tasks of transliteration and translation referred to in Rule 4.16 in the Alternative Draft be carried out by the International Bureau, it would now, in a spirit of compromise, be ready to accept the Draft as proposed.

876. *Subject to the decisions referred to in 819, 821, and 852, and to the harmonization of Rules 4.12(a) and (b) and 4.13 with Article 2, Rule 4 was adopted as appearing in the Alternative Draft. (Continued at 1623.)*

**Rule 5: The Description**

877. Mr. GIERCZAK (Poland), referring to the proposal of his Delegation contained in document PCT/DC/23, proposed that Rule 5.1(a) be completed by requiring the inclusion of two further elements in the description, namely, that the description "contain a critical analysis of the background and define, on that base, the aim of the invention" and "define the technical problem which is solved by the invention."

878. Mr. LIPS (Switzerland) said that it was dangerous to ask that the description should contain a critical analysis of the background because such analysis might degenerate into criticizing competitors, and patent documents were not the right place to do so. Furthermore, the technical problem to be solved was in some cases entirely obvious through the statement of the subject of the invention so that it would not be necessary specifically to state the problem as such.

879. Mr. ARMITAGE (United Kingdom) said that his Delegation preferred the Draft to the proposal of the Delegation of Poland. The main problem to be solved would always appear, implicitly or explicitly, in the description. However, once the applicant received the search report and changed his claims, the application might encompass problems which were not clearly indicated in the international application as filed. Rules 5.6 and 13 were among those which had been the most carefully prepared, which represented a compromise negotiated over a period of years among conflicting views, and which should be disturbed only if absolutely necessary.

880. Mr. CLARK (United States of America) said that his Delegation shared the views expressed by the previous speaker.

881. Mr. LEWIN (Sweden) also shared the views of the Delegation of the United Kingdom. In the great majority of cases, the Rule as it was in the Draft already satisfied all the wishes of the Delegation of Poland.

882. Mr. CASELLI (Italy) said that his Delegation wished the provision to be as it was in the Draft.

883. Mr. PETERSSON (Australia) said that the provisions on the description should not be made stricter and therefore the Draft was preferable to the proposal of the Delegation of Poland.

884. Mr. SIMONS (Canada) said that in his Delegation's view the Draft should be maintained as it was.

885. Mr. GIERCZAK (Poland) said that he was not convinced by the arguments invoked against his proposal.

886. Mr. ONIGA (Brazil) said that the proposal of the Delegation of Poland could be qualified by saying that the Application should contain a critical analysis "where such analysis was necessary" or "where such analysis contributed to clarifying the matter."

887. *The proposal of the Delegation of Poland for a new item (iii) for Rule 5.1(a), as contained in document PCT/DC/23, was rejected by 16 votes against to 4 in favor, with 7 abstentions.*

888. *The proposal of the Delegation of Poland concerning a new item (iv) for Rule 5.1(a), as contained in document PCT/DC/23, was rejected by 17 votes against to 3 in favor, with 7 abstentions.*

889. The SECRETARY, on a question from Mr. VILLALBA (Argentina), said that it was the disclosure in the international application, including the description, beyond which the amendments could not go.

890.1 The CHAIRMAN said that if the Delegation of Brazil wanted to maintain the suggestion made for amending the proposal of the Delegation of Poland it had the right to do so but would have to file its proposal in writing.

890.2 The CHAIRMAN said that the proposal of the Delegation of Poland concerning a change in item (iii) of Rule 5.1(a) contained in document PCT/DC/23, had been disposed of by the last two votes since the change in question depended on the proposals which had been rejected.

891. Mr. SIMONS (Canada) proposed that in item (v) the words "best mode contemplated" be changed to "best mode known".

892. Mr. BOGSCH (Secretary General of the Conference) said that the language appearing in the Draft followed closely the language used in the US law. At the time when the Application was made the applicant could only speculate on what the best mode was. What did "know" mean? Did it mean "know for sure" or merely "know it was possible"?

893. Mr. SIMONS (Canada) suggested that the matter be left to the Drafting Committee.

894. Mr. MCKIE (United States of America) agreed with the view expressed by the Secretary General of the Conference.

895. The CHAIRMAN said that the matter would be referred to the Drafting Committee.

896. Mr. LIPS (Switzerland) moved the proposal of his Delegation concerning item (vi), contained in document PCT/DC/17. In most cases, the use or industrial manufacture of an invention was obvious and required no special explanation such as that envisaged in item (vi) of the Draft. Consequently, item (vi) should read as follows: "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)." In 99 percent of the cases, the said implication would be possible and no specific statement would be necessary.

897. Mr. GAJAC (France), referring to the proposal of his Delegation contained in document PCT/DC/21, said that item (vi) should be made entirely optional and should refer only to the general notion of "industrial applications" without providing any exact and restricted definition. The industrial character or industrial application of the invention was in most cases so obvious from the general description of the invention that it required no special explanation. Consequently, item (vi) could read as follows: "possibly indicate the possibilities of industrial application of the invention."

898. Mr. SIMONS (Canada) said that an invention might be patentable "even if it was not used in industry" but was used only by doctors or musicians.

899. Mr. BOGSCH (Secretary General of the Conference) said that the word "industry" should be interpreted in the same extremely broad manner as that in which it was used in the Paris Convention.

900. Mr. FERGUSSON (United Kingdom) said that perhaps it would be clearer to stipulate that the description had to "indicate explicitly or implicitly the way in which the subject of the invention can be made or used in industry."

901.1 Mr. MCKIE (United States of America) said that it was his Delegation's understanding that Rules 3 to 13 set out the minimum standards with which all international applications would have to comply. As far as the United States of America was concerned, a statement on the utility of the invention was a minimum requirement.

901.2 He was of the opinion that the word "industry" had been adequately dealt with. Consequently, his Delegation preferred the text of item (vi) as appearing in the Alternative Draft. He said that the point made by the Delegation of Canada was correct: a scalpel used in surgery, for example, could not be "used" in industry but it could be industrially produced – and thus it could be "made" in industry – and it could also be "exploited" by industry. Consequently, item (vi) should use the expression "to be made or used" rather than "to be made and used"; alternatively one could use the word "exploited" rather than "used."

902. Mr. MESSEROTTI-BENVENUTI (Italy) said that the text should say "made and/or used" since there were certain products, for example, consumer goods, which were made in industry but which were not used in industry.

903. Mr. PRETNAR (Yugoslavia) said that Article 33(4) of the Draft Treaty defined "industry." Perhaps it would be the best thing to postpone discussion until the said Article was discussed.

904. Mr. GIERCZAK (Poland) said that it was indispensable for the complete understanding of an invention that its usefulness in industry should be stated in the application. Consequently, his Delegation opposed the proposals of the Delegations

of France and Switzerland and supported the proposal as appearing in the Alternative Draft.

905. Mr. LIPS (Switzerland) said that the designation of an invention could be so clearly indicated in the title or in other parts of the description that it was quite superfluous to indicate it in a separate special passage of the application. For example, if the title of an application was "insecticide," it would be wholly unnecessary to have a separate paragraph in the description saying that the invention was useful for the extermination of insects.

906. Mr. MCKIE (United States of America) said that the US patent law would not require that an insecticide disclosed as such be further disclosed as being useful in killing insects. However, under the US law, if a chemical which was usable as an insecticide was disclosed, it must be stated expressly that it was usable for that purpose. He insisted that the text as appearing in the Alternative Draft be adopted.

907. Mr. VILLALBA (Argentina) said that, as he understood it, the international application had to conform with certain rules only in order to make the international search possible. Whether any subject matter was patentable or not depended on the national law of each Contracting State. The Paris Convention contained no obligation to grant patents for everything that could be made and/or used in industry. Any country had complete liberty to decide what it regarded as being industrially usable and to grant patents only for those inventions which it regarded as being so usable.

908.1 Mr. BOGSCH (Secretary General of the Conference) said that an international application served not only the purpose of international search but also the purpose of being an application in each of the designated States. Therefore, it was extremely important that the international application should contain all the elements which made it possible for the Contracting States to regard it as an equivalent of a national application. It was for that reason, and mainly for that reason, that the PCT defined with precision the formalities and the minimum contents of international applications. From the viewpoint of some of the Contracting States, those minimum requirements were stricter than the national law. Nevertheless, it was necessary to adopt such stricter requirements so that the international application should be acceptable also in Contracting States whose national laws contained those stricter requirements. If any of the Contracting States was satisfied with less strict requirements, it could apply them, as indicated in Article 27(4).

908.2 On the other hand, the PCT did not prescribe what subject matters were patentable and what were not. Therefore, a State which did not consider that foods or drugs or pesticides or any other categories of inventions were patentable could continue to do so under the PCT. Nevertheless, international applications might be filed for such subject matters and, unless excluded by Rule 39, they would be internationally searched. If an applicant had been well informed that his invention related to a subject matter which was not patentable in certain Contracting

States, he would not designate such States – for example, if he designated in an international application relating to drugs a State which did not grant patents for drugs – then when the application reached the national Office the grant of the patent would be denied.

909. Mr. SIMONS (Canada) said that, after having heard the explanations of the Secretary General of the Conference and the Delegation of the United States of America, it had become evident that, for the purposes of the United States of America, specifying the utility was mandatory – as it was for the purposes of Canada – and, consequently, that situation should be borne in mind when the Drafting Committee dealt with item (vi).

910. Mr. FERGUSSON (United Kingdom) said that he fully agreed with the explanation given by the Secretary General of the Conference. Since the Delegation of the United States of America had indicated that any broadening of the provision under discussion would put the applicant in jeopardy in the United States of America, it would be extremely difficult to accept the proposals of the Delegations of Switzerland and France. It would be best to leave the text as it appeared in the Alternative Draft.

911. Mr. VAN DAM (Netherlands) said that the trouble with item (vi) was that it was stricter than the US law or any national law. It was therefore quite unnecessarily strict. For example, if the invention related to a chair, the description would describe the newly invented chair and the difference between it and other chairs. No patent law in the world, however, would require that it also describe the way in which the chair was made in industry. The making was obvious, contained nothing new, and followed traditional methods. He was convinced that even in the United States of America it was not required in respect of a new chair to state how it was made and used since everybody knew what purposes a chair could be used for.

912. Mr. GAJAC (France) said that, in the overwhelming majority of cases, compliance with item (vi) as appearing in the Alternative Draft was completely superfluous. It was probably only in some types of chemical inventions that the statements required by the Draft would be useful.

913. Mr. LIPS (Switzerland) said that his Delegation was ready to withdraw its proposal in favor of the proposal of the Delegation of France.

914.1 Mr. MCKIE (United States of America) said that Section 112 of the US Patent Statute required the specification to contain "a written description of the invention and of the manner and process of making and using it, in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains or with which it is most nearly connected to make and use the same." Naturally, in the case of a chair, both the method of making it and the purpose for which it was used were so obvious, particularly to a person skilled in the art, that a statement on neither point would be required. However, the verb "indicate" in the Alternative Draft took care of the problem since the indication could

take many forms; for example, in the case of a chair, it could take the form of merely showing the chair.

914.2 It was in view of Article 27(1) – which provided that no Contracting State had the right to require compliance with requirements relating to the form or contents of the international application different from or additional to those which were provided for in the PCT – that it was essential that the Rules concerning the description be such that they did not require a change in the US patent law which the United States of America could not effectuate.

915. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that he fully agreed with the remarks made by the Delegation of the Netherlands. He would like to take another example, that of a doll. If a doll was invented which could move its arms, and the description and the drawings clearly showed the mechanism used for moving the arms, it was completely unnecessary to state how the mechanism would be made and for what purposes the doll would be used.

916. *The proposal of the Delegation of France was rejected by 15 votes against to 8 in favor, with 7 abstentions.*

917. Mr. FERGUSSON (United Kingdom) said that he was agreeable to item (vi) as appearing in the Alternative Draft but wished the Drafting Committee to look into the question whether the disjunctive and conjunctive “or” and “and” should not be used in a clearer fashion.

918. Mr. LEWIN (Sweden) agreed with the previous speaker. In that respect, the Draft, as distinguished from the Alternative Draft, might have been clearer.

919. Mr. BOGSCH (Secretary General of the Conference) said that in his view what the Drafting Committee should make sure of was that the text covered all the logically possible situations and that it should not refer to situations which did not exist in practice.

920. *Rule 5.1(a)(vi) was adopted as appearing in the Alternative Draft, subject to the refining of its language by the Drafting Committee.*

921. *The other provisions of Rule 5.1(a) were adopted as appearing in the Alternative Draft.*

922. Mr. VAN DAM (Netherlands) said that paragraph (c) carried with it a strong indication that the elements described in the six items of paragraph (a) would have to appear separately in each international application. On the other hand, paragraph (b) indicated that it was permissible not always to follow paragraph (a). Furthermore, since it had been stated during the discussion of item (vi) that the indications required by that item did not always have to appear in the form of a separate statement, paragraph (b) should be modified to indicate that fact.

923. The CHAIRMAN said that in his view the question was one for the Drafting Committee.

924. Mr. GAJAC (France) wished to express his full agreement with the proposal of the Delegation of the Netherlands.

925. *Rule 5.1(b) was adopted as appearing in the Draft, it being understood that the Drafting Committee would examine the proposal made by the Delegation of the Netherlands.*

926. *Rule 5.1(c) was adopted as appearing in the Draft, without discussion. (Continued at 1825.)*

#### **Rule 6: The Claims**

927. *Rule 6.1 was adopted as appearing in the Draft, without discussion.*

928. *Rule 6.2 was adopted as appearing in the Alternative Draft, without discussion.*

929. *Rule 6.3 was adopted as appearing in the Alternative Draft, without discussion.*

930.1 Mr. LIPS (Switzerland) moved the proposal of his Delegation concerning Rule 6.4 as appearing in document PCT/DC/17.

930.2 Paragraph (a) of the Alternative Draft provided that any claims which included all the features of more than one claim must contain a reference to the other claims. Paragraph (b) provided that any dependent claim which referred to more than one other claim must refer to such claims in the alternative only. There was a contradiction between the two paragraphs since paragraph (a) permitted multiple subordination in the form of an addition, whereas paragraph (b) permitted subordination only in the form of an alternative. Consequently, the Rule should be modified so as to remove the contradiction.

931. Mr. TROTTA (Italy) supported the proposal of the Delegation of Switzerland.

932. Mr. VAN DAM (Netherlands) said that he would like to know whether the Delegation of Switzerland would agree to broaden somewhat its proposal by changing the words “the preceding claim” to “a preceding claim.”

933. Mr. LEWIN (Sweden) said that the proposed text in the Alternative Draft contained no contradiction and was clearer than the proposal made by the Delegation of Switzerland. He therefore supported the Alternative Draft.

934. Mr. FERGUSSON (United Kingdom) said that in the view of his Delegation the Alternative Draft did not contain any contradiction. Of course, it could also be worded in other ways, for example, by changing somewhat the order of the paragraphs, but in essence it was correct and preferable to the proposal of the Delegation of Switzerland.

935. Mr. MCKIE (United States of America) agreed with the observations made by the previous speaker.

936. Mr. VAN DAM (Netherlands) said that the use of the definite article “the” in the proposal of the Delegation of Switzerland would indicate that one could refer only to the claim immediately preceding. Such a result would exclude a so-called “branching arrangement” and such limitation was undesirable.

937. Mr. LIPS (Switzerland) said that the Delegation of the Netherlands had misunderstood his proposal, which did not exclude a “branching arrangement.” The reference might be to any

preceding claim and not only to the one immediately preceding. He would accept the substitution of the definite article by the indefinite article.

938. Mr. SINGER (Germany (Federal Republic)) suggested that the matter be referred to the Drafting Committee since the proposal of the Delegation of Switzerland was, in substance, the same as the text in the Alternative Draft.

939. Mr. BOGSCH (Secretary General of the Conference) said that he was not sure that the two proposals were the same as to their substance. Only if they were the same was the matter one for the Drafting Committee.

940. Mr. LORENZ (Austria) said that his Delegation hesitated to accept the proposal of the Delegation of Switzerland if it meant that no cumulative references were permitted under it.

941. Mr. FERGUSSON (United Kingdom) said that the Drafting Committee would need very clear instructions on whether it was or was not supposed to exclude dependent claims referring cumulatively to more than one previous claim.

942. Mr. LIPS (Switzerland) said that the proposal of his Delegation was to the effect that a certain cumulative referring back should be allowed, albeit in a form which was implicit or indirect. He said that the Alternative Draft, which used the word "and," was not clear as to whether a cumulative or an alternative reference was meant. Perhaps the Alternative Draft might be clarified by inserting the word "directly" between the word "shall" and the word "refer" in paragraph (d).

943. *Rule 6.4(a) was adopted as appearing in the Alternative Draft, on the understanding that the Drafting Committee would attempt to improve the language used.*

944. Mr. FERGUSSON (United Kingdom) said that the proposal of his Delegation concerning Rule 6.4(b), contained in document PCT/DC/26, was of a drafting nature.

945. *Rule 6.4(b) was adopted as appearing in the Draft, with the understanding that the proposal of the United Kingdom would be examined by the Drafting Committee.*

946. Mr. BOGSCH (Secretary General of the Conference) said that Rule 6.5 concerning utility models was intended to take care of a point which was extremely important for Japan. It had been found acceptable in the Committee of Experts of March 1970.

947. *Rule 6.5 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1826.)*

#### **Rule 7: The Drawings**

948. *Rule 7 was adopted as appearing in the Draft, without discussion. (Continued at 1830.)*

#### **Rule 8: The Abstract**

949. *Rule 8.1(a) was adopted as appearing in the Alternative Draft, without discussion.*

950. Mr. LIPS (Switzerland) said that recommending length (50 to 150 words in English) in terms of numbers of words and with reference to a particular language, in Rule 8.1(b), was not a good method. His Delegation would prefer it if the length were expressed with reference to the size of a page. It should be between one-half and one page long. The suggestion, which had already been presented by his Delegation, was contained in document PCT/DC/17.

951. Mr. VILLALBA (Argentina) supported the proposal of the Delegation of Switzerland.

952. Mr. BOGSCH (Secretary General of the Conference) said that expressing the length of the abstract in terms of one-half to one page was uncertain because there were so many different kinds of typewriting machines, different ways of spacing between lines, and different widths of margins. If the applicant could not make a correct estimate of how many words his abstract would contain in English, no harmful consequence would follow because the provision was merely in the nature of a recommendation.

953. Mr. DAHMOUCHE (Algeria), referring to the solution which had been adopted in connection with the length of the title of the invention, suggested that the provision in question should be placed within parentheses in order to emphasize its limited importance.

954. The CHAIRMAN said that, since the Draft provided that the number of words should "normally" be 50 to 150 words, it was quite clear that the provision did not constitute a mandatory rule.

955. Mr. LIPS (Switzerland) said that his Delegation would not insist on maintaining its proposal.

956. *Rule 8.1(b) was adopted as appearing in the Alternative Draft.*

957. *Rules 8.1(c) and (d), as well as Rules 8.2 and 8.3, were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1831.)*

#### **Rule 9: Expressions, Etc., Not To Be Used**

958. *Rule 9 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1832.)*

#### **Rule 10: Terminology and Signs**

959. *Rule 10 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1833.)*

#### **Rule 11: Physical Requirements of the International Application**

960. *Rules 11.1 to 11.6 were adopted as appearing in the Alternative Draft, without discussion.*

961. Mr. LIPS (Switzerland), referring to the proposal of his Delegation contained in document PCT/DC/60, moved that Rule 11.7(b) provide that the figures numbering each sheet of the application should be placed at the top rather than at the bottom of each sheet.

962. *The proposal of the Delegation of Switzerland was put to the vote and adopted without counting the votes.*

963. Mr. LIPS (Switzerland), referring to his Delegation's proposal contained in document PCT/DC/60 moved that Rule 11.8, which "recommended" the numbering of every fifth line of each sheet, should be changed so as to make the recommendation a rule.

964. Mr. DAHMOUCHE (Algeria) supported the proposal of the Delegation of Switzerland.

965. Mr. GAJAC (France) said that, although his Delegation had no strong opposition to the proposal of the Delegation of Switzerland, it was disturbed by the fact that the European Convention Relating to the Formalities Required for Patent Applications did not require any numbering of the lines.

966. *The proposal of the Delegation of Switzerland was rejected by 8 votes against to 6 in favor, with 18 abstentions.*

967. *Rules 11.7 to 11.15 were approved as appearing in the Alternative Draft. (Continued at 1834.)*

#### **Rule 12: Language of the International Application**

968. *Rule 12 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1028.)*

*End of the Thirteenth Meeting*

#### **FOURTEENTH MEETING**

Tuesday, June 2, 1970, morning

#### **Rule 13: Unity of Invention**

969. *Rule 13.1 was adopted as appearing in the Alternative Draft, without discussion.*

970. Mr. FERGUSSON (United Kingdom), referring to the proposal presented by his Delegation which appeared in document PCT/DC/26, proposed that, in the opening sentence of Rule 13.2 as appearing in the Alternative Draft, the brackets around the words "in particular" be removed.

971. Mr. LIPS (Switzerland) presented the proposal of his Delegation contained in document PCT/DC/60.

972. Mr. CASELLI (Italy) presented the proposal of his Delegation contained in document PCT/DC/74.

973. Mr. BOGSCH (Secretary General of the Conference) said that in the preparatory negotiations it had always been clearly understood that the substantive provision was contained in Rule 13.1 and that Rule 13.2 was merely in the nature of an interpretation of Rule 13.1. Rule 13.2 provided that certain things were expressly permitted under Rule 13.1. Additional possibilities also existed. That would be made quite clear if the words "in particular" were maintained. Should they be maintained, there

would probably be no need for the amendments proposed by the Delegations of Switzerland and Italy.

974. Mr. CLARK (United States of America) and Mr. VAN DAM (Netherlands) supported the proposal of the Delegation of the United Kingdom.

975.1 Mr. HAERTEL (Germany (Federal Republic)) wished to comment on the consequences of the removal of the brackets in question.

975.2 In such a case, the provisions in Rule 13.2 were merely minimum requirements. If the application complied with them, it could not be rejected in any of the Contracting States. However, any Contracting State could be more liberal than the provisions of Rule 13.2. If the words "in particular" were deleted, it would be doubtful whether countries *could* be more liberal.

976. The CHAIRMAN said that it was his understanding that the Rule was provided in Rule 13.1 and the minimum requirements in Rule 13.2, and that any nation might enlarge upon the minimum.

977. Mr. ASHER (Canada) wanted clarification of the word "use" appearing in item (i). Under Canadian law, "use" as such was not patentable unless it was expressed as a process or a composition or some apparatus.

978. The CHAIRMAN said that the matter was reserved for the national law of each country and the rule had merely to do with the possibility of submitting the claim without violating the rule of unity of invention.

979. Mr. VAN DAM (Netherlands) asked whether Rule 13.2(i) should not be subject to Rule 13.3 since although the former Rule spoke about "one claim" it followed from the latter Rule that the number of claims might be more than one.

980. The SECRETARY said that, whereas Rule 13.2 dealt with claims of different categories, Rule 13.3 dealt with claims of one and the same category. Both in the former and in the latter case there could be several claims, in the former case of different categories and in the latter case of one and the same category.

981. *The proposals of the Delegations of Switzerland (PCT/DC/60) and Italy (PCT/DC/74) were withdrawn.*

982. *Rule 13.2 was adopted as appearing in the Alternative Draft, subject to omitting the brackets and maintaining the words "in particular."*

983. *Rules 13.3 and 13.5 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1836.)*

#### **Rule 14: The Transmittal Fee**

984. *Rule 14 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1837.)*

#### **Rule 15: The International Fee**

985. *Rule 15.1 was adopted as appearing in the Alternative Draft, without discussion.*

986. Mr. VAN DAM (Netherlands) suggested that any fee that had to be paid in a given country should be expressed in the currency of that country. For example, the amount of the fees to be paid to the International Bureau should be expressed only in Swiss francs and not also in US dollars.

987. Mr. HASHIMOTO (Japan) asked what would happen if the exchange rate between Swiss francs and US dollars changed.

988. Mr. BOGSCH (Secretary General of the Conference) replied that originally the Draft had expressed the amounts of the fees only in US dollars since that currency was better known in the world than the value of the Swiss franc. If the exchange rate underwent changes and such changes were important, then the Rules would doubtless be amended to take account of the disparity.

989. Mr. HASHIMOTO (Japan) said that his Delegation did not wish to propose any amendment.

990. Mr. VAN DAM (Netherlands) formally proposed the deletion of the reference to US currency.

991. Mr. GAJAC (France) seconded the proposal of the Delegation of the Netherlands.

992. Mr. VILLALBA (Argentina) said that his Delegation opposed the proposal of the Delegation of the Netherlands. Indicating both currencies was more flexible and therefore preferable.

993. Mr. CLARK (United States of America) said that his Delegation would prefer the text of the Alternative Draft. It would allow US applicants to pay by checks issued against their dollar accounts.

994. Mr. SIMONS (Canada) said that his Delegation was of the same opinion as the Delegation of the United States of America.

995. *The proposal of the Delegation of the Netherlands was rejected by 10 votes against to 3 in favor, with 17 abstentions.*

996. *Rules 15.2 to 15.6 were adopted as appearing in the Alternative Draft. (Continued at 1838.)*

#### **Rule 16: The Search Fee**

997. Mr. ARMITAGE (United Kingdom) said that he would like to know whether the Rule was satisfactory to the International Patent Institute.

998. Mr. VAN WAASBERGEN (International Patent Institute) replied in the affirmative.

999. *Rules 16.1 and 16.2 were adopted as appearing in the Alternative Draft.*

1000. Mr. OTANI (Japan), referring to a proposal by his Delegation appearing in document PCT/DC/43, moved that Rule 16.3 concerning partial refund should either be deleted or should be made permissive rather than mandatory. The matter was one which should be left to the discretion and practical possibilities of each International Searching Authority.

1001. Mr. CLARK (United States of America) entirely shared the view of the Delegation of Japan.

1002. Mr. HAERTEL (Germany (Federal Republic)) said that since the Alternative Draft provided that the partial refund would take place as

regulated in the agreement under Article 16(3)(b) it seemed unnecessary to make any stipulation on the question in the Regulations. The agreement between the International Searching Authority and the International Bureau would take care of the matter. He also said that the question under consideration equally concerned Rule 14.1 on the international-type search. There, a similar provision provided – logically it would seem – for a refund when an international-type search was made on a national application and then an application with a similar content was later filed as an international application. In the Rule under consideration the situation was similar, the only difference being that the first application was an international application. Whether the Rule used the word “shall” or the word “may,” it left a fair amount of discretion to the International Searching Authority, which alone would be able to say to what extent it used the results of the first search in the course of the second search.

1003. Mr. LEWIN (Sweden) said that using an international-type search only made sense if there were strong hopes of a partial refund of the search fee when the same application was filed later as an international application.

1004. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that the principle of a refund in the situation under consideration should be maintained. It did not make much difference whether the provision was drafted in a mandatory or a permissive form since the real extent of the refund would be stipulated in the agreement between the International Bureau and the International Searching Authority.

1005. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation preferred the text as appearing in the Alternative Draft. Furthermore, he wondered whether there was not a loophole in the Regulations since similar provision would be needed also for the case where an applicant filed two practically identical international applications. He might wish to do so for purely formal reasons, one of which would be more satisfactory for one group of designated States and the other for another group of designated States.

1006. Mr. CLARK (United States of America) said that his Delegation would prefer to see the provision cast as permissive rather than mandatory. That would be consistent with Article 15(5), which left it to national legislation to admit or not to admit international-type searches on national applications.

1007. Mr. BRAUN (Belgium) said that his Delegation agreed with the declaration made by the Delegation of Spain.

1008. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation considered Rule 16.3 to be superfluous but would not vote against it. However, the word “shall” could hardly be changed to “may” since once a refund was stipulated in the agreement between the International Searching Authority and the International Bureau it was no longer a matter of discretion for the International Searching Authority to make a refund or not, but rather an obligation to make a refund to the extent stipulated in the agreement. Consequently, his



Delegation could not support the proposal of the Delegation of Japan.

1009. *Rule 16.3 was adopted as appearing in the Alternative Draft, by 19 votes in favor to 2 against, with 7 abstentions.*

1010. *The proposal of the Delegation of Japan to change the word "shall" appearing in Rule 16.3 to "may" was rejected by 18 votes against to 2 in favor, with 8 abstentions. (Continued at 1839.)*

#### **Rule 17: The Priority Document**

1011. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation contained in document PCT/DC/71, moved that the 16 months time limit appearing in Rule 17.1(a) be reduced to 12 months. In that case, as in other cases, his Delegation proposed shorter terms than those appearing in the Draft. Consequently, the matter could be regarded as a question of general principle and could be discussed as such in connection either with the Rule under discussion or with any other appropriate Rule.

1012. The CHAIRMAN said that the Delegation of Argentina would be welcome to make a general declaration at that point if it so desired.

1013. Mr. VILLALBA (Argentina) said that all time limits in the Treaty and the Regulations which were longer than 12 months and therefore did not enable the designated Offices to start national processing until after the expiration of the priority year should be reduced to 12 months from the priority date. Particularly for countries in which most of the applications came from abroad, it was more important to be able to dispose of those applications at the same rate as that at which national applications were disposed of. It was more important to speed up the processing of international applications than to give additional time to applicants. With the cooperation of the applicant the international search could be completed within the priority year and national processing could consequently be started, with the international search report, immediately after the expiration of the priority year all that the applicant would have to do was file his international application as a first application, or immediately after having filed the national application whose priority the international application invoked.

1014.1 Mr. ONIGA (Brazil) said that in most branches of technology development was so rapid and inventions became so rapidly obsolete that it was essential that the processing of patent applications should take the shortest possible time. Consequently, his Delegation supported the proposal made by the Delegation of Argentina to reduce all time limits which, under the Draft, would expire after the expiration of the priority year, so that they expired at the same time as the priority year.

1014.2 For the same reason it would also be desirable to reduce the term of patent protection as fixed today in the legislation of most countries at least for those sectors (e.g. electronics) which are in rapid evolution.

1015.1 Mr. BOGSCH (Secretary General of the Conference) said that it was one of the basic

assumptions of the PCT that an international application could be filed right up to the end of the priority year. If it had to be filed earlier, then it would have to be filed earlier than an application not using the PCT route, and thus the PCT route would cease to be attractive. A further basic assumption of the PCT was that it would be fully useful both to the applicant and to the designated Offices only if there was an international search report before national proceedings started.

1015.2 The said two factors had some practical consequences, particularly in that the international processing, including the preparation of the international search report, would normally take place after the priority year had expired. Consequently, the time limit in question would have to expire later than one year counted from the priority date.

1015.3 As far as Rule 17.1 was concerned, an additional reason for a time limit longer than the priority year was that Article 4 D(3) of the Paris Convention provided that a priority document could be filed within 15 months or later if the national law so permitted. The Draft provided for a time limit one month longer than the 15 months because of the practical necessity of communications to the International Bureau rather than to the national Office. However, there would probably be no opposition to reducing the time limit from 16 to 15 months.

1015.4 A further proposal by the Delegation of Argentina was to the effect that copies of the international application and of the international search report should be communicated to each designated Office within the priority year. For the reasons stated, that was not possible because it left no time for the preparation of an international search report and other international processing.

1015.5 There was yet another proposal by the Delegation of Argentina, which asked that the record copy should reach the International Bureau within the priority year. That too was not possible in practice because there had to be some time left between the filing of the international application, which could occur at the very end of the priority year, and the making and forwarding of copies to the International Bureau.

1015.6 The whole system was based on a *quid pro quo*: the national Offices must wait a little longer; in exchange they would receive an international search report which would facilitate their work.

1015.7 As for the observations of the Delegation of Brazil to the effect that the duration of patents was generally too long, it should be noted that that was not a question for the PCT. Neither the PCT nor the Paris Convention contained proposals on the duration of patent protection.

1016. Mr. FERGUSSON (United Kingdom) said that his Delegation fully agreed with the statement by the Secretary General of the Conference. However, it would prefer to maintain the time limit under consideration at 16 months and not to reduce it to 15 months. The 16 months time limit had been arrived at after carefully considering what could be realistically hoped for. In order to file a certified

priority document, the national Office where the earlier application had been filed had to prepare a copy. That required time. It might be that in many cases even the 16 months would be very difficult to comply with.

1017. Mr. VAN DAM (Netherlands) said that his Delegation agreed with the statement made by the Delegation of the United Kingdom.

1018. Mr. ASHER (Canada) also agreed with the statement by the Delegation of the United Kingdom.

1019. Mr. PRETNAR (Yugoslavia) said that, whereas it was true that the development of technology was faster than it used to be, it was equally true that the inventions were much more complex and the applications more complicated than they used to be. Consequently their processing required more time than a few decades ago. The time limits proposed in the Draft were not too long; if anything, in most cases they were on the short side.

1020. Mr. PETERSSON (Australia) said that private circles in his country were of the opinion that the time limits provided in the Draft were generally too short as it would be very difficult to respect them. Consequently, his Delegation would be opposed to any reduction of any of the time limits. As to the particular point of the discussion, the proposed 16 months time limit should under no circumstances be reduced.

1021. Mr. VILLALBA (Argentina) said that his Delegation was not convinced by the arguments of the Delegations which had spoken against its proposal. If having an international search report was advantageous to the applicant, he should be prepared to pay for that advantage by not using the priority year to its full extent and by filing his international application early in the priority year.

1022. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that in the Netherlands the time limit for filing the priority document was 18 months and even that was found in practice to be too short. Consequently, he hoped that the 16 months time limit under discussion would not be shortened.

1023. Mr. HAZELZET (Union of Industries of the European Community) said that he fully supported the statement of the previous speaker.

1024. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) shared the views of the two previous speakers. CNIPA had carefully examined all the provisions on time limits in the Drafts and found them to be a reasonable compromise.

1025. *The proposal of Argentina as appearing in document PCT/DC/71 was rejected by 19 votes against to 9 in favor, with 7 abstentions.*

1026. *Rule 17.1 was adopted as appearing in the Alternative Draft.*

1027. *Rule 17.2 was adopted as appearing in the Draft, without discussion. (Continued at 1840.)*

**Rule 12: Language of the International Application** (Continued from 968.)

1028. Mr. BOGSCH (Secretary General of the Conference) said that the Secretariat had just noticed that there was a regrettable error in the French version of the document containing the Alternative Draft. The last part (some six lines in the English text) of Rule 12.1 had been omitted. The part in question – which appeared only in the English version of the Alternative Draft – provided in practice that international applications could always be filed in English if the competent International Searching Authority was the International Patent Institute.

1029. Mr. DEGAVRE (Belgium) said that the provision in question was totally unacceptable for his Delegation because, if the national Office of Belgium was a receiving Office, it would have to apply the Belgian law concerning official languages and could not accept an international application filed in English.

1030. Mr. KÄMPF (Switzerland) said that his Delegation was in exactly the same position as that of Belgium.

1031. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) supported the view expressed by the Delegations of Belgium and Switzerland.

1032. Mr. ASCENSÃO (Portugal) agreed with the view of the Delegation of Belgium.

1033.1 Mr. BOGSCH (Secretary General of the Conference) said that the provision under consideration would not allow the filing of international applications in Spanish or Portuguese because the International Patent Institute was not yet able to handle those languages. Consequently, international applications filed in Spain or Portugal would have to be in languages other than Spanish and Portuguese, namely, in one of the languages which the International Patent Institute could handle.

1033.2 However, since there seemed to be no support for the provision in question, it might be best to drop it.

1033.3 Finally, he said that the Secretariat withdrew the provision under discussion.

1034. *It was decided that Rule 12 was to be considered adopted by the Main Committee as appearing in the French version of the Alternative Draft rather than in the English version. (Continued at 1835.)*

**Rule 18: The Applicant**

1035. *Rules 18.1 and 18.2 were adopted as appearing in the Draft, without discussion.*

1036.1 Mr. HASHIMOTO (Japan) moved the proposal of his Delegation as appearing in document PCT/DC/44. It was proposed that the following words be added at the end of Rule 18.3: “and all the applicants are nationals of a Paris Union country or countries or nationals having their domicile or establishment in a Paris Union country or countries.”

1036.2 According to the Draft, an international application in which several persons were named as applicants was receivable even if some of them were not residents of a country entitled to file international applications. That would mean that nationals of

countries which were not even members of the Paris Union could benefit from the PCT as long as they associated themselves with at least one person who was entitled to use the PCT. That result would be contrary to the spirit of the Paris Convention, which extended its benefits on a reciprocal basis.

1036.3 A further disadvantage would be that whereas such permissiveness did not exist under the national laws of certain countries it would exist under the PCT, so that by using the PCT applicants could circumvent national laws. Finally, since an international application might be the basis of a priority claim, countries which did not recognize original claims based on applications where some of the applicants were nationals or residents of countries outside the Paris Union would now benefit from such priority.

1037. Mr. SINGER (Germany (Federal Republic)) supported the proposal of the Delegation of Japan.

1038. Mr. BOGSCH (Secretary General of the Conference) said that BIRPI, as guardian of the Paris Convention, wanted to go on record as saying that although it had no objection to adopting the Japanese proposal it did not necessarily accept the interpretation which the Delegation of Japan placed on the Paris Convention.

1039. Mr. GYRDYMOV (Soviet Union) said that his Delegation supported the Draft on the question under discussion. In any case, the proposal of the Delegation of Japan would not be very effective in practice since the international application could always be assigned to a person who had no right to file an international application.

1040. Mr. CLARK (United States of America) supported the proposal of the Delegation of Japan.

1041. Mr. PRETNAR (Yugoslavia) also supported the proposal of the Delegation of Japan.

1042.1 Mr. ARMITAGE (United Kingdom) said that his Delegation did not have very strong feelings about the matter at issue. The United Kingdom law allowed the filing of applications invoking priority based on the Paris Convention even if one or more of several applicants were not residents or nationals of a Paris Union country as long as at least one of the applicants was a resident or national of a Paris Union country.

1042.2 If any restriction was desired, logically it should consist in providing that all applicants must be qualified to file international applications. He did not see any logical reason to provide – as the proposal of the Delegation of Japan would do – that as long as one of the applicants was qualified to file an international application the others must be residents or nationals of a Paris Union country.

1042.3 Article 4 of the Paris Convention did not give the priority right on the basis of the nationality or residence of the applicant but on the basis of the place where the earlier application was filed. As long as that application was filed in a Paris Union country, the priority right existed.

1043. Mr. GABAY (Israel) said that the text appearing in the Draft was preferable and that on balance it would seem to be more equitable not to exclude a person entitled to file an international

application from filing it because he had associated himself with a person who was not entitled to file an international application than the other way round.

1044. Mr. HAERTEL (Germany (Federal Republic)) asked whether in the view of the Secretary General of the Conference an international application jointly filed by a person qualified to file international applications and a person not so qualified could or could not be the basis of a Paris Union priority.

1045. Mr. BOGSCH (Secretary General of the Conference) said that in his view the answer was probably in the affirmative. In any case the problem was not a new one which would be created by the PCT because it already existed under a Paris Convention. There, the question was whether a later national application invoking the priority of an earlier national application could do so validly if one of the co-applicants in the earlier application was a person who was neither a resident nor a national of a Paris Union country.

1046. Mr. PETERSSON (Australia) said that his Delegation supported the text of the Draft as he believed that it was not in conflict with the Paris Union.

1047. Mr. TASNÁDI (Hungary) said that his Delegation supported the text as appearing in the Draft.

1048. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that since the balance should be tipped in favor of the co-applicant who was qualified to file an international application, the text appearing in the Draft should be adopted.

1049. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation was ready to accept the text as appearing in the Draft provided that it was clearly understood that it did not prejudice the question concerning the validity of a priority claim based or attempted to be based on an international application where not all the co-applicants were nationals or residents of Paris Union countries.

1050. Mr. BOGSCH (Secretary General of the Conference) said that the understanding proposed by the Delegation of Germany (Federal Republic) amounted in a sense to an interpretation of the Paris Convention. He wondered whether the Conference was the appropriate forum to reach an understanding on the meaning of any provision of the Paris Convention.

1051. Mr. ARMITAGE (United Kingdom) said that in his view the declaration of the Delegation of Germany (Federal Republic) did not amount to an interpretation of the Paris Convention. It would leave the possibility of different interpretations of the Paris Convention open. The speaker was of the opinion that the main thrust of the proposal of the Delegation of Japan was not in the direction of the right of priority but in the direction of whether an international application should be able to have the effect of a national application – as it would under Article 11(3) – if not all the applicants were nationals or residents of Paris Union countries.

1052.1 Mr. LEWIN (Sweden) agreed with the Delegation of the United Kingdom that there were two questions involved. One was the question who was entitled to file an international application, and in that respect his Delegation was of the opinion that if at least one of the applicants was entitled to file an international application he should not lose his right only because he had associated himself with persons who had no such right.

1052.2 As far as the question of the priority right was concerned, the Scandinavian countries were in the same position as the United Kingdom: they decided the matter on the basis of the country in which the earlier application was filed and not on the basis of the nationality or residence of the applicants.

1052.3 Professor Bodenhausen, in his book entitled *Guide to the Application of the Paris Convention for the Protection of Industrial Property (as revised at Stockholm in 1967)*, had expressed the opinion that the priority right could be denied if one of the applicants was not a national or resident of a Paris Union country. However, the same book also recalled that the Chairman of the Diplomatic Conference adopting the relevant provision of the Paris Convention had expressed the contrary view in respect of a trade name belonging jointly to a national of a country of the Union and a national of a country outside the Union. Professor Bodenhausen also stated in his book that the opinion of the Chairman remained an isolated opinion. In conclusion, the Delegation of Sweden favored the Draft as far as the entitlement for filing was concerned. The right of priority was a different question, which should be regulated in another provision. (Continued at 1053.)

*End of the Fourteenth Meeting*

## FIFTEENTH MEETING

Tuesday, June 2, 1970, afternoon

### **Rule 18: The Applicant** (Continued from 1052.)

1053. Mr. BOGSCH (Secretary General of the Conference) said that after further reflection he wished to state that in his view, since Article 11(4) provided that an international application should be equivalent to a regular national filing "within the meaning of the Paris Convention," whatever ambiguity existed in the Paris Convention should simply be transferred to the PCT. The PCT did not have to resolve the ambiguity.

1054. *The proposal of the Delegation of Japan was rejected by 12 votes against to 4 in favor, with 13 abstentions.*

1055. *Rule 18.3 was adopted as appearing in the Draft.*

1056. *The proposal of the Delegation of Japan, contained in document PCT/DC/44, concerning Rule 18.4(a) was withdrawn.*

1057. *Rules 18.4 and 18.5 were adopted as appearing in the Draft.* (Continued at 1841.)

### **Rule 19: Competent Receiving Office**

1058. Mr. ARMITAGE (United Kingdom) said that his Delegation interpreted Rule 19.1(a), which, on the face of it, would seem to leave the choice to the applicant to file his international application either in the country of his nationality or the country of his residence (assuming that the two countries were different), as not limiting the right of any Contracting State to apply, to the fullest extent, its provisions on national security. For example, the United Kingdom law required that every resident of the United Kingdom wishing to file abroad should conform to the security requirements of the United Kingdom law, irrespective of the applicant's nationality.

1059. Mr. GAJAC (France) said that his Delegation, too, interpreted the Rule under discussion, and Article 27(7), as did the Delegation of the United Kingdom.

1060. Mr. BOGSCH (Secretary General of the Conference) said that he was of the opinion that the interpretation given by the Delegation of the United Kingdom was correct and followed from Article 27(7) of the Draft.

1061. *Rule 19 was adopted as appearing in the Alternative Draft.* (Continued at 1842.)

### **Rule 20: Receipt of the International Application**

1062. *Rule 20 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1843.)

### **Rule 21: Preparation of Copies**

1063. *Rule 21 was adopted as appearing in the Draft, without discussion.* (Continued at 1844.)

### **Rule 22: Transmittal of the Record Copy**

1064. Mr. VILLALBA (Argentina) withdrew the proposal of his Delegation contained in document PCT/DC/71.

1065. Mr. VAN DAM (Netherlands) requested a clarification of the legal significance of the last sentence of Rule 22.1(a) reading as follows: "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 13<sup>th</sup> month from the priority date." Did the provision mean that, if the record copy was mailed within the said time limit, arrival in the International Bureau after the prescribed time limit would be excused?

1066. Mr. BOGSCH (Secretary General of the Conference) replied that late arrival would not be excused and the provision was merely of an exhortatory nature.

1067. Mr. CLARK (United States of America), referring to the proposal of his Delegation contained in document PCT/DC/67, moved the following amendments in Rule 22.2(e): at the end of the first sentence delete the words "and pay a special fee to that Bureau" appearing in the Alternative Draft; delete the last two sentences of Rule 22.2(e). The

mistake with which those provisions dealt was not a mistake on the part of the applicant. Therefore, there seemed to be no justification for obliging him to pay a special fee if the mistake was made.

1068. Mr. OTANI (Japan) seconded the proposal of the Delegation of the United States of America.

1069. Mr. SINGER (Germany (Federal Republic)) said that the provisions opposed by the Delegation of the United States of America should be maintained. There seemed to be no other way than that foreseen by the Alternative Draft to prevent abusing the additional month's delay intended to be used only in special circumstances.

1070. Mr. VAN DAM (Netherlands) shared the views expressed by the previous speaker.

1071. Mr. CLARK (United States of America) said that the provisions in the Draft were too harsh towards the applicant. Any mistake would be a mistake by the receiving Office, not by the applicant. The speaker asked that the non-governmental organizations be heard on the subject.

1072. Mr. ARMITAGE (United Kingdom) said that his Delegation was not directly interested in the matter since the United Kingdom would not allow the applicant to transmit the record copy to the International Bureau but would see to its transmittal direct by its national Office. Allowing the applicant to effect the transmittal of the record copy would cause additional work for the receiving Office which was completely unnecessary.

1073. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that his Association could not see how the applicant could misuse the opportunity which, under the Rule, could be given to him to transmit the record copy himself. Any delay would be caused by the receiving Office and the applicant should not have to pay any additional fee if such a delay occurred.

1074. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that his Association shared the views expressed by the Delegation of the United States of America.

1075. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that his Association had no strong feelings about the matter although it found that it was not clear why an applicant should be made responsible for a mistake which someone else had made.

1076. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) said that he found the argument developed by the Delegation of the United States of America to be persuasive.

1077. Mr. HAZELZET (Union of Industries of the European Community) shared the views expressed by the representatives of the other non-governmental organizations.

1078. Mr. SINGER (Germany (Federal Republic)) said that, after having heard the previous speakers, his Delegation no longer objected to the adoption of the proposal of the Delegation of the United States of America.

1079. Mr. VAN DAM (Netherlands) said that his Delegation, too, withdrew its opposition.

1080. *The proposal of the Delegation of the United States of America was adopted as contained in document PCT/DC/67.*

1081. *Subject to the amendment in Rule 22.2(e) referred to in the preceding paragraph, Rule 22 was adopted as appearing in the Alternative Draft. (Continued at 1845.)*

**Rule 23: Transmittal of the Search Copy**

1082. *Rule 23 was adopted as appearing in the Draft, without discussion. (Continued at 1847.)*

**Rule 24: Receipt of the Record Copy by the International Bureau**

1083. *Rule 24 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1848.)*

**Rule 25: Receipt of the Search Copy by the International Searching Authority**

1084. *Rule 25 was adopted as appearing in the Draft, without discussion. (Continued at 1849.)*

**Rule 26: Checking and Correcting Certain Elements of the International Application**

1085. *Rule 26 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1850.)*

**Rule 27: Lack of Payment of Fees**

1086. *Rule 27 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1851.)*

**Rule 28: Defects Noted by the International Bureau or the International Searching Authority**

1087. *Rule 28 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1852.)*

**Rule 29: International Applications or Designations Considered Withdrawn Under Article 14(1), (3) or (4)**

1088. *Rule 29 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1853.)*

**Rule 30: Time Limit Under Article 14(4)**

1089. *Rule 30 was adopted as appearing in the Draft, without discussion. (Continued at 1854.)*

**Rule 31: Copies Required Under Article 13**

1090. Mr. BOGSCH (Secretary General of the Conference) said that some consequential changes would have to be incorporated in the Rule under discussion, as well as in Rule 24 and possibly others,

in view of the decisions taken by Main Committee I on the Articles to which those Rules related.

1091. The CHAIRMAN said that all decisions on the Rules should be understood as requiring the Drafting Committee to make such consequential changes in them as were necessary in view of the changes adopted in the Treaty, and allowing the Drafting Committee to propose such drafting changes as it saw fit.

1092. *Rule 31 was adopted as appearing in the Alternative Draft.* (Continued at 1855.)

### **Rule 32: Withdrawal of the International Application or of Designations**

1093. Mr. FERGUSSON (United Kingdom) enquired as to the reasons why the Rule prohibited the withdrawal of the international application after the international processing had ended.

1094. Mr. BOGSCH (Secretary General of the Conference) replied that, once the international phase was ended, withdrawal was still possible but had to be notified separately to each designated Office because, once the national phase started, the International Bureau had no further role to play.

1095. *Rule 32 was adopted as appearing in the Alternative Draft.* (Continued at 1856.)

### **Rule 33: Relevant Prior Art for the International Search**

1096. Mr. MCKIE (United States of America) said that discussion should start with Rule 33.3(a) because, if that Rule were adopted as appearing in the Alternative Draft, it would prejudice decisions on some parts of Rule 33.1.

1097. *Rule 33.3(a) was adopted as appearing in the Alternative Draft.*

1098. Mr. MCKIE (United States of America) said that, after the decision on Rule 33.3(a), the amendment proposed in the Alternative Draft for Rule 33.1 (a) became superfluous and, consequently, Rule 33.1 (a) should be adopted as appearing in the Draft rather than in the Alternative Draft.

1099. *Rules 33.1(a) and 33.1(b) were adopted as appearing in the Draft.*

1100. Mr. HASHIMOTO (Japan) said that Rule 33.1(c), first sentence, as appearing in the Alternative Draft, provided for the exclusion of utility models. He saw no reason for such exclusion and therefore proposed that the sentence in question should be adopted as appearing in the Draft, which did not provide for such exclusion.

1101.1 The SECRETARY said that the reason for the exclusion of utility models in the Alternative Draft was based on the consideration that few countries needed utility models. Consequently, their consideration in the very particular situation with which Rule 33.1(c) dealt would be of very limited practical usefulness and would complicate the task of the International Searching Authorities.

1101.2 As far as the last sentence of Rule 33.1(c) was concerned – which provided in the Alternative Draft that, for the purposes of paragraph (c), applications which had only been laid open for public inspection were not considered published applications – it was proposed to harmonize it with Rule 34 because it was not practical to expect International Searching Authorities to have access to texts which were only laid open for public inspection without being published in copies that were generally available.

1102.1 Mr. ARMITAGE (United Kingdom) said that, as far as the question of utility models as mentioned in the first sentence was concerned, his Delegation had no strong views since that was a matter for those countries which had utility models, such as Germany (Federal Republic) and Japan.

1102.2 Nor had his Delegation any strong views on the last sentence of Rule 33.1(c). However, it should be taken into account that, where the International Searching Authority was a national Office and applications were laid open for public inspection in that Office, referring to them in the international search report might be quite useful because they would contain some very recent information.

1103. Mr. ASCENSÃO (Portugal) said that his Delegation supported the proposal of the Delegation of Japan concerning the first sentence.

1104. The CHAIRMAN said that there seemed to be no opposition to Rule 33.1(c) as appearing in the Draft.

1105. The SECRETARY said that the ultimate wording of the first sentence would have to depend on the definition to be adopted later in Article 2.

1106. *Rule 33.1(c) was adopted as appearing in the Draft.*

1107. *Rule 33.2 as appearing in the Draft, and Rule 33.3(a) and (b) as appearing in the Alternative Draft, were adopted without discussion.*

1108.1 Mr. HADDRICK (Australia), referring to the proposal of his Delegation contained in document PCT/DC/75, suggested that the following paragraph be added 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.”

1108.2 It was most desirable that all designated Offices receiving international search reports know exactly what had been searched.

1109. Mr. LORENZ (Austria) supported the proposal of the Delegation of Australia.

1110. Mr. GABAY (Israel) also supported the proposal of the Delegation of Australia.

1111. The SECRETARY said that it would be interesting to know whether the prospective International Searching Authorities were of the opinion that the new task which the proposal of the Delegation of Australia would impose on them could be carried out without considerably increasing the fees and without considerably prolonging the time required for the preparation of the search report. Furthermore,

he wanted to call attention to the fact that the proposal of the Delegation of Australia would require that the search report contain some text matter which would require interpretative functions and translations, both of which were regarded as undesirable.

1112. Mr. FERGUSSON (United Kingdom) said that, although the proposal of the Delegation of Australia was an interesting one, for practical purposes, as already explained by the Secretary, his Delegation would oppose it. Searching an application and drafting a statement defining what the searcher understood the claim involved to be were two very different operations. The latter operations also involved some dangers for the applicant, who alone, through the claims, should express the scope of the protection sought.

1113. Mr. MCKIE (United States of America) agreed with the observations of the Delegation of the United Kingdom. His Delegation feared that the proposal would oblige the International Searching Authority to confine the search to exactly what was claimed. This would be in contradiction to the principle adopted, namely, that the search should also try to anticipate amendments in the claims.

1114. Mr. VAN WAASBERGEN (International Patent Institute) said that he fully agreed with the Delegation of the United Kingdom. The proposal of the Delegation of Australia would, in practice, require the searcher to draw up claims. Such an operation would be extremely costly.

1115. Mr. OTANI (Japan) shared the views expressed by the Delegation of the United Kingdom.

1116. Mr. SINGER (Germany (Federal Republic)) shared the views of the Delegation of the United Kingdom and those other Delegations which had expressed the same views.

1117. Mr. GYRDYMOV (Soviet Union) said that his Delegation, too, shared the views of the Delegation of the United Kingdom.

1118. Mr. HADDRICK (Australia) said the discussion had shown that, in the opinion of all speakers, the search should be limited to the exact scope of the claims. That was exactly what his Delegation wished.

1119. Mr. VILLALBA (Argentina) said that he shared the views of the Delegation of Australia and supported the proposal of that Delegation.

1120. Mr. GABAY (Israel) said that, in view of the considerable opposition expressed to the proposal of the Delegation of Australia, perhaps the problem could be solved by casting the proposal not in the language of an obligation but merely as a faculty.

1121. Mr. LORENZ (Austria) said that perhaps the difficulties could be avoided if the word "precisely" were to be stricken from the proposal of the Delegation of Australia, and that the International Searching Authorities should be obliged to indicate, in connection with each cited document, which parts of that document were of relevance.

1122. Mr. HADDRICK (Australia) said that one of the important elements of the proposal of his

Delegation was that it would oblige the International Searching Authorities to make it clear that, if their search went beyond the scope of the claims, it would do just that. He understood the amendments proposed by the Delegations of Israel and Austria to be of a drafting nature and, if that were so, he could accept them.

1123. Mr. FERGUSSON (United Kingdom) said that the purpose of the search was to discover relevant prior art in relation to a particular invention. Elements concerning the scope of the invention might be found also in parts of the application other than the claims.

1124.1 Mr. LEWIN (Sweden) said that his Delegation shared the views of the Delegation of the United Kingdom. The proposal of the Delegation of Australia would require the International Searching Authority to define what it considered the invention to be. In order to avoid such a task, it would probably simply rely on the claims. By doing that, it would unduly restrict the scope of the search since – as has been stated in other parts of the Regulations – the search had to take into account the description and the drawings and had to anticipate possible changes in the claims.

1124.2 His Delegation agreed with the wish to make the international search report more meaningful and, in that respect, would make a proposal, far more modest in its scope than the proposal of the Delegation of Australia, in connection with Rule 43.

1125. Mr. HADDRICK (Australia) said that it was precisely because Rule 33.3(b) invited the searcher to take into account the anticipated amendments of the claims that the proposal of his Delegation was necessary. If the searcher followed the said invitation, he should duly state that he had done so and to what extent.

1126. Mr. GABAY (Israel) said that his compromise proposal – making the provision permissive rather than mandatory – was useful in the very situation in which the searcher accepted the invitation contained in Rule 33.3(b) and could, without major difficulty, indicate in the international search report to what extent he had done so.

1127. Mr. FERGUSSON (United Kingdom) said that, in view of the fact that any changes in Rule 43 might have a bearing on the issue, discussion on the proposal of the Delegation of Australia should be deferred.

1128. *It was decided to defer discussion on the proposal of the Delegation of Australia contained in document PCT/DC/75. (Continued at 1204.)*

#### **Rule 34: Minimum Documentation**

1129. Mr. HAERTEL (Germany (Federal Republic)) suggested that discussion on Rule 34.1(a) be deferred until Article 2, concerning definitions, had been adopted.

1130. *Discussion on Rule 34.1(a) was deferred. (See 1624.)*

1131. *Rules 34.1(b), 34.1(c) and 34.1(d) were adopted as appearing in the Alternative Draft, without discussion.*

1132. Mr. GYRDYMOV (Soviet Union) said that Rule 34.1(e) would mean that patent documents in the Russian language for which no English abstracts existed would be excluded from the minimum documentation. Such exclusions would be extremely dangerous for applicants, particularly if they designated the Soviet Union, because they could find their applications rejected on the basis of Soviet documents for which no English abstracts existed.

1133. Mr. GIERCZAK (Poland) shared the views expressed by the Delegation of the Soviet Union.

1134. Mr. BOGSCH (Secretary General of the Conference) said that the Committee for Technical Cooperation would do its utmost to ensure that a satisfactory solution be found to a problem which was, to a large extent, transitional and should be resolved when mechanical searching methods had been perfected.

1135. Mr. BENÁRD (Hungary) shared the views expressed by the Delegation of the Soviet Union.

1136. Mr. ARMITAGE (United Kingdom) said that, in principle, everybody agreed that searches would be incomplete without the inclusion in the minimum documentation of all the Japanese and Russian language documentation. However, the matter was of questionable practicality. The integration of the said documents in the existing documentation of the prospective International Searching Authorities would be a tremendous task and, even if it were carried out, would serve little useful purpose because most searchers did not understand Japanese and Russian and there was little hope that they would learn those languages. Consequently, the only practical solution seemed to be to cover with English abstracts the greatest possible number of Japanese and Russian patent documents.

1137. Mr. SAVIGNON (France) said that he agreed with the principle of the proposal underlying the observations of the Delegation of the Soviet Union. Perhaps the desire of that Delegation and the Delegation of Japan could be more easily satisfied if there were only one International Searching Authority. However, for practical reasons, at the present time his Delegation had to support Rule 34.1(e) as appearing in the Alternative Draft.

1138. Mr. VAN WAASBERGEN (International Patent Institute) said that the Institute already considered all the Russian language documents for which there was an English abstract available. The only practical solution was the one provided for in Rule 34.1(e) of the Alternative Draft.

1139. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that the problem concerned not only documents in Russian and Japanese, but also documents in many other languages.

1140. Mr. ARTEMIEV (Soviet Union) suggested that the discussion be postponed until most of the

remaining Draft Regulations had been considered by the Main Committee.

1141. *Discussion on Rule 34.1(e) was deferred. (See 1625.)*

1142. *Rule 34.1(f) was adopted as appearing in the Alternative Draft. (Continued at 1624.)*

### **Rule 35: The Competent International Searching Authority**

1143. *Rule 35 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1859.)*

### **Rule 36: Minimum Requirements for International Searching Authorities**

1144.1 Mr. LORENZ (Austria) moved the proposal of his Delegation, contained in document PCT/DC/53, suggesting that the minimum number of full-time employees referred to in item (i) be changed from 150 to 100.

1144.2 The Patent Office of Austria fulfilled all the conditions for becoming an International Searching Authority except as far as the number of examiners was concerned. It had just slightly over 100 examiners. In order to enable his Office to become an International Searching Authority, the proposal would require adoption.

1145. Mr. VILLALBA (Argentina) moved the proposal of his Delegation contained in document PCT/DC/71. According to that proposal, item (i) would not specify a minimum number of examiners, but would simply state that the International Searching Authority would need to have "an adequate number" of examiners. The purpose of the proposal was that it should not close the door to countries, like his own, wishing to become International Searching Authorities. The number of examiners was irrelevant as long as the Authority could effect adequate searches. Searches might be carried out – and in Argentina they were carried out – not only by fulltime employees but also by persons who were not employees of the national Office but who were specialists in the technological field working on a contractual basis. Furthermore, with the automation of searches, the number of examiners required might be far less than the number in question.

1146. Mr. SIMONS (Canada) supported the proposal of the Delegation of Austria.

1147. Mr. ALMEIDA (Brazil) supported the proposal of the Delegation of Argentina.

1148. Mr. SAVIGNON (France) supported the proposal of the Delegation of Austria.

1149. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) supported the proposal of the Delegation of Argentina.

1150. Mr. SINGER (Germany (Federal Republic)) said that his Delegation could agree with the proposal of the Delegation of Austria. The more so as it would make the requirement as to the number of examiners the same as that contained in Rule 63 in connection with International Preliminary Examining Authorities.



He could see no reason for any differences, in that respect, between Rules 36 and 63.

1151. Mr. SHER (Israel) said that his Delegation could go along with the proposal of the Delegation of Argentina.

1152. Mr. PRETNAR (Yugoslavia) supported the proposal of the Delegation of Austria for the reasons mentioned by the Delegation of Germany (Federal Republic).

1153. Mr. HASHIMOTO (Japan) also supported the proposal of the Delegation of Austria.

1154. Mr. VILLALBA (Argentina) said that a more flexible criterion was important for his Delegation because it wished to make it easier for developing countries of a certain region to become regional Searching Authorities, if they so desired. South America was particularly in need of such an Authority.

1155. Mr. CLARK (United States of America) said that, although his Delegation was sympathetic to the principle underlying the proposal of the Delegation of Argentina, for practical reasons it would support the proposal of the Delegation of Austria. Like the Delegation of Germany (Federal Republic), he could see no reason for any differences between Rules 36 and 63.

1156. Mr. MESSEROTTI-BENVENUTI (Italy) said that perhaps the criterion of the number of examiners was not a valid one, since much depended on the number of national applications which such examiners would have to handle. To refer to the number of international applications would seem to be more reasonable. For example, it could be stipulated that each International Searching Authority must be able to search at least 1,000 international applications per year.

1157. Mr. DAHMOUCHE (Algeria) said that any Rule containing a fixed minimum number might be too rigid and, perhaps, unnecessary because the final decision would in any case be taken by the Assembly. Consequently, his Delegation was sympathetic to the proposal of the Delegation of Argentina. For practical reasons, however, it would support the proposal of the Delegation of Austria.

1158. Mr. ARTEMIEV (Soviet Union) said that his Delegation was not opposed to the proposal of the Delegation of Austria.

1159. Mr. ARMITAGE (United Kingdom) said that his Delegation would oppose the proposal of the Delegation of Austria if the reduction of the minimum number of examiners from 150 to 100 would mean a significant proliferation of the number of International Searching Authorities. But since changing the Rule would only add one or two more International Searching Authorities, his Delegation did not oppose the proposal of the Delegation of Austria.

1160. Mr. ASCENSÃO (Portugal) said that any minimum number was arbitrary and therefore his Delegation preferred the proposal of the Delegation of Argentina.

1161. Mr. HADDRICK (Australia) supported the declarations made by the Delegation of the United Kingdom.

1162. Mr. TASNÁDI (Hungary) said that, since he knew very well the high quality of work performed in the Austrian Patent Office, his Delegation could accept the proposal of the Delegation of Austria.

1163. Mr. LEWIN (Sweden) also supported the proposal of the Delegation of Austria.

1164. Mr. GIERCZAK (Poland) also supported the proposal of the Delegation of Austria.

1165. Mr. NARAGHI (Iran) also supported the proposal of the Delegation of Austria.

1166. Mr. LORENZ (Austria) said that his Delegation was opposed to the proposal of the Delegation of Argentina since it contained an element of uncertainty. It did not, for example, guarantee that 100 examiners would be sufficient.

1167. Mr. VILLALBA (Argentina) withdrew the proposal of his Delegation in favor of the proposal of the Delegation of Austria.

1168. *The proposal of the Delegation of Austria was adopted as appearing in document PCT/DC/53.*

1169. Mr. HAERTEL (Germany (Federal Republic)) said that his Delegation's preference for the proposal of the Delegation of Austria was merely dictated by the desire to provide for an objective criterion. His Delegation's position should not be interpreted as opposing the creation of an International Searching Authority, or International Searching Authorities, in South America, be they regional Offices or national Offices. On the contrary, the Delegation of Germany (Federal Republic) would welcome the creation of one or more International Searching Authorities in Latin America.

1170. Mr. GABAY (Israel) said that his Delegation's support for the proposal of Argentina should not be interpreted as opposing the proposal of the Delegation of Austria. Had the proposal of Argentina been put to a vote and defeated, and had then the proposal of the Delegation of Austria been put to a vote, his Delegation would have voted for it. His country, too, recognized the importance for Latin America to have one or more International Searching Authorities of its own.

1171. *Rule 36 was adopted as appearing in the Draft, subject, in item (i), to changing the number 150 to 100. (Continued at 1860.)*

*End of the Fifteenth Meeting*

## SIXTEENTH MEETING

Wednesday, June 3, 1970, morning

### **Rule 37: Missing or Defective Title**

1172. *Rule 37 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1861.)*

**Rule 38: Missing or Defective Abstract** (In the signed text, Rule 38: Missing Abstract)

1173. *Rule 38 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1862.)

**Rule 39: Subject Matter Under Article 17(2)(a)(i)**

1174. Mr. HASHIMOTO (Japan) said that in item (iv) of the Alternative Draft, which reads "methods for treatment of the human or animal body by surgery or [physical] therapy, as well as diagnostic methods," the word "physical" should be deleted. The methods of treatment of the human body by surgery or therapy were not patentable under the patent law of Japan. Consequently, the Japanese Office, as a prospective International Searching Authority, would have difficulty in searching prior art in that field.

1175. Mr. VAN DAM (Netherlands) expressed agreement with the point of view of the Delegation of Japan.

1176. Mr. SINGER (Germany (Federal Republic)) said that his Delegation would prefer retaining the word "physical" since it would restrict the scope of the provision and would, for example, oblige International Searching Authorities to search applications concerning medicaments for the purposes of healing.

1177. Mr. ARMITAGE (United Kingdom) said that the question was one concerning what kind of inventions International Searching Authorities were equipped to search. His delegation could support the deletion of "physical."

1178. Mr. VAN WAASBERGEN (International Patent Institute) said that he did not think that any International Searching Authority would have difficulty in searching drugs, since drugs consisted of chemical components or matter to be found in nature. However, "therapy" was different, and there search might not be possible for some of the prospective International Searching Authorities.

1179. *It was decided to delete the word "physical" in item (iv) of the Alternative Draft.*

1180. Mr. ASHER (Canada) asked what was meant in item (v) of the Alternative Draft by "mere presentations of information."

1181. Mr. BOGSCH (Secretary General of the Conference) replied that the wording of item (v) had been adopted by the March 1970 Committee of Experts and it was not clear to him what it meant.

1182. Mr. CLARK (United States of America) supported the text appearing in the Alternative Draft cited above.

1183. Mr. FERGUSSON (United Kingdom) said that the intent of the provision was to remove from what an International Searching Authority had to search just "a presentation of information," say in tabular form, particular ways of writing, and that sort of thing.

1184. *It was decided to delete item (vii).*

1185. *Rule 39 was adopted as appearing in the Alternative Draft, on the understanding that the word*

*"physical" in item (iv) and the entire item (vii) would be deleted.* (Continued at 1863.)

**Rule 40: Lack of Unity of Invention (International Search)**

1186. Mr. BOGSCH (Secretary General of the Conference) said that, in view of the changes decided by the Main Committee in Article 17, some consequential changes in the Rule under discussion would have to be made by the Drafting Committee.

1187. *Rule 40 was adopted as appearing in the Alternative Draft, with the understanding that the Drafting Committee would harmonize it with Article 17.* (Continued at 1864.)

**Rule 41: The International-Type Search**

1188. *Rule 41 was adopted as appearing in the Draft, on the understanding that it would be harmonized by the Drafting Committee with the changes made in Article 15.* (Continued at 1865.)

**Rule 42: Time Limit for International Search**

1189. *Discussion on Rule 42 was deferred.* (Continued at 1248.)

**Rule 43: The International Search Report**

1190. *Rules 43.1, 43.2 and 43.3 were adopted as appearing in the Alternative Draft, without discussion.*

1191. Mr. VILLALBA (Argentina) recalled his Delegation's proposal concerning Article 18, contained in document PCT/DC/33, discussion on which was deferred (See 503) until the Rule under consideration had been reached. The purpose of that proposal was to enable designated Offices to require that the international search report be translated into their languages by the applicant, and that the applicant be responsible for any mistakes that the translation might contain. Such translations were indispensable for the smooth working of the designated Offices.

1192. Mr. FERGUSSON (United Kingdom) said that much of the relevance of the proposal of the Delegation of Argentina depended on the question whether the international search report would contain any substantial text matter. Consequently, it would seem to be preferable to postpone discussion until the contents of the international search report had been decided upon.

1193. Mr. VILLALBA (Argentina) said that the Treaty already provided for the translation of the international search report in certain circumstances. Thus, it was clear that a translation was needed. His Delegation's proposal was that the rule concerning translation be generalized, that is, that each designated Office should be allowed to require translation of the international search report into its national language and not have to content itself with an international search report in the form of an English translation when the original of that report was in a language other than English.

1194. Mr. ARMITAGE (United Kingdom) said that his Delegation was naturally quite willing to have a

full discussion on the proposal of the Delegation of Argentina. Only it seemed to be more logical to have that discussion once it became quite clear how much text there would be in each international search report, because the need for translation would be dictated by that fact.

1195. *Rule 43.4 was adopted as appearing in the Alternative Draft but would be further discussed if necessary along with the further discussion of the proposal of the Delegation of Argentina in document PCT/DC/33 which was deferred until after the disposal of the remaining parts of Rule 43.* (See 1239.)

1196. Mr. ALMEIDA (Brazil), referring to his Delegations' proposal contained in documents PCT/DC/34/Rev. and Rev. Corr., said that Rule 43.5 should be completed by a provision to the effect that, whenever the international search report was to be transmitted to an applicant or designated Office of a developing country, it must also contain the relevant transcripts of the cited document. The said transcript would not necessarily be composed of the entire cited document but would always have to contain all those parts of the cited document which were of relevance in connection with the citation.

1197. Mr. ARMITAGE (United Kingdom) said that it would be quite difficult to apply the proposal of the Delegation of Brazil because there were various degrees of relevance and it would be uncertain what degree of relevance had to be present to allow the requiring of transmittal of transcripts. Consequently, it would be more practical to have the document cited transmitted in its entirety. The right to ask for complete copies was contained in Rule 44.3 as appearing in the Alternative Draft. As far as Rule 43.5 was concerned, his Delegation preferred to maintain the text as appearing in the Draft.

1198. Mr. VAN WAASBERGEN (International Patent Institute) said that he feared that transmitting all the cited documents in all cases would cause a lot of unnecessary work since, in many cases, such documents would not be needed by the designated Office. He also warned the meeting that making the transcripts would be an enormous task and would be very expensive.

1199. Mr. CLARK (United States of America) said that the proposals of the Delegation of Brazil for changes in Rules 43.5(a) and 43.5(d) seemed to be contradictory. He expressed the wish that the Delegation of Brazil clarify the relationship between the two proposals.

1200. Mr. ALMEIDA (Brazil) said that some drafting improvements might be necessary. However, what was important was that developing countries had much less facility of access to documents than developed countries and the former could hardly be expected to work on the international search report without, at the same time, obtaining the texts to which that report referred.

1201. Mr. FERGUSSON (United Kingdom) wanted a clarification on the question whether the proposal of the Delegation of Brazil meant transcripts, or copies,

in the original language of the document cited or translations thereof.

1202. Mr. ALMEIDA (Brazil) replied that, for the moment, the discussion was about the documents in their original language. The question of translation was another question, which would be dealt with separately and was not to be confused with the question of copies or transcripts.

1203.1 Mr. LEWIN (Sweden) said that he saw some merit in the proposal of the Delegation of Brazil since one of its aims was to indicate to the user of the international search report which parts of the cited documents were relevant. However, to solve that problem by transcribing into the international search report certain parts of the cited document was not easy, for practical reason. Such transcripts would necessarily take certain passages out of context, which could result in misinterpreting both the international search report and the cited document. He thought that the proposal of his Delegation contained in document PCT/DC/72 was more practical. It proposed that citations of particular relevance should be especially indicated.

1203.2 Since the Regulations did not provide for any limit on the number of documents that an international search report could cite, there might be cases in which they would cite very large numbers of documents. That would put the applicant and the designated Office in a difficult position because they would have to check a large number of documents and would lose a lot of time in finding those which were of particular relevance. His Delegation's proposal tended to avoid such superfluous work and directed the attention of the user of the international search report to the most relevant documents.

1203.3 The proposal had been considered by previous meetings and had been rejected by them on the grounds that it would introduce an element of judgment into the international search report, which, as everybody agreed, should not express any opinion on patentability. He did not share those fears since bringing out the relevance of certain documents could also be achieved by simply not citing documents of secondary relevance. Such a procedure, however, would endanger the completeness of the international search report. Consequently, a solution had to be found which assured the completeness of the international search report and at the same time avoided unnecessary work for the users of the international search report. The proposal of his Delegation achieved that result.

1204. Mr. PETERSSON (Australia) said that his Delegation strongly supported the proposal of the Delegation of Sweden as appearing in document PCT/DC/72 and that the proposal of his Delegation, contained in document PCT/DC/75, on which discussion was deferred (See 1128), was only a small extension of the former proposal and might be added to it.

1205.1 Mr. SINGER (Germany (Federal Republic)) said that his Delegation was opposed to the proposal of the Delegation of Sweden because it implied weighing the relative importance of the cited

documents. Such weighing would be contrary to the basic principle of an independent search, namely, that the search should take no position on the value of the invention. Furthermore, the proposal was also dangerous because it might incite applicants and third parties to neglect those cited documents whose relevance was not underlined in the international search report, and yet those search documents might also contain information detrimental to patentability.

1205.2 As far as the proposal of the Delegation of Brazil was concerned, his Delegation considered it impractical. Only in some cases would it be possible to transcribe into the international search report passages of cited documents. In most cases the totality of the cited documents would be of relevance. Transcribing long documents into the international search report would be most impractical.

1206. Mr. HASHIMOTO (Japan) agreed with the point of view expressed by the Delegation of Germany (Federal Republic).

1207. Mr. GABAY (Israel) said that, although in principle his Delegation supported the idea underlying the proposal of the Delegation of Brazil, particularly since it would facilitate the work in developing countries, it recognized the practical difficulties. Perhaps the best solution would be a combination of the proposals of the Delegations of Australia and Sweden.

1208. Mrs. SIMONSEN (Denmark) supported the proposal of the Delegation of Sweden.

1209. Mr. GALL (Austria) supported the proposals of the Delegations of Australia and Sweden.

1210.1 Mr. COMTE (Switzerland) said that his Delegation shared the views of the Delegation of Germany (Federal Republic). The international search report must be perfectly objective and must not contain any expression of opinion. The international search report should not be confused with the international preliminary examination report. On the contrary, they should be kept clearly apart, one from the other.

1210.2 If the proposal of the Delegation of Sweden simply meant that a sign (underlining, asterisk or some other sign) would indicate documents of particular relevance – and such indications would never take the form of comments, notes or other text matter – his Delegation could accept it.

1210.3 The proposal of the Delegation of Brazil would be totally impractical because, among other things, it would require the translation of the transcribed passages into the language of the search report. The translation could contain errors or differences in emphasis, which could be misleading. The transmittal of copies of the cited documents, in their original languages, would be sufficient.

1211. Mr. ALMEIDA (Brazil), on a question from the Chairman, said that, as he had already stated, the question of translation was not under discussion at that time.

1212. Mr. FINNE (Finland) expressed his Delegation's support for the proposal of the Delegation of Sweden.

1213. Mr. VAN DAM (Netherlands) said that his Delegation supported the view of the Delegation of Germany (Federal Republic). The proposal of the Delegation of Sweden would constitute the beginning of an evaluation. Evaluation, however, should be a matter reserved for the international preliminary examination phase and should not be introduced into the international search phase.

1214. Mr. ARMITAGE (United Kingdom) shared the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands.

1215. Mr. VAN WAASBERGEN (International Patent Institute) said that his Institute had no strong feelings about the proposal of the Delegation of Sweden.

1216. Mr. DAVIDSON (International Association for the Protection of Industrial Property (AIPPI)) said that his Association shared the views of the Delegations of Germany (Federal Republic) and the Netherlands.

1217. Mr. HAZELZET (Union of Industries of the European Community) shared the views expressed by the previous speaker.

1218. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) also shared the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands.

1219. Mr. BARDEHLE (International Federation of Patent Agents (FICPI)) said that his Federation agreed with the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands as far as the proposal of the Delegation of Sweden was concerned. As far as the proposal of the Delegation of Brazil was concerned, the transcriptions were undesirable not only because they could prejudice the situation of the applicant but also because they would cause a lot of work and complications for the International Searching Authorities, which had to work within rather short time limits.

1220. Mr. VAN DER AUWERAER (European Industrial Research Management Association (EIRMA)) also supported the views of the Delegations of Germany (Federal Republic) and the Netherlands.

1221. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that something more than a mere list of numbers referring to documents should be included in the international search report. Such additional information would be very useful for the developing countries which were members of his Association. That did not mean that the international search report would have to go as far as evaluating the invention.

1222. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that his Association was ready to accept the proposal of the Delegation of Sweden if it was understood that the relevant documents would only be indicated by conventional symbols.

1223. Mr. YUASA (Asian Patent Attorneys Association (APAA)) said that his Association agreed with the view expressed by the Delegation of Germany (Federal Republic).

1224. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) supported the views expressed by the Delegations of Germany (Federal Republic) and the Netherlands.

1225. Mr. PETERSSON (Australia) said that when the designated Offices received the international search reports they would, in many cases, also receive amendments to the claims. It was very important for the designated Offices to know whether the international search report covered the fields to which the amendments related. That was why the indications suggested in the proposal of his Delegation contained in document PCT/DC/75 would be particularly useful.

1226. Mr. GABAY (Israel) said that he shared the views of the Delegation of Australia. Furthermore, his Delegation interpreted the proposal of the Delegation of Brazil as requiring the furnishing of copies only, rather than transcribing into the text of the international search report long passages or whole documents.

1227. *The proposal of the Delegation of Brazil appearing in documents PCT/DC/34/Rev. and Rev. Corr., was rejected by 16 votes against to 7 in favor, with 8 abstentions.*

1228. *The proposal of the Delegation of Sweden appearing in document PCT/DC/72 was adopted by 16 votes in favor to 7 against, with 8 abstentions.*

1229. *The proposal of the Delegation of Australia concerning Rule 33.3(c), appearing in document PCT/DC/75, without the word "precisely", was rejected by 18 votes against to 10 in favor, with 4 abstentions. (Continued at 1857.)*

1230. *Rule 43.5 was adopted as appearing in the Draft, subject to the incorporation of the proposal of the Delegation of Sweden referred to above. (Continued at 1231.)*

*End of the Sixteenth Meeting*

## SEVENTEENTH MEETING

Wednesday, June 3, 1970, afternoon

### **Rule 43: The International Search Report** (Continued from 1230.)

1231. Mr. GAJAC (France) asked, in connection with Rule 43.6(a), in what language the classification used would be published if the said classification was other than the International Patent Classification.

1232. The SECRETARY replied that it would be published only in the original languages since translating classifications would be an inordinately expensive and complicated task.

1233. Mr. CLARK (United States of America) said that his Delegation would prefer the text of the Draft to that of the Alternative Draft as far as Rule 43.6(b) was concerned, since the former used the word "or" rather than the word "and." That would leave a certain flexibility to the International Searching Authority in a case where a substantial burden was put on it, as in the provision under consideration.

1234. The SECRETARY said that, in his view, under both texts the International Searching Authority would be under the obligation to indicate the States and the periods and the languages in question and that the word "or" in the Draft merely meant that whatever was applicable must be indicated.

1235. Mr. ARMITAGE (United Kingdom) said that, in many cases, it would be difficult for the International Searching Authority to comply with the Rule under consideration. It was relatively easy to comply with it if an International Searching Authority included in its search files big areas of documents, for example, documents of a given country not included in the minimum documentation. On the other hand, where scattered documents not included in the minimum documentation were also in the search files of the International Searching Authority, their identification would cause great practical difficulties. Consequently, he suggested that the words "when practicable" should be inserted.

1236. *Rule 43.6 was adopted as appearing in the Alternative Draft, subject to the insertion in paragraph (b) of the words "when practicable."*

1237. *Rule 43.7 was adopted as appearing in document PCT/DC/14, without discussion.*

1238. *Rules 43.8, 43.9 and 43.10 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1867.)*

### **Article 18: The International Search Report** (Continued from 1195.)

1239. The CHAIRMAN said that the proposal of the Delegation of Argentina contained in document PCT/DC/33, on which discussion had been deferred, would then be discussed.

1240. Mr. VILLALBA (Argentina) said that the proposal contained in document PCT/DC/33 was to the effect that a new paragraph be added to Article 18 reading as follows: "The designated Offices may require a translation from the applicant and legislate on the responsibilities which originate from the mistakes that it may contain." The translation in question was that of the international search report. In the previous discussion he had already indicated the reason for the proposal. Simply stated, it was that if any designated Office required that the international search report be translated into its own language, such translation would facilitate its work.

1241. Mr. SINGER (Germany (Federal Republic)) said that, before discussing the proposal he would like to ask two questions: Would the requirement of translation relate to the international search report only or to the international search report and the annexes of that report? Since the applicant did not know the language in which the translation was to be prepared, was it he or the translator who would undergo the sanctions?

1242. Mr. VILLALBA (Argentina) said that a translation was to be made of the international search report, as well as of any additional elements which might accompany it. Providing some sanctions in the case of erroneous translation was indispensable

because incorrect translations would mislead everybody concerned.

1243.1 Mr. ARMITAGE (United Kingdom) said that his Delegation has no strong feelings about the translation of the international search report since that report would contain practically no text matter. Consequently, even if a translation were required, it would not represent a very heavy burden on the applicant. He did not, however, see any real need for a translation since even those statements which could be made in words, such as the indication that there was a lack of unity of invention, or that the claims were unclear, etc., could be expressed in the international search report by symbols not requiring any translation.

1243.2 As far as the documents cited in the international search report were concerned, it would put an inordinate burden on the applicant to have to furnish a translation of each and every document. Of course, national legislations were free, as far as the processing of the applications in the national Offices was concerned, and were not prevented from asking for translations under certain circumstances.

1244. Mr. MCKIE (United States of America) asked what the time limit would be for furnishing the translation if the proposal of the Delegation of Argentina were to be adopted.

1245. Mr. BOGSCH (Secretary General of the Conference) replied that the time limit would probably have to be the same as that applicable under Article 22 for other acts by the applicant.

1246. Mr. LADAS (International Association for the Protection of Industrial Property (AIPPI)) said that the proposal of the Delegation of Argentina was wholly impractical. It would mean that, if the international search report contained citations of documents in the Dutch, Japanese and German languages, and Argentina and Brazil were designated, all the cited documents would have to be translated into Spanish and Portuguese. It would be certain that, under such conditions, no applicant would ever use the PCT.

1247. *The proposal of Argentina, contained in document PCT/DC/33, was rejected by 10 votes against to 7 in favor, with 12 abstentions. (Continued at 1762.)*

**Rule 42: Time Limit for International Search**  
(Continued from 1189.)

1248.1 Mr. MCKIE (United States of America) presented his Delegation's proposal contained in document PCT/DC/83. It had been proposed that a new paragraph be added to Rule 42 reading 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." The purpose of the amendment was to allow the prospective International Searching Authorities and the International Bureau to agree, for the purposes of producing international search reports, on time limits longer than those provided for in the Draft (those time limits were

three months from the receipt of the search copy by the International Searching Authority, or nine months from the priority date, whichever time limit expired later).

1248.2 The proposal aimed at securing a degree of flexibility for an initial period after the Treaty was put into operation so that the national Offices which were International Searching Authorities might be able to comply with the requirements of the Treaty without disadvantage to domestic applicants. Under a rigid time schedule, the national Office might have to take up international applications which had been filed later than certain national applications, before taking up the said national applications.

1249. Mr. LORENZ (Austria) supported the proposal of the Delegation of the United States of America.

1250. Mr. PETERSSON (Australia) asked whether those prospective International Searching Authorities which could not meet the time limits foreseen in the Draft could identify themselves.

1251. Mr. MCKIE (United States of America) said that he did not wish to give the impression that the US Patent Office could not meet the requirements in question. However, the number of applications to be dealt with under the PCT was uncertain. The impact that international applications would have on the regular business of the US Patent Office was also uncertain. Furthermore, it was uncertain what the date of disposals of domestic applications in the US Patent Office would be at the time the Treaty went into effect. It was because of all those uncertainties that a certain degree of flexibility ought to be written into the Rule under consideration.

1252. Mr. VAN WAASBERGEN (International Patent Institute) said that he shared the views expressed by the Delegation of the United States of America.

1253. Mr. LORENZ (Austria) said that he wished the record to show that, if the Austrian Patent Office became an international Searching Authority, it would not need any extensions of the time limits provided for in the Rule under consideration.

1254. Mr. OTANI (Japan) supported the proposal of the Delegation of the United States of America.

1255. Mr. SINGER (Germany (Federal Republic)) said that the German Patent Office did not foresee any difficulties in complying with the time limits provided for in the Rule under consideration, the more so as in the years which would pass between the signature of the Treaty and its entry into force there would be ample time to plan and prepare for the entry into force. However, if other prospective International Searching Authorities wished to have the required flexibility his Delegation had no objections to the amendment proposed by the Delegation of the United States of America.

1256. Mr. TUXEN (Denmark) said that for the applicant and for the Patent Offices which were not International Searching Authorities compliance with the time limits provided for in the PCT was of the greatest importance. A slight deviation from the time

limit provided for in the Draft could be accepted for an initial period, but the proposal of the Delegation of the United States of America set absolutely no limits on possible extensions. If it were to be retained, the limits of possible extensions of the time limits should be precisely defined.

1257. Mr. MCKIE (United States of America), on a question from the Secretary General of the Conference, said that the words "after this Treaty has entered into force," contained in the proposal of his Delegation, were to be understood as meaning "from the entry into force of this Treaty."

1258. Mr. FERGUSSON (United Kingdom) said that his Delegation understood that the US and Japanese Patent Offices and the International Patent Institute might wish to have some flexibility in the first years of application of the PCT. Could they, however, accept some limitation on that flexibility? For example, could they accept that the time limit be extended only in special circumstances, and by not more than one or two months?

1259. Mr. VAN WAASBERGEN (International Patent Institute) said that the proposal of the Delegation of the United Kingdom would be acceptable and the five years could even be diminished.

1260. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) asked whether any extension of the time limits in the Rule under discussion would also cause the extension of other time limits.

1261. Mr. ROMANUS (International Federation of Inventors Associations (IFIA)) said that he would like to hear an answer to the question of the previous speaker, in particular, whether the time limit for publications and the time limit for starting the national processing would be extended if the time limit for searching was extended.

1262. Mr. VILLALBA (Argentina) said that his Delegation, too, was interested in having an answer to the question, particularly with respect to the time limit provided for in Articles 22 and 23.

1263.1 Mr. PETERSSON (Australia) said that the question was of great importance because it affected the rhythm of all the various steps provided for in the PCT.

1263.2 In view of the importance of the proposal and the shortness of time that the Delegations had had to study the proposal of the Delegation of the United States of America, which had been distributed only that same day, his Delegation suggested that discussion be postponed.

1264. Mr. ARTEMIEV (Soviet Union) supported the proposal of the Delegation of Australia to defer further discussion on the proposal of the Delegation of the United States of America.

1265. Mr. VILLALBA (Argentina) said that a period of reflection could be put to much better use if the question concerning the effect of any prolongation of the time limit provided for in the Rule under discussion on other time limits were to be answered.

1266. Mr. BOGSCH (Secretary General of the Conference) said that there were no proposals before the Main Committee to prolong time limits other than that contained in the Rule under discussion. He did not think that the proposal could lead to unreasonable time limits since the Assembly of the PCT Union would have to approve any agreement between prospective International Searching Authorities and the International Bureau, and such an agreement would specify the extent to which any time limit for searching could be prolonged. If the prospective International Searching Authority were to ask for an unacceptably long time limit, there would be no agreement, and the candidate wishing to become an International Searching Authority would not be considered.

1267. *Further discussion on the proposal of the Delegation of the United States of America appearing in document PCT/DC/83 was deferred.* (Continued at 1277.)

#### **Rule 44: Transmittal of the International Search Report, Etc.**

1268. *Rules 44.1 and 44.2 were adopted as appearing in the Alternative Draft, without discussion.*

1269. Mr. GIERCZAK (Poland), referring to the proposal of his Delegation contained in document PCT/DC/23, said that it was important that not only should the applicant have the right to require that a copy of any cited document be sent to him, but so also should the designated or elected Office, since it might be extremely difficult if not impossible for such Office to locate, in its own files, the cited documents.

1270. Mr. ASCENSÃO (Portugal), referring to the proposal of his delegation and the Delegation of Argentina, contained in document PCT/DC/42, said that the right to be given to each designated Office to ask for copies of cited documents was so important that it should be written into the Treaty itself, rather than merely into the Regulations. That was why his Delegation proposed that the right in question should constitute a new paragraph in Article 20.

1271.1 Mr. BOGSCH (Secretary General of the Conference) said that the question was mainly how the prospective International Searching Authorities should organize themselves to be able to satisfy, in a practical way, requests for copies. The cost of furnishing copies was not at issue since both the Alternative Draft and the proposal of the Delegation of Poland provided that such costs would be borne by the party asking for the copies, that is, by the applicant if he asked for copies, and by the designated or elected Office if it asked for copies.

1271.2 In the meeting of March 1970, it had also been mentioned that, where any International Searching Authority found it too burdensome to organize the transmittal of the copies in question, particularly if they were requested several years after the international search report had issued, perhaps such Authority should transmit only one copy to the International Bureau and the International Bureau

would meet the requests of applicants and designated or elected Offices.

1272. Mr. SINGER (Germany (Federal Republic)) said that, although his Delegation realized that the proposal of the Delegation of Poland would not be easy to implement from an organizational viewpoint, it was ready to accept it.

1273. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the proposal of the Delegation of Poland, and also the proposal of the Delegation of Japan contained in document PCT/DC/48, which would allow each International Searching Authority to delegate the responsibility of sending copies.

1274. Mr. GABAY (Israel) said that his Delegation agreed with the general idea underlying the proposal of the Delegation of Poland and felt that the practical difficulties might be resolved if the International Searching Authorities were required to send one copy to the International Bureau and the International Bureau were required to take care of the individual wishes of applicants and designated or elected Offices.

1275. Mr. MCKIE (United States of America) said that his Delegation thought that the proposal of the Delegation of Poland might cause added complexity and expense. Consequently, it supported the provision as it appeared in the Alternative Draft.

1276. *Further discussion on Rule 44.3 was deferred.*  
(Continued at 1317.)

*End of the Seventeenth Meeting*

## EIGHTEENTH MEETING

Thursday, June 4, 1970, morning

### **Rule 42: Time Limit for International Search** (Continued from 1267.)

1277.1 Mr. ROBINSON (Canada) said that a two or three months prolongation of the time limit for the search would, in most cases, make the use of the Treaty undesirable for the applicant since he would have no, or clearly insufficient, time for considering the international search report and amending his application.

1277.2 Consequently, his Delegation would suggest that the time limit for search should not be extendible beyond the maximum of two months.

1278. Mr. OTANI (Japan) said that, in the previous discussion on the proposal of the Delegation of the United States of America, his Delegation had supported that proposal because it wished to satisfy the desire of the US Patent Office and the International Patent Institute to have a safety valve at their disposal in the earlier stages of the implementation of the Treaty. As far as the Japanese Patent Office was concerned, there was no need for such safety valves since that Office could respect the time limit as fixed in the Alternative Draft.

1279. Mr. NORDSTRAND (Norway) said that, while his Delegation had sympathy with the concern of some of the prospective International Searching

Authorities, the Treaty would be useless for applicants if they could not count on international search reports delivered within the strict time limits. Consequently, his Delegation supported the amendments proposed by the Delegation of Canada, which would place a two-month outer limit on any prolongation of the time limit.

1280. Mr. ARTEMIEV (Soviet Union) said that an indefinite prolongation, as proposed by the Delegation of the United States of America, was not acceptable because it could endanger the efficiency of all the procedures under the Treaty. However, his Delegation was ready to accept a prolongation of one month of the time limit fixed in the Alternative Draft during the first years of application of the Treaty.

1281. Mr. LIPS (Switzerland) said that the prolongation could be granted in cases where the international application was a first application in the sense that it did not invoke the priority of any earlier application. On the other hand, when it did invoke such priority there should be no – or only a much shorter – prolongation. The two cases should be treated separately in the Treaty.

1282.1 Mr. VAN DAM (Netherlands) said that applicants would certainly choose to use the Treaty only if they knew in advance that they could count on the international search report being delivered to them within a fixed and reasonable time limit.

1282.2 Subject to what further light might be thrown on the problem by possible interventions on the part of the representatives of the non-governmental organizations, the Delegation of the Netherlands favored the idea underlying the proposal of the Delegation of Canada, namely, that the length of any prolongation should be clearly fixed.

1283. Mr. MCKIE (United States of America) said that his Delegation did not believe that any time limit needed to be written into the Treaty itself. Such time limit would, in any case, be written into the agreement between the International Searching Authority and the International Bureau and that agreement would be under control of the Assembly. Any prolongation written into such agreements could be less than the two months proposed by the Delegation of Canada.

1284. Mr. HAERTEL (Germany (Federal Republic)) said that, in his Delegation's view, what was really important was that in any case the applicant should be in possession of the international search report before the expiration of the 18<sup>th</sup> month from the priority date so that he should have enough time to consider it and amend the application. Even so, the two months which would remain for him – that is, from the 18<sup>th</sup> to the 20<sup>th</sup> month – would be sufficient only if he received the document cited in the international search report together with that report. Consequently, provision should be made for a flexible time limit, depending on whether or not the international application invoked the priority of an earlier application; a possible time limit of 18 months from the priority date should be established; and a guarantee should be written into the Regulations according to which the applicant would not have to wait for copies of the cited documents but would



receive them together with the international search report.

1285. Mr. LIPS (Switzerland) supported the proposal of the Delegation of Germany (Federal Republic).

1286. Mr. PETERSSON (Australia) said that the proposal of the Delegation of the United States of America was acceptable because it was to be presumed that the applicants would exercise sufficient pressure on the International Searching Authorities not to make any prolongation too long. In any case, his Delegation was ready to set a two-month limit to the prolongation.

1287. Mr. FERGUSSON (United Kingdom) said that it would be interesting to hear the reaction of the Delegation of the United States of America to the proposal of the Delegations of Germany (Federal Republic) and Switzerland.

1288. Mr. ROMANUS (International Federation of Inventors Association (IFIA)) said that, under the proposal of the Delegation of the United States of America, it would be perfectly possible that the applicant would receive the international search report after his international application had been published. That was obviously not in his interest as he could no longer prevent his application from being publicly known. It would therefore be desirable that the international publication should take place later than at the expiration of the 18<sup>th</sup> month, at least in all cases in which the international search report was late.

1289. Mr. HAZELZET (Union of Industries of the European Community) said that if there were no guarantees that the international search report would be received within a fixed and reasonable time, applicants would not only be reluctant to use the Treaty but would simply not use it at all.

1290.1 Mr. BARDEHLE (International Federation of Patent Agents (FICPI)) said that it was extremely important for the applicant to see the international search report some time before the international application was published because the international search report might prompt him to withdraw his application. Even if the international search report revealed anticipations which made patenting unlikely, the application might contain much interesting information, for example, concerning know-how developed by the applicant, which the applicant would not wish to see published unless his prospects for patenting were good.

1290.2 Consequently, his Federation was of the opinion that, without a satisfactory solution on the time limit for international search reports, the Treaty would probably not be used very much by industry.

1291. Mr. VAN DER AUWERAER (European Industrial Research Management Association (EIRMA)) said that it was desirable, in order to make the Treaty effective, to have the international search report in the hands of the applicant well before the time he had to file amendments.

1292. Mr. MEUNIER (Council of European Industrial Federations (CEIF)) said that his Federation

supported the views expressed by the previous two speakers.

1293. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that it was uncertain in any case to what extent, if any, applicants would use the Treaty. By prolonging the time limit for search the need for prolonging other time limits might also arise. Longer time limits would be undesirable because they would delay the issuing of patents.

1294.1 Mr. ROBINSON (Canada) said that the publication of anticipated inventions could do no harm and therefore he did not consider it necessary to prolong the time limits for publication only because the time limit for search would be prolonged.

1294.2 His Delegation was ready to accept the proposal of the Delegation of Germany (Federal Republic), which was an improvement on the proposal of his own Delegation.

1295. Mr. ADAMS (Pacific Industrial Property Association (PIPA)) said that applicants had to realize the initial difficulties in which some International Searching Authorities might find themselves. However, that initial period could, and should, be shorter than the proposed five years.

1296. Mr. MCKIE (United States of America) said that his Delegation saw a great deal of merit in the suggestions of the Delegation of Germany (Federal Republic). It also was concerned to satisfy the wishes of the private sector. Consequently, the various proposals made could be referred to the Drafting Committee in order that it suggest a solution.

1297. Mr. VILLALBA (Argentina) said that the discussion had, so far, yielded clear enough answers to some important questions to allow the matter to be referred to the Drafting Committee.

1298. Mr. LADAS (International Association for the Protection of Industrial Property (AIPPI)) said that one should not overcomplicate the Treaty. A one-month prolongation, as proposed by the Delegation of the Soviet Union, should be sufficient.

1299. Mr. NORDSTRAND (Norway) proposed that, if the proposal of the Delegation of the United States of America were adopted, it should be completed by the following words: "In those cases, all time limits subsequent to the receipt of the international search report shall be automatically accorded the same prolongation." That proposal would take the place of the proposal of the Delegation of Canada.

1300. Mr. ONIGA (Brazil) said that his Delegation agreed with the view which had just been expressed by the Delegation of Argentina.

1301.1 The SECRETARY said that he wished to call the attention of the meeting to the fact that the Draft already differentiated between international applications invoking and international applications not invoking the priority of an earlier application.

1301.2 In any case, the proposal in question was to limit both in time – since it would only last for a limited number of years after the entry into force of

the Treaty – and in scope, since only two of the prospective International Searching Authorities seemed to intend to make use of it.

1301.3 In any case, it was not advisable to make any of the other time limits provided for in the Regulations dependent on the time limit within which the international search report had to be prepared. The time limit for publication and for starting the national procedure could hardly be prolonged.

1302. Mr. LEWIN (Sweden) said that his Delegation had no very strong views on the subject but it would prefer that the proposal of the Delegation of the Soviet Union, providing for a one-month prolongation of the time limit, were adopted. However, the matter had been sufficiently discussed for it to be sent to the Drafting Committee.

1303. Mr. GIERCZAK (Poland) said that his Delegation favored the proposal made by the Delegation of the Soviet Union.

1304. The CHAIRMAN said that the discussion did not seem to have given sufficient directives to the Drafting Committee. Perhaps the matter could best be left to the Assembly of the Union when it was called upon to approve or disapprove of any agreement between the International Bureau and any International Searching Authority.

1305. Mr. VILLALBA (Argentina) said that the question of giving certain powers to the Assembly was not the only question. Even if the Assembly received some powers, the limits of those powers would have to be set in the Treaty. Among those limits most speakers would seem to prefer a reduction of the five-year transitional period and wish to fix a maximum for the possible prolongation of the time limit. His Delegation would suggest that the two time limits in question be fixed at three years and two months, respectively.

1306. The CHAIRMAN pointed out that the Rule under discussion was one which the Assembly could always change by a majority vote.

1307. Mr. FINNS (Finland) said that his Delegation could accept the proposal of the Delegation of the United States of America.

1308. Mr. FERGUSSON (United Kingdom) said that the whole matter could be left in the hands of the Assembly, as proposed by the Delegation of the United States of America.

1309. Mr. GABAY (Israel) agreed with the previous speaker and added that the transitional period should last three years.

1310. Mr. HAERTEL (Germany (Federal Republic)) said that there seemed to be at least one point on which everybody appeared to be in agreement, namely, that in any case the international search report must be completed within 18 months from the priority date.

1311. *It was decided to adopt 18 months as the time limit within which the international search reports must be completed, such time limit to be counted from the priority date.*

1312. Mr. PETERSSON (Australia) asked if the Main Committee might be consulted on the question of any possible prolongation and on the duration of the transitional period.

1313. *It was decided that Rule 42 should contain a limitation of the duration of possible prolongations of the time limit by 16 votes in favor to 3 against, with 12 abstentions.*

1314. *Ten Delegations voted that the extension should be two months, eight that it should be one month, and 12 Delegations abstained.*

1315. *Two Delegations voted that the transitional period should be five years, 20 Delegations voted that the transitional period should be three years, and 12 Delegations abstained.*

1316. Mr. PETERSSON (Australia) said, in explanation of his Delegation's vote, that in his view there was no need for any limitation such as was provided for in the proposal of the Delegation of the United States of America and that the only reason for which his Delegation had accepted the proposal was that it wished to help those International Searching Authorities which might need such a transitional provision. (Continued at 1866.)

**Rule 44: Transmittal of the International Search Report, Etc.** (Continued from 1276.)

1317.1 Mr. BOGSCH (Secretary General of the Conference) introduced the proposal of the Secretariat contained in document PCT/DC/88. The proposal was based on the discussions of the previous day and consultations with the Delegations which had participated in those discussions.

1317.2 The new proposal was that the right of any designated Office and of any applicant to receive copies of the documents cited in the international search report should not only be recognized but should also be written into the Treaty itself. Furthermore, that the obligations which would result for any International Searching Authority from the said right of the designated Offices and applicants could be satisfied either by sending one copy of the documents to the International Bureau – which then would see to it that those wishing to have copies would receive them – or by satisfying each individual request separately. The choice between the two solutions would rest entirely with the International Searching Authority.

1318.1 Mr. OTANI (Japan) said that his Delegation was grateful to the Secretariat for producing a proposal consolidating various proposals, including the proposal of the Delegation of Japan contained in document PCT/DC/48.

1318.2 His Delegation did not consider it essential that Article 20 be amended as proposed. The whole matter could be left to the Regulations since it was of an administrative nature.

1318.3 As regards the sentence “any International Searching Authority may perform the above obligation through any agency responsible to it,” such a provision was essential for his Delegation since, in Japan, it was the Invention Association of Japan rather

than the Japanese Patent Office which performed the services in question. It did so in a satisfactory way, at a reasonable cost, and under the supervision of the Japanese Patent Office.

1319. The CHAIRMAN said that for the moment only Rule 44.3 was under discussion and not also Article 20(3).

1320. Mr. ASCENSÃO (Portugal) said that his Delegation favored the proposal of the Secretariat because it incorporated the earlier proposals of the Delegations of Portugal and Argentina. However, since the two proposals were closely connected, they should be discussed at the same time.

1321. Mr. GIERCZAK (Poland) thanked the Secretariat for preparing the proposal, which was acceptable to his Delegation as it included also the proposal of the Delegation of Poland.

1322. Mr. FERGUSSON (United Kingdom) said that, subject to some drafting changes, his Delegation supported the proposal of the Secretariat.

1323. *The proposals contained in document PCT/DC/88 as far as Rule 44.3 was concerned were adopted, subject to any decision which might be taken on the proposal of the Delegation of Israel contained in document PCT/DC/89.*

1324. Mr. GABAY (Israel), presenting his Delegation's proposal contained in document PCT/DC/89, said that it would be desirable not only that the International Searching Authority could decide that the copies were to be communicated through the International Bureau but also that the applicant and the designated Offices should be entitled to obtain those copies through the International Bureau – rather than direct from the International Searching Authority – if they preferred to obtain them in that way. There might be language or other reasons for which that indirect route was preferable.

1325. Mr. FERGUSSON (United Kingdom) opposed the proposal of the Delegation of Israel. It would create utter chaos, he said, and would be unworkable in practice.

1326. Mr. BOGSCH (Secretary General of the Conference) said that it seemed to him far more practical to leave the option only to the International Searching Authorities since the normal route for communications between applicant and International Searching Authority should be a direct one.

1327. Mr. HAERTEL (Germany (Federal Republic)) said that the proposal of the Delegation of Israel would introduce unnecessary complexities in the procedure.

1328. Mr. LIPS (Switzerland) said that his Delegation agreed with the point of view of the previous speaker.

1329. Mr. HAERTEL (Germany (Federal Republic)) said that one of the complications which the proposal of the Delegation of Israel could cause was that some applicants would ask for copies direct from the International Searching Authority, whereas others would ask for them through the International Bureau.

1330. Mr. PETERSSON (Australia) said that his Delegation objected to the proposal of the Delegation of Israel also on the grounds that it would make the procedure more expensive since an intermediary could not perform services without being paid for it.

1331. Mr. VAN WAASBERGEN (International Patent Institute) said that the proposal of the Delegation of Israel could be carried out but it would increase the costs.

1332. Mr. GABAY (Israel) said that, in view of the opposition that the proposal of his Delegation had encountered, it withdrew that proposal. (Continued at 1870.)

#### **Article 20: Communication to Designated Offices** (Continued from 576.)

1333. *The Committee adopted paragraph (3) as appearing in document PCT/DC/88, subject to revision of the text by the Drafting Committee.* (Continued at 1764.)

#### **Rule 45: Translation of the International Search Report**

1334. Mr. VILLALBA (Argentina), referring to the discussion which had taken place on the proposal of his Delegation contained in document PCT/DC/71, moved that it be adopted. The proposal was to the effect that the international search report should be translated into the languages of all the designated Offices.

1335. Mr. ASCENSÃO (Portugal) seconded the proposal of the Delegation of Argentina.

1336. Mr. ONIGA (Brazil) supported the proposal of the Delegation of Argentina.

1337. Mr. HAERTEL (Germany (Federal Republic)) said that he had the impression that the proposal had already been discussed and decided upon.

1338. The SECRETARY said that the Delegation of Argentina had made the same proposal in document PCT/DC/33 concerning Article 18 and that that proposal had been put to the vote and defeated.

1339. Mr. VILLALBA (Argentina) said that the vote and discussion in question had related to the transcripts of the cited documents in the international search report rather than to the international search report itself.

1340. The SECRETARY said that a further difference between the proposals contained in document PCT/DC/33 and PCT/DC/71 might be that, whereas under the former translations would have to be prepared by the applicant, under the latter they would have to be prepared by the International Bureau.

1341. Mr. VILLALBA (Argentina) said that the remarks by the previous speaker clearly showed that the two proposals were not comparable in scope. The one under discussion was far less ambitious because it related only to the international search report itself, which would contain only a very limited amount of text matter and therefore should cause the

International Bureau no difficulty when it had to present it.

1342. The SECRETARY said that the former decision had been taken on the international search report itself and not on possible transcripts appearing in it, and that the proposal being considered was more far-reaching because it would transfer the responsibility for the translation from the applicant to the International Bureau.

1343. Mr. MCKIE (United States of America) wanted to know who was supposed to furnish the translation under the proposal under discussion.

1344. The SECRETARY replied that, according to Article 18(3), the translation would have to be prepared by or under the responsibility of the International Bureau.

1345. Mr. VILLALBA (Argentina) said that it just did not make sense to assert that there was nothing to translate in the case of an international search report, when the Draft itself provided for translation into English where the international search report was in another language than English.

1346. Mr. HAERTEL (Germany (Federal Republic)) asked whether the International Bureau could undertake the task of translating and how much that would cost.

1347. Mr. BOGSCH (Secretary General of the Conference) replied that the International Bureau could undertake the task but it would be rather expensive.

1348. *The proposal of the Delegation of Argentina contained in document PCT/DC/71 was rejected by 17 votes against to 5 in favor, with 8 abstentions.*

1349. *Rule 45 was adopted as appearing in the Draft. (Continued at 1873.)*

#### **Rule 46: Amendment of Claims Before the International Bureau**

1350. Mr. FERGUSSON (United Kingdom) moved his Delegation's proposal contained in document PCT/DC/26. According to the Proposal, Rule 46.1 should read as follows "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." The proposal would allow the applicant some more time for amending his application when such extension of the time limit did not hamper national processing.

1351. Mr. QUINN (Ireland) supported the proposal of the Delegation of the United Kingdom. It would make the time limit for amendment more flexible and, in certain cases, facilitate the task of the applicant. Interested private circles had made representations for such flexibility.

1352. Mr. VAN DAM (Netherlands) drew attention to the fact that the proposal by the Delegation of the

United Kingdom would have an influence on Rule 47.1(b). According to that Rule, the International Bureau had to make the communication to the designated Offices only after the time limit for amendment had expired.

1353. Mr. SIMONS (Canada) said that, as a result of the decision taken earlier in the day to extend the time limit for producing international search reports until the end of a period of 18 months from the priority date, situations might be created which were not reconcilable with the proposal of the Delegation of the United Kingdom.

1354. Mr. FERGUSSON (United Kingdom) said that, indeed, the proposal under discussion could not be reconciled with the longer time limit which would be applicable during the transitional period.

1355. Mr. MCKIE (United States of America) wanted to know how much time the applicant would have for amendment if the international search report was received only at the end of the 17<sup>th</sup> month.

1356. Mr. BOGSCH (Secretary General of the Conference) replied that the applicant would have two months.

1357. Mr. FERGUSSON (United Kingdom) said that his Delegation withdrew the proposal under discussion.

1358. *Rule 46.1 was adopted as appearing in the Draft.*

1359. *Rules 46.2, 46.3, 46.4 and 46.5 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1874.)*

*End of the Eighteenth Meeting*

#### **NINETEENTH MEETING**

Thursday, June 4, 1970, afternoon

#### **Rule 47: Communication to Designated Offices**

1360. Mr. ONIGA (Brazil) withdrew the proposal of his Delegation contained in document PCT/DC/52.

1361. Mr. ROBINSON (Canada) said that his Delegation had introduced a proposal only an hour earlier and that it might be better to defer discussion in order to allow the delegations to study it.

1362. *Further discussion on Rule 47 was deferred. (Continued at 1436.)*

#### **Rule 48: International Publication**

1363. *Rules 48.1, 48.2 and 48.3(a) and (b) were adopted as appearing in the Alternative Draft (with the corrections appearing in document PCT/DC/12/Add.1), without discussion.*

1364. Mr. TÖRNROTH (Sweden) moved the proposal of the Delegations of Denmark, Finland, Norway and Sweden contained in document PCT/DC/73. The proposal was to the effect that not only the abstract but also all the independent patent claims, if not in English, should be published both in the original language and in English. Claims

contained more precise, if not more, information than mere abstracts. Claims had legal consequences and therefore were drafted with much care. It was for those reasons that the amendment had been proposed.

1365. Mr. BOGSCH (Secretary General of the Conference) said that, while it was undoubtedly useful to have as much information as possible in as many languages as possible, the proposal of the four Nordic countries would cause considerable expense and possibly also delays.

1366. Mr. SINGER (Germany (Federal Republic)) said that he would like to know whether the proponents of the amendment were thinking of the claims in their original form, or in their amended form, or in both. Furthermore, he would like to hear the views of the representatives of the non-governmental organizations since the matter was a practical one and primarily concerned them.

1367. Mr. ARMITAGE (United Kingdom) said that, while his Delegation sympathized with the proposal as one which would make the procedure more perfect, it would also entail additional cost and complications and therefore should not be accepted. In any case, the private sector in his country was of the opinion that at the international publication stage it could accept it if only the abstract were translated into English.

1368. Mr. VAN DER AUWERAER (European Industrial Research Management Association (EIRMA)) said that, whereas it would undoubtedly be interesting to see the claims also translated into English, such a requirement would cause considerable expense, which would have to be met by the applicant. On balance, therefore, he was opposed to the proposal, it being understood that if experience showed that translation of the claims was also necessary the Regulations could later be amended accordingly.

1369. Mr. HAZELZET (Union of Industries of the European Community) said that his Union agreed with the declarations of EIRMA.

1370. Mr. GILLIES (International Chamber of Commerce (ICC)) expressed agreement with the statements of the Representatives of EIRMA and the Union of Industries of the European Community.

1371. Mr. BEESTON (Committee of National Institutes of Patent Agents (CNIPA)) also agreed with the statements of the Representatives of the non-governmental organizations who had spoken on the subject.

1372. Mr. LEWIN (Sweden), in reply to the question from the Delegation of Germany (Federal Republic), said that those claims which were the latest at the time of publication would be published in the form of a translation. The cost would not be very high because only the first independent claim would have to be translated, which was usually not very long.

1373. *The proposal of the Delegation of Sweden was rejected by 11 votes against to 5 in favor, with 9 abstentions.*

1374. *Rule 48.3(c) was adopted as appearing in the Draft.*

1375. *Rules 48.4, 48.5 and 48.6 were adopted as appearing in the Alternative Draft, without discussion. (Continued at 1876.)*

**Rule 49: Languages of Translations and Amounts of Fees under Article 22(1) and (2)**

1376. Mr. FERGUSSON (United Kingdom) wished to know whether it was the understanding of the Main Committee that any national Office could, in the national stage, require that the applicant sign a statement to the effect that the translation, according to the best of his knowledge, was complete and faithful.

1377. Mr. MORTON (United States of America), referring to the proposal of his Delegation contained in document PCT/DC/85, said that the last sentence of Rule 49.2 should be deleted. The sentence said that, if there were several official languages in a country but the national law of that country prescribed the use of one such language for foreigners, the translation must be into that language.

1378. Mr. ROBINSON (Canada) said that his Delegation could assure the Delegation of the United States of America that the national law of Canada would never prescribe the use of English only or French only by foreigners.

1379. Mr. FINNE (Finland) said that the sentence in question applied to the conditions prevailing in his country. There the minority could use its own language in official dealings. However, that privilege was not accorded to foreigners, who could use only the Finnish language.

1380. The CHAIRMAN said that the proposal of the Delegation of the United States of America was rejected because it had not been seconded by any other Delegation.

1381. Mr. BOGSCH (Secretary General of the Conference) said that certain consequential changes in the Rule would be necessary because of the changes decided in connection with Article 22.

1382. *Subject to that understanding, Rules 49.1, 49.2 and 49.3 were adopted as appearing in the Alternative Draft. (Continued at 1877.)*

**Rule 50: Faculty Under Article 22(3)**

1383. *Rule 50.1 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1878.)*

**Rule 51: Review by Designated Offices**

1384. *Rule 51 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1879.)*

**Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices**

1385. *Discussion on Rule 52.1(a) was deferred. (Continued at 1523.)*

1386. *Rule 52.1(b) was adopted as appearing in the Draft, without discussion.*

1387. *It was decided, as suggested in the Alternative Draft and as proposed by the Delegation of Argentina in document PCT/DC/71, that Rule 52.1(a) appearing in the Draft should be omitted. (Continued at 1523.)*

**Article 31: Demand for International Preliminary Examination**

1388. *Article 31(1) was adopted as appearing in the Draft, without discussion.*

1389.1 Mr. GABAY (Israel), referring to the proposal of his Delegation contained in document PCT/DC/41, proposed that 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." It seemed unjustified that the use of Chapter II should be limited only to nationals and residents of States accepting Chapter II. Nationals and residents of any Contracting State should be enabled to use Chapter II.

1389.2 Furthermore, each designated Office should be allowed to receive international preliminary examination reports even if it had not been elected under Chapter II. That would be particularly useful for developing countries.

1390. Mr. LORENZ (Austria) said that, if he understood the proposal of the Delegation of Israel correctly, it meant that any Contracting State could require that the applicant produce an international preliminary examination report. If that was the objective, he approved of it.

1391.1 Mr. BOGSCH (Secretary General of the Conference) said that it had always been understood during the preliminary negotiations that Chapter II should be doubly optional, that is, optional both as far as Contracting States were concerned and as far as applicants were concerned: a Contracting State should be able to accept the Treaty without accepting Chapter II; no applicant should be under the obligation to use Chapter II. The proposal of the Delegation of Israel, if accepted, would take away the second option.

1391.2 If the Treaty provided that a designation might imply an election, then some applicants might prefer not to designate the countries in which such a consequence would arise.

1391.3 Any country which wished to receive international preliminary examination reports could require the production of such a report, even without the Treaty, provided that it impose the same obligation on both domestic and foreign applicants and provided that it could reach an agreement with an International Preliminary Examining Authority to prepare such reports.

1392. Mr. COULIBALY (Ivory Coast) supported the proposal of the Delegation of Israel.

1393. Mr. ARMITAGE (United Kingdom) said that the proposal of the Delegation of Israel posed quite a number of complicated problems and it might be better to ask a working group to study it.

1394. The CHAIRMAN said that a working group would be set up and its composition would later be announced.

1395. *Further discussion on Article 31(2) was deferred. (See 1672.)*

1396. *Article 31(3) was adopted as appearing in the Draft, without discussion.*

1397. Mr. GABAY (Israel) said that the proposal of his Delegation contained in document PCT/DC/41 concerned also Article 31(4) and therefore should also be transmitted to the working group.

1398. *Discussion on Article 31(4) was deferred. (See 1672.)*

1399. *Articles 31(5), 31(6) and 31(7) were adopted as appearing in the Draft, without discussion. (See 1672.)*

1400. The CHAIRMAN said that the Working Group mentioned earlier (See 1394) would consist of the Delegations of Austria, Germany (Federal Republic), Israel, Ivory Coast, Japan, Soviet Union, United Kingdom, and United States of America. (Continued at 1672.)

**Article 15: The International Search** (Continued from 555.)

1401. Mr. VILLALBA (Argentina), referring to the proposal of his Delegation and the Delegation of Portugal contained in document PCT/DC/68, said that the two Delegations had redrafted their proposal in order to make it fit in better with the other provisions of the Treaty. They had also proposed that Article 61 be complemented by the addition of a sentence saying that that Article – which dealt with the gradual application of the Treaty – should also apply to the provision under discussion. That would mean that International Searching Authorities would have time to adjust themselves to the new situation.

1402. Mr. ARMITAGE (United Kingdom) said that it was important that it be understood that no International Searching Authority would be under an obligation to carry out international-type searches. It would do so only if it had agreed to undertake such a task.

1403. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, the implication that the proposal of the Delegations of Argentina and Portugal carried with it was that any prospective International Searching Authority, before agreeing to act as an International Searching Authority for international applications originating from a certain country, would have to reckon with the possibility of having to make international-type searches on all national applications filed in the same country.

1404. Mr. ARMITAGE (United Kingdom) said that if a country wished to have the International Patent Institute search all the national applications filed in

that country the normal way to go about it was to join the International Patent Institute.

1405. Mr. VAN WAASBERGEN (International Patent Institute) said that his Institute had no objection to the proposal contained in document PCT/DC/68. It was to be clearly understood, however, that the form and language requirements would be the same as under the PCT.

1406. Mr. ASCENSÃO (Portugal) said that he agreed with the interpretation of the International Patent Institute and saw no objection to reflecting it clearly in the final text.

1407. Mr. VILLALBA (Argentina) agreed with the statement of the Delegation of Portugal.

1408. Mr. MCKIE (United States of America) said that his Delegation was, in principle, in favor of the proposal of the Delegations of Argentina and Portugal. However, it wished to know why, if subparagraph (b) meant that an international-type search could be requested on any; national application, such entitlement had to be written into the Treaty rather than into the national law.

1409. Mr. VAN DAM (Netherlands) said that, in his view, national Offices should not be allowed to require international-type searches for some applications and not for others. Otherwise, this could lead to discrimination against foreign applicants, which would be incompatible with the Paris Convention.

1410. Mr. CRUZ (Portugal) said that the main reason for the amendment was to ensure that each application of sufficient importance would become an international Application and be made the object of a search. If that was achieved, the number of applications to be searched would be the same whether or not the proposed amendment was adopted.

1411. Mr. BOGSCH (Secretary General of the Conference) said that it might be desirable to specify in the Treaty that no discrimination was allowed.

1412. Mr. VILLALBA (Argentina) said that the question should be further studied. There was no provision against discrimination in connection with any other provision of the Treaty. It was not clear why in that case such a provision should be necessary only in connection with Article 15.

1413. Mr. ASCENSÃO (Portugal) said that differentiation would not be made on the basis of the nationality of the applicant but might have to be made on the basis of the nature of the invention. For some more complex inventions an international search report would be required, whereas for more simple ones this might not be necessary.

1414. *The proposal of the Delegations of Argentina and Portugal was adopted as appearing in document PCT/DC/68 and as far as it concerned Article 15(5). (Continued at 1753.)*

**Article 16: The International Searching Authority** (Continued from 472.)

1415. *By 19 votes in favor to none against, with 9 abstentions, it was decided to resume discussion on*

*Article 16(1) in order to consider the proposal, appearing in document PCT/DC/84, of the Delegations of Belgium, France, Italy, Monaco, the Netherlands, Switzerland, and the United Kingdom (herein-after referred to as "the Seven Delegations")*

1416. Mr. SAVIGNON (France), in the name of the Seven Delegations, moved the proposal. Since it had been accompanied by a written explanatory statement, it was not necessary to repeat it orally. The essence of the proposal was that the International Patent Institute be mentioned expressly – that is, by name – in Article 16(1) as one of the possible future International Searching Authorities.

1417. Mr. HAERTEL (Germany (Federal Republic)) said that, although his Delegation had no objection on practical grounds, it was not sure whether it was a wise thing for an international interment to refer to an organization by name, the more so as other organizations might be created in the future which could have similar aspirations. He wished to know whether it was customary for international treaties to contain the names of specific organizations, as proposed by the Seven Delegations.

1418. Mr. ARTEMIEV (Soviet Union) said that his Delegation would prefer not to have any organization mentioned by name but merely make a general description of the kind of organization which could become an International Searching Authority, a description which would obviously also cover the International Patent Institute.

1419. *The proposal of the Seven Delegations to amend Article 16(1) was adopted as appearing in document PCT/DC/84, by 17 votes in favor to 4 against, with 9 abstentions. (Continued at 1756.)*

**Article 32: The International Preliminary Examining Authority**

1420. Mr. BOGSCH (Secretary General of the Conference) said that some changes would have to be made as a result of the changes made earlier in Article 16(2).

1421. *Subject to that understanding, Article 32 was adopted as appearing in the Draft. (Continued at 1672.)*

**Article 33: The International Preliminary Examination**

1422. Mr. FERGUSSON (United Kingdom) withdrew the proposal of his Delegation concerning Article 33(1) contained in document PCT/DC/25.

1423. *Paragraphs (1), (2) and (3) were adopted as appearing in the Alternative Draft, without discussion.*

1424. Mr. VILLALBA (Argentina) said that his Delegation would not insist on the proposal presented in document PCT/DC/51 in respect of Articles 33(4) if it received assurances that each Contracting State would be free to interpret what "industry" meant.

1425. Mr. BOGSCH (Secretary General of the Conference) replied that the provision was addressed merely to the obligations of the International Preliminary Examining Authorities: they should not

be allowed to escape from their obligation to examine inventions merely on the grounds that they gave some arbitrary, narrow interpretation to the expression "industry."

1426. *Paragraph (4) was adopted as appearing in the Draft.*

1427. *Paragraphs (5) and (6) were adopted as appearing in the Draft, without discussion. (Continued at 1785.)*

#### **Article 34: Procedure Before the International Preliminary Examining Authority**

1428. Mr. FERGUSSON (United Kingdom) said that the proposals of his Delegation, contained in document PCT/DC/25, concerning paragraphs (2) and (3) were merely of a drafting nature.

1429. *Paragraphs (1), (2) and (3) were adopted as appearing in the Draft.*

1430. Mr. FERGUSSON (United Kingdom), referring to the proposal of his Delegation concerning paragraph (4)(a) contained in document PCT/DC/25, suggested that no international preliminary examination report should be established where the international application contained claims which were not searched. Without an international search report on certain claims, the International Preliminary Examining Authority could not do intelligent work.

1431. Mr. BOGSCH (Secretary General of the Conference) said that, under the proposal, the applicant might fall a victim to a difference of appreciation between the International Searching Authority and the International Preliminary Examining Authority. The main reasons for which any claim would not be searched were covered by items (i) and (ii) of paragraph (4)(a).

1432. Mr. MCKIE (United States of America) opposed the proposal of the Delegation of the United Kingdom for the reasons stated by the Secretary General of the Conference and because it seemed to be in conflict with Articles 19 and 34(2)(b), which allowed for amendments after receipt of the international search report.

1433. Mr. ARMITAGE (United Kingdom) said that his Delegation could also accept the Draft as it stood. Nevertheless, he would be interested to see the proposal of his Delegation put to a vote to discover the reaction of the various delegations. If they rejected the proposal, it would have to be recognized that there would be cases – probably rare, but nevertheless one – in which International Preliminary Examining Authorities would, themselves, have to carry out some search work.

1434. *The proposal of the Delegation of the United Kingdom concerning Article 34(4)(a) contained in document PCT/DC/25 was rejected by 10 votes against to 2 in favor, with 17 abstentions.*

1435. *Paragraph (4) was adopted as appearing in the Draft. (Continued at 1786.)*

*End of the Nineteenth Meeting*

## **TWENTIETH MEETING**

Friday, June 5, 1970, morning

#### **Rule 47: Communication to Designated Offices** (Continued from 1362.)

1436. Mr. ROBINSON (Canada) presented his Delegation's proposal contained in document PCT/DC/94. The Rule under consideration provided that the communication must be effected by the International Bureau. Rule 52 provided that any amendment filed under Article 28 must be filed not earlier than at the time when the said communication reached the designated office. Since, however, the applicant would not know – or would only be able to find out with great difficulty – when his application would be communicated to the designated Office and when it would reach it, if the communication was effected by the International Bureau, his Delegation's proposal provided that the communication should be effected by the applicant himself. Thus, he could insert his amendments at the time when he effected the communication. Any possibility of missing the deadline would thus be automatically eliminated.

1437. Mr. VAN DAM (Netherlands) said that the applicant had the right to communicate the application himself, that followed from Article 22. Communication by the International Bureau would take place only if the applicant had not himself effected the communication. Consequently, the applicant could insert, at the time he effected the communication, all the amendments he wished to make.

1438. Mr. PETERSSON (Australia) seconded the proposal of the Delegation of Canada.

1439. Mr. ROBINSON (Canada) said that communications under Article 20 (made by the International Bureau) and Article 22 (made by the applicant) would unnecessarily duplicate each other. The proposal of his Delegation tended to avoid such duplication: under it, the applicant would notify the International Bureau that he would effect the communication, and in such case the International Bureau would not itself proceed with any communication.

1440. Mr. BOGSCH (Secretary General of the Conference) asked whether the proposal of the Delegation of Canada meant that only amendments made under Article 28 would reach the designated Offices and not amendments made under Article 19.

1441.1 Mr. ROBINSON (Canada) replied that the subject matter of the communication would not be different; the only difference would be that the communication would be effected by the applicant rather than by the International Bureau.

1441.2 Another consideration which should be kept in mind was that, if the international search report was issued very late – which might particularly be the case under the new Rule according to which International Searching Authorities might be authorized to extend the time limit allotted for search – the time limits for



amendments under Articles 19 and 28 could practically coincide.

1442. Mr. VAN DAM (Netherlands) said that the proposal of the Delegation of Canada was inseparably linked to another proposal, contained in document PCT/DC/96, which had been made by the Delegations of Canada and the Netherlands and dealt in particular with the question of time limits for amendments. He suggested discussion be deferred until discussion of said document.

1443. *Further discussion on Rule 47 was deferred.* (Continued at 1533.)

#### **Article 35: The International Preliminary Examination Report**

1444. Mr. FERGUSSON (United Kingdom) noted that the proposals of his Delegation contained in document PCT/DC/25 concerning Article 35 were mere drafting points.

1445. *Article 35 was adopted as appearing in the Alternative Draft.* (Continued at 1787.)

#### **Article 36: Transmittal, Translation, and Communication, of the International Preliminary Examination Report**

1446. *Article 36 was adopted as appearing in the Draft.* (Continued at 1788.)

#### **Article 37: Withdrawal of Demand or Election**

1447. Mr. SAVIGNON (France) noted that the proposals of his Delegation contained in document PCT/DC/21 were mere drafting points.

1448. *Article 37 was adopted as appearing in the Draft.* (Continued at 1792.)

#### **Article 38: Confidential Nature of the International Preliminary Examination**

1449. *Article 38 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1793.)

#### **Article 39: Copy, Translation, and Fee, to Elected Offices**

1450. Mr. FERGUSSON (United Kingdom) noted that the proposals of his Delegation contained in document PCT/DC/25 concerning Article 39 were mere drafting points.

1451. *Article 39 was adopted as appearing in the Draft, without discussion.* (Continued at 1794.)

#### **Article 40: Delaying of National Examination and Other Processing**

1452. *Article 40 was adopted as appearing in the Draft, without discussion.* (Continued at 1795.)

**Article 60: Reservations** (In the signed text, Article 64: Reservations) (Continued from 2399, see document PCT/DC/87.)

1453. *Paragraph 2 of this Article was adopted as appearing in the Draft, without discussion.* (Continued at 1604.)

#### **Article 41: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices**

1454. Mr. FERGUSSON (United Kingdom) withdrew the proposal of his Delegation, concerning Article 41(3), contained in document PCT/DC/25.

1455. *Article 41 was adopted as appearing in the Alternative Draft.* (Continued at 1796.)

#### **Article 42: Results of National Examination in Elected Offices**

1456. Mr. ASCENSÃO (Portugal) said that his Delegation could find no very strong arguments in favor of the adoption of the Article in question. Such an Article would, to a certain extent, limit the freedom of national legislations.

1457. Mr. BOGSCH (Secretary General of the Conference) said that the reason for the Article under discussion was the desire to make the use of Chapter II of the Treaty more attractive to the applicant. It would save the applicant the trouble and expense of furnishing, to any elected Office, copies of documents which he had to furnish to other elected Offices. There seemed to be no justification for demanding such copies since the international preliminary examination report was furnished to all elected Offices and those Offices would find that report a most valuable aid for their task of examination.

1458. *Article 42 was adopted, as appearing in the Draft.* (Continued at 1797.)

#### **Rule 53: The Demand**

1459. *Rule 53 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1881.)

#### **Rule 54: The Applicant Entitled To Make a Demand**

1460. Mr. LORENZ (Austria) said that, if the proposal of the Delegation of Israel concerning Article 31, the study of which was still pending in a working group, was going to be adopted, several rules would have to be revised.

1461. The CHAIRMAN said that the adoption of any rule would be subject to reopening the discussion should the action on the proposal of the Delegation of Israel require consequential changes.

1462. *Rule 54 was adopted as appearing in the Alternative Draft.* (Continued at 1882.)

#### **Rule 55: Languages (International Preliminary Examination)**

1463. *Rule 55 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1883.)

**Rule 56: Later Elections**

1464. *Rule 56 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1884.)

**Rule 57: The Handling Fee**

1465. *Rule 57 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1885.)

**Rule 58: The Preliminary Examination Fee**

1466. *Rule 58 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1886.)

**Rule 59: The Competent International Preliminary Examining Authority**

1467. *Rule 59 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1672.)

**Rule 60: Certain Defects in the Demand or Elections**

1468. *Rule 60 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1888.)

**Rule 61: Notification of the Demand and Elections**

1469. *Rule 61 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1889.)

**Rule 62: Copy for the International Preliminary Examining Authority**

1470. *Rule 62 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1890.)

**Rule 63: Minimum Requirements for International Preliminary Examining Authorities**

1471. *Rule 63 was adopted as appearing in the Draft, without discussion.* (Continued at 1891.)

**Rule 64: Prior Art for International Preliminary Examination**

1472. *Rule 64.1 was adopted as appearing in the Draft, without discussion.*

1473. The SECRETARY said that changes paralleling those made in the corresponding Rule 33 would have to be made in the Rule under consideration.

1474. The CHAIRMAN said that an amendment concerning paragraph 2 had been proposed by the Delegation of Poland (document PCT/DC/23) but since that Delegation could not be present in the meeting it would be given the opportunity at a later time to move its proposal.

1475. *Subject to the above understanding, Rules 64.2 and 64.3 were adopted as appearing in the Alternative Draft.* (Continued at 1535.)

**Rule 65: Inventive Step or Non-Obviousness**

1476. *Rule 65 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1893.)

**Rule 66: Procedure Before the International Preliminary Examining Authority**

1477. *Rule 66 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1894.)

**Rule 67: Subject Matter Under Article 34(4)(a)(i)**

1478. *Subject to the omission of the word "physical" in item (iv), and the omission of item (vii), Rule 67 was adopted as appearing in the Alternative Draft.* (Continued at 1895.)

**Rule 68: Lack of Unity of Invention (International Preliminary Examination)**

1479. *Rule 68 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1896.)

**Rule 69: Time Limit for International Preliminary Examination**

1480. *Rule 69 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1897.)

**Rule 70: The International Preliminary Examination Report**

1481. *After the proposal of the Delegation of the United Kingdom concerning Rule 70.8 contained in document PCT/DC/26 had been withdrawn, Rule 70 was adopted as appearing in the Alternative Draft, subject to the understanding that the Delegation of Poland could, if it so wished, move at a later time its proposal contained in document PCT/DC/23.* (Continued at 1538.)

**Rule 71: Transmittal of the International Preliminary Examination Report**

1482. Mr. BOGSCH (Secretary General of the Conference) said that the Rule would have to be changed to parallel the changes which had been made in the corresponding Rule concerning Chapter I.

1483. *Subject to the above understanding, Rule 71 was adopted as appearing in the Alternative Draft.* (Continued at 1899.)

**Rule 72: Translation of the International Preliminary Examination Report**

1484. *Rule 72 was adopted as appearing in the Draft, without discussion.* (Continued at 1900.)

**Rule 73: Communication of the International Preliminary Examination Report**

1485. *Rule 73 was approved as appearing in the Draft, without discussion.* (Continued at 1901.)

**Rule 74: Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof**

1486. *Rule 74 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1902.)

**Rule 75: Withdrawal of the International Application, of the Demand, or of Elections** (In the Alternative Draft and in the signed text, Rule 75: Withdrawal of the Demand, or of Elections)

1487. *Rule 75 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1903.)

**Rule 76: Languages of Translations and Amounts of Fees Under Article 39(1)** (In the Alternative Draft, also, Rule 76bis: Translation of Priority Document; in the signed text, Languages of Translations and Amounts of Fees Under Article 39(1); Translation of Priority Document)

1488. *Rule 76 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1904.)

1489. *Rule 76bis was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1904.)

**Rule 77: Faculty Under Article 39(1)(b)**

1490. *Rule 77 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1905.)

**Rule 78: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices**

1491. *Rule 78 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1906.)

**Article 43: Inventors' Certificates** (In the signed text, no corresponding Article)

1492. *Discussion on this Article was deferred.* (Continued at 1548.)

**Article 44: Regional Patents and Regional Patent Treaties** (In the signed text, Article 45; Regional Patent Treaties)

1493. *Discussion on this Article was deferred.* (Continued at 1550.)

**Article 45: Seeking Protection Through Other Means Than the Grant of a Patent** (In the Alternative Draft, Article 45: "Seeking Certain Kinds of Protection" and Article ...: "Seeking Two Kinds of

Protection"; in the signed text, Article 43: "Seeking Certain Kinds of Protection" and Article 44: "Seeking Two Kinds of Protection")

1494. Mr. FERGUSSON (United Kingdom) asked whether patents of importation, as known in the national law of Spain, were to be understood as coming under the general notion of patents or were to be regarded as special types of patents.

1495. The SECRETARY replied that, in his opinion, patents of importation and patents of introduction, whether existing under the law of Spain or of any other country, came under the general heading of "patents." The only reason for which patents of addition were mentioned separately was that some special provisions concerning indications of the parent patent were needed.

1496. Mr. FERGUSSON (United Kingdom) said that, consequently, it was understood that the word "patent" covered all types of patents which were peculiar to any of the Contracting States,

1497. Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that patents of importation existed also in Belgium and confirmation patents existed in several of the Latin American countries.

1498. *The Articles entitled "Seeking Certain Kinds of Protection" and "Seeking Two Kinds of Protection" were adopted as appearing in the Alternative Draft.* (Continued at 1589.)

**Article 46: Incorrect Translation of the International Application**

1499. *Article 46 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 1802.)

**Article 47: Time Limits**

1500. Mr. OHWADA (Japan) asked whether the modification referred to in paragraph (2)(a) meant that the text would have to be altered or that the Assembly would simply decide that certain time limits would be changed.

1501. Mr. BOGSCH (Secretary General of the Conference) replied that the decision of the Assembly would suffice. No document would have to be drawn up and signed.

1502. Mr. VILLALBA (Argentina) said that the proposal of his Delegation, contained in document PCT/DC/51, was withdrawn in Main Committee II.

1503. Mr. SOUSA (Portugal) referring to the proposal of his Delegation contained in document PCT/DC/70 said that only where decisions were made by correspondence should unanimity be required.

1504. Mr. LORENZ (Austria) seconded the proposal of the Delegation of Portugal.

1505. Mr. HAERTEL (Germany (Federal Republic)) said that the time limits provided for in the Treaty were of such great importance that they should be modifiable only by unanimous decision even where the decision was made in the Assembly, rather than by correspondence.

1506. Mr. MCKIE (United States of America) supported the view expressed by the Delegation of Germany (Federal Republic).

1507. Mr. OTANI (Japan) also supported the view expressed by the Delegation of Germany (Federal Republic).

1508. Mr. ASCENSÃO (Portugal) said that, in his Delegation's view, the time limits provided for in the Treaty were too long and that, once the Treaty was applied, they would prove to be too long. Reduction of the time limits should be possible even if a few countries opposed such reduction. That was why the Assembly should be able to make a decision by a majority vote.

1509. *The proposal of the Delegation of Portugal was rejected by 15 votes against to 1 in favor, with 6 abstentions.*

1510. *Article 47 was adopted as appearing in the Draft. (Continued at 1803.)*

#### **Article 48: Delay in Meeting Certain Time Limits**

1511. *Article 48 was adopted as appearing in the Draft, without discussion. (Continued at 1804.)*

#### **Article 49: Right to Practice Before International Authorities**

1512. *Article 49 was adopted as appearing in the Draft, without discussion. (Continued at 1805.)*

#### **Rule 79: Calendar**

1513. *Rule 79 was adopted as appearing in the Draft, without discussion. (Continued at 1907.)*

#### **Rule 80: Computation of Time Limits**

1514. *Rule 80 was adopted as appearing in the Alternative Draft and in document PCT/DC/12/Add. 1, without discussion. (Continued at 1908.)*

#### **Rule 81: Modification of Time Limits Fixed in the Treaty**

1515. Mr. PETERSSON (Australia), referring to the proposal of his Delegation contained in document PCT/DC/77, proposed that Rule 81.3(c) should be amended. In the Draft it read as follows: "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." The proposal in document PCT/DC/77 read as follows: "Replies must be either positive or negative. Proposals for amendment or observations shall not be regarded as votes."

1516. Mr. SAVIGNON (France) supported the proposal of the Delegation of Australia.

1517. Mr. BOGSCH (Secretary General of the Conference) asked whether the Delegations of Australia and France could accept that, in the proposal of the Delegation of Australia, the word "mere" should be inserted before the word "observations."

The consequence of such an amendment would be that if a positive or negative vote were accompanied by observations it would be counted as a vote; whereas, if the reply consisted only of observations without a formal conclusion ("yes" or "no"), the reply would not be considered a vote.

1518. The CHAIRMAN said that the Delegations of both Australia and France were in agreement with the proposal of the Secretary General.

1519. *The proposal of the Delegation of Australia was adopted as appearing in document PCT/DC/77, with the addition of the word "mere" before the word "observations."*

1520. *Subject to the foregoing decision, Rule 81 was adopted as appearing in the Alternative Draft. (Continued at 1909.)*

#### **Rule 82: Irregularities in the Mail Service**

1521. *Rule 82 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1910.)*

#### **Rule 83: Right to Practice Before International Authorities**

1522. *Rule 83 was adopted as appearing in the Alternative Draft, without discussion. (Continued at 1911.)*

*End of the Twentieth Meeting*

### **TWENTY-FIRST MEETING**

Saturday, June 6, 1970, morning

#### **Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices** (Continued from 1387.)

1523.1 Mr. VAN DAM (Netherlands) presented the proposal of the Delegations of Canada and the Netherlands contained in document PCT/DC/96.

1523.2 The problem to be solved was how to give the applicant sufficient time to amend his claims under Article 28, that is, before the designated Office (in the national phase) after he had received the international search report. The starting date of that period, according to the Draft, was the date on which the international application was communicated to the designated Office. However, the international search report might reach the applicant only after such communication had been effected. It was therefore desirable that in such a case the period should not start to run until some time – for example, one month – after he had obtained the international search report.

1523.3 As to the closing date of the period allowed for amendment, the Draft provided that it should be the same as the date on which the translation of the international application was due, that is, 20 months after the priority date. However, if the international search report was abnormally late, the so-called "closing date" could, in fact, be reached before the starting date of the period. It was not indispensable

that the time limit for the acts called for under Article 22 be applied also to the amendments. It was therefore suggested that the closing date could, under certain circumstances, be later than the time limit provided for in Article 22 – namely, when the lateness of the international search report so required. In any case, the closing date should be fixed for a point in time not earlier than the expiration of two months from the receipt of the international search report.

1524. Mr. LORENZ (Austria) asked whether the proposal would also apply when the international search report was extremely late, even if it was several months late.

1525. Mr. ROBINSON (Canada) replied that even during the first years of the Treaty's application, when International Searching Authorities could obtain slightly longer periods for producing international search reports, the period could only be such that it would be necessary, for the purpose of filing amendments, to prolong the deadline of 20 months from the priority date until the end of the 21<sup>st</sup> or 22<sup>nd</sup> month from the priority date.

1526. Mr. VILLALBA (Argentina) said that the effect of the proposal of the Delegations of Canada and the Netherlands would be that national processing could not start at the end of the 20<sup>th</sup> month after the priority date. Since that would mean further limitation on the freedom of the designated Offices, his Delegation opposed the proposal.

1527. Mr. BARDEHLE (International Federation of Patent Agents (FICPI)) wanted to know whether the proposal of the Delegations of Canada and the Netherlands meant that in countries where amendments could be proposed later – in the course of the normal examination procedure – such possibilities would be excluded.

1528.1 Mr. VAN DAM (Netherlands), referring to the objection of the Delegation of Argentina, said that the proposal under discussion would not prolong the time limit provided for in Article 22.

1528.2 As far as the question raised by the Representative of FICPI was concerned, the proposal under discussion would not modify the existing situation. The PCT did not modify, in any way, the procedure in the national phase, so that the present national laws and practices would continue to be applicable.

1529. Mr. LORENZ (Austria) wondered whether the proposal under discussion would not allow amendments to be made after the patent had been granted. Such amendments were allowed under the national law of Austria.

1530. Mr. ONIGA (Brazil) said that his Delegation shared the views expressed by the Delegation of Argentina.

1531. Mr. FERGUSSON (United Kingdom) wondered whether the proposal under discussion would stand up in cases where the international application would not be published.

1532. Mr. BOGSCH (Secretary General of the Conference) said that perhaps the best thing would be

to set up a working group to examine in detail all the implications of the proposal under discussion.

1533.1 Mr. GOLDSMITH (Inter-American Association of Industrial Property (ASIPI)) said that the proposal under discussion, as well as the proposal made by the same Delegations in connection with Rule 47, would benefit applicants and the national Offices of developing countries. Transmittal of the copy of the application by the applicant would give greater control over the procedure. The applicant would act through local patent attorneys and agents, who would, together with the transmittal, also take care of the amendments.

1533.2 He had been asked by Mr. LADAS, the Representative of the International Association for the Protection of Industrial Property (AIPPI), who could not be present in the meeting, to state the following opinion. The failure of the applicant to communicate the international application to each designated Office raised a serious problem. It was at the moment when the international search report reached him that he must make important decisions; he might decide to withdraw the application or certain designations; he had to prepare a translation; he might wish to file amendments. It was therefore more logical and economical that all those acts, as well as the communication of the international application, should be done by the applicant.

1534. *It was decided to refer the proposals concerning Rules 47 and 52, contained in documents PCT/DC/94, PCT/DC/96 and PCT/DC/100, to a working group consisting of the Delegations of Austria, Brazil, Canada, the Netherlands, and the United Kingdom. (Continued at 1544.)*

#### **Rule 64: Prior Art for International Preliminary Examination** (Continued from 1475.)

1535. Mr. GIERCZAK (Poland) moved the proposal of his Delegation concerning Rule 64.2 referred to in document PCT/DC/23. Its aim was to establish complete parallelism with the corresponding Rule under Chapter I, namely, Rule 33.1(b).

1536. Mr. SINGER (Germany (Federal Republic)) said that his Delegation supported the proposal of the Delegation of Poland.

1537. *The proposal of the Delegation of Poland concerning Rule 64.2, contained in document PCT/DC/23, was adopted. (Continued at 1892.)*

#### **Rule 70: The International Preliminary Examination Report** (Continued from 1481.)

1538. Mr. GIERCZAK (Poland) introduced the proposal of his Delegation concerning Rule 70.10 contained in document PCT/DC/23 and said that it was merely consequential upon the amendment just adopted in respect of Rule 64.2.

1539. *The proposal of the Delegation of Poland concerning Rule 75.10 contained in document PCT/DC/23 was adopted. (Continued at 1898.)*

**Article 2: Definitions** (Continued from 182.)

1540. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/18 and to the proposals of the Delegations of France and the United States of America contained in documents PCT/DC/97 and PCT/DC/98, respectively, proposed that a working group be established to propose a text which would try to take care of all those proposals.

1541. Mr. SAVIGNON (France) seconded the proposal of the Delegation of the Soviet Union.

1542. Mr. HAERTEL (Germany (Federal Republic)) also supported the proposal of the Delegation of the Soviet Union.

1543. *It was decided to refer to the working group consisting of the Delegations of Algeria, France, Romania, the Soviet Union, and The United States of America, the task of considering and reporting on Articles 1 and 2 in particular, as affected by the proposals contained in documents PCT/DC/18, PCT/DC/97 and PCT/DC/98.* (Continued at 1546.)

*End of the Twenty-First Meeting*

**TWENTY-SECOND MEETING**

Monday, June 8, 1970, morning

**Rule 47: Communication to Designated Offices** (Continued from 1534.)**Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices** (Continued from 1534.)

1544.1 Mr. ROBINSON (Canada) introduced the report of the Working Group contained in document PCT/DC/103.

1544.2 He said that, after the report had been prepared, it had been decided that the last two lines of Rule 47.1(e) should read as follows: "... on the request of that Office, or the applicant, be sent to the applicant at the time of the notice referred to in paragraph (c)."

1545. *Subject to the above modification, the proposals concerning Rule 47.1(e), Rule 52.1(a) and Rule 52.1(b) were adopted as contained in document PCT/DC/103, without discussion.* (As far as Rule 47 is concerned, continued at 1875; as far as Rule 52 is concerned, continued at 1880.)

**Article 2: Definitions** (Continued from 1543.)

1546. Mr. BOGSCH (Secretary General of the Conference) presented document PCT/DC/102, which contained the report of the Working Group set up to consider various proposals concerning Article 2.

1547. *Subject to the understanding that the Drafting Committee would be entitled to propose consequential or terminological language modifications, Article 2 was adopted as appearing in document PCT/DC/102.* (Continued at 1737.)

**Article 43: Inventors' Certificates** (In the signed text, no corresponding Article) (Continued from 1492.)

1548. Mr. BOGSCH (Secretary General of the Conference) said that the Alternative Draft proposed the omission of the Article appearing as Article 43 in the Draft in view of the fact that inventors' certificates were now being taken care of in other provisions of the Treaty expected to emerge from the Diplomatic Conference.

1549. *Subject to the understanding that the Drafting Committee was entitled to propose such further consequential changes as might appear to be necessary, it was decided not to include in the Treaty Article 43 as appearing in the Draft.*

**Article 44: Regional Patents and Regional Patent Treaties** (In the signed text, Article 45: Regional Patent Treaties) (Continued from 1493.)

1550. The CHAIRMAN pointed out that the Alternative Draft proposed the deletion of the Article in question and that the Delegations of France and the Netherlands had made a proposal for its modification. Their proposal appeared in document PCT/DC/95.

1551.1 Mr. LEWIN (Sweden) said that his Delegation objected to the deletion of the Article in question although it had to be admitted that some of its objections were no longer valid in view of the amendments to Article 2 on definitions. In the Nordic countries there were proposals for a special kind of application called "the Nordic patent application." Such an application could be filed with any of the national Offices of the Nordic countries and, if the application was granted, it resulted in national patents in each of the countries which were designated in the application. It must be noted that the system had not yet entered into force.

1551.2 It was believed that Article 2, even as modified, did not cover that kind of system. For that reason, Article 44 should be maintained in one form or another.

1552.1 Mr. VAN BENTHEM (Netherlands) introduced the proposal made by his Delegation and the Delegation of France, which was contained in document PCT/DC/95. It represented a complete rewrite of Article 44. Paragraph (1) stipulated that any treaty providing for the grant of regional patents could provide that international applications designating a State party to both the regional patent treaty and the PCT could be filed for the grant of a regional patent. Paragraph (2) provided that if, for the purpose of obtaining a patent in any Contracting State, the applicant was entitled to file a regional application the national law of such State would provide that any designation of such State in the international application would have the effect of a request to obtain a regional patent in that State.

1552.2 The sense of paragraph (2) was that the national law of any State could close the so-called "PCT route" to the obtaining of national patents if, in the same State, regional patents were available. In other words, a national patent could be obtained only

by not using the PCT; and if the PCT was used, only a regional patent could be obtained.

1552.3 One of the reasons for the proposal was that, under a system like the contemplated European patent system, applications would be examined even though some of the countries belonging to the European system would have no examination as far as national patents were concerned. In countries like the Netherlands, where a large number of applications came from abroad, it was desirable that such applications be examined, and the task of such Offices would be considerably facilitated if such an examination were preceded by an international search and possibly also an international preliminary examination. It was to be expected that once the European system became operative most foreign applicants would use it. They should not be allowed to avoid examination by using the PCT to obtain national patents. The cumulative effect of the PCT and the European system might be that national Offices would have such small numbers of applications to deal with that they would discontinue their examination procedures. It would not be worthwhile keeping up an examining staff only for those exceptional cases in which an applicant might wish to have a national patent via the PCT.

1552.4 It had to be noted, however, that once the PCT route was closed as proposed to national patents for foreigners, it would also be closed to national patents for nationals. Furthermore, the route to national patents would not be closed entirely but only for those who used the PCT; so that applicants who still wished to obtain national patents could obtain them by not using the PCT. Finally, it was impossible to foresee which countries, if any, would use the faculty that the proposal in question would give them. That would certainly depend on the circumstances which would prevail in the future.

1553.1 Mr. SAVIGNON (France) said that his Delegation, which was co-signatory of the proposal with the Netherlands, naturally supported it. It was a fact that most applications by foreigners related to inventions of international importance. A particularly serious examination of such applications was desirable. Consequently, they should be directed as much as possible towards the contemplated European patent systems, in which such examination would be assured.

1553.2 The Government of France considered the PCT as part of several measures, contemplated at that time, to improve patent systems through international collaboration. The proposal was not intended to take away any of the advantages of the PCT; on the contrary, it was intended to combine the advantages of the PCT and the future European Convention and thereby make both more attractive to applicants.

1554. Mr. BOGSCH (Secretary General of the Conference) said that it would be interesting to know whether the proposal would still allow an applicant filing an international Application under the PCT to designate only some of the six countries of the European Economic Community in view of the fact that European Convention No. 2, to be concluded

among the said six countries, would not allow designation of any fewer than all six countries.

1555.1 Mr. VAN BENTHEM (Netherlands) replied in the affirmative to the question of the Secretary General. Naturally, under European Convention No. 1 the situation was different because under that Convention countries other than the six could be individually designated without having to designate all the countries additional to the said six.

1555.2 As far as the Netherlands was concerned, it would be a party to European Convention No. 2. The proposal, if used by the Netherlands, would mean that an applicant using the PCT could not restrict his application to some only of the six countries, even if he desired to file his application only in the Netherlands. The case was not unlike the situation in the United States of America, where applicants could not obtain patents for any fewer than all the 50 States composing the United States.

1555.3 In practice, it was unlikely that foreign applicants would not want to have protection in all the six countries.

1556. Mr. ONIGA (Brazil) wondered whether the proposal under discussion was compatible with the Paris Convention.

1557. Mr. PHAF (Netherlands) replied that Article 2(3) of the Paris Convention provided that the laws of each of the member States of the Paris Union relating to administrative procedure were not subject to any limitation by virtue of Article 2(1), which provided for national treatment for foreigners. Consequently, any country was free to regulate the procedure as long as it permitted the obtaining of protection in that country.

1558. Mr. OTANI (Japan) said that his Delegation was opposed to the proposal of the Delegations of France and the Netherlands because it would reduce the number of possibilities open to foreigners. The PCT should improve the situation of the applicant and not deprive him of possibilities which he had today. Furthermore, the question was also one of expense. The fees for the European patent would probably be much higher than those for a national patent. Consequently, an applicant who wished, for example, to obtain protection only in the Netherlands would have to pay much bigger fees because he could obtain such protection only if he paid the fees applicable under the European Convention.

1559. Mr. PHAF (Netherlands) said that he wished to make a further observation in connection with the remarks of the Delegation of Brazil. Complete equality between foreigners and nationals would be maintained under the proposal of the Delegations of France and the Netherlands because, if any country closed the PCT route to national patents, it would do so irrespective of the nationality of the applicant.

1560. Mr. FERGUSSON (United Kingdom) said that, whereas the implications of the proposal of the Delegations of France and the Netherlands could be fairly well predicted, since there was a rather clear picture of what the European Convention was going to be and which countries would adhere to it, the same

was not true in respect of other possible regional agreements which did not even exist in draft form at the present stage. It might, therefore, be dangerous to accept a proposal which would naturally go far beyond the European regional patent system. Prohibitive fees might be introduced in some regional treaties which would, in practice, make it impractical for the applicant to use the PCT and would force him to use the national route. Furthermore, the regional patent might extend into countries in which the applicant did not desire or simply had no right to protection and, therefore, he might wish to be selective in designating countries. Such selectivity would be excluded under the PCT if the proposal under discussion was adopted and was combined with that feature of the European Patent Convention which provided that the European patent must be requested for all six countries and none of them could be left out of the application. For all those reasons, the Delegation of the United Kingdom would vote against the proposal.

1561. Mr. CLARK (United States of America) said that, for the reasons stated by the previous speaker, his Delegation aligned itself with the position taken by the Delegation of the United Kingdom.

1562. Mr. PETERSSON (Australia) said that his Delegation, too, would prefer the PCT to remain as flexible for the applicant as possible. Consequently, he would oppose the proposal of the Delegations of France and the Netherlands.

1563.1 Mr. VAN BENTHEM (Netherlands) said that it was clear from the proposal that it could only apply if, under the regional treaty, any person who could file a PCT application could also file a regional application. That was so because paragraph (2) started with the words: "If, for the purpose of obtaining a patent in any Contracting State, the applicant is entitled to file a regional application..." Consequently, if the applicant were not entitled to file a regional application, the provision would not apply.

1563.2 It had to be emphasized that it had not yet been decided whether use would be made of the proposal once the PCT and the European Convention went into effect. However, the possibility must be provided for now because, otherwise, only a revision conference could provide for it, with all the delays that such a procedure necessarily entailed.

1564. Mr. BRAUN (Belgium) said that his Delegation fully supported the proposal of the Delegations of France and the Netherlands. It would be impractical to adopt a "wait and see" attitude since both the PCT and the European Convention might enter into force within a few years. Furthermore, he shared the view expressed by the Delegation of the Netherlands that the proposal was in perfect conformity with the Paris Convention.

1565. Mr. TUXEN (Denmark) said that his Delegation shared the views expressed by the Delegations of Japan and the United Kingdom. The proposal was out of line with the spirit of the PCT. According to that spirit, as long as national patents were available in a country, the PCT should be available for obtaining such patents. Furthermore, it

was also in the spirit of the PCT that no applicant who did not wish to have his application examined should be forced into such an examination if, under the national law of the designated State, no examination system existed. The proposal under discussion would force foreign applicants into examination by the European Patent Office, even for the purpose of countries where national applications were not subject to examination.

1566. Mr. KÄMPF (Switzerland) said that, as long as an applicant could choose between national and regional patents, he should be able to use the PCT for obtaining either according to his choice. The proposal would eliminate the possibility of choice where the PCT was used. Consequently, his Delegation did not look with favor on the proposal.

1567. Mr. FERGUSSON (United Kingdom) said that the objections of his Delegation related to paragraph (2) and not to paragraph (1).

1568. Mr. LAUWERS (Commission of the European Communities) said that, in the name of the Commission of the European Communities, he wished to record his support for the proposal of the Delegations of France and the Netherlands. It was in harmony with the basic principle of the PCT, namely, that the PCT did not affect the freedom of the Contracting States to legislate in patent matters as they wished. Such freedom was particularly important for States which were part of an economic community.

1569. Mr. SAVIGNON (France) said that it was a merit rather than a demerit of the proposal under discussion that it could be applied also to economic communities other than the European Community. It was a natural tendency of the present age for countries to form regional groups for economic purposes. It could not hurt any applicant if his patent extended to all countries members of such groups rather than only to some of them.

1570. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the proposal of the Delegations of France and the Netherlands. It should be noted that the effect of the proposal was merely to reserve a possibility; it did not provide that countries party to treaties providing for regional patents had to apply it.

1571. Mr. CLARK (United States of America) said that his Delegation proposed that the proposal contained in document PCT/DC/95 be amended in two respects: in paragraph (1), after the words "Regional Patent Treaty" the following words should be inserted: "to applicants entitled to file international applications under Article 9"; paragraph (2) should read as follows: "The national law of such designated 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."

1572. Mr. PRETNAR (Yugoslavia) said that he shared the views expressed by the Delegations of Japan and Switzerland. As long as in any country both national and regional patents were available, the PCT should be able to be used for obtaining either of them.



1573. Mr. VAN BENTHEM (Netherlands) said that his Delegation had no objection to the amendments proposed by the Delegation of the United States of America.

1574. Mr. CLARK (United States of America), at the invitation of the Chairman, repeated the amendments which his Delegation had proposed.

1575. The CHAIRMAN asked whether there was any objection to the amendments proposed by the Delegation of the United States of America.

1576. Mr. LEWIN (Sweden) said that the amendments presented by the Delegation of the United States of America did not change the situation. For the reasons stated by the Delegation of Denmark, his Delegation still had misgivings. The proposal of the Delegations of the Netherlands and France introduced an element of competition between the PCT plan and other examination systems such as the European regional patent system. His Delegation was against the original proposal and the proposal as amended by the Delegation of the United States of America.

1577. Mr. ASCENSÃO (Portugal) said that his Delegation objected to the proposal even in the form amended by the Delegation of the United States of America.

1578. The CHAIRMAN said that, according to the Secretary, the Delegations of Portugal and Sweden had objected to the amendment proposed by the Delegation of the United States of America, but he understood that they had objected to the proposal of the Delegations of France and the Netherlands, whether amended or not.

1579. Mr. LEWIN (Sweden) said that his Delegation was against the proposal as originally presented by the Delegations of France and the Netherlands and was also opposed to the same proposal as amended by the Delegation of the United States of America.

1580. The CHAIRMAN said that that was his understanding of the previous intervention by the Delegation of Sweden.

1581. Mr. OTANI (Japan) said that his Delegation shared the views expressed by the Delegation of Sweden.

1582. The CHAIRMAN said that, as there seemed to be no objection to the amendment, then the proposal as amended would be put to the vote provided the Delegations of France and the Netherlands had no objection. He said that those two Delegations had signalled that they had no objection.

1583. *The proposal of the Delegations of France and the Netherlands as amended by the Delegation of the United States of America was put to the vote. The result was 14 votes in favor to 14 against, with 8 abstentions.*

1584. The CHAIRMAN said that the Secretary had informed him that, under the Rules of Procedure, an equally divided vote meant rejection of the proposal. He had not himself checked that point in the Rules of

Procedure. In order to be sure that the count was correct, he would ask for a recount.

1585. *In the course of a new vote, the proposal of the Delegations of France and the Netherlands as amended by the Delegation of the United States of America was adopted by 15 votes in favor to 14 against, with 7 abstentions.*

1586. Mr. ARMITAGE (United Kingdom) said that, as Chairman of the Drafting Committee, he would like to clarify a point relating to paragraph (1). As amended, that paragraph implied that only such regional patent treaties were meant as gave the right to file regional applications to all those who were entitled to file international applications under the PCT. However, Article 2, which contained a definition of regional patents, did not contain such a qualification. He wished to know whether the definition in Article 2 overrode paragraph (1), which had just been adopted or whether the latter overrode the former.

1587. The CHAIRMAN replied that it was his understanding that there was no desire in the Article under discussion to restrict the definition of "national Office" as appearing in Article 2. The Article under discussion related to another matter, namely, in what circumstances the national law of a country might restrict the use of the PCT, and it provided that it could restrict it only in connection with regional treaties under which regional applications could be filed by any person who was entitled to file an international application under the PCT.

1588. Mr. LEWIN (Sweden), on the invitation of the Chairman, restated the question which he had brought up earlier in the discussion. In the Nordic countries the result of a national application could be that, once granted, national patents would come into existence in each of the Nordic countries. It was not clear whether, in the terminology of the PCT, that kind of application was a national Application or a regional application. The Drafting Committee should make sure that some provision in the Treaty would make it clear that those kinds of applications were also covered. (Continued at 1800.)

**Article 45: Seeking Protection Through Other Means Than the Grant of a Patent** (In the Alternative Draft, Article 45: "Seeking Certain Kinds of Protection" and Article .... "Seeking Two Kinds of Protection"; in the signed text, Article 43: "Seeking Certain Kinds of Protection" and Article 44 "Seeking Two Kinds of Protection") (Continued from 1498.)

1589. Mr. GYRDYMOV (Soviet Union) said that it was important that either the Article under discussion or Article 2 on definitions cover the case of regional inventors' certificates.

1590. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, Article 2 already took care of the problem but, if not, the Drafting Committee should propose an amendment because it was clearly desirable that the PCT should also refer to regional inventors' certificates. (Continued at 1798 and 1799.)

*End of the Twenty-Second Meeting***TWENTY-THIRD MEETING**

Monday, June 8, 1970, afternoon

**Article 1: Establishment of a Union** (Continued from 350.)

1591. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/18, said that, in conformity with the recent decision on the new definition of the word "application" in Article 2, the reference in Article 1 should not be to "patent applications" but rather to "applications," thereby placing inventors' certificates and patents on the same footing.

1592. Mr. DAHMOUCHE (Algeria) seconded the proposal of the Delegation of the Soviet Union.

1593. Mr. TASNÁDI (Hungary) supported the proposal of the Delegation of the Soviet Union.

1594. *The proposal of the Delegation of the Soviet Union concerning Article 1(1) was adopted as appearing in document PCT/DC/18, and as amended during the discussion.*

1595. Mr. ALMEIDA (Brazil) said that the Working Group on a new chapter to be inserted in the PCT would also come up with a proposal for modifying the paragraph in question.

1596. *It was understood that the discussion on Article 1 would be re-opened when the report of the Working Group on the new chapter was available.* (Continued at 1690.)

**In the signed text, Preamble** (no provision in the Drafts) (Continued from 175.)

1597. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/18, said that there were proposals for a preamble also by the Delegations of Romania, contained in document PCT/DC/104, Brazil and Sweden, referred to in the working group document PCT/DC/WG.II/6. He had the impression that all Delegations wished the PCT to have a preamble. That was customary in treaties of the kind to which the PCT belonged. The establishment of a working group would seem to be desirable in order to present a joint proposal after having taken account of the various proposals presented.

1598. Mr. SAVIGNON (France) seconded the proposal of the Delegation of the Soviet Union to set up a working group.

1599. Mr. BOGSCH (Secretary General of the Conference) said that perhaps, in order to save time, the task of drafting a preamble could be given directly to the Drafting Committee.

1600. Mr. ARTEMIEV (Soviet Union) said that his Delegation was ready to entrust the task to the Drafting Committee.

1601. Mr. VILLALBA (Argentina) suggested that the preamble contain references not only to filing,

search, and preliminary examination, but also to the other matters with which the PCT was going to deal.

1602. Mr. DAHMOUCHE (Algeria) said that the Working Group for the new chapter would, as far as he was aware, propose an addition to the preamble which would cover the new Chapter In question.

1603. *The task of drafting a preamble was referred to the Drafting Committee.* (Continued at 1690.)

**Article 11: Filing Date and Effects of the International Application** (Continued from 810.)**Article 27: National Requirements** (Continued from 814.)**Article 60: Reservations** (In the signed text, Article 64: Reservations) (Continued from 1453.)

1604.1 Mr. ROBINSON (Canada) presented the report of the Working Group set up to deal with Articles 11(3) and 27(5) of the Draft. The report was contained in document PCT/DC/106. The

document in question represented the result of a substantial amount of work over a number of meetings. The Working Group first addressed itself to isolating the aspects of the problem on which there was general agreement from those aspects which divided the delegations. After much deliberation and reflection, a unanimous solution was arrived at, subject to the reservations of some Delegations referred to in paragraph 5 of the report.

1604.2 It was proposed that Article 11(3) be completed in two respects. First, a reference should be made to the possibility of reservations which would be inscribed as a new paragraph (4) in Article 60 [Article 64 in the signed text]. Secondly, Article 11(3) should be completed by the following words: "which shall be considered to be the actual filing date in each designated State." Those words should make it clear that the priority effect of Article 11(3) was complete.

1604.3 Furthermore, it was proposed that the last sentence of Article 27(5) as appearing in the Draft should be deleted.

1604.4 Finally, it was proposed that a new paragraph(4) be written into Article 60 concerning the possibility of reservations in connection with the prior art effect. It should be noted that the Working Group considered not only the proposals cited in paragraph 2 of the report – namely, the proposal of the Netherlands contained in document PCT/DC/29 and the joint proposal of twelve Delegations contained in document PCT/DC/32 – but also the proposals of the Delegation of France, contained in document PCT/DC/17 and Poland, contained in document PCT/DC/23.

1604.5 It was important to note that the three amendments proposed – namely, those concerning Article 11(3), Article 27(5) and Article 60(4) [new] – constituted a single proposal whose elements were not to be dissociated from each other.

1605.1 Mr. SAVIGNON (France) said that paragraph 5 of the report stated that certain Delegations in the Working Group had expressed

reservations as to the point in time at which the declaration under the proposed Article 60(4)(a) could be made and as to the freedom to modify the statement under Article 60(4)(c). The Delegation of France was among the said Delegations.

1605.2 Above all, it should be noted that the Delegation of France was glad that any possible exception to Article 11(3) was now admitted only by way of a reservation, and thus regulated in the Article concerning reservations.

1605.3 As far as the time at which the declaration under Article 60(4)(a) should be made was concerned, the Delegation of France suggested that such declaration should be possible only up to the time when the instrument of ratification or accession was deposited. Such a measure would create a situation in which all countries could know, at the time another country deposited its instrument of ratification or accession, whether that country was going to make use of the faculty and, if so, to what extent. Article 60(4)(c), last sentence, provided that the statement referred to in that subparagraph could be modified at any time. The Delegation of France proposed that such modification should be able to consist of either a withdrawal of the reservation or of a shortening of the period which separated the prior art effect from the international filing. In other words, it should not allow the lengthening of such period. That was important because, otherwise, the situation, which was not very satisfactory in any case, could by a later modification be still further aggravated.

1606. Mr. STAMM (Switzerland) said that, for the reasons stated by the previous speaker, his Delegation could not accept the proposal of the Working Group.

1607. Mr. VAN BENTHEM (Netherlands) said that, although his Delegation had great sympathy with the point of view expressed by the Delegations of France and Switzerland, it was ready to accept the proposal contained in the report of the Working Group since the flexibility provided for in that proposal seemed to be indispensable in the eyes of some of the delegations.

1608.1 Mr. HAERTEL (Germany (Federal Republic)) said that, as was well known, the aims of the proposal in question was to deal with the now famous U.S. Court decision in the Hilmer case. His Delegation wanted to try to find a compromise solution and to limit the effects of that case to the maximum extent possible but, in view of the fact that entire freedom in the matter seemed to be of paramount importance to at least one country, his Delegation – although with some hesitation and with much sympathy for the point of view expressed by the Delegation of France – was ready to accept the proposal of the Working Group.

1608.2 The proposal of the Delegation of France would, in fact, freeze the situation of each country as of the date of its becoming party to the PCT, at least in the sense that if it had no principle similar to that of the Hilmer case at that time it could not later introduce such a principle into its legislation, or if it had such a principle in its legislation at that time it could not later strengthen the period in question. The proposal of the

Delegation of France would therefore favor those countries which at the time of the discussion had a principle like the Hilmer principle as compared with those countries which, at the time in question or at the time when they ratified or acceded to the PCT, had or would have no such principle in their laws.

1608.3 His Delegation was of the opinion that each Contracting State should have the same right. Any State which was going to make use of the faculty provided for in Article 60(4) must be aware of the fact that it was giving an example which other Contracting States might follow.

1609. Mr. ARMITAGE (United Kingdom) said that his Delegation wished to associate itself with the very statesman – like declarations of the Delegations of the Netherlands and Germany (Federal Republic). Although the Delegation of the United Kingdom had sympathy with the ideas expressed by the Delegations of France and Switzerland, it was convinced that, under the circumstances, the proposal represented the best compromise. In expressing that view, the Delegation of the United Kingdom wished to emphasize that its attitude should not be interpreted as recognizing that, from the point of view of the efficient working of the PCT, it was satisfactory that the laws of some countries should remain as they were. If they had to remain as they were, the Delegation of the United Kingdom accepted that fact with resignation but, at the same time, it hoped – because it would be equitable in respect of the other countries – that the laws of those countries would move in a direction which would make the PCT more attractive to applicants.

1610. Mr. VILLALBA (Argentina) said that his Delegation firmly believed in the freedom of each Contracting State to regulate its substantive patent law as it desired. The proposal of the Working Group seemed to represent a compromise which his Delegation was ready to accept.

1611.1 Mr. BRAUN (Belgium) said that his Delegation shared the views expressed by the Delegation of France. It was most important for both the applicant and third parties that no uncertainties should exist as to the future attitude of the countries once they had become party to the PCT.

1611.2 As far as the views expressed by the Delegation of Germany (Federal Republic) were concerned, his Delegation took the view that once a country accepted the PCT, and in particular Article 11(3), it should not have the right to render, at a later date, the situation of applicants more difficult.

1612. Mr. LORENZ (Austria) said that, for the reasons expressed by the Delegation of Germany (Federal Republic), his Delegation was ready to accept the compromise proposal of the Working Group.

1613. Mr. PETERSSON (Australia) said that his Delegation was sympathetic to the difficulty in which the Delegation of the United States of America found itself on the point under discussion but it wished, at the same time, to express its regret that such a provision had become necessary. In the hope that the use to which the faculty provided for in the compromise proposal was going to be put would

remain minimal, his Delegation – without supporting the proposal – would not oppose it.

1614. Mr. CLARK (United States of America) said that his Delegation appreciated the understanding and cooperation which had become manifest in the Working Group and which was illustrated by the statesman-like observations of the various Delegations and, in particular, by those of the Delegation of Germany (Federal Republic). His Delegation respectfully solicited the support of the other Delegations for the compromise proposal contained in document PCT/DC/106.

1615. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation entirely agreed with the observations of the Delegation of the Netherlands shared in part also by the Delegations of the United Kingdom and Germany (Federal Republic). Although his Delegation was of the opinion that the proposal of the Delegation of France, supported by the Delegation of Belgium, would clarify and improve upon the proposal of the Working Group, in view of the fact that the latter proposal was the result of a compromise, it was ready to accept it in the form in which it had been proposed by the Working Group.

1616. Mr. SAVIGNON (France) said that it was rather dangerous to admit the possibility of retaliation. It was that very idea of retaliation which, at the beginning of the Working Group's task, had been eliminated. It was to be regretted that it had later been accepted in the proposals contained in document PCT/DC/106. It was mainly for that possibility of retaliation that the Delegation of France could not accept the proposal of the Working Group.

1617. Mr. LEWIN (Sweden) said that his Delegation could agree with the compromise solution. He thought it unlikely that the possibility of retaliation would be made use of. The matter was not so much a question of reciprocity as a question of what was a better system. A good system required the protection of third parties from a patenting picture according to which inventions that were very similar could be protected by a continuous chain of patents, thereby reducing the right of third parties to have the freedom of construction of improvements which were not inventions in themselves.

1618. Mr. ROBINSON (Canada) said that his Delegation, while fully sympathizing with the sense of the reservations proposed by the Delegation of France and supported by the Delegations of Switzerland and Belgium, was ready, like the Delegations of the Netherlands and Italy, to support the proposed solution since it seemed to be the best practical solution of a practical problem that could be reached.

1619. Mr. OTANI (Japan) said that his Delegation was in favor of the compromise solution proposed by the Working Group for the reasons stated by the Delegation of Germany (Federal Republic) and other Delegations.

1620. *The proposals of the Working Group concerning Articles 11(3), 27(5) and 60(4) [new] were adopted as contained in document PCT/DC/106, by 18 votes in favor to 4 against, with 11 abstentions.*

(Article 11 continued at 1749; Article 27 at 1774; Article 60 at 2690.)

**Rule 1: Abbreviated Expressions** (Continued from 815.)

1621. *It was agreed to refer the reserved parts of this Rule to the Drafting Committee for harmonization with the new definitions contained in Article 2 as amended.* (Continued at 1815.)

**Rule 2: Interpretation of Certain Words** (Continued from 816.)

1622. *It was agreed to refer the reserved parts of this Rule to the Drafting Committee for harmonization with the new definitions contained in Article 2 as amended.* (Continued at 1816.)

**Rule 4: The Request (Contents)** (Continued from 876.)

1623. *It was agreed to refer the reserved parts of this Rule to the Drafting Committee for harmonization with the new definitions contained in Article 2 as amended.* (Continued at 1818.)

**Rule 34: Minimum Documentation** (Continued from 1142.)

1624. *Rule 34.1(a) was adopted with the understanding that the Drafting Committee would harmonize it with the new definitions contained in Article 2 as amended.*

1625. Mr. ARTEMIEV (Soviet Union), referring to the proposal of his Delegation contained in document PCT/DC/99 concerning Rule 34.1(e), said that the aim of the proposal of his Delegation was to avoid any uncertainty which might arise in connection with the discontinuation of the publications of English abstracts of certain Russian language documents by some private publishing firms. The maintaining of the Russian documents in the minimum documentation should not be exposed to such uncertainties.

1626. Mr. OTANI (Japan) supported the proposal made by the Delegation of the Soviet Union.

1627. Mr. TASNÁDI (Hungary) said that, for the reasons stated by the Delegation of the Soviet Union, his Delegation also supported the proposal of the Delegation of the Soviet Union.

1628. Mr. IONITA (Romania) said that his Delegation too supported the proposal of the Delegation of the Soviet Union.

1629. Mr. VAN BENTHEM (Netherlands) said that it was not entirely clear to him what was meant by the word "classes" in the proposal of the Delegation of the Soviet Union.

1630. Mr. BOGSCH (Secretary General of the Conference) said that he thought that the word "classes" meant that, if in a certain branch of technology abstracts in English existed, then for that branch of technology such abstracts could not be discontinued in the future.

1631. Mr. ARTEMIEV (Soviet Union) said that the Secretary General's interpretation corresponded to the views of his Delegation.

1632. Mr. OTANI (Japan) said that the text of the proposal of the Delegation of the Soviet Union should be clarified in the sense that it related to the responsibility of all the International Searching Authorities.

1633. Mr. HAERTEL (Germany (Federal Republic)) said that he would appreciate it if the Delegation of the Soviet Union could clarify the practical scope of its proposal, preferably by giving an example.

1634. Mr. ARTEMIEV (Soviet Union) said that, as was known, Soviet patent documents were at the present time abstracted in English by a London-based firm. However, since that firm was under no obligation to continue the service, it could happen that in the future the service might be discontinued, either entirely or in respect of some of the classes of technology. The aim of the proposal of his Delegation was to provide that in such a situation the International Searching Authorities would take joint measures to continue the publication of the English abstracts of Russian and Japanese patent documents.

1635. Mr. CLARK (United States of America) asked whether the proposal of the Delegation of the Soviet Union would require the International Searching Authorities to provide, on their own, for translations of all Russian and Japanese patents in case the present services were discontinued.

1636. Mr. BOGSCH (Secretary General of the Conference) replied that, as far as he understood the proposal of the Delegation of the Soviet Union, it dealt only with abstracts, not with patents.

1637. Mr. CLARK (United States of America) said that he would then ask the question in relation to abstracts only.

1638. Mr. BOGSCH (Secretary General of the Conference) said that he thought that the proposal of the Delegation of the Soviet Union meant that there was a collective obligation on the International Searching Authorities to find some solution.

1639. Mr. CLARK (United States of America) asked who would pay for such services.

1640. Mr. BOGSCH (Secretary General of the Conference) replied that the question was left open by the proposal under discussion. "Appropriate measures" would try to take care of the problem.

1641. Mr. HAERTEL (Germany (Federal Republic)) said that he did not think that it was justified to oblige the International Searching Authorities to take the measures asked for by the Delegation of the Soviet Union, particularly in view of the fact that the International Patent Institute would not be a contracting party. Such measures should rather be taken by the Contracting States or by their Assembly.

1642. Mr. SCHATZ (International Patent Institute) said that his Institute fully shared the views expressed by the Delegation of Germany (Federal Republic) and

asked whether the problem could not be taken care of by the Committee for Technical Cooperation.

1643. Mr. ARTEMIEV (Soviet Union), on a question from the Chairman, said that, while it seemed to be more practical and more natural to ask that solutions be found by the International Searching Authorities, his Delegation was ready to consider the proposal that the taking of such measures should be a task for the Assembly.

1644. Mr. FERGUSSON (United Kingdom) said that the matter was one of minimum documentation, which was the responsibility of the International Searching Authorities. If, because of the situation envisaged by the Delegation of the Soviet Union, the International Searching Authorities would have to incur expenses, such expenses would ultimately be borne by the applicants when they paid for the international search reports. Paying for such expenses should not be made the responsibility of the Contracting States or the Assembly.

1645. Mr. VAN BENTHEM (Netherlands) said that he understood the proposal of the Delegation of the Soviet Union in the sense that, if the abstracting service were discontinued, each International Searching Authority would do its best to solve the problem but there was no absolute obligation on anybody to restore the service.

1646. Mr. CLARK (United States of America) proposed that the Main Committee consider and vote separately on the first and second paragraphs of the proposal of the Delegation of the Soviet Union contained in document PCT/DC/99.

1647. Mr. ARTEMIEV (Soviet Union) said that it was not realistic to imagine that a complete search could be established without searching the Russian and Japanese patent documents. If there was no other solution, perhaps each International Searching Authority which could not, itself, search in the Japanese or Russian literature should send its search reports to the Soviet and Japanese Offices for a supplementary search in the Japanese and Russian literature.

1648. *It was understood that the two paragraphs of the proposal of the Soviet Delegation contained in document PCT/DC/99 would be voted upon separately and that the vote would just be taken on paragraph 1 and then on paragraph 2.*

1649. *The meeting recessed for thirty minutes.*

1650. Mr. ARTEMIEV (Soviet Union) said that, during the recess, the Delegation of the Soviet Union had studied further the proposal of the Delegation of Germany (Federal Republic) to the effect that in case of discontinuation of abstracting services it would be the Assembly, rather than the International Searching Authorities, which would have the task of taking appropriate measures. His Delegation was prepared to accept that proposal provided that the Delegation of the United States withdrew its proposal to vote separately on the two paragraphs of the proposal of the Delegation of the Soviet Union.

1651. Mr. CLARK (United States of America) said that, in view of the statement made by the Delegation

of the Soviet Union, his Delegation withdrew its proposal for separate votes on the two paragraphs.

1652. Mr. HADDRICK (Australia) said that the Main Committee had already decided to have two separate votes.

1653. The CHAIRMAN asked the Delegation of Australia whether it wished to renew the proposal of the Delegation of the United States of America in view of the fact that the Delegation of the United States of America had withdrawn it.

1654. Mr. HADDRICK (Australia) said that there seemed to be no need to renew any proposal because the decision had been made by the Main Committee.

1655. The CHAIRMAN replied that he had reversed his former declaration but that he would certainly consider a new motion by the Delegation of Australia if it wished to present one.

1656. Mr. HADDRICK (Australia) requested that there should be separate votes for the two paragraphs in question.

1657. Mr. ARTEMIEV (Soviet Union) said that his Delegation objected to separate votes.

1658. Mr. HADDRICK (Australia) said that the first paragraph of the proposal of the Delegation of the Soviet Union was probably acceptable to most Delegations, whereas the second paragraph was more controversial. Leaving them together would confuse the discussion.

1659. Mr. HAERTEL (Germany (Federal Republic)) said that during the recess the hope of a compromise had seemed to emerge from private conversations with the interested delegations. There was a definite possibility that, if separate voting was to be insisted upon, the Delegation of the Soviet Union might withdraw its acceptance of the substitution of the Assembly of the Union for the International Searching Authorities in the second paragraph of its proposal.

1660. Mr. VAN BENTHEM (Netherlands) said that he shared the views of the Delegation of Germany (Federal Republic).

1661. *The motion to have two separate votes was rejected by 16 votes against to 2 in favor, with 10 abstentions.*

1662. Mr. HADDRICK (Australia) said that it was preferable to leave the matter under the responsibility of the International Searching Authorities. The Assembly would not be in a position to foresee, when it approved the agreement between the International Bureau and the International Searching Authorities, which abstracting services might be discontinued.

1663. Mr. VILLALBA (Argentina) said that the contracting parties were the International Searching Authorities and the International Bureau. Consequently, the Assembly should assume no responsibilities.

1664. Mr. FERGUSSON (United Kingdom) said that if the decision should be that the Assembly would have to take the appropriate measures, the Delegation of the United Kingdom reserved its position entirely on whether or not it would accept any additional

financial liability involved by any decision of the Assembly on the said point.

1665. Mr. VILLALBA (Argentina) said that he did not think that any reservation of the kind which the Delegation of the United Kingdom had just made would solve the problem. No State had the right to declare that certain decisions of the Assembly would not bind it if the exception was not provided for in the Treaty itself.

1666. Mr. SCHATZ (International Patent Institute) said that the principle underlying the proposal of the Delegation of the Soviet Union was acceptable to his Institute but that some drafting changes would have to be made in it. In particular, the word "classes" should be clarified and the word "restoration" should be complemented by the word "or replacement."

1667. Mr. OTANI (Japan) said that his Delegation supported the replacement of the words "International Searching Authorities" by the words "the Assembly."

1668. Mr. VAN BENTHEM (Netherlands) said that his Delegation was ready to accept the proposal of the Delegation of the Soviet Union as modified by that Delegation and the Delegation of Germany (Federal Republic). As far as any expense was concerned, he was convinced that the Assembly would have the wisdom to change, if necessary, the agreements with the International Searching Authorities and that the fees would be so amended as to take care of the increased cost.

1669. Mr. HADDRICK (Australia) said that he did not see how the Assembly could change an agreement. Agreements would presumably be concluded for a certain period of time and before that period expired it was not possible to modify them unilaterally.

1670. *The proposal of the Delegation of the Soviet Union contained in document PCT/DC/99 was adopted by 16 votes in favor to 2 against, with 9 abstentions, subject to the replacement, in its second paragraph, of the words "International Searching Authorities" by the word "Assembly."*

1671. *Subject to the decision recorded in the preceding paragraph, Rule 34.1 (e) was adopted as appearing in the Alternative Draft. (Continued at 1858.)*

*End of the Twenty-Third Meeting*

## TWENTY-FOURTH MEETING

Wednesday, June 10, 1970, morning

**Article 31: Demand for International Preliminary Examination** (Continued from 1400.)

**Article 32: The International Preliminary Examining Authority** (Continued from 1421.)

**Rule 59: The Competent International Preliminary Examining Authority** (Continued from 1467.)

1672.1 Mr. FERGUSSON (United Kingdom), as Chairman of the Working Group entrusted with the Study of the proposal made by the Delegation of Israel in document PCT/DC/41 concerning Article 31, presented the report of the Working Group appearing in document PCT/DC/107. The Working Group had several meetings in which it considered a number of suggestions made by various Delegations and the observer of the African and Malagasy Industrial Property Office. The outcome of the deliberations appeared to be an important and useful contribution to the PCT. Adoption of the proposal would be of interest both to applicants and to national Offices. It should be noted that the non-governmental organizations, which were also represented on the Working Group, had not raised any objections to the conclusions of the Working Group.

1672.2 The proposal would fill a gap in the Draft, namely, the failure to allow nationals or residents of a Contracting State which had not accepted Chapter II to procure an international preliminary examination report and produce it in the national Offices, including those of States which had accepted Chapter II. There seemed to be no theoretical grounds for that gap; it probably had only a practical reason, namely, the difficulty in finding International Preliminary Examining Authorities for international applications filed in Contracting States not bound by Chapter II.

1672.3 The Working Group was of the opinion that three provisions of the Draft needed modification.

1672.4 First, Article 21 would have to be modified in order to provide that the Assembly could decide to allow applicants who were neither residents nor nationals of Contracting States bound by Chapter II, but who were residents or nationals of a Contracting State, to make a demand for international preliminary examination. Furthermore, it was proposed that the demand presented by such residents and such nationals could elect only those Contracting States bound by Chapter II which had declared that they were prepared to be elected.

1672.5 Secondly, it would be necessary to amend Article 32(2) by entrusting to the Assembly – rather than the receiving Office – the task of selecting and agreeing with International Preliminary Examining Authorities to act for the applicants in question.

1672.6 Finally, Rule 59(2) would have to be modified in order to guide the Assembly in carrying out the said task: the Assembly should give preference to the wishes of the receiving Office. Thus, for example, if the US Patent Office was ready to act as an International Preliminary Examining Authority for its own nationals, it would be able to ask the Assembly, in the case of demands presented by US nationals, to appoint it (the US Patent Office) to act as International Preliminary Examining Authority notwithstanding the fact that the United States might not have accepted Chapter II and would therefore be under no obligation to accept international preliminary examination reports obtained by any person.

1673. Mr. GABAY (Israel) said that he saw great merit in the proposals, which filled a gap. They would make it possible for smaller Patent Offices to benefit

from international preliminary examination reports and it was precisely those smaller Patent Offices which were most in need of assistance of that kind.

1674. Mr. SAVIGNON (France) wished to call the attention of the Drafting Committee to the possible need for harmonization between the proposed Article 31(2) and Article 9(2) in the case where the applicant was the resident and the national of a non-Contracting State.

1675. Mr. HAERTEL (Germany (Federal Republic)) said that, having heard that the interested private circles were also in agreement, his Delegation would give full support to the proposals of the Working Group. The proposals would substantially enhance the value of Chapter II, particularly for developing countries.

1676. Mr. VAN BENTHEM (Netherlands) called attention to the fact that under Article 9 it was possible for the Assembly to authorize persons who were neither nationals nor residents of any Contracting State to file international applications.

1677. Mr. BOGSCH (Secretary General of the Conference) said that the observations of the Delegations of France and the Netherlands could be taken care of by referring, in the suggested Article 31(2)(b), to persons who were entitled to file international applications.

1678. Mr. VAN BENTHEM (Netherlands) said that he would prefer that Article 9 be amended along the lines of the provision suggested in Article 31(4) so that, if a person had the right to file an international application only on the basis of the authorization of the Assembly, then such a person should have the right to designate only such States as had declared that they were prepared to be designated.

1679. Mr. GABAY (Israel) said that his Delegation had no strong feelings about maintaining or eliminating paragraph (4) of the proposed Article 31. However, it did see some merit in giving discretion to the Contracting States to accept international preliminary examination reports coming from nationals or residents of States which were not bound by Chapter II. That feature would secure a certain degree of reciprocity.

1680. Mr. MCKIE (United States of America) said that his Delegation was in agreement with the declarations made by the Delegations of Germany (Federal Republic) and the United Kingdom. Furthermore, he was of the opinion that the draft of the Working Group represented a balanced solution which accommodated an interesting new idea to the general objectives of the PCT.

1681. The CHAIRMAN said that Mr. van Benthem (Netherlands) had signalled to him that he would not insist on his suggestion to modify Article 9.

1682. Mr. MAST (Germany (Federal Republic)) said that he was not sure whether the suggestion of the Secretary General – namely, that Article 31(2) should refer to all persons entitled to file an international application – had been accepted or not. In any case, his Delegation proposed that it be accepted.

1683. Mr. VAN BENTHEM (Netherlands) supported the proposal of the Delegation of Germany (Federal Republic).

1684. Mr. SAVIGNON (France) also supported the proposal of the Delegation of Germany (Federal Republic).

1685. Mr. FERGUSSON (United Kingdom) said that his Delegation, too, was agreeable to the proposal of the Delegation of Germany (Federal Republic). It also wanted to know whether there was any change to be made in Article 9.

1686. Mr. BOGSCH (Secretary General of the Conference) said that, according to his understanding, there was no longer any proposal to make such a change.

1687. Mr. GABAY (Israel) said that his Delegation also supported the suggestion made by the Secretary General which was being transformed into a proposal by the Delegation of Germany (Federal Republic).

1688. *The amendments proposed by the Working Group concerning Articles 31 and 32 and Rule 59 were adopted as appearing in document PCT/DC/107, subject to the understanding that Article 31(2)(b) would refer to any person entitled to file international applications.*

1689. Mr. EKANI (African and Malagasy Industrial Property Office) wished to record his appreciation of the work accomplished by the Working Group and the excellent results which it had yielded. He said that the amendments made in Articles 31 and 32 were of great importance for developing countries. Those amendments would considerably increase the usefulness of the PCT as far as they were concerned and would make it much easier for them to accede to it. (Article 31 continued at 1783; Article 32 at 1784; Rule 59 at 1887.)

*End of the Twenty-Fourth Meeting*

## TWENTY-FIFTH MEETING

Wednesday, June 10, 1970, afternoon

**In the signed text, Preamble** (no provision in the Drafts) (Continued from 1603.)

**Article 1: Establishment of a Union** (Continued from 1596.)

**In the signed text, Article 50: Patent Information Services** (no provision in the Drafts) (Continued from 350.)

**In the signed text, Article 51: Technical Assistance** (no provision in the Drafts) (Continued from 350.)

**In the signed text, Article 52: Relations with other Provisions of the Treaty** (no provision in the Drafts) (Continued from 350.)

1690. The CHAIRMAN announced that, in agreement with the Chairman of Main Committee II,

the present meeting would be a joint meeting of Main Committees I and II.

1691.1 Mr. ONIGA (Brazil) as Chairman of the Working Group entrusted with the preparation of a new chapter [in the signed text, Chapter IV: Technical Services], introduced the report of the Working Group contained in documents PCT/DC/109 and PCT/DC/109/Corr.

1691.2 The Working Group held seven meetings and a subgroup of the Working Group at least as many. Its discussions were based on a proposal by the Delegation of Brazil contained in document PCT/DC/45 and a proposal by the Delegation of Israel contained in document PCT/DC/20.

1691.3 The Working Group proposed the adoption of a new chapter consisting of three articles, one on patent information services (in document PCT/DC/109, Article 56*bis*; in the signed text, Article 50), one on technical assistance (in document PCT/DC/109, Article 56*ter*; in the signed text, Article 51), and one on relations with other provisions of the Treaty (in document PCT/DC/109, Article 56*quater*; in the signed text, Article 52). Furthermore, it proposed additions in the Preamble and in Article 1 in order to include in them references to the contents of the proposed new chapter.

1692. Mr. SHER (Israel) said that his Delegation viewed, with great satisfaction, the outcome of the efforts of the Working Group. The original approach suggested by his Delegation was somewhat more restricted but, on the proposal of the Delegation of Brazil, the scope of the chapter was now broader, which was all the better. The chapter represented a very positive contribution to the usefulness of the Treaty to developing countries.

1693. Mr. ONIGA (Brazil) suggested that the words "of income" appearing in Draft Article 56*bis*(5)(a) be omitted, and that in Article 56*ter*(3)(a) the words "set up" should be replaced by the words "for developing."

1694. The CHAIRMAN noted that the members of the Working Group had no objection to those small changes on the report and, consequently, the discussions continued on the report as amended orally by the Delegation of Brazil.

1695. Mr. VAN BENTHEM (Netherlands) said that his Delegation well understood the needs for which the new chapter was intended to provide and that his Government was quite willing to contribute towards satisfying those needs. However, his Delegation was wondering whether the matter really belonged in the PCT. Was the WIPO Convention not taking care of the matter? Would the PCT not duplicate the legal-technical assistance provisions of that Convention? Before expressing a final view on the proposed Chapter IV, he would appreciate comments on his questions.

1696.1 Mr. ALMEIDA (Brazil) said that, in the view of his Delegation, the PCT Draft was unbalanced in the sense that most of its stipulations had been drawn up to make the obtaining of patents cheaper and easier and thus to serve in the first place the developed countries which had most inventions. His Delegation



was not opposed to that basic aim of the PCT. However, without impairing the position of the owners of patents, his Government wished to make the Treaty more balanced and insert in it provisions of particular usefulness to developing countries.

1696.2 The patent system contained much valuable technical information. It was therefore desirable to increase the possibilities of information for those who bought, rather than produced, new technology. Such buyers should be informed of alternative processes for finding adequate – and, if possible, less expensive – solutions to their technological problems. More information would lead to more competition, and more competition would lead to cheaper prices for those who wished to obtain technology.

1696.3 Furthermore, technical assistance was needed. Not in the sense in which the term was used in the United Nations where it related to substantive transfer of technology, but technical assistance in order to increase the efficiency of the Patent Offices and assist them in digesting the information which they received from foreign patent documents.

1696.4 Several delegations had said in the Working Group that, nonetheless, changes in the PCT Draft were not needed because the matter was already taken care of by the WIPO Convention. Such, however, was not the view of other delegations, in particular, the Delegation of Brazil, which was of the opinion that the PCT would become attractive to under-developed countries mainly if it preserved a better balance between the needs of the developed and those of the developing countries. The Delegation of Brazil expressed the wish that the sources of information which the PCT would produce should be tapped in favor of developing countries.

1696.5 For all those reasons, his Delegation urged the adoption of the proposals contained in the report of the Working Group.

1697. Mr. VAN BENTHEM (Netherlands) said that he had not heard a precise answer to his question, namely, whether the PCT would not duplicate the tasks which had already been entrusted to WIPO in the field of technical assistance.

1698.1 Mr. GABAY (Israel) said that WIPO provided a general framework for different kinds of technical assistance activities. However, it was not duplication to provide for special tasks under that general framework by virtue of a special Treaty. That had been the approach as far as other aspects of industrial property were concerned, through special Unions other than the PCT Union.

1698.2 The PCT would produce a considerable accumulation of information and such information should be used for the purposes of helping developing countries. The proposal did not contain anything that was superfluous; it made those general tasks more precise and, thereby, the PCT more attractive to developing countries.

1699. Mr. LAURELLI (Argentina) said that in the Stockholm Conference of 1967 there had been much discussion about the best means of granting technical assistance to developing countries. Certain provisions

had been written into the WIPO Convention at that time. He wished to know whether, in the view of the International Bureau, the present WIPO structure would be sufficient to carry out the tasks outlined in the proposed new chapter.

1700.1 Mr. BOGSCH (Secretary General of the Conference) said that the WIPO Convention had provided for all kinds of technical assistance and therefore the position could be taken that whatever the new chapter would contain could already be carried out under the WIPO Convention. Nevertheless, the general mandate contained in the WIPO Convention did not exclude the definition of a more specific mandate in a more specialized Treaty as long as there was no contradiction between the said Convention and the PCT. He certainly did not see any contradiction between the two instruments.

1700.2 The mere fact that the Paris Convention was a Convention on industrial property did not exclude the creation of special agreements on certain aspects of such property. That had been done in the past, for example, in the field of trademarks and industrial designs. Now it would be done in the field of patents.

1700.3 Although it was true that the proposal to write provisions on technical assistance into the PCT had come somewhat late, that circumstance was not, in his view, a sufficient reason for rejecting such proposals. As far as the International Bureau was concerned, it saw no practical difficulties in the proposal of the Working Group and would consider the insertion of a new chapter, such as that suggested by the Working Group, a distinct improvement of the PCT. It would make the PCT more effective and more useful in a number of countries, particularly developing countries.

1701. Mr. LAURELLI (Argentina) said that the Washington Conference seemed to be the right place to present the proposals in question. The preparatory meetings had been highly technical ones but a Diplomatic Conference, by its very nature, was a meeting in which the more general interests of the participating countries came to the fore. Such general interests required recognition of the needs of developing countries and their satisfaction, even in a treaty which, otherwise, was highly technical.

1702.1 Mr. DAHMOUCHE (Algeria) said that the proposals of the Working Group were of great value for the international community.

1702.2 One had to recognize that, so far, WIPO had mainly been concerned with coordination and much less with cooperation. The new chapter would establish bases for a meaningful cooperation among the participating countries. Developing countries needed complete means to be able to participate in any cooperative venture. The Chapter in question would create means and possibilities for developing countries to become true partners in international cooperation in the patent field.

1702.3 The matter involved was rather specialized in its nature. WIPO and, even more particularly, the United Nations and its Specialized Agencies had vast and more general tasks in the field of technical cooperation. In the context under discussion, patent,

slow, and extremely specialized tasks had to be accomplished. For such tasks the specialized framework of the PCT should be far more efficient.

1702.4 For all those reasons, the Delegation of Algeria full-heartedly supported the report of the Working Group.

1703. Mr. VAN BENTHEM (Netherlands) said that, as indicated earlier, his Delegation was sympathetic towards the goals set out by the proposed new chapter. It merely was wondering whether the same problems could not be solved equally well in the framework of WIPO's technical assistance program. If the prevailing view was that the PCT would furnish a more efficient framework, his Delegation had no objection to the proposal of the Working Group. It would, however, be essential that the closest coordination be established between the organs of WIPO and those of the PCT so that all duplication of effort would be avoided.

1704.1 Mr. HAERTEL (Germany (Federal Republic)) said that the means of action of WIPO were probably less efficient than those contemplated by the new chapter since WIPO mainly addressed recommendations to its Member States. The new chapter would allow a more direct and more concrete action.

1704.2 Furthermore, it had to be remembered that WIPO was a large organization with a large membership. Consequently, it was unavoidable that it had to give attention to many problems and that its financial resources were called on for many tasks. On the other hand, the PCT Union would be a Union with a smaller number of members and only such countries as were directly concerned with the development of their patent systems.

1704.3 Most important, however, the proposed new chapter would provide for real assistance to developing countries in creating those conditions which were necessary for making the best use of international search reports, international preliminary examination reports and other services which the PCT provided for national Offices. Such conditions included the creation of well-organized technical literature and provision for the possibility of training examiners since, as was known, without such literature and without such examiners efficient use could not be made of the facilities provided for by the PCT.

1704.4 His Delegation was not interested in a paper treaty but in a treaty which was really useful in actual practice to the greatest possible number of countries, including developing countries. His Delegation was convinced that the proposals of the Working Group served those purposes and therefore it warmly supported the said proposals.

1705.1 Mr. CHONA (Zambia) said that the PCT would be of real interest to developing countries only if they had such patent systems as could make use of the services provided for under the PCT. The proposed new chapter would help developing countries to organize their patent systems in a way which would allow them to make full use of the PCT.

1705.2 There was no danger of duplication between the proposed new chapter and the WIPO Convention. The two complemented each other and would mutually reinforce each other.

1706.1 Mr. ARTEMIEV (Soviet Union) said that his country had always been in favor of rendering technical assistance to developing countries. Ratification by the Soviet Union of the WIPO Convention was eloquent proof of the fact that the Soviet Union was interested in rendering service to developing countries in the field of industrial property.

1706.2 The proposals of the Working Group had the support of the Delegation of the Soviet Union. The proposed new chapter would encourage a greater number of countries to accept the PCT.

1706.3 Consequently, the Soviet Union favored technical assistance also in the specific framework of the PCT.

1707.1 Mr. SAVIGNON (France) said that his Delegation approved the inclusion of a new Chapter in the PCT as proposed by the Working Group. Under the PCT more concrete and more specialized assistance could be expected than that available under the general WIPO Convention. Of course, the new Chapter itself would not be sufficient to effect the transfer of technology but it would be a contribution to that end.

1707.2 Consequently, the Delegation of France fully supported the proposals of the Working Group.

1708. Mrs. BARONA (Uruguay) also fully supported the proposals of the Working Group.

1709. Mr. WINTER (United States of America) said that, when the discussions started, the Delegation of the United States had also wondered whether the provisions of the WIPO Convention were not sufficient to provide the kind of technical assistance in question. However, during the discussion it had become clear that improvement of the patent systems in the developing countries might be facilitated through such measures as were contemplated in the proposed new chapter and consequently it was now in a position to support the proposals of the Working Group.

1710. Mr. LORENZ (Austria) said that his Delegation was also ready to support the proposal of the Working Group as it was its general policy to give aid to developing countries whenever possible.

1711.1 Mr. ARMITAGE (United Kingdom) said that his Delegation supported the proposal of the Working Group.

1711.2 The proposed new chapter contained the germ and possibility for some real advantages to developing countries under the PCT. In particular, it might be a very useful development if WIPO could organize programs and channel aid for the development of patent systems, the money needed for such aid coming from other sources than WIPO's own.

1712. Mr. FERNÁNDEZ-MAZARAMBROZ (Spain) said that, in the view of his Delegation, the proposal of the Delegation of Brazil, now the proposals of the Working Group, represented

important and desirable improvements of the PCT Draft. Consequently, his Delegation supported the proposals of the Working Group.

1713. Mr. BORGGÅRD (Sweden) said that his Delegation regarded the proposals of the Working Group as a basis for further steps towards the development of the patent systems of the developing countries. Consequently, it was glad to support the proposals of the Working Group.

1714. Mr. BRAUN (Belgium) said that, for reasons which the previous speakers had stated, and because of the great importance of aid for developing countries, his Delegation was ready to support the proposals of the Working Group.

1715. Mr. PRETNAR (Yugoslavia) said that his Delegation, too, supported the proposals of the Working Group. He wished to pay special tribute to the Government of Brazil, which had, on that and other occasions – in ECOSOC, in UNIDO, and in UNCTAD – taken the initiative in presenting constructive proposals in the patent field, proposals which were calculated to serve the interests of developing countries.

1716. Mr. OTANI (Japan) said that his Delegation was one of the members of the Working Group and had helped to work out the proposals in question. It was glad to support the proposals of the Working Group, which would doubtless be of interest to developing countries.

1717. Mr. BENÁRD (Hungary) said that his Delegation fully supported the proposals of the Working Group. His Government was ready to contribute, within the limits of its possibilities, to the success and the carrying out of the tasks which would have to be performed under the proposed chapter.

1718. Mr. NARAGHI (Iran) supported the proposals of the Working Group since it was an important contribution towards serving the interests of the developing countries.

1719. Mr. IONITA (Romania) said that his Government always favored means facilitating technical cooperation among the countries of the world. The proposals of the Working Group were useful in that respect and his Delegation supported them.

1720.1 Mr. COMTE (Switzerland) said that it was well known that his country was very much in favor of aid to developing countries. As far as industrial property was concerned, the Swiss Government had already proved its willingness to help by receiving trainees in the Federal Industrial Property Office and sending publications to the national Offices of developing countries.

1720.2 Consequently, his Delegation was ready to support the proposals of the Working Group. It only regretted that the proposal had not been made earlier, during the preparatory phase of the Conference, which would have permitted finding an even more far-reaching solution.

1721. Mr. TROTTA (Italy) said that, for the reasons stated by several delegations, his Delegation, too, supported the proposal of the Working Group.

1722. Mr. COULIBALY (Ivory Coast) said that his Delegation was in full agreement with the proposals contained in the report of the Working Group.

1723. Mr. QUINN (Ireland) said that his Delegation was glad to support the proposals of the Working Group, which should result in effective help for developing countries.

1724. Mr. EKANI (African and Malagasy Industrial Property Office) said that, in the name of the countries members of his organization, he was pleased to give his support to the proposals of the Working Group. It gave great satisfaction to those countries to see that the developed nations were ready to give efficient assistance to developing countries in the field of industrial property.

1725. Mr. HAZELZET (Union of Industries of the European Community), speaking also in the name of CEIF, said that the industries of the 17 countries of Western Europe were, as always, ready to give real and practical assistance to developing countries. It was too early to say whether the proposals of the Working Group would be sufficient to lead to effective aid. In any case, the industries in question hoped that they would.

1726. Mr. SIMONS (Canada), recalling the technical assistance afforded by his Government, particularly in the form of fellowships, to nationals of developing countries in the field of industrial property, said that his Delegation was in full support of the proposals of the Working Group.

1727. Mr. SCHATZ (International Patent Institute) said that his Institute was ready to assume its share in the technical assistance which would be given, under the proposed chapter, to developing countries.

1728. Mr. SHER (Israel) said that, as mentioned by the Delegation of the Netherlands, the utmost care should be taken to coordinate the technical assistance tasks under the PCT with those under WIPO.

1729.1 Mr. PETERSSON (Australia) said that it was a pity that the proposal concerning technical assistance had not been made before the Diplomatic Conference since a proposal made earlier would have allowed a more careful consideration and, possibly, a more satisfactory solution.

1729.2 Nevertheless, his Delegation was ready to accept the proposed new chapter. On the other hand, the proposals of the Working Group concerning the Preamble seemed to be too long and too detailed compared with the other parts of the proposed Preamble.

1730. The CHAIRMAN expressed the thanks of Main Committee I and Main Committee II to the Working Group for its arduous work and also to the Delegation of Brazil for its initiative and leadership.

1731. *The proposals of the Working Group were adopted as contained in document PCT/DC/109 and PCT/DC/109. Corr. and as orally modified by the Delegation of Brazil, subject to drafting changes.* (The Preamble continued at 1915, Article 1 at 1736, Article 50 at 1912, Article 51 at 1913, Article 52 at 1914.)

*End of the Twenty-Fifth Meeting*

## TWENTY-SIXTH MEETING

Friday, June 12, 1970, morning

### Report of the Drafting Committee

1732. The CHAIRMAN introduced the discussion on the texts presented by the Drafting Committee contained, as far as the Treaty was concerned, in document PCT/DC/112 and, as far as the Regulations were concerned, in document PCT/DC/113

1733. Mr. ARMITAGE (United Kingdom), speaking in his capacity of Chairman of the Drafting Committee, said that his Committee had not made any effort to polish the existing wording of the texts but had merely endeavored to eliminate grammatical errors, obscurities or inconsistencies.

1734. Mr. SAVIGNON (France) said that a subgroup of French – speaking participants were still working on the task of trying to polish the French text and he would ask for an understanding that such purely formal changes would be admitted between that time and the signing of the texts.

1735. *The Main Committee noted, with approval, the declaration of the Delegation of France.*

**Article 1: Establishment of a Union** (Continued from 1731.)

1736. *Article 1 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 2: Definitions** (Continued from 1547.)

1737. Mr. ROBINSON (Canada) asked whether the various items appearing in that Article could not be put into alphabetical order and numbered accordingly.

1738. The CHAIRMAN replied that there was some logical order among the various items and, consequently, he did not think that it would be useful to change the order.

1739. Mr. BOGSCH (Secretary General of the Conference) said that there was an additional reason for not changing the order, namely, that the alphabetical order would not be the same in English and French. Thus the numbers would be different in the two texts.

1740. *Article 2 was adopted as appearing in document PCT/DC/112.*

**Article 3: The International Application** (Continued from 190.)

1741. *Article 3 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 4: The Request** (Continued from 708.)

1742. *Article 4 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 5: The Description** (Continued from 253.)

1743. *Article 5 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 6: The Claims** (Continued from 262.)

1744. *Article 6 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 7: The Drawings** (Continued from 263.)

1745. *Article 7 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 8: Claiming Priority** (Continued from 669.)

1746. *Article 8 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 9: The Applicant** (Continued from 345.)

1747. *Article 9 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 10: The Receiving Office** (Continued from 300.)

1748. *Article 10 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 11: Filing Date and Effects of the International Application** (Continued from 1620.)

1749. *Article 11 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 12: Transmittal of the International Application to the International Bureau and the International Searching Authority** (Continued from 319.)

1750. *Article 12 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 13: Availability of Copy of the International Application to Designated Offices** (Continued from 547.)

1751. *Article 13 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 14: Certain Defects in the International Application** (Continued from 550.)

1752. *Article 14 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 15: The International Search** (Continued from 1414.)

1753. Mr. SAVIGNON (France) asked that discussion of Article 15(5)(c) be deferred until the Representatives of the International Patent Institute were present.

1754. Mr. BRENNAN (United States of America) proposed that the whole of paragraph (5) be reserved.

1755. *Article 15, with the exception of paragraph (5), was adopted as appearing in document PCT/DC/112. (Continued at 1929.)*

**Article 16: The International Searching Authority** (Continued from 1419.)

1756. Mr. SAVIGNON (France) proposed that paragraph (3)(b) be deferred until the Representatives of the International Patent Institute were present.

1757. Mr. PHAF (Netherlands) said that, since it was in paragraph (1) of the Article under discussion that the International Patent Institute was mentioned for the first time, it would be preferable to indicate the treaty by which that Institute was constituted.

1758. Mr. BOGSCH (Secretary General of the Conference) said that, since the International Patent Institute was well known and no risk of confusion existed, there seemed to be no need for further specification.

1759. Mr. PHAF (Netherlands) said that he would not insist on his proposal.

1760. *Article 16, with the exception of paragraph (3)(b), was adopted as appearing in document PCT/DC/112. (Continued at 1950.)*

**Article 17: Procedure Before the International Searching Authority** (Continued from 491.)

1761. *Article 17 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 18: The International Search Report** (Continued from 1247.)

1762. *Article 18 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 19: Amendment of the Claims Before the International Bureau** (Continued from 564.)

1763. *Article 19 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 20: Communication to Designated Offices** (Continued from 1333.)

1764. Mr. VAN DAM (Netherlands) said that there seemed to be some practical difficulty in sending the copies referred to in paragraph (3) to the designated Office.

1765. Mr. BOGSCH (Secretary General of the Conference) said that Rule 44.3(c) took care of the difficulty by stipulating, in essence, that if the International Searching Authority wished to send the copies via the International Bureau it could do so.

1766. The CHAIRMAN said that the Delegation of the Netherlands had signalled that it was satisfied with the reply of the Secretary General.

1767. *Article 20 was adopted as appearing in document PCT/DC/112.*

**Article 21: International Publication** (Continued from 581.)

1768. *Article 21 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 22: Copy, Translation, and Fee, to Designated Offices** (Continued from 713.)

1769. *Article 22 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 23: Delaying of National Procedure** (Continued from 586.)

1770. *Article 23 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 24: Possible Loss of Effect in Designated States** (Continued from 587.)

1771. *Article 24 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 25: Review By Designated Offices** (Continued from 588.)

1772. *Article 25 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 26: Opportunity To Correct Before Designated Offices** (Continued from 589.)

1773. *Article 26 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 27: National Requirements** (Continued from 1620.)

1774. Mr. ASCENSÃO (Portugal) said that in paragraph (8) the English version spoke about "national security," whereas the French version spoke about "défense nationale."

1775. Mr. SAVIGNON (France) said that, in French, "défense nationale" was acceptable and if the English words did not correspond they should be changed.

1776. Mr. BOGSCH (Secretary General of the Conference) said that the expressions used in both languages seemed to mean the same thing, namely, protection of the country against enemies or potential enemies.

1777. Mr. ARMITAGE (United Kingdom) said that the interpretation given by the Secretary General seemed to him to be correct. The right that the Delegation of the United Kingdom wished to preserve and exercise under paragraph (8) was the right to require residents of the United Kingdom to seek permission before filing in other countries under the PCT.

1778. The CHAIRMAN said that the Delegation of Portugal had signalled that it was satisfied with the explanation given.

1779. *Article 27 was adopted as appearing in document PCT/DC/112.*

**Article 28: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices** (Continued from 700.)

1780. *Article 28 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 29: Effects of the International Publication** (Continued from 644.)

1781. *Article 29 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 30: Confidential Nature of the International Application** (Continued from 742.)

1782. *Article 30 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 31: Demand for International Preliminary Examination** (Continued from 1689.)

1783. *Article 31 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 32: The International Preliminary Examining Authority** (Continued from 1689.)

1784. *Article 32 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 33: The International Preliminary Examination** (Continued from 1427.)

1785. *Article 33 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 34: Procedure Before the International Preliminary Examining Authority** (Continued from 1435.)

1786. *Article 34 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 35: The International Preliminary Examination Report** (Continued from 1445.)

1787. *Article 35 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 36: Transmittal, Translation, and Communication, of the International Preliminary Examination Report** (Continued from 1446.)

1788. Mr. ASCENSÃO (Portugal) said that it would be necessary to parallel, in Article 36, the provision contained in Article 20(3). Rule 71 already took care of the details but the principle should be expressed in the Treaty itself.

1789. Mr. BOGSCH (Secretary General of the Conference) said that the problem could be solved by adding a new paragraph (4) which would say, in essence, that Article 20(3) would also apply, *mutatis mutandis*, in the case of the International Preliminary Examining Authorities.

1790. Mr. ARMITAGE (United Kingdom) said that his Delegation could accept the proposal of the Secretary General.

1791. *Subject to the understanding that a new paragraph would be added paralleling Article 20(3), Article 36 was adopted as appearing in document PCT/DC/112.*

**Article 37: Withdrawal of Demand or Election** (Continued from 1448.)

1792. *Article 37 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 38: Confidential Nature of the International Preliminary Examination** (Continued from 1449.)

1793. *Article 38 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 39: Copy, Translation, and Fee, to Elected Offices** (Continued from 1451.)

1794. *Article 39 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 40: Delaying of National Examination and Other Processing** (Continued from 1452.)

1795. *Article 40 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 41: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices** (Continued from 1455.)

1796. *Article 41 was adopted as appearing in document PCT/DC/112 without discussion.*

**Article 42: Results of National Examination in Elected Offices** (Continued from 1458.)

1797. *Article 42 was adopted as appearing in document PCT/DC/112, without discussion.*

**In the signed text, Article 43: Seeking Certain Kinds of Protection** (In the Draft, Article 45: Seeking Protection Through Other Means Than the Grant of a Patent. In the Alternative Draft, Article 45: Seeking Certain Kinds of Protection) (Continued from 1590)

1798. *Article 43 was adopted as appearing in document PCT/DC/112, without discussion.*

**In the signed text, Article 44: Seeking Two Kinds of Protection** (In the Draft, Article 45: Seeking Protection Through Other Means Than the Grant of a Patent. In the Alternative Draft, Article 45: Seeking Two Kinds of Protection) (Continued from 1590.)

1799. *Article 44 was adopted as appearing in document PCT/DC/112, without discussion.*

**In the signed text, Article 45: Regional Patent Treaties** (In the Draft, Article 44: Regional Patents and Regional Patent Treaties) (Continued from 1588.)

1800. Mr. ARMITAGE (United Kingdom) said that when the Article under discussion was adopted by the

Main Committee, he had stated that some coordination might be necessary between that Article and Article 2. He was by then of the opinion that Article 2(xii) was in the nature of an enabling provision and that Article 45 made only a restricted use of the possibilities offered by Article 2(xii) in the particular situation which Article 45 wished to cover. Consequently, he no longer saw any contradiction between the two provisions.

1801. *Article 45 was adopted as appearing in document PCT/DC/112.*

**Article 46: Incorrect Translation of the International Application** (Continued from 1499.)

1802. *Article 46 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 47: Time Limits** (Continued from 1510.)

1803. *Article 47 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 48: Delay in Meeting Certain Time Limits** (Continued from 1511.)

1804. *Article 48 was adopted as appearing in document PCT/DC/112, without discussion.*

**Article 49: Right to Practice Before International Authorities** (Continued from 1512.)

1805. Mr. BRAUN (Belgium) said that “attorney” and “*avocat*” (in French) did not mean the same thing. Furthermore, it did not seem to be necessary to refer to attorneys and patent agents; it was sufficient to refer merely to persons having the right to practice. In any case, in France and in Belgium, and perhaps also in Italy, an “*avocat*” did not have the right to practice before Patent Offices.

1806. Mr. BOGSCH (Secretary General of the Conference) said that even the word “*avocat*” was qualified by the words “having the right to practice” so that, in countries where they had no right to practice before the national Office, they would not qualify under Article 49. Thus, whether one maintained “*avocat*” or not, the result would be the same. Nevertheless, it would be regrettable if the noble professions of attorneys and patent agents were not mentioned *expressis verbis* in the Article.

1807. Mr. LUZZATI (Italy) said that, although it was true that in Italy, Belgium and France the two professions – attorneys and patent agents – were completely separate and that, in the present state of affairs, attorneys could not file patent applications, the PCT would substantially modify the whole system and consequently future professional Regulations might contain changes. Such changes were probable as far as Italy was concerned. He would therefore favor maintaining the term “*avocat*,” which could in no way embarrass the profession.

1808. The CHAIRMAN said that, as the Delegation of Belgium had signalled to him that it did not wish to have a vote on reopening the discussion, its proposal would no longer be considered.

1809. Mr. HAERTEL (Germany (Federal Republic)) said that he was not sure whether the proposal of the Delegation of Belgium was a matter of substance, on which the discussion would have to be reopened formally, or whether it was merely a matter of drafting. In particular, it was not clear to him whether the qualifying words “having the right to practice...” referred only to “other person” or also to “attorney” and “patent agent.”

1810. Mr. BOGSCH (Secretary General of the Conference) said that the qualification referred to all three categories and, by placing a comma before the word “having,” any doubt could be removed.

1811. Mr. ARMITAGE (United Kingdom) said that the proposal of the Secretary General would make the provision unambiguous but that a further comma, after the word “filed,” should also be inserted.

1812. Mr. SAVIGNON (France) said that, in essence, he would have agreed with the Delegation of Belgium in that the express mention of “*avocat*” and patent agent was unnecessary but, in any case, the punctuation would have to be changed also in the French text to conform with the proposal just made concerning two commas.

1813. *Subject to inserting a comma after the word “person” and a comma after the word “filed,” Article 49 was adopted as appearing in document PCT/DC/112.*

*End of the Twenty-Sixth Meeting*

**TWENTY-SEVENTH MEETING**

Friday, June 12, 1970, afternoon

**Report of the Drafting Committee Concerning the Regulations**

1814. The CHAIRMAN opened the discussion on the proposals of the Drafting Committee concerning the Regulations contained in documents PCT/DC/113, PCT/DC/114, and PCT/DC/116.

**Rule 1: Abbreviated Expressions** (Continued from 1621.)

1815. *Rule 1 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 2: Interpretation of Certain Words** (Continued from 1622.)

1816. *Rule 2 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 3: The Request (Form)** (Continued from 817.)

1817. *Rule 3 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 4: The Request (Contents)** (Continued from 1623.)

1818. Mr. MESSEROTTI-BENVENUTI (Italy) said that the Rule did not provide for the case where the inventor wished to be designated.

1819. Mr. BOGSCH (Secretary General of the Conference) said that the matter was taken care of in Rule 18.4.

1820. Mr. MESSEROTTI-BENVENUTI (Italy) said that the Regulations did not seem to provide for the possibility of not designating the inventor.

1821. The CHAIRMAN replied that that case was provided for in Rule 4.6(c).

1822. Mr. BOGSCH (Secretary General of the Conference) said that, according to his interpretation, whenever the applicant did not wish to indicate the inventor he would simply leave blank the space reserved for such indications in the application form.

1823. Mr. MESSEROTTI-BENVENUTI (Italy) said that he was satisfied with that interpretation.

1824. *Rule 4 was adopted as appearing in document PCT/DC/113.*

**Rule 5: The Description** (Continued from 926.)

1825. *Rule 5 was adopted as appearing in documents PCT/DC/113 and PCT/DC/116, without discussion.*

**Rule 6: The Claims** (Continued from 947.)

1826. Mr. LIPS (Switzerland) said that Rule 6.4(a) was ambiguous. The first part of the sentence allowed reference to several claims, whereas the second part excluded reference to several claims. The words "all the features of one or more other claims" should be replaced by the words "a set of dependent claims, one subordinated to the other."

1827. Mr. BOGSCH (Secretary General of the Conference) said that the Drafting Committee had incorporated paragraph (d) of Rule 6.4, as it appeared in the Alternative Draft, in paragraph (a) of the same Rule. In so doing, it had wanted to make the text clearer without changing its substance and believed that that change would satisfy the Delegation of Switzerland.

1828.1 Mr. LIPS (Switzerland) said that the change only partly satisfied his Delegation.

1828.2 On a question from the CHAIRMAN, Mr. LIPS (Switzerland) replied that his Delegation did not wish to put its proposal to the vote.

1829. *Rule 6 was adopted as appearing in document PCT/DC/113.*

**Rule 7: The Drawings** (Continued from 948.)

1830. *Rule 7 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 8: The Abstract** (Continued from 957.)

1831. *Rule 8 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 9: Expressions, Etc., Not to be Used** (Continued from 958.)

1832. *Rule 9 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 10: Terminology and Signs** (Continued from 959.)

1833. *Rule 10 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 11: Physical Requirements of the International Application** (Continued from 967.)

1834. *Rule 11 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 12: Language of the International Application** (Continued from 1034.)

1835. *Rule 12 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 13: Unity of Invention** (Continued from 983.)

1836. *Rule 13 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 14: The Transmittal Fee** (Continued from 984.)

1837. *Rule 14 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 15: The International Fee** (Continued from 996.)

1838. *Rule 15 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 16: The Search Fee** (Continued from 1010.)

1839. *Rule 16 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 17: The Priority Document** (Continued from 1027.)

1840. *Rule 17 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 18: The Applicant** (Continued from 1057.)

1841. *Rule 18 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 19: The Competent Receiving Office** (Continued from 1061.)

1842. *Rule 19 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 20: Receipt of the International Application** (Continued from 1062.)

1843. *Rule 20 was adopted as appearing in document PCT/DC/113, without discussion.*



**Rule 21: Preparation of Copies** (Continued from 1063.)

1844. *Rule 21 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 22: Transmittal of the Record Copy** (Continued from 1081.)

1845. Mr. PHAF (Netherlands) suggested that the words "It is understood that" in Rule 22.3(b) should be deleted.

1846. *Rule 22 was adopted as appearing in document PCT/DC/113, subject to the omission of the words: "It is understood that" in Rule 22.3(b).*

**Rule 23: Transmittal of the Search Copy** (Continued from 1082.)

1847. *Rule 23 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 24: Receipt of the Record Copy by the International Bureau** (Continued from 1083.)

1848. *Rule 24 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 25: Receipt of the Search Copy by the International Searching Authority** (Continued from 1084.)

1849. *Rule 25 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 26: Checking and Correcting Certain Elements of the International Application** (Continued from 1085.)

1850. *Rule 26 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 27: Lack of Payment of Fees** (Continued from 1086.)

1851. *Rule 27 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 28: Defects Noted by the International Bureau or the International Searching Authority** (Continued from 1087.)

1852. *Rule 28 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 29: International Applications or Designations Considered Withdrawn Under Article 14(1), (3) or (4)** (Continued from 1088.)

1853. *Rule 29 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 30: Time Limit Under Article 14(4)** (Continued from 1089.)

1854. *Rule 30 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 31: Copies Required Under Article 13** (Continued from 1092.)

1855. *Rule 31 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 32: Withdrawal of the International Application or of Designations** (Continued from 1095.)

1856. *Rule 32 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 33: Relevant Prior Art for the International Search** (Continued from 1229.)

1857. *Rule 33 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 34: Minimum Documentation** (Continued from 1671.)

1858. *Rule 34 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 35: The Competent International Searching Authority** (Continued from 1143.)

1859. *Rule 35 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 36: Minimum Requirements for International Searching Authorities** (Continued from 1171.)

1860. *Rule 36 was adopted as appearing in document PCT/DC/133, without discussion.*

**Rule 37: Missing or Defective Title** (Continued from 1172.)

1861. *Rule 37 was adopted as appearing in document PCT/DC/113, without discussion.*

**In the signed text, Rule 38: Missing Abstract** (In the Drafts, Rule 38: Missing or Defective Abstract) (Continued from 1173.)

1862. *Rule 38 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 39: Subject Matter Under Article 17(2)(a)(i)** (Continued from 1185.)

1863. *Rule 39 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 40: Lack of Unity of Invention (International Search)** (Continued from 1187.)

1864. *Rule 40 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 41: The International-Type Search** (Continued from 1188.)

1865. *Rule 41 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 42: Time Limit for International Search**  
(Continued from 1316.)

1866. *Rule 42 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 43: The International Search Report**  
(Continued from 1238.)

1867. Mr. GYRDYMOV (Soviet Union) said that Rule 43.6(b) should also deal with inventors' certificates of addition since the definition contained in Article 2(ii) did not apply.

1868. Mr. BOGSCH (Secretary General of the Conference) said that not only should inventors' certificates of addition be inserted in Rule 43.6(b), but also patents or certificates of addition and utility certificates of addition.

1869. *Rule 43 was adopted as appearing in document PCT/DC/113, subject to the addition of a reference to "patents of addition, certificates of addition, inventors' certificates of addition and utility certificates of addition."*

**Rule 44: Transmittal of the International Search Report, Etc.** (Continued from 1332.)

1870. Mr. PHAF (Netherlands) said that the words: "On the specific request" in Rule 44.3(a) seemed to be redundant with Article 20(3).

1871. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, the remarks of the Delegation of the Netherlands were justified and Rule 44.3(a) should be adjusted accordingly.

1872. *Subject to the understanding that any redundancy with Article 20(3) would be removed from Rule 44.3(a), Rule 44 was adopted as appearing in document PCT/DC/113.*

**Rule 45: Translation of the International Search Report** (Continued from 1349.)

1873. *Rule 45 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 46: Amendment of Claims Before the International Bureau** (Continued from 1359.)

1874. *Rule 46 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 47: Communication to Designated Offices**  
(Continued from 1545.)

1875. *Rule 47 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 48: International Publication** (Continued from 1375.)

1876. Rule 48 was adopted as appearing in document PCT/DC/113, without discussion.

**Rule 49: Languages of Translations and Amounts of Fees Under Article 22(1) and (2)**  
(Continued from 1382.)

1877. *Rule 49 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 50: Faculty Under Article 22(3)**  
(Continued from 1383.)

1878. *Rule 50 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 51: Review by Designated Offices**  
(Continued from 1384.)

1879. *Rule 51 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 52: Amendment of the Claims, the Description, and the Drawings, Before Designated Offices** (Continued from 1545.)

1880. *Rule 52 was adopted as appearing in documents PCT/DC/113, without discussion.*

**Rule 53: The Demand** (Continued from 1459.)

1881. *Rule 53 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 54: The Applicant Entitled To Make a Demand** (Continued from 1462.)

1882. *Rule 54 was adopted as appearing in documents PCT/DC/113 and PCT/DC/116, without discussion.*

**Rule 55: Languages (International Preliminary Examination)** (Continued from 1463.)

1883. *Rule 55 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 56: Later Elections** (Continued from 1464.)

1884. *Rule 56 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 57: The Handling Fee** (Continued from 1465.)

1885. *Rule 57 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 58: The Preliminary Examination Fee**  
(Continued from 1466.)

1886. *Rule 58 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 59: The Competent International Preliminary Examining Authority** (Continued from 1689.)

1887. *Rule 59 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 60: Certain Defects in the Demand or Elections** (Continued from 1468.)

1888. *Rule 60 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 61: Notification of the Demand and Elections** (Continued from 1469.)

1889. *Rule 61 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 62: Copy for the International Preliminary Examining Authority** (Continued from 1470.)

1890. *Rule 62 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 63: Minimum Requirements for International Preliminary Examining Authorities** (Continued from 1471.)

1891. *Rule 63 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 64: Prior Art for International Preliminary Examination** (Continued from 1537.)

1892. *Rule 64 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 65: Inventive Step or Non-Obviousness** (Continued from 1476.)

1893. *Rule 65 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 66: Procedure Before the International Preliminary Examining Authority** (Continued from 1477.)

1894. *Rule 66 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 67: Subject Matter Under Article 34(4)(a)(i)** (Continued from 1478.)

1895. *Rule 67 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 68: Lack of Unity of Invention (International Preliminary Examination)** (Continued from 1479.)

1896. *Rule 68 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 69: Time Limit for International Preliminary Examination** (Continued from 1480.)

1897. *Rule 69 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 70: The International Preliminary Examination Report** (Continued from 1539.)

1898. *Rule 70 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 71: Transmittal of the International Preliminary Examination Report** (Continued from 1483.)

1899. *Rule 71 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 72: Translation of the International Preliminary Examination Report** (Continued from 1484.)

1900. *Rule 72 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 73: Communication of the International Preliminary Examination Report** (Continued from 1485.)

1901. *Rule 73 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 74: Translations of Annexes of the International Preliminary Examination Report and Transmittal Thereof** (Continued from 1486.)

1902. *Rule 74 was adopted as appearing in document PCT/DC/113, without discussion.*

**In the signed text and in the Alternative Draft, Rule 75: Withdrawal of the Demand, or of Elections** (In the Draft, Rule 75: Withdrawal of the International Application, of the Demand, or of Elections) (Continued from 1487.)

1903. *Rule 75 was adopted as appearing in document PCT/DC/113, without discussion.*

**In the signed text, Rule 76: Languages of Translations and Amounts of Fees Under Article 39(1); Translation of Priority Document** (In the Draft, Rule 76: Languages of Translations and Amounts of Fees Under Article 39(1)) (In the Alternative Draft as in the Draft and additionally, Rule 76bis: Translation of Priority Document) (Continued from 1488 and 1489.)

1904. *Rule 76 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 77: Faculty Under Article 39(1)(b)** (Continued from 1490.)

1905. *Rule 77 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 78: Amendment of the Claims, the Description, and the Drawings, Before Elected Offices** (Continued from 1491.)

1906. *Rule 78 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 79: Calendar** (Continued from 1513.)

1907. *Rule 79 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 80: Computation of Time Limits**  
(Continued from 1514.)

1908. *Rule 80 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 81: Modification of Time Limits Fixed in the Treaty** (Continued from 1520.)

1909. *Rule 81 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 82: Irregularities in the Mail Service**  
(Continued from 1521.)

1910. *Rule 82 was adopted as appearing in document PCT/DC/113, without discussion.*

**Rule 83: Right to Practice Before International Authorities** (Continued from 1522.)

1911. *Rule 83 was adopted as appearing in document PCT/DC/113, without discussion.*

**In the signed text, Article 50: Patent Information Services** (no provision in the Drafts) (Continued from 1731.)

1912. *Article 50 was adopted as appearing in document PCT/DC/114, without discussion.*

**In the signed text, Article 51: Technical Assistance** (no provision in the Drafts) (Continued from 1731.)

1913. *Article 51 was adopted as appearing in document PCT/DC/114, without discussion.*

**In the signed text, Article 52: Relations with Other Provisions of the Treaty** (no provision in the Drafts) (Continued from 1731.)

1914. *Article 52 was adopted as appearing in document PCT/DC/114, without discussion.*

**In the signed text, Preamble** (no provision in the Drafts) (Continued from 1731.)

1915. The CHAIRMAN opened the discussion on the Preamble proposed by the Drafting Committee, as appearing in document PCT/DC/114.

1916. Mr. OHWADA (Japan) said that the different parts of the Preamble should be proportionate to the different chapters of the Treaty. He found that the paragraph dealing with the developing countries was out of proportion to the length of the other paragraphs of the Preamble which referred to the other, much longer chapters of the Treaty.

1917. Mr. PETERSSON (Australia) said that he agreed with the observations of the Delegation of Japan. He had already asked the Drafting Committee to make that paragraph much shorter; however, his request had not been complied with.

1918. Mr. ALMEIDA (Brazil) said that the paragraph in question served to explain clearly what was intended by Chapter IV for developing countries. Consequently, it should be left as it was in the Draft submitted by the Drafting Committee.

1919. Mr. SCHERTENLEIB (Monaco) agreed with the declarations of the Delegations of Japan and Australia. The paragraph relating to the developing countries should be limited to the first 11 words.

1920. Mr. WINTER (United States of America) said that the paragraph concerning developing countries was the result of a compromise and seemed to be the best way to reflect the inclusion of the new Chapter IV in the Treaty.

1921. Mr. OTANI (Japan) supported the proposal of the Delegation of Monaco.

1922. The CHAIRMAN said that the paragraph repeated in essence what was in Chapter IV and therefore much of it was superfluous. In his view, the paragraph concerning developing countries should be limited to the first 29 words.

1923. Mr. DAHMOUCHE (Algeria) said that he did not find the paragraph on developing countries excessively long. He would therefore insist that it remain as it was in the proposals of the Drafting Committee.

1924. Mr. VILLALBA (Argentina) said that the relative length of the paragraphs was unimportant. The second part of the paragraph concerning developing countries contained an explanation which was necessary in view of the novelty of the problem.

1925. Mr. ARTEMIEV (Soviet Union) said that the Preamble should be adopted as proposed by the Drafting Committee.

1926. Mr. SCHERTENLEIB (Monaco) said that the paragraph concerning developing countries was not unnecessary but it was too long. Any preamble should refer only to the essential considerations. He would be ready to accept the suggestion of the Chairman, that is, to limit the paragraph to its first 29 words.

1927. The CHAIRMAN noted that the Delegations of Japan and Monaco had signalled that they were not insisting upon their proposal.

1928. *The Preamble was adopted as appearing in document PCT/DC/114.*

**Article 15: The International Search** (Continued from 1755.)

1929. Mr. BRENNAN (United States of America) moved the proposal of his Delegation contained in document PCT/DC/117. The proposal was to make available to those countries without search facilities a search encompassing the minimum documentation described by the PCT, with the assurance that patents would be granted on an invention that was truly inventive over prior art. The first part of the proposal suggested that the international-type search should not be available for applications with respect to which the applicant had filed an international application, provided that the two applications would not allow the subjecting of national applications to an international-type search whether the application was one "with respect to which the applicant [had] filed an international application directed to essentially the same subject matter, or [had] asked for an international-type search on a national application

filed in a Contracting State directed to essentially the same subject matter.” The proposal was made to avoid any duplication. As to the rest of the proposal contained in document PCT/DC/117, the words “and presents the search report” should be inserted before the comma and the word “all” should be replaced by the word “any.”

1930. Mr. ASCENSÃO (Portugal) said that the French text of the proposal of the United States of America seemed to be ambiguous but, subject to further clarification, he did not have any objection to the principle of the suggestion.

1931. Mr. VILLALBA (Argentina) said that, for countries which had a national search only, a more complete, international-type search might be desirable.

1932. Mr. BRENNAN (United States of America) said that the proposal of his Delegation was not concerned with the question of definition of novelty or patentability. Any country could still adopt the principle of universal prior art.

1933. Mr. SAVIGNON (France) said that the text proposed by the Delegation of the United States of America was not in conformity with present French law. The searches made on national applications were not based on the same documentation as the minimum documentation under the PCT, although it was to be hoped that, in the future, searches on national applications would have the same characteristics as international-type searches. In any case, the Government of France wished to maintain its freedom to require a complementary search to be effected by the International Patent Institute in the case of any international application.

1934.1 Mr. BOGSCH (Secretary General of the Conference) said that the freedom of France or any other country was not affected by the proposal of the Delegation of the United States, at least as far as the first part of the proposal was concerned. The first part of the proposal was intended to avoid duplication between international searches and international-type searches. It did not refer to purely national searches. Therefore, any State which had national searches could, under the proposal of the Delegation of the United States of America, still make a complementary search on the basis of its national law even if the application was the subject of an international or an international-type search.

1934.2 However, the second part of the proposal of the Delegation of the United States of America, which spoke about Contracting States that did not “normally subject national applications to searches of the minimum documentation,” was not very clear to him. What did “normally” mean? Furthermore, the concept of “minimum documentation” was not defined in the Treaty but only in the Regulations. He was wondering whether the Delegation of the United States of America would be satisfied by a provision which would simply state that the deliberate duplication of international searches and international-type searches must be avoided? In other words, he wondered whether the said Delegation would be ready to drop the second part of its proposal.

1935. Mr. BRENNAN (United States of America) said that his Delegation was ready to withdraw the second part of its proposal and accept the formula suggested by the Secretary General.

1936. Mr. ARMITAGE (United Kingdom) said that, whereas he found the idea behind the proposal of the Delegation of the United States of America – that is, limitation of any duplication in searches – a worthy one, he did not see how the idea could be positively expressed in the Treaty without trespassing on national law. Any State whose national searches were carried out by the International Patent Institute might be regarded as subjecting its national applications to international-type searches.

1937. Mr. ASCENSÃO (Portugal) said that the problem was merely to find the right wording and perhaps a working group should be set up to propose the precise text.

1938. Mr. BOGSCH (Secretary General of the Conference) said that, once an International Searching Authority conducted a search, it was either an international search or an international-type search. The proposal merely attempted to avoid duplication between those two searches and not between any of those two searches, on the one hand, and a national search, on the other hand. The mere fact that a national search was carried out by the international Patent Institute did not make the search international or “international-type.”

1939. Mr. MAST (Germany (Federal Republic)) said that the interpretation given by the Secretary General was correct. It followed already from the text in Article 15(5)(b) contained in document PCT/DC/112. The changes proposed by the Delegation of the United States of America were therefore not necessary.

1940.1 Mr. BRENNAN (United States of America) said that Article 15(5) had been proposed by the Delegations of Argentina and Portugal in order to allow countries to require International Searching Authorities to carry out searches on national applications. Once an international or international-type search was carried out on any given application, that objective was fulfilled and various countries wishing to profit from Article 15(5) should not be allowed to have the work duplicated. The spirit of the PCT was to avoid duplication. If any country could order a supplementary search, for example by the International Patent Institute, on an Application which was already the subject of an international search, or an international-type search, there would be as many searches as there were designated countries, plus one (namely, the international or international-type search). Such a situation would clearly result in a wholly unnecessary multiplication of the same effort.

1940.2 His Delegation would welcome the constitution of a working group to examine the matter more closely.

1941. Mr. LEWIN (Sweden) said that perhaps the problem raised by the Delegation of the United States of America could be solved by substituting for the words “any national application”, in Article 15(5) as appearing in document PCT/DC/112, the words “any

invention which is the subject of a national application.”

1942. Mr. SAVIGNON (France) said that the proposal of the Delegation of the United States of America would interfere with the freedom of national laws in respects in which it was never intended to interfere.

1943. The CHAIRMAN said that the proposal of the Delegation of the United States of America was interlinked with Article 16(3)(b) and the two should be considered together.

1944. Mr. BOGSCH (Secretary General of the Conference) said that perhaps all the speakers would be satisfied if the following words were merely added to Article 15(5)(b) as appearing in document PCT/DC/112 “except if the applicant has already filed an international application for the same invention or has already asked for an international-type search on another application concerning the same invention.”

1945. Mr. BRENNAN (United States of America) said that his Delegation was willing to withdraw its own proposal in favor of the suggestion made by the Secretary General. However, if other Delegations were also interested in adding some words about the availability of search reports, his Delegation would also support such additions.

1946. Mr. SAVIGNON (France) said that his Delegation could not accept the suggestion made by the Secretary General since it might limit the freedom of any Contracting State to ask for a search where an international or international-type search was already carried out.

1947. Mr. ASCENSÃO (Portugal) said that his Delegation could accept the suggestion of the Secretary General provided it was completed by the following words: “if the applicant presents the search report.”

1948. Mr. VILLALBA (Argentina) supported the suggestion made by the Secretary General. He understood the objections of the Delegation of France but, where there was clear duplication, it should be avoided.

1949. Mr. PHAF (Netherlands) said that his Delegation shared the views of the Delegation of France but would have no objections to having a working group try to clarify the matter.

1950. Mr. SAVIGNON (France) said that although his Delegation had no objection to the establishment of a working group to examine Articles 15(5)(b) and 16(3)(b) he wanted to point out to the Main Committee that the matter was of capital importance to countries members of the International Patent Institute. The issue involved was one of principle, namely, the use any Contracting State would make of an international or international-type search. The question was entirely within the competence of the national law of each Contracting State and no limitation of this freedom should be written into the Treaty.

1951. *It was decided to refer further consideration of Articles 15 (5)(b) and 16 (3)(b) to a working group consisting of the Delegations of three States members*

*of the International Patent Institute, namely, the Delegations of France, the Netherlands, and Switzerland, and the Delegations of three States not members of that Institute, namely, the Delegations of Argentina, Portugal and the United States of America. (Continued at 1952.)*

*End of the Twenty-Seventh Meeting*

## TWENTY-EIGHTH MEETING

Monday, June 15, 1970, afternoon

**Article 15: The International Search** (Continued from 1951.)

**Article 16: The International Searching Authority** (Continued from 1951.)

1952. The CHAIRMAN opened the discussion on the matter referred to the Working Group concerning Article 15(5) and Article 16(3).

1953.1 Mr. BOGSCH (Secretary General of the Conference), speaking in his capacity of Chairman of the Working Group, said that the reason for which there was no written report by the Working Group was that it had decided to recommend that there should be no change in Articles 15(5) and 16(3). Instead, it had agreed that the following statement should be made in the name of the Working Group:

1953.2 “Article 16 provides for the possibility of the gradual application of the Treaty and makes express reference to international-type searches. It is to be understood that such gradual application may be different for international searches and international-type searches and that any agreement with International Searching Authorities, particularly the International Patent Institute, should give special attention to any danger that could arise from a sudden cessation of the use of international-type searches by any given State.

1953.3 “It should further be understood that since the International Searching Authority, for example, the International Patent Institute, is one of the contracting parties to the agreement concerning searches, its consent will naturally be necessary to that agreement.

1953.4 “Finally, it is understood that nothing in the Treaty or the Regulations affects the continued freedom of any State to enter into agreements outside the framework of the PCT with the International Patent Institute. For example, the existing agreement between the International Patent Institute, on the one hand, and France, the Netherlands and Switzerland, and any other member of that Institute, on the other hand, and any modification in the future of that agreement, will in no way be affected by the PCT.”

1954. *Article 15(5) and Article 16(3) were adopted as appearing in document PCT/DC/112.*

1955. Mr. ARMITAGE (United Kingdom) asked that the statement read by the Secretary General should appear in the records of the Conference.

1956. *It was decided that the statement quoted above would appear in the records of the Conference.*

**Closing of the Work of the Main Committee**

1957.1 Mr. ARMITAGE (United Kingdom), speaking on behalf of all members of the Main Committee, expressed very considerable thanks for the way in which Mr. Schuyler had chaired the meetings. The task had been an extremely difficult one. The Chairman had shown a great deal of patience and tact, and consideration for all delegations. It had been a great achievement to bring the work to a satisfactory conclusion within the scheduled time.

1957.2 The members of the Main Committee congratulated the Chairman on his achievement.

1957.3 The members of the Main Committee wished also to extend their thanks to Mr. Haertel, Vice-Chairman of the Committee, who had acted as substitute for the Chairman in several meetings. Those meetings dealt with some of the most difficult problems. Consequently, Mr. Haertel had assumed, together with Mr. Schuyler, a great burden.

1957.4 The members of the Main Committee wished therefore to express their appreciation also to Mr. Haertel.

1958.1 The CHAIRMAN wished, also on behalf of Mr. Haertel, to thank Mr. Armitage for expressing the feelings of the members of the Main Committee.

1958.2 It was thanks to the cooperation of all the delegates that it had been possible to complete the work within the prescribed time limits.

1958.3 In his capacity of Co-Chairman of the Delegation of the United States of America, he wished to inform the delegations that the Treaty and the Regulations, as reported by the two Main Committees, were acceptable to the Government of the United States of America and that Government intended to sign the Treaty in the form in which it then stood.

1958.4 It was not possible to indicate when the United States of America would ratify the Treaty, nor indeed whether it would ratify it. However, in his personal opinion, the United States of America would ratify the Treaty in the form in which it then stood.

*End of the Twenty-Eighth Meeting*

*End of the Deliberations of Main Committee I*





## MAIN COMMITTEE II\*

<i>Chairman:</i>	Mr. J. B. VAN BENTHEM (Netherlands)
<i>Vice-Chairmen:</i>	Mr. M. BESAROVIĆ (Yugoslavia) Mr. V. C. AKPONOR (Zambia)
<i>Secretary:</i>	Mr. Joseph VOYAME (BIRPI)

### FIRST MEETING

Monday, June 1, 1970, morning

1959. The CHAIRMAN opened the discussion by stating that the Main Committee would deal with the Administrative Provisions and the Final Clauses of the draft Treaty, i.e., with Articles 50 to 65 in documents PCT/DC/4 and 11 and with the Rules corresponding to those Articles, i.e., with Rules 84 to 89, as contained in documents PCT/DC/5 and 12.

**Article 50: Assembly** (In the signed text, Article 53: Assembly, and Article 54: Executive Committee)

1960. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

1961. *Paragraph (2) was adopted as appearing in the Draft, without discussion.*

1962. *Paragraph (3) was adopted as appearing in the Draft, without discussion.*

1963. *Paragraph (4) was adopted as appearing in the Draft, without discussion.*

1964. *Paragraph (5) was adopted as appearing in the Draft, without discussion.*

1965.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, suggested that a new subparagraph be added to paragraph (6) reading as follows: "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."

1965.2 He said that without such a change it would be possible for the Assembly to make a decision with, for example, two votes in favor, one against, and all the rest of the countries needed for the quorum abstaining. Such a result would be abnormal and should be avoided.

1966. Mr. BODENHAUSEN (Director of BIRPI) said that the same situation could arise also under any of the other Assemblies of Unions administered by BIRPI. It would be regrettable if the PCT did not follow the precedents. In any case the example given

by the Delegation of Yugoslavia would, in his opinion, merely show that the participating countries did not have any strong feelings about the matter and therefore would probably have no difficulty in accepting a decision which had received an affirmative vote from only a small number of countries.

1967. *Further discussion on paragraph (6) was reserved. (Continued at 413.)*

1968. *Paragraph (7) was adopted as appearing in the Draft, without discussion.*

1969. *Paragraph (8) was adopted as appearing in the Draft, without discussion.*

1970. *Paragraph (9) was adopted as appearing in the Draft, without discussion.*

1971. Mr. DAHMOUCHE (Algeria) said that it was curious that paragraph (10)(a) should provide that a higher organ (the Assembly) would generally meet at the same time as a lower organ (the Coordination Committee of WIPO). He wondered whether the rule should not be stated the other way round.

1972. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal was in conformity with the corresponding provisions in the other treaties administered by BIRPI. The Coordination Committee was an organ of BIRPI – and would in the near future be an organ of WIPO – that is, an organ which was not subordinated to the Assembly of any of the Unions and which was a central organ dealing with the matters of all Unions.

1973. Mr. PUSZTAI (Hungary) reminded the meeting that the observations of his Government appearing in document PCT/DC/8 contained a proposal for establishing an Executive Committee right at the outset and devoted a separate Article to it.

1974. The CHAIRMAN said that a similar proposal was expected to be made by the Delegation of Yugoslavia.

1975. *Further discussion on paragraph (10) was deferred. (Continued at 2173.)*

**Article 51: International Bureau** (In the signed text, Article 55: International Bureau)

1976. *Article 51 was adopted as appearing in the Draft, without discussion. (Continued at 2189.)*

**Article 52: Committee for Technical Cooperation** (In the signed text, Article 56: Committee for Technical Cooperation)

1977. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

\* Note: In these summary minutes of Main Committee II:

(i) "Main Committee" means "Main Committee II";  
(ii) "Chairman" means Mr. J. B. VAN BENTHEM (Netherlands) except in the case of the 9<sup>th</sup> and 13<sup>th</sup> meetings where it means Mr. MIRKO BESAROVIĆ (Yugoslavia);  
(iii) "Secretary" means Mr. JOSEPH VOYAME (BIRPI);  
(iv) "Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/4 and 5;  
(v) "Alternative Draft" means the drafts of the Treaty and the Regulations as appearing in documents PCT/DC/11 and 12;  
(vi) unless otherwise indicated, the numbers and titles of Articles and Rules are those used in the Draft.

1978. Mr. ALMEIDA (Portugal), referring to the proposal of his Delegation contained in document PCT/DC/64, proposed that the total number of the members of the Committee for Technical Cooperation should be more than double – rather than at least double – the number of the International Searching or Preliminary Examining Authorities. Such a change would secure that the *ex officio* interested members would always be a majority.

1979. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation was about to present written proposals on the same subject. Consequently, it would be preferable to defer further discussion.

1980. *Further discussion on paragraph (2)(a) was deferred.* (See 2194.)

1981.1 Mr. ALENCAR NETTO (Brazil) called the attention of the meeting to his Delegation's proposals contained in document PCT/DC/45 which suggested a number of changes in the Article under discussion.

1981.2 As far as paragraph (2)(b) was concerned, his Delegation proposed that the invitations should be made by the Director General either on his own initiative or at the request of the Committee for Technical Cooperation and that the organizations to be invited should be international and should be concerned with technical cooperation.

1982. Mr. CAPURRO-AVELLANEDA (Uruguay) supported the proposal of the Delegation of Brazil.

1983. *It was decided to adopt the proposal of the Delegation of Brazil contained in document PCT/DC/45 to the extent that the Article should specify that the invitations would be made by the Director General "on his own initiative or at the request of the Committee [for Technical Cooperation]."*

1984. Mr. BOWEN (United Kingdom) said that his Delegation was not convinced that the other proposals of the Delegation of Brazil concerning paragraph (2) should be adopted. A further study of the matter was required and the discussion should be deferred.

1985. Mr. SAVIGNON (France) said that his Delegation too would prefer deferring the discussion on the other proposals of the Delegation of Brazil since the advantages of the changes proposed were not clear to it.

1986. Mr. DAHMOUCHE (Algeria) said that his Delegation was in general agreement with the proposal of the Delegation of Brazil but that the text should be made clearer in order to indicate whether only intergovernmental organizations were meant or also non-governmental organizations.

1987. *Further discussion on paragraph (2)(b) was deferred.* (See 2194.)

1988. Mr. SAVIGNON (France) referred to the proposal of his Delegation contained in document PCT/DC/21 according to which a new subparagraph should be added to paragraph (3) reading as follows: "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 proposal was made

because the long-term role of the PCT was to have a single centralized International Searching Authority and it appeared that the Committee for Technical Cooperation was the appropriate body to prepare the creation of such a centralized authority.

1989. Mr. ASHER (Canada) said that his Delegation had made a proposal (document PCT/DC/31) similar to that of the Delegation of France and, because of that similarity, his own Delegation's proposal was to be considered withdrawn.

1990. Mr. STAMM (Switzerland) said that since his Delegation was also interested in centralized search, it supported the proposal of the Delegation of France.

1991. Mr. BESAROVIĆ (Yugoslavia) also supported the proposal of the Delegation of France.

1992. Mr. SCHURMANS (Belgium) also supported the proposal of the Delegation of France.

1993. Mr. MESSEROTTI-BENVENUTI (Italy) also supported the proposal of the Delegation of France.

1994. Mr. BRENNAN (United States of America) asked whether the proposal of the Delegation of France meant that the Committee for Technical Cooperation was to conduct a continuous investigation of the feasibility of a centralized International Searching Authority or if it would undertake one investigation and report on its results.

1995. Mr. SAVIGNON (France) said that his Delegation was ready to accept further clarifications, in particular on the question whether the work of the Committee for Technical Cooperation should not, also in that respect, be directed by the Assembly.

1996. Mr. BORGGÅRD (Sweden) expressed the view that the task in question was too big for the Committee for Technical Cooperation and, when the time came for an investigation, it could be better carried out by an *ad hoc* body of the Assembly.

1997. Mr. ROBINSON (Canada) said that the Committee for Technical Cooperation should have a continuous task for the purpose in question.

1998. Mr. MAST (Germany (Federal Republic)) expressed agreement with the observations of the Delegation of Sweden.

1999. Mr. BOWEN (United Kingdom) also supported the views expressed by the Delegations of Sweden and Germany (Federal Republic). Any investigation for the creation of a centralized single International Searching Authority should only start when the Assembly of the PCT Union found that the time was ripe for such study.

2000. Mr. OHWADA (Japan) expressed agreement with the Delegations of Sweden, Germany (Federal Republic) and the United Kingdom.

2001. Mr. PUSZTAI (Hungary) said that his Delegation too was in agreement with the Delegations of Sweden, Germany (Federal Republic), the United Kingdom and Japan.

2002. Mr. DAHMOUCHE (Algeria) said that a committee for technical cooperation had the technical qualifications to deal with the question of creating a single International Searching Authority.

Consequently, the task of studying the feasibility of such an authority should be entrusted to the Committee for Technical Cooperation.

2003. Mr. SAVIGNON (France) said that the question of the need for a centralized International Searching Authority was closely linked to the question of quality of the search. That question could be most competently handled by the Committee for Technical Cooperation, which would consist of specialists in the matter of searching.

2003.1 Of course, the political question whether the time had come for a transition from a multiplicity of International Searching Authorities to a single International Searching Authority was one that would be reserved for the Assembly. The Committee for Technical Cooperation would work under the directions of the Assembly.

2004. Mr. ARTEMIEV (Soviet Union) said that entrusting the task in question to the Committee for Technical Cooperation would probably complicate the tasks of that Committee. Consequently, he reserved the position of his Delegation.

2005. Mr. SHER (Israel) said that whereas his country was in favor of the ultimate creation of a centralized International Searching Authority it shared the view of the Delegation of the United Kingdom that the task should not be entrusted to the Committee for Technical Cooperation since that Committee would then be entrusted with contradictory tasks; on the one hand, it would be called upon to coordinate the work of several International Searching Authorities; on the other hand, it would be entrusted with the task of eliminating all but one of such Authorities.

2006. Mr. ROBINSON (Canada) said that he saw no danger and no contradiction. The decision whether a centralized International Searching Authority was feasible would ultimately be made by all the Contracting States in the Assembly. In addition to that political question there were also technical questions and the Committee for Technical Cooperation was ideally suited to study and report on such questions.

2007. Mr. TUULI (Finland) said that his Delegation also supported the views of the Delegation of Sweden.

2008. Mr. BRENNAN (United States of America) said that a compromise solution would consist in adding the proposal of the Delegation of France to the paragraph under discussion as a new item in that paragraph.

2009. The CHAIRMAN suggested as a compromise solution inserting in item (ii) of paragraph (3), at the beginning of that item, the following words: "taking into consideration the prospect of a centralized Searching Authority."

2010. Mr. SAVIGNON (France) said that his Delegation was ready to examine the possibilities of the compromise solution.

2011. The CHAIRMAN suggested that the Delegations of Canada, France, Sweden, the United Kingdom and the United States of America form a working group and try to find a compromise solution.

2012. *The proposal of the Chairman to appoint such a working group was adopted.* (See 2257.)

2013. Mr. BAHADIAN (Brazil), referring to the proposals of his Delegation contained in document PCT/DC/45, said that the tasks suggested by his Delegation were important for developing countries.

2014. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Brazil omitted the words "by advice and recommendations" of the Draft. Should it be interpreted as meaning that, if the Committee had the power to make decisions, such decisions could be contrary to the decisions of the Assembly? Any possibility of such contradictory results should be avoided.

2015. Mr. BAHADIAN (Brazil) said that the emphasis in the proposal of his Delegation was on the need for special provisions concerning developing countries. Perhaps the matter should be referred to the Working Group created for the purpose of looking into the question of special provisions in favor of developing countries.

2016. Mr. BODENHAUSEN (Director of BIRPI) agreed with the last procedural proposal of the Delegation of Brazil.

2017. Mr. SHER (Israel) also agreed with the procedural proposal of the Delegation of Brazil.

2018. Mr. BRADERMAN (United States of America) said that the Working Group, in studying the proposal of the Delegation of Brazil, should take into account the recent entry into force of the WIPO Convention.

2019. Mr. BAHADIAN (Brazil) agreed with the procedural proposals made.

2020. Mr. SAVIGNON (France) also agreed with the idea of submitting the proposal of the Delegation of Brazil to the Working Group dealing with the questions of interest to developing countries.

2021. Mr. CHONA (Zambia) said that his Delegation wholeheartedly supported the provisions suggested by the Delegation of Brazil because they would considerably increase the potential usefulness of the PCT to developing countries.

2022. *It was decided to refer the proposals of the Delegation of Brazil concerning paragraph (3), contained in document PCT/DC/45, to the Working Group on developing countries.* (See 1690.)

2023. Mr. DAHMOUCHE (Algeria) asked whether paragraph (4) of the Draft, which provided that any interested organization might approach the Committee on Technical Cooperation, should not be limited to international organizations.

2024. Mr. BODENHAUSEN (Director of BIRPI) said that he would prefer it if the provision was limited to international organizations.

2025. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would regret it if the provision was modified and the possibility of approaching the Committee limited to international organizations since there were conceivably cases where national organizations could also contribute in an important

way to the work of the Committee for Technical Cooperation.

2026. Mr. BODENHAUSEN (Director of BIRPI) said that no national organization which was important would have any difficulty in having its views expressed through an international organization.

2027. Mr. STAMM (Switzerland) said that his Delegation favored the idea that the provision be limited to international organizations.

2028. Mr. ALENCAR NETTO (Brazil) agreed with the views of the Delegation of Switzerland.

2029. Mr. MESSEROTTI-BENVENUTI (Italy) said that he would not insist.

2030. *It was decided that the word "international" should be inserted in paragraph (4).*

2031. Mr. ALMEIDA (Portugal), referring to the proposal contained in document PCT/DC/64 presented by his Delegation and the Delegation of Argentina, proposed that the Committee for Technical Cooperation should be able to address its advice also to the Assembly.

2032. Mr. BESAROVIĆ (Yugoslavia) said that the Committee for Technical Cooperation could address its advice to the Assembly but its recommendations should be addressed either to the Executive Committee or to the Director General.

2033. Mr. ALMEIDA (Portugal) said that his Delegation could accept the proposal of the Delegation of Yugoslavia.

2034. *It was decided to defer further discussion on the proposal of the Delegations of Argentina and Portugal contained in document PCT/DC/64 concerning paragraph (5) pending the filing of a written proposal by the Delegation of Yugoslavia. (See 2194.)*

2035. *It was decided to proceed in the same manner as far as paragraphs (6), (7) and (8) of the Draft were concerned. (Continued at 2194.)*

**Article 53: Finances** (In the signed text, Article 57: Finances)

2036. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2037. *Paragraph (2) was adopted as appearing in the Draft, without discussion.*

2038. *Paragraph (3) was adopted as appearing in the Draft, without discussion.*

2039.1 Mr. SHER (Israel), referring to the proposal of his Delegation contained in document PCT/DC/49, suggested that paragraph (4) be completed by the following sentence: "In fixing the 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."

2039.2 He said that, obviously, the proposal was made in favor of developing countries and applicants who were nationals of developing countries. The amount of the reduction which such countries and the nationals of such countries would enjoy would be determined by the Assembly.

2040. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Israel, having to do with the special situation of developing countries, should perhaps first be examined by the Working Group set up to examine questions concerning developing countries.

2041. Mr. BOWEN (United Kingdom) agreed with the procedural proposal made by the Director of BIRPI.

2042. Mr. STAMM (Switzerland) said that the proposal of the Delegation of Israel raised the question whether, if it was adopted, it should apply to nationals of and/or persons domiciled in developing countries.

2043. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the proposal of the Delegation of Israel and also supported the procedural proposal made by the Director of BIRPI.

2044. Mr. BRENNAN (United States of America) agreed with the proposal of the Director of BIRPI but wished to remind the Working Group of the national treatment principle of the Paris Convention, a principle which called for the same treatment for foreigners as for nationals in each member country of the Paris Union.

2045. Mr. SHER (Israel) said that his Delegation too agreed with the proposal of the Director of BIRPI to have its proposal first studied by the Working Group.

2046. *It was decided to entrust the Working Group dealing with questions of interest to developing countries with the task of studying the proposal of the Delegation of Israel contained in document PCT/DC/49.*

2047. *Further discussion on paragraph (4) was deferred. (See 2060.)*

2048. *Paragraph 5(a) was adopted as appearing in the Draft, without discussion.*

2049. Mr. HADDRICK (Australia), referring to the proposal of his Delegation contained in document PCT/DC/63, said that the Draft provided that, should any financial year close with a deficit, the member countries would pay contributions to cover such deficit and the amount of the contribution of each Contracting State would be decided by the Assembly with due regard to the number of international applications which had emanated from each of them in the relevant year "and other pertinent factors." The words "and other pertinent factors" should be deleted as they were too vague.

2050. Mr. BODENHAUSEN (Director of BIRPI) said that he would have some hesitation in recommending the adoption of the proposal of the Delegation of Australia because it would make the system of distributing possible deficits too rigid and would not, for example, allow the special situation of developing countries to be taken into account.

2051. Mr. ARTEMIEV (Soviet Union) said that his Delegation supported the proposal of the Delegation of Australia. An international treaty was a legal document of the highest order and should be absolutely precise as to the obligations of the

Contracting States. The term “and other pertinent factors” was much too vague, particularly in the field of financial obligations.

2052. Mr. BODENHAUSEN (Director of BIRPI) said that perhaps the words “other pertinent factors” should be replaced by “other factors which the Assembly considers relevant or pertinent,” thereby giving the task of more accurate definition to the Assembly.

2053. Mr. ARTEMIEV (Soviet Union) said that the suggested words contained the same ambiguity and therefore caused the same difficulties.

2054. Mr. BRENNAN (United States of America) said that it appeared to be wise to leave some flexibility to the Assembly in establishing the basis of the distribution of the deficits. Although deleting the words “and other pertinent factors” would make the text more precise, it would result in removing any flexibility and would retain a criterion which, in itself, might not reflect all the advantages of the PCT. For example, examining Offices would doubtless derive benefit from receiving applications under the PCT because they would be accompanied by international search reports. Consequently, the number of applications emanating from each country was not the only criterion for measuring the potential benefits of the PCT to any given State.

2055. Mr. BORGGÅRD (Sweden) said that his Delegation supported the suggestion made by the Director of BIRPI.

2056. Mr. LULE (Uganda) said that his Delegation was in favor of the language used in the Draft. It was more flexible and would allow the special situation of developing countries to be taken into account.

2057. Mr. MAST (Germany (Federal Republic)) said that his Delegation was of an opinion similar to that expressed by the Delegation of the United States of America. The text of the Draft should be adopted as it stood. The number of applications emanating from a country was a basic factor for judging the benefits of the Treaty to that country and it was therefore rightly mentioned in the Draft. But it was not the only factor and that was why it was appropriate that the Draft should also maintain the possibility of taking other factors into consideration. One of those factors would doubtless be the desire to assist developing countries.

2058. Mr. DAHMOUCHE (Algeria) said that the proposal to omit the words “and other pertinent factors” would not solve the problem for those who wished to have complete precision. The amount of the contributions would still be decided by the Assembly and the Assembly was not obliged to “base” its decision on the number of international applications but was merely invited to have “due regard” to that number in making its decision.

2059. Mr. ALENCAR NETTO (Brazil) said that his Delegation shared the views expressed by the Delegation of Algeria. (Continued at 2060.)

*End of the First Meeting*

## SECOND MEETING

Monday, June 1, 1970, afternoon

**Article 53: Finances** (In the signed text, Article 57: Finances) (Continued from 2059.)

2060. The CHAIRMAN asked the Delegation of Australia whether it wished to maintain its proposal contained in document PCT/DC/63 in the light of the discussions of the previous meeting.

2061. Mr. HADDRICK (Australia) replied that his Delegation wished to maintain its proposal to delete the words “and other pertinent factors.” The matter being one of financial obligations contracted among the member States, it was essential that such obligations should be expressed in the most precise terms. Any reference to “other factors” would make the definition of the extent of the obligations uncertain and could become the source of disagreement in the Assembly.

2062. The CHAIRMAN said that it ought to be borne in mind that paragraph (4) of the same Article provided that the amounts of fees and charges due to the International Bureau and the prices of its publications must 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 the PCT. Consequently, the provision under discussion, which related to the covering of deficits, would not be applied under normal circumstances but only in extraordinary circumstances, presumably only during the first few years after the Treaty had entered into force.

2063. Mr. BRADERMAN (United States of America) said that the provision under discussion was the result of careful consideration. His Delegation would have no objection to replacing “other pertinent factors” by an enumeration of such factors if other delegations could offer such an enumeration. It would also be possible to maintain only the beginning of the provision, namely, the words: “The amount of the contribution of each Contracting State shall be decided by the Assembly.” Such a solution, however, would have the drawback of not referring to one of the important factors which the Assembly should keep in mind when it made its decision, namely, the number of international applications which had emanated from each Contracting State.

2064. Mr. ARTEMIEV (Soviet Union) said that his Delegation was not opposed to finding a compromise solution which would suit all the delegations. What was important, however, was that the provision should be precise and entirely clear. In that connection, it would seem to be necessary to specify all the possible factors which should be taken into consideration in deciding the share of each country in possible deficits. That was the reason for which his Delegation supported the proposal of the Delegation of Australia. It had, however, no objection to asking a working group to propose some compromise solution.

2065. Mrs. MATLASZEK (Poland) said that her Delegation supported the proposal of the Delegation of Australia since it was important that the financial

obligations of each Contracting State be specified with precision. Her Delegation could not accept the suggestion of the Director of BIRPI since that would merely change the drafting without changing the essence.

2066. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation shared the views of the Delegation of the Soviet Union.

2067. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the Draft as it stood for the reasons expressed by the Delegation of the United States.

2068. The CHAIRMAN suggested that a working group be appointed to study the problem further.

2069. Mr. BORGGÅRD (Sweden) said that before a working group was appointed there would need to be adequate guidelines for it, in particular on the question what other factors should be specified in the text, such as industrial capacity, economic capacity, state of development of the country, state of development of the patent system of the country.

2070. Mr. BODENHAUSEN (Director of BIRPI) said that the factors mentioned by the Delegation of Sweden would certainly be among the factors which could be taken into account by the Assembly under the text of the Draft.

2071. Mr. SAVIGNON (France) said that there was another factor which would certainly have relevance, namely, whether or not any Contracting State had accepted Chapter II of the PCT.

2072. The CHAIRMAN suggested the setting up of a working group consisting of the Delegations of Australia, Italy, Poland, the Soviet Union and the United States of America as they were the Delegations which had taken the most active part in the discussions.

2073. Mr. BRENNAN (United States of America) suggested that delegations of developing countries also be included in the working group.

2074. Mr. DAHMOUCHE (Algeria) expressed his agreement with the suggestion of the Delegation of the United States and suggested that the Delegation of Brazil be added to the members of the working group.

2075. Mr. BESAROVIĆ (Yugoslavia) proposed that the Delegation of Algeria be added to the members of the working group.

2076. Mr. MAST (Germany (Federal Republic)) said that his Delegation wished to participate in the work of the working group.

2077. *It was decided to establish a working group whose task would be to examine the proposal of the Delegation of Australia contained in document PCT/DC/63, and which would consist of the Delegations of Algeria, Australia, Brazil, Italy, Japan, Germany (Federal Republic), Poland, the Soviet Union and the United States of America.*

2078. *Further discussion on paragraph (5)(b) was deferred. (See 2530.)*

2079. Miss NILSEN (United States of America) proposed that the Drafting Committee improve the text of paragraph (5)(c).

2080. *Subject to improvement of the text by the Drafting Committee, paragraph (5)(c) was adopted as appearing in the Draft.*

2081. *Paragraph (5)(d) was adopted as appearing in the Alternative Draft, without discussion.*

2082. *Paragraph (5)(e) was adopted as appearing in the Draft, without discussion.*

2083. *Paragraph (6) was adopted as appearing in the Draft, without discussion.*

2084. *Paragraph (7)(a) was adopted as appearing in the Draft, without discussion.*

2085. *Paragraph (7)(b) was adopted as appearing in the Draft, without discussion.*

2086. *Paragraph (7)(c) was adopted as appearing in the Draft, without discussion.*

2087. Miss NILSEN (United States of America) said that she interpreted the words "taking into account the dates at which they were paid" in paragraph (7)(d) to mean, possibly among other things, that countries which paid earlier would have some advantage over countries which paid later because their payments would have produced interest in the meantime.

2088. Mr. BODENHAUSEN (Director of BIRPI) said that he interpreted the provision in the same manner.

2089. *Paragraph (7)(d) was adopted as appearing in the Draft.*

2090. *Paragraph (8) was adopted as appearing in the Draft, without discussion.*

2091. *Paragraph (9) was adopted as appearing in the Draft, without discussion. (Continued at 2241.)*

**Article 54: Regulations** (In the signed text, Article 58: Regulations)

2092. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2093. *Paragraph (2)(a) was adopted as appearing in the Draft, without discussion.*

2094. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, proposed that the majority provided for in paragraph (2)(b) should be three-fourths rather than two-thirds.

2095. Mr. ALMEIDA (Portugal) supported the proposal of Delegation of the United States of America.

2096. *It was decided to amend paragraph (2)(b) to read as follows: "Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast."*

2097. Mr. LAURELLI (Argentina), referring to the proposal of his Delegation contained in document PCT/DC/51, said that there should be only two possibilities for making decisions in the Assembly: either by a two-thirds vote or by unanimity.

2098. Mr. ALMEIDA (Portugal) agreed with the suggestion of the Delegation of Argentina. Not only the unanimity rule was undesirable as it was contrary to the three-fourths majority just adopted but also

undesirable was the veto power given in certain cases to certain States as provided for in paragraph 3(a)(ii) of the Draft.

2099. Mr. ALENCAR NETTO (Brazil) said that his Delegation supported the proposal of the Delegation of Argentina.

2100. Mr. BOWEN (United Kingdom) said that a finer differentiation, according to the relative importance of the various Rules, should be maintained and therefore his Delegation generally supported the Draft.

2101. Mr. BRADERMAN (United States of America) said that his Delegation shared the views of the Delegation of the United Kingdom. As a general rule, amendment of the Regulations should require a three-fourths majority as just decided. In special cases, however, more stringent provisions should be required.

2102. Mr. CAPURRO-AVELLANEDA (Uruguay) supported the proposal of the Delegation of Argentina.

2103. Mr. PIETERS (Netherlands) opposed the proposal of the Delegation of Argentina for the reasons expounded by the Delegations of the United Kingdom and the United States of America.

2104. Mr. ARTEMIEV (Soviet Union) said that his Delegation also shared the views of the Delegation of the United Kingdom.

2105. Mr. MAST (Germany (Federal Republic)) said that some Rules had to require a unanimous decision if they were to be amended. His Delegation would later make proposals for amending Rule 88.1 of the Draft.

2106. Mr. ALMEIDA (Portugal) said that, if any Rule was so important that it could be amended only by unanimous decision, it should perhaps be transferred to the Treaty rather than left in the Regulations.

2107. The CHAIRMAN replied that transferring all Rules requiring unanimity to the Treaty would mean that such Rules could be amended only by a revision conference.

2108. Mr. ALMEIDA (Portugal) said that Article 56 provided for amendment of the Treaty without a revision conference.

2109. The CHAIRMAN replied that amendment of the Treaty without a revision conference applied only to administrative provisions and not to substantive provisions. The Rules requiring a unanimous decision for amendment were of a substantive nature.

2110. Mr. PIETERS (Netherlands) said that amendment of the Treaty followed a different procedure from amendment of the Regulations, even if one considered in connection with the Treaty only those provisions which could be amended without a revision conference.

2111. Mr. DAHMOUCHE (Algeria) suggested that the question be deferred until Rule 88 of the Draft had been reached.

2112. *Further discussion on paragraph (3)(a)(i) was deferred.* (See 2288.)

2113. Mr. SAVIGNON (France) said that paragraph (3)(a)(ii) as appearing in the Draft would limit the powers of decision of any intergovernmental organization referred to in that provision. His Delegation would later submit a proposal to amend the provision to avoid that shortcoming.

2114. Mr. MESSEROTTI-BENVENUTI (Italy) shared the views expressed by the Delegation of France and referred to the observations which his Government had made in document PCT/DC/8.

2115. Mr. SCHATZ (International Patent Institute) said that he shared the views expressed by the Delegations of France and Italy in order to maintain the freedom of contracting of the international organizations.

2116. *Further discussion on paragraph (3)(a)(ii) was deferred.* (See 2289.)

2117. *Paragraph (3)(b) was adopted as appearing in the Draft, without discussion.*

2118. *Paragraph (3)(c) was adopted as appearing in the Draft, without discussion.*

2119. *Paragraph (4) was adopted as appearing in the Draft, without discussion.*

2120. Mr. OHWADA (Japan), referring to the proposal of his Delegation contained in document PCT/DC/66, proposed that the Article under discussion be supplemented by an additional paragraph reading as follows: "The Regulations are annexed to this Treaty but do not form an integral part thereof."

2121. Mr. SHER (Israel) supported the proposal of the Delegation of Japan.

2122. Mr. PUSZTAI (Hungary) supported the proposal of the Delegation of Japan.

2123. Mr. BOWEN (United Kingdom) asked the Director of BIRPI to express an opinion on the legal significance of the proposal of the Delegation of Japan.

2124. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Japan could cast some doubt on the legal status of the Regulations.

2125. Miss NILSEN (United States of America) said that it was extremely important that there be no doubt in anybody's mind that the Regulations were binding on the Contracting States. The proposal of the Delegation of Japan could throw some doubt on such binding force and for that reason her Delegation objected to the said proposal.

2126. Mr. MAST (Germany (Federal Republic)) said that as he understood the proposal of the Delegation of Japan it had been made only for some technical, internal reasons and was not intended to remove or weaken the obligation of the member States to comply with the Regulations. If the proposal of the Delegation of Japan was adopted, it would be necessary to state also in the Treaty that the Regulations were binding on the Contracting States.

2127. Mr. HADDRICK (Australia) said that his Delegation could well understand that some countries would have difficulties from the viewpoint of constitutional procedure but that it was indispensable

that it should be understood that the Regulations were binding on each Contracting State.

2128. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation was opposed to the proposal of the Delegation of Japan. If the Regulations were not an integral part of the Treaty, then, to make them binding on the Contracting States, they should be made the subject of a separate treaty. Such a procedure would obviously be too complicated.

2129. Mr. DAHMOUCHE (Algeria) said that the proposal of the Delegation of Japan seemed to raise more problems than it would resolve. Consequently, it would seem to be better not to adopt it.

2130. The CHAIRMAN said that there were, of course, two ways to make Regulations binding on Contracting States. One was to attach them to the Treaty; the other was to empower the Assembly to adopt Regulations. Throughout the preparatory work for the PCT it was understood that the Regulations would be adopted by the same diplomatic conference as the Treaty itself. It was, of course, understood that the Regulations would not necessarily remain unchanged forever because the Assembly was empowered to amend them subject to certain conditions.

2131. Mr. OHWADA (Japan) proposed that further discussion on the proposal of his Delegation be deferred so that the latter could further reflect on the observations made during the discussion.

2132. *Further discussion on the proposal of the Delegation of Japan contained in document PCT/DC/66 was deferred.* (Continued at 2280.)

**Article 55: Revision of the Treaty** (In the signed text, Article 60: Revision of the Treaty)

2133. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2134. *Paragraph (2) was adopted as appearing in the Draft, without discussion.*

2135. Mr. TRUONG (Ivory Coast) said that, whereas he agreed with the draft of paragraph (3) which provided that any intergovernmental organization appointed as International Searching or Preliminary Examining Authority would be admitted as observer to any revision conference, he wished to know whether it would not be possible to admit as observer also such intergovernmental organizations as the African and Malagasy Industrial Property Office, which, without being such an Authority, still had some role to play in connection with the PCT, for example, as a receiving Office.

2136. Mr. BODENHAUSEN (Director of BIRPI) said that he was sure that the African and Malagasy Industrial Property Office would be invited to all revision conferences since it was a tradition that it be invited to all the diplomatic conferences organized by WIPO.

2137. Mr. TRUONG (Ivory Coast) said that he was satisfied with the assurances given by the Director of BIRPI.

2138. *Paragraph (3) was adopted as appearing in the Draft.*

2139. Miss NILSEN (United States of America) said that the proposal of her Delegation concerning paragraph (4) appearing in document PCT/DC/58, was purely of a drafting nature; and that her Delegation would be satisfied if it were simply referred to the Drafting Committee.

2140. *The proposal of the United States of America concerning paragraph (4) and contained in document PCT/DC/58, was referred to the Drafting Committee.*

2141. *Subject to the foregoing decision, paragraph (4) was adopted as appearing in the Draft.* (Continued at 2671.)

**Article 56: Amendment of Certain Provisions of the Treaty** (In the signed text, Article 61: Amendment of Certain Provisions of the Treaty)

2142.1 The SECRETARY said that there were two proposals concerning the Article under consideration.

2142.2 One was a proposal by the Delegation of Argentina, contained in document PCT/DC/51, to the effect that paragraph (2)(b) ("Adoption shall require three-fourths of the votes cast") be omitted.

2142.3 The other was a proposal by the Delegation of the United Kingdom, contained in document PCT/DC/61, to the effect that paragraph (3)(b) be completed and paragraph (3)(c) omitted.

2143. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2144. *Paragraph (2)(a) was adopted as appearing in the Draft, without discussion.*

2145. The CHAIRMAN noted that the proposal of the Delegation of Argentina concerning paragraph (2)(b) and contained in document PCT/DC/51 had not been moved or seconded.

2146. *Paragraph (2)(b) was adopted as appearing in the Draft, without discussion.*

2147. *Paragraph (3)(a) was adopted as appearing in the Draft, without discussion.*

2148. Mr. BOWEN (United Kingdom) said that the proposal of his Delegation, contained in document PCT/DC/61, was intended to make the Draft conform with the corresponding provisions in the various texts adopted at the Stockholm Diplomatic Conference of 1967.

2149. Mr. BODENHAUSEN (Director of BIRPI) said that he agreed with the intent of the proposal of the Delegation of the United Kingdom.

2150. *It was decided to refer the proposal of the Delegation of the United Kingdom concerning paragraphs (3)(b) and (3)(c) to the Drafting Committee.*

2151. *Subject to the foregoing decision, paragraphs (3)(b) and (3)(c) were adopted as appearing in the Draft.* (Continued at 2672.)

**Article 57: Becoming Party to the Treaty** (In the signed text, Article 62: Becoming Party to the Treaty)

2152.1 The SECRETARY said that three proposals for amending the Draft had been filed.

2152.2 One, made by the Delegation of the United Kingdom, was contained in document PCT/DC/25 and



suggested that a new paragraph be added to the Article under discussion. The new paragraph would read as follows: "The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property apply to this Treaty."

2152.3 The second proposal, made by the Delegation of the Netherlands, was contained in document PCT/DC/39 and tended to transfer the provision appearing as Article 63(2) of the Draft ("This Treaty shall remain open for signature for six months.") to the Article under discussion.

2152.4 The third proposal, made by the Delegation of the United States of America, was contained in document PCT/DC/58 and suggested that item (i) of paragraph (1) ("signature without reservation as to ratification") be deleted.

2153. Mr. OHWADA (Japan) said that his Delegation also intended to propose an amendment to the Article under discussion but the discussions had proceeded so rapidly that it had not yet had time to file any written proposal.

2154. The CHAIRMAN said that the discussion would proceed on the understanding that it would be reopened once the proposal of the Delegation of Japan, to be filed the same day, was available.

2155. Mr. BOWEN (United Kingdom) said that the proposal of his Delegation contained in document PCT/DC/25 was intended to fill what appeared to be an inadvertent gap in the Draft.

2156. Mr. BODENHAUSEN (Director of BIRPI) said that he saw no objection to the proposal of the Delegation of the United Kingdom but that the proposal ought to specify that the Stockholm Act of the Paris Convention was meant since the Article to which the proposal wished to refer had a different number in the Stockholm Act from the number in the previous Act.

2157. Mr. DAHMOUCHE (Algeria) said that he did not know what the contents of Article 24 of the Paris Convention were. In any case, the suggestion of the Director of BIRPI should be followed. Furthermore, it might be necessary to add "to the extent that those provisions (i.e., the provisions of Article 24 of the Stockholm Act of the Paris Convention) are not in discrepancy with the provisions of the present Treaty."

2158. Mr. ALENCAR NETTO (Brazil) requested the Director of BIRPI to clarify what the effect of the provision would be in respect of those countries which had not accepted the Stockholm Act of the Paris Convention.

2159. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the United Kingdom aimed at adding to the PCT a clause which had obviously been forgotten, namely, that the PCT could be declared applicable to dependent territories through a declaration of the Contracting State which was responsible for the external relations of such territories. There was nothing in Article 24 of the Stockholm Act which would be contrary to the provisions of the PCT. There was no obstacle to acceptance of the provision proposed by the Delegation of the United Kingdom by countries not

yet having accepted the Stockholm Act since Article 24 of that Act – which was merely a final provision, having nothing to do with substantive patent law – would simply be incorporated by reference in the PCT.

2160.1 Mr. EKANI (African and Malagasy Industrial Property Office (OAMPI)) said that in his view BIRPI was right not to include a provision similar to Article 24 of the Stockholm Act of the Paris Convention, or a reference to that Article, in the Draft PCT. That Article, in fact, had given rise to serious controversy at the Stockholm Conference.

2160.2 Some years after the Stockholm Conference, the clause or any express provision on dependent territories would seem to be out of place. It would seem to be sufficient to give powers to the Assembly to extend the benefits of the Convention to non-Contracting States. Such powers, should the need for them arise, would enable dependent territories to profit from the PCT.

2161. Mr. DAHMOUCHE (Algeria) suggested that the discussion be deferred since it seemed that several delegations were in need of supplementary information.

2162. Mr. BODENHAUSEN (Director of BIRPI) said that a clause on dependent territories was routine in all treaties administered by WIPO. The proposal made by the representative of the African and Malagasy Industrial Property Office would not be sufficient. The Assembly could extend the benefits of the PCT only to States which were members of the Paris Union. Nationals or residents of dependent territories could thus not benefit from the PCT and that seemed to be a pity.

2163. Mr. DAHMOUCHE (Algeria) said that the proposal seemed to recognize that any colonial power which *de facto* controlled a territory, or believed that it had the rights of protectorate over a territory, had some kind of sovereignty over such territory. Such a pretension was completely unilateral. If such were the case, then any country could consider itself to have sovereignty over any other country.

2164. *The proposal of the Delegation of the United Kingdom contained in document PCT/DC/25 was adopted.*

2165. Mr. PIETERS (Netherlands), referring to the proposal of his Delegation contained in document PCT/DC/39, said that it was of a drafting nature and could be referred to the Drafting Committee.

2166. *It was decided to refer the proposal of the Delegation of the Netherlands contained in document PCT/DC/39 to the Drafting Committee.*

2167. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, said that it had been dictated by practical considerations. It was in fact likely that no – or only very few – States would be ready to bind themselves to the Treaty by a simple signature not followed by ratification. Consequently, item (i) in paragraph (1) seemed to be superfluous and should be deleted.

2168. Mr. GALL (Austria) seconded the proposal of the Delegation of the United States of America.

2169. *The proposal of the United States of America contained in document PCT/DC/58 was adopted.*

2170. *Subject to the decisions referred to in paragraphs 2164, 2166 and 2169, above, Article 57 was adopted as appearing in the Draft. (Continued at 2171.)*

*End of the Second Meeting*

### THIRD MEETING

Tuesday, June 2, 1970, morning

**Article 57: Becoming Party to the Treaty** (In the signed text, Article 62: Becoming to the Treaty) (Continued from 2170.)

2171. Mr. ARTEMIEV (Soviet Union) said that as far as the proposal of the Delegation of the United Kingdom was concerned his Delegation wished to go on record as saying that the Soviet Union was opposed to it.

2172. Mr. DAHMOUCHE (Algeria) wished to emphasize that, in his view, the proposal of the Delegation of the United Kingdom had been accepted owing to some confusion. As he had already tried to indicate in the last session, any declaration by a State claiming to have powers over a territory was to be considered to have no legal effect. (Continued at 2318.)

**Article 50: Assembly** (In the signed text, Article 53: Assembly and Article 54: Executive Committee) (Continued from 1975.)

2173.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65 and his remarks on the previous day, said that paragraph (6) should be completed by a new subparagraph reading as follows: "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."

2173.2 Such a proposal was necessary because without it a decision could be adopted by the Assembly with only a few votes in favor if the majority of the countries represented abstained.

2173.3 His Delegation had in mind the observations of the Director of BIRPI made in that connection the previous day. It was quite conceivable that the majority of the delegates might abstain because they were uninterested. Nevertheless, it was shocking that a decision could be adopted by only a few votes.

2174.1 Mr. BODENHAUSEN (Director of BIRPI) said that he hoped that the Conference would not deviate from the pattern set in that respect by the other treaties administered by BIRPI, as amended at the Stockholm Conference in 1967.

2174.2 The provisions on the quorum were a sufficient guarantee that a small number of States could not adopt a decision without there being at least a passive attitude on the part of the other countries.

2175. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation would not insist on its proposal.

2176. Mr. DAHMOUCHE (Algeria) said that, although he was satisfied with the withdrawal of the proposal of the Delegation of Yugoslavia, he wished it to be noted that the argument advanced according to which the proposal should be rejected because it was not in conformity with the Stockholm Acts was not convincing. There was always room for improvement and if there was anything in those Acts that was not wise or practical it should not be followed merely because it was in the nature of a precedent.

2177.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65 concerning paragraph (9), said that the Executive Committee should be constituted not when the number of Contracting States exceeded 40 but when it exceeded 20.

2177.2 The reason for that proposal was that it might take a very long time before the number of Contracting States reached 40. It was inconvenient to convene the Assembly each year – as it would have to be – as long as the Executive Committee had not been set up. It was in order to advance the date of the setting up of the Executive Committee and to allow the Assembly to meet only once every three years, rather than yearly, that the proposal had been made.

2178.1 Mr. BODENHAUSEN (Director of BIRPI) said that the reason for the relatively high number of Contracting States in the Draft was that the PCT was an important treaty dealing with a new subject. Consequently, it was desirable to have the totality of its membership participating in the yearly review of the situation of the new Union for a long initial period. It was only when the number of Contracting States became very high, and the Assembly – for that reason – too cumbersome for transacting routine business, that the setting up of an Executive Committee would become necessary. The earlier creation of an Executive Committee was not desirable because, during the formative years of the new Union, it would exclude three-quarters of the member States from meeting every year.

2178.2 Furthermore, it would be quite difficult for practical and political reasons to select only five countries among 20 to be members of the Executive Committee. Such a selection would almost certainly force the Assembly to exclude from the membership of the Executive Committee States which had a legitimate claim to such membership.

2179.1 Mr. BESAROVIĆ (Yugoslavia) said that in view of the declarations of the Director of BIRPI his Delegation withdrew their proposal.

2179.2 He then presented a proposal, also contained in document PCT/DC/65, according to which the Treaty should contain a separate article on the Executive Committee and all matters concerning that Committee would be regulated in detail in the Treaty itself rather than leave most of the questions to a decision of the Assembly as the Draft would do.

2180.1 Mr. BODENHAUSEN (Director of BIRPI) said that whether there should be a special article

devoted to the Executive Committee or not was mainly a matter of taste in view of the fact that it would take a long time before the Executive Committee came into existence.

2180.2 However, if a special article were to be devoted to the Executive Committee it would be desirable that it follow, in its essentials, the parallel provisions of the Stockholm Act of the Paris Convention.

2181. Mr. BESAROVIĆ (Yugoslavia) said that it was the very intention of the proposal of his Delegation that the separate article on the Executive Committee of the PCT Union should closely follow the pattern set by the corresponding Article of the Stockholm Act of the Paris Convention.

2182. Mr. MAST (Germany (Federal Republic)) said that his Delegation supported the general idea underlying the proposal of the Delegation of Yugoslavia. A new article in the PCT concerning the Executive Committee should be drawn up along the lines of Article 14 of the Stockholm Act of the Paris Convention and Article 23 of the Stockholm Act of the Berne Convention.

2183. Mr. BOWEN (United Kingdom) said that his Delegation had no objection to the proposal of the Delegation of Yugoslavia provided the new article on the Executive Committee followed closely the precedent of the Stockholm Conference.

2184. Mr. PUSZTAI (Hungary) said that his Delegation, which had made a proposal similar to that of the Delegation of Yugoslavia in document PCT/DC/8, supported the proposal of the Delegation of Yugoslavia.

2185. Mr. STAMM (Switzerland) also supported the proposal of the Delegation of Yugoslavia.

2186. Mr. PIETERS (Netherlands) also supported the proposal of the Delegation of Yugoslavia.

2187. Mr. SAVIGNON (France) also supported the proposal of the Delegation of Yugoslavia.

2188. *It was decided that a new article dealing with the Executive Committee would be inserted in the Treaty; that that article would closely follow the corresponding articles in the Stockholm Acts of the Paris and Berne Conventions and that the Delegation of Yugoslavia, in cooperation with the Secretariat, would propose a text to the Main Committee for the said purpose.* (Article on Executive Committee continued at 2451; Article on Assembly at 2636.)

**Article 51: International Bureau** (In the signed text, Article 55: International Bureau) (Continued from 1976.)

2189.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, suggested that, considering that in several provisions of the Article under discussion, as well as in other articles of the Draft, reference was made to the competence of the Director General in connection with the application of the PCT, a new article should be inserted in the Treaty and that such article should be devoted entirely to the responsibilities of the Director General.

2189.2 Furthermore, it would be logical to have a separate article for each of the organs of the PCT. The Director General was such an organ.

2190. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Yugoslavia might cause some practical difficulties. The responsibilities of the Director General were mentioned in many articles of the Treaty, in places where they logically belonged. Lifting out those provisions from the logical context and grouping them in one article would be practically impossible.

2191. Mr. LAURELLI (Argentina) said that perhaps the best solution would be to group in the same paragraph or set of paragraphs all the provisions concerning the Director General but leave that paragraph or paragraphs in the same article as that in which the provisions concerning the International Bureau appeared.

2192.1 Mr. DAHMOUCHE (Algeria) said that the Article under consideration could be divided into two parts: one dealing with the duties of the International Bureau and the other with the duties of the Director General.

2192.2 The matter was really a matter of drafting and general presentation, which could be referred to the Drafting Committee.

2193. Mr. BESAROVIĆ (Yugoslavia) said that, in view of the explanations given by the Director of BIRPI, his Delegation would not insist on its proposal. (Continued at 2645.)

**Article 52: Committee for Technical Cooperation** (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2035.)

2194.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, proposed that paragraph (2)(a) be completed by the words "paying due regard to a proportionate representation of all regions." The reason behind the proposal was that, in determining the composition of the Committee for Technical Cooperation, the Assembly should secure an equitable representation of developing countries.

2194.2 Furthermore, the following sentence should be added at the end of the same paragraph: "The remaining members of the Committee may not be nationals of States in which the headquarters of an International Searching or Preliminary Examining Authority is located."

2195. Mr. DAHMOUCHE (Algeria) supported the proposals of the Delegation of Yugoslavia.

2196. Mr. CHERVIAKOV (Soviet Union) also supported the proposals of the Delegation of Yugoslavia.

2197. Mr. ALENCAR NETTO (Brazil) also supported the proposals of the Delegation of Yugoslavia.

2198. Mr. BOWEN (United Kingdom) said that his Delegation had no objection to the proposals of the Delegation of Yugoslavia.

2199. Mr. SAVIGNON (France) also said that his Delegation had no objection to the proposals of the Delegation of Yugoslavia.
2200. Mr. LAURELLI (Argentina) also said that his Delegation had no objection to the proposals of the Delegation of Yugoslavia.
- 2201.1 Mr. PIETERS (Netherlands) said that the first proposal of the Delegation of Yugoslavia, dealing with developing countries, should be referred to the Working Group dealing with questions of direct interest to developing countries.
- 2201.2 As far as the second proposal of the Delegation of Yugoslavia was concerned, his Delegation considered it unjustified because it would render a country like the Netherlands ineligible for a seat on the Committee for Technical Cooperation merely because the headquarters of one of the International Searching Authorities – namely, the International Patent Institute – would be on its territory.
2202. Mr. STAMM (Switzerland) wished to know what was exactly meant by the words “all regions” appearing in the first proposal of Yugoslavia. Certainly they did not convey clearly to him that developing countries were meant.
2203. Mr. BESAROVIĆ (Yugoslavia) said that the objections of the Delegations of the Netherlands and of Switzerland could both be taken care of by the Drafting Committee.
2204. Mr. SHER (Israel) said that, instead of speaking about “regions,” the proposal should speak about “representation of countries in different stages of economic development.” The latter formula would adequately cover developing countries.
2205. Mr. BRADERMAN (United States of America) said that, whereas his Delegation agreed with the intent behind the first proposal of the Delegation of Yugoslavia, it seemed to be obvious that the Drafting Committee would have to find a clearer expression of that intent.
2206. Mr. DAHMOUCHE (Algeria) said that the idea behind the first proposal of the Delegation of Yugoslavia could be better expressed by the words, “with due regard to equitable geographical representation.”
2207. Mr. BESAROVIĆ (Yugoslavia) said that the suggestion of the Delegation of Algeria should be combined with an express reference to developing countries.
2208. Mr. MAST (Germany (Federal Republic)) said that whereas his Delegation had no objection to referring to “equitable geographical representation” such criterion should not be the only one that should govern in the selection of the members of the Committee for Technical Cooperation.
2209. The CHAIRMAN suggested that the first proposal of the Delegation of Yugoslavia should be referred to the Working Group dealing with questions of interest to developing countries, and that the second proposal of the same Delegation should be so amended that it should exclude the inequity referred to by the Delegation of the Netherlands.
2210. Mr. MAST (Germany (Federal Republic)) agreed with the suggestions of the Chairman.
2211. Mr. BOWEN (United Kingdom) also agreed with the suggestions of the Chairman.
2212. Mr. BRENNAN (United States of America) also agreed with the suggestions of the Chairman.
2213. Mr. SAVIGNON (France) also supported the suggestion of the Chairman.
2214. Mr. BODENHAUSEN (Director of BIRPI) said that the International Patent Institute would in any case be represented on the Committee for Technical Cooperation through one of its member States.
2215. *The first proposal of the Delegation of Yugoslavia, concerning developing countries, was referred to the Working Group dealing with questions of interest to developing countries.*
2216. *The second proposal of the Delegation of Yugoslavia, concerning the problem of double representation, was adopted as far as its intent was concerned, it being understood that the Drafting Committee would redraft it so that States on the territory of which an international organization being an International Searching or Preliminary Examining Authority had its headquarters would not, because of that fact, be ineligible for membership on the said Committee.*
2217. Mr. ALMEIDA (Portugal), referring once more to the proposal of his Delegation and that of Argentina contained in document PCT/DC/64, asked that the words “at least” be replaced by “more than” in paragraph (2)(a).
2218. Mr. BODENHAUSEN (Director of BIRPI) said that the difference between the two proposals was minimal and he had no preference for either text.
2219. Mr. GALL (Austria) supported the proposal of the Delegations of Argentina and Portugal.
2220. *The proposal of the Delegations of Argentina and Portugal concerning paragraph (2)(a), contained in document PCT/DC/64, was adopted, subject to the Drafting Committee’s finding an appropriate place for the provision thus amended.*
2221. Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, proposed that the Committee for Technical Cooperation should be entitled to give its advice also to the Assembly.
2222. Mr. ALMEIDA (Portugal) said that a compromise solution would consist in providing that the Committee for Technical Cooperation could address its advice to the Assembly and its advice or recommendations to the Executive Committee or the International Bureau or the Director General.
2223. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation was ready to accept the suggestion just made by the Delegation of Portugal,
2224. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of Portugal seemed to introduce a distinction which was

unnecessary since “advice” and “recommendation” were practically the same. In any case, it would be for the Assembly to decide whether to follow any advice or recommendation made by the Committee for Technical Cooperation.

2225. Mr. BOWEN (United Kingdom) said that his Delegation would prefer to maintain the Draft as it stood. His Delegation failed to see any difference between “advice” and “recommendation.” It was also indifferent whether the advice or recommendation went to the Assembly direct or through the Executive Committee.

2226. Mr. ALMEIDA (Portugal) said that the reason for the proposal of his Delegation was that the Draft did not provide for the possibility of any direct communication from the Committee for Technical Cooperation to the Assembly. Furthermore, there was no obligation on the Executive Committee to transmit any recommendation of the Committee for Technical Cooperation to the Assembly. The Executive Committee should not have the power to prevent any recommendation of the Committee for Technical Cooperation from reaching the Assembly.

2227. Mr. BORGGÅRD (Sweden) said that his Delegation supported the Draft as it stood.

2228. Mr. DAHMOUCHE (Algeria) said that his Delegation supported the idea behind the proposal of the Delegations of Argentina and Portugal, namely, that the Committee for Technical Cooperation should be able to report direct to the Assembly.

2229. Mr. HADDRICK (Australia) said that his Delegation supported the Draft as it stood.

2230. Mr. LAURELLI (Argentina) said that, since the Committee for Technical Cooperation was created by the Assembly, it was only logical that it should be able to report to the Assembly. Consequently, his Delegation supported the proposal of the Delegations of Argentina and Portugal.

2231. Mr. STAMM (Switzerland) said that his Delegation supported the views expressed by the Delegation of the United Kingdom.

2232. Mr. SAVIGNON (France) said that his Delegation supported the proposal of the Delegations of Argentina and Portugal.

2233. Mr. ALENCAR NETTO (Brazil) said that his Delegation also supported the proposal of the Delegations of Argentina and Portugal.

2234. Mr. CHONA (Zambia) said that his Delegation also supported the proposal of the Delegations of Argentina and Portugal.

2235. Mr. CHAVANNES (Netherlands) said that his Delegation also supported the proposal of the Delegations of Argentina and Portugal since it was desirable to establish a direct channel of communication between the Assembly and the Committee for Technical Cooperation.

2236. *The proposal of the Delegations of Argentina and Portugal concerning paragraph (5), contained in document PCT/DC/64, was adopted by 22 votes in favor to 8 against, with 1 abstention.*

2237. Mr. SHER (Israel) said that, as a consequential change, the Treaty should then provide that the Director General would have the right to comment on any recommendation of the Committee for Technical Cooperation at the time he transmitted it to the Assembly or Executive Committee.

2238. Mr. BODENHAUSEN (Director of BIRPI) agreed with the suggestion made by the Delegation of Israel.

2239. Mr. ALMEIDA (Portugal) said that his Delegation had no objection to the proposal of the Delegation of Israel.

2240. *It was decided that the proposal of the Delegation of Israel should be followed, on the understanding that it would be referred to the Drafting Committee for precise formulation. (Continued at 2257.)*

**Article 53: Finances** (In the signed text, Article 57: Finances) (Continued from 2091.)

2241.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation concerning paragraph (5)(d), contained in document PCT/DC/65, proposed that the words “shall decide” should be replaced by the words “may decide.”

2241.2 It was the conviction of his Delegation that, whenever the financial situation of the PCT Union made reimbursement possible, the Assembly should decide that such reimbursement must be made.

2242. Mr. BODENHAUSEN (Director of BIRPI) said that, in his view, the fact that the provision contained the condition – namely, that “if the financial situation of the Union so permits” – the question whether reimbursement was to be made was one which depended on the appreciation of the Assembly. As a general principle, however, it seemed to be preferable to leave the rule flexible. It might be that, at the time the Assembly met, the financial situation was such that a reimbursement would be possible but it would be unwise to proceed with it because, at the same time, it was already clear that the then current financial period, or the subsequent financial period, would end with a substantial deficit.

2243. Mr. SAVIGNON (France) said that his Delegation fully agreed with the views of the Director of BIRPI. The Assembly should be in a position to have a long-term financial policy, including the possibility of creating and increasing the reserve fund.

2244. Mr. BESAROVIĆ (Yugoslavia) said that he was not convinced by the arguments of the Director of BIRPI and insisted on the adoption of the proposal of his Delegation.

2245. Mr. BRENNAN (United States of America) said that his Delegation supported the proposal of the Delegation of Yugoslavia. The introductory phrase, expressed in the form of a condition, allowed the Assembly to exercise a certain discretion. Once that possibility had been exhausted, all reimbursements should be obligatory and not discretionary.

2246. Mr. GALL (Austria) said that, for the reasons just expressed by the Delegation of the United States

of America, his Delegation supported the proposal of the Delegation of Yugoslavia.

2247. Mr. BORGGÅRD (Sweden) said that in order that the rule should be as flexible as possible his Delegation consequently shared the views expressed by the Delegation of France.

2248. Mr. LULE (Uganda) said that his Delegation was also in favor of making the rule flexible and shared the views expressed by the Delegation of France.

2249. Mr. STAMM (Switzerland) said that his Delegation also supported the view of the Delegation of France.

2250. Mr. DAHMOUCHE (Algeria) said that if the question was put to the vote his Delegation would abstain.

2251. Mr. MAST (Germany (Federal Republic)) said that his Delegation was opposed to the proposal of the Delegation of Yugoslavia.

2252. Mr. BOWEN (United Kingdom) wondered whether the proposal of the Delegation of Yugoslavia should not be referred to the Working Group.

2253. Mr. BESAROVIĆ (Yugoslavia) said that some of the objections to the proposal of his Delegation might be taken care of if the following word were added: with due regard to the future program of the Union."

2254. Mr. BRENNAN (United States of America) said that he would like to hear an explanation on the question whether the provision related only to the deficits of the year in which the decision was to be taken by the Assembly, or also to the deficits of preceding years.

2255. Mr. SHER (Israel) said that his Delegation seconded the suggestion of the Delegation of the United Kingdom to refer the question to the Working Group.

2256. *It was decided to refer the proposal of the Delegation of Yugoslavia to the same Working Group as had already been set up to deal with paragraph (5)(b), with Zambia as an additional member of that Working Group. (Continued at 2266.)*

*End of the Third Meeting*

#### FOURTH MEETING

Tuesday, June 2, 1970, afternoon

**Article 52: Committee for Technical Cooperation** (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2240.)

2257. The CHAIRMAN said that a Working Group set up to deal with paragraph (3) had made proposals which were contained in document PCT/DC/79. However, two members of the Working Group, namely, the Delegations of France and Canada, had reserved their position in the Working Group.

2258. Mr. SAVIGNON (France) said that although his Delegation had made a reservation in the Working Group, and although it was still not entirely satisfied

with the proposal, it was ready to accept such a proposal, in a spirit of compromise and in view of the fact that it did give a certain degree of satisfaction to his Delegation.

2259. Mr. MESSEROTTI-BENVENUTI (Italy) said that he would prefer it if the introductory words "on the invitation of the Assembly or the Executive Committee" (appearing in item (ii) of paragraph (3)) could be deleted because they were too limitative.

2260. The CHAIRMAN said that those were the very words on which, according to what he had been told, the Delegations of Canada and France had made their reservations. In the meantime, he had been informed that the Delegation of Canada no longer maintained its reservation and the Delegation of France had just declared that it did not maintain its reservation either.

2261. Mr. STAMM (Switzerland) asked whether the right given in paragraph (4) to any Contracting State to approach the Committee for Technical Cooperation was limited by paragraph (3)(iii), as proposed by the Working Group.

2262. Mr. BORGGÅRD (Sweden), as Chairman of the Working Group, replied that the limitation contained in paragraph (3)(iii) applied only to one specific topic, namely, the technical problems specifically involved in the establishment of a single International Searching Authority.

2263. Mr. STAMM (Switzerland) said that in view of the fact that paragraph (4) would still remain and would be the rule which would suffer only one exception, namely, that spelled out in paragraph (3)(iii), his Delegation would be ready to accept the proposal of the Working Group.

2264. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would not insist.

2265. *Paragraph (3) was adopted as appearing in document PCT/DC/79. (Continued at 2647.)*

**Article 53: Finances** (In the signed text, Article 57: Finances) (Continued from 2256.)

2266.1 Mr. BESAROVIĆ (Yugoslavia), referring to the proposals of his Delegation contained in document PCT/DC/65, proposed that, in paragraph (7) dealing with the working capital fund, the following words be added to subparagraph (b): "on the basis of the number of applications in the preceding year" and that the following words be added at the end of subparagraph (d): "and the number of international applications in the preceding year." Those proposals were made in order to bring paragraph (7) into conformity with paragraph (5), which dealt with deficits.

2266.2 The difference between the two texts proposed for addition to subparagraphs (b) and (d) was that the first spoke of national applications whereas the second spoke of international applications since, in the first case, the country had just entered the PCT Union and there were therefore no international applications yet emanating from it.

2267. Mr. BODENHAUSEN (Director of BIRPI) said that basing the amount of the initial contribution

to the working capital fund on the number of national applications was a totally arbitrary criterion and had no logical connection with the size of the share that each new Contracting State should have in the creation of the working capital fund. It would be better to leave it to the Assembly, as did the Draft, to appreciate freely the best methods of assessing the amount of the initial payment to the working capital fund.

2268. Mrs. MATLASZEK (Poland) seconded the proposal of the Delegation of Yugoslavia.

2269. Mr. ARTEMIEV (Soviet Union) said that his Delegation agreed with the view expressed by the Director of BIRPI and would prefer to maintain the text of the Draft.

2270. Mr. BESAROVIĆ (Yugoslavia) said that the criterion of the number of national applications filed in any country had already been used in connection with the computation of the special contributions to the PCT work. Consequently, the criterion was not without some logical relation to the PCT nor without precedent.

2271. Mr. OHWADA (Japan) said that his Delegation also shared the views expressed by the Director of BIRPI and the Delegation of the Soviet Union.

2272. Mr. BRENNAN (United States of America) said that the whole question should be referred to the Working Group entrusted with the task of finding some solutions for paragraph (5) dealing with deficits. The creation of the working capital fund and participation in the deficits were two subjects which had some interrelationship and could therefore be usefully considered together.

2273. Mr. BODENHAUSEN (Director of BIRPI) said that there was a further problem with the proposal of the Delegation of Yugoslavia. That Delegation had proposed that in the constitution of the working capital fund the number of the national applications should be taken into account, whereas in the reimbursement of the working capital fund the number of the international applications should be taken into account. The two numbers might be totally different. The only logical criterion for reimbursement was that the reimbursement should be proportionate to the amounts paid into the working capital fund.

2274. Mr. BOWEN (United Kingdom) said that his Delegation opposed both proposals of the Delegation of Yugoslavia because it found no merit in them. It was unnecessary to send them to the Working Group. The Draft should be adopted as it stood.

2275. Mr. MESSEROTTI-BENVENUTI (Italy) associated his Delegation with the views expressed by the Delegation of the United Kingdom.

2276. Mr. BRENNAN (United States of America) said that his Delegation persisted in believing that the same criteria should apply to deficits as to the creation of the working capital fund.

2277. Mr. BODENHAUSEN (Director of BIRPI) said that naturally he had no objection to sending the matter to the Working Group if that was the desire of the majority of the delegations. However, the

contradiction between the proposals of the Delegation of Yugoslavia concerning subparagraph (b) and subparagraph (d) should, in any case, be eliminated.

2278. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation continued to believe that the number of international applications was a logical criterion of reimbursement of contributions to the working capital fund.

2279. *It was decided to refer the proposals of the Delegation of Yugoslavia concerning paragraphs (7)(b) and (7)(d) to the Working Group already entrusted with the task of dealing with paragraph (5)(b).* (Continued at 2530.)

**Article 54: Regulations** (In the signed text, Article 58: Regulations) (Continued from 2132.)

2280. Mr. BESAROVIĆ (Yugoslavia), referring to the proposal of his Delegation contained in document PCT/DC/65, proposed that a new paragraph be added to the Article, reading as follows: "In the event of divergence between the text of the Treaty and the Regulations, the text of the Treaty shall prevail."

2281. Miss NILSEN (United States of America) said that her Delegation was ready to second the proposal of the Delegation of Yugoslavia but wished that it spoke about "conflict" rather than "divergence."

2282. Mr. PIETERS (Netherlands) said that his Delegation supported the proposal of the Delegation of Yugoslavia.

2283. Mr. HADDRICK (Australia) said that his Delegation agreed with the proposal of the Delegation of Yugoslavia, provided that it was modified as suggested by the Delegation of the United States of America.

2284. Mr. BODENHAUSEN (Director of BIRPI) said that in his view it went without saying that as between a Treaty and its Regulations it was always the Treaty which was stronger if there was any conflict between the two texts. However, he saw no harm in stating that obvious principle in the Treaty itself.

2285. Mr. DAHMOUCHE (Algeria) said that it was generally wise to say things which went without saying. Therefore his Delegation supported the proposal of the Delegation of Yugoslavia.

2286. *The Proposal of the Delegation of Yugoslavia for the addition of a new paragraph to the Article under discussion, contained in document PCT/DC/65, was adopted on the understanding that the word "conflict" would be used rather than "divergence."* (Continued at 2296.)

**Rule 88: Amendment of the Regulations**

2287. Mr. BOGSCH (Secretary General of the Conference) said that Rule 14.1 concerning the transmittal fee had been put among the Rules which could be changed only by unanimous decision because it dealt with each national Office's right to charge a fee as a receiving Office for processing international applications. If the Rule in question were to be placed under a majority rule, transmittal fees could be abolished and even such national Offices as were in the minority and would wish to continue to collect

fees for the work they performed as receiving Offices could be deprived of such a possibility. Such a result would be patently undesirable, and that was why the said Rule should only be capable of being changed by unanimous decision.

2288.1 Mr. LAURELLI (Argentina) said that although his Delegation had been the one to propose that the unanimity requirement should be completely eliminated, it would not insist if, for certain situations, the delegations believed that such a requirement was indispensable.

2288.2 His Delegation no longer maintained its proposal that Article 54(3)(i) be deleted.

2289. Mr. ALMEIDA (Portugal) said that his Delegation reintroduced the proposal of the Delegation of Argentina as far as Article 54(3)(a)(ii) regarding the veto power was concerned.

2290. The CHAIRMAN said that as no other Delegation had supported the reintroduction of the proposal in question discussion on it could not be reopened.

2291. *Rule 88.1 was adopted as appearing in the Draft, as far as items (i), (ii), (iii), (iv) and (v) were concerned.*

2292. *Rules 88.1(vi) and (vii) were adopted as appearing in the Alternative Draft.*

2293.1 Mr. BRENNAN (United States of America), referring to the proposal of his Delegation contained in document PCT/DC/80, proposed that Rule 5 concerning the description and Rule 6 concerning the claims should also be among the rules which could be changed only by a unanimous decision, that is, that Rules 5 and 6 should also be referred to in Rule 88.1.

2293.2 The reason for the proposal was that the two Rules in question went to the heart of the international application and any change in Rules 5 and 6 could fundamentally affect the nature of the document called the international application. It was recognized that in the light of experience it might be necessary to make some changes in those two Rules, and to facilitate such changes the Delegation of the United States of America was satisfied that the matters regulated in Rules 5 and 6 should remain in the Regulations and should not be transferred to the Treaty. However, if maintained in the Regulations, sufficient safeguards were necessary so that the Rules in question should not be capable of being changed if any of the Contracting States objected to such changes. Rules 5 and 6 as now appearing in the Draft were the result of protracted negotiations resulting in well-balanced compromises. It should not be possible to upset such compromises by a majority decision of the Assembly.

2294. Mr. MAST (Germany (Federal Republic)) said that the proposal of the Delegation of the United States of America was a very important one and time for further reflection would seem to be indicated.

2295. *Further discussion on the proposal of the Delegation of the United States of America contained in document PCT/DC/80 was deferred. (Continued at 2325.)*

**Article 54: Regulations** (In the signed text, Article 58: Regulations) (Continued from 2286.)

2296. The SECRETARY called the attention of the meeting to the fact that the Alternative Draft differed from the Draft on certain points as far as paragraph (3) was concerned.

2297.1 Mr. SAVIGNON (France), referring to the proposal presented by his Delegation together with that of Italy in document PCT/DC/76, proposed that paragraph (3)(a)(ii) be changed so as to state that, where the International Searching or Preliminary Examining Authority was an intergovernmental organization, the veto power should be vested in a Contracting State which had been authorized for the purpose in question by the competent body of the said intergovernmental organization.

2297.2 The criteria of statistics proposed in the Draft and the Alternative Draft were too artificial. It was much more logical to leave it to the governing body of any intergovernmental organization to designate the State which should represent its interests.

2298. Mr. ALMEIDA (Portugal) said that his Delegation preferred the proposal of the Delegations of France and Italy to the Draft and the Alternative Draft but failed to see how it was compatible with the sovereignty of any State that it should use its voting right in any organ of the International Patent Cooperation Union according to instructions to be received from the governing body of an intergovernmental organization.

2299.1 Mr. FINNISS (International Patent Institute) said that it was not unusual in international relations that a group of States entrusted one given State with a certain task. For example Switzerland had been entrusted with the task of acting as supervisory authority of the International Bureau in Geneva, before it became WIPO.

2299.2 In his view, the proposal of the Delegations of France and Italy was excellent and perfectly served the purpose.

2300. Mr. PIETERS (Netherlands) said that his Delegation supported the proposal of the Delegations of France and Italy.

2301. Mr. SCHURMANS (Belgium) seconded the proposal of the Delegations of France and Italy.

2302. Mr. MAST (Germany (Federal Republic)) said that his Delegation did not see any difficulty either in the sense referred to by the Delegation of Portugal.

2303. Mr. BRENNAN (United States of America) said that the proposal might lead to the curious result that the State which was representing an intergovernmental organization would receive instructions from States which were not party to the PCT.

2304. Mr. FINNISS (International Patent Institute) said that it was to be anticipated that States which were members of the governing body of an intergovernmental organization but not members of the International Patent Cooperation Union would take into full account the fact that any instruction which



they gave to a State representing the intergovernmental organization concerned primarily those States members of the intergovernmental organization which were also members of the International Patent Cooperation Union.

2305. Mr. ALMEIDA (Portugal) said that if, for example, there was only one State member of the International Patent Cooperation Union which was also a member of the governing body of the International Patent Institute and that State wished to accept a modification in the Rules, whereas all the other States did not, then the other States could force the State in question to vote in the Assembly of the International Patent Cooperation Union against its own convictions. He seriously doubted that such a result would be compatible with the sovereignty of States.

2306. Mr. BODENHAUSEN (Director of BIRPI) said that he continued to believe that the proposal of the Delegations of France and Italy was perfectly workable. The sovereignty of the State was not involved. In the circumstances under consideration it would act as an agent for a number of States, which, in international relations, was a perfectly normal situation.

2307. Mr. MAST (Germany (Federal Republic)) wanted to have information on two questions. One was whether it was necessary that the State representing the intergovernmental organization in the Assembly of the International Patent Cooperation Union should be a member State of the PCT Union. The second was whether it was necessary for any State wishing to have the International Patent Institute make the international searches of applications filed with its national Office to be a member State of the International Patent Institute. If the answer to the second question was in the negative, then it could happen that no State member of an intergovernmental organization acting as an International Searching Authority would be a member also of the PCT Union and thus there would be no State that could represent that intergovernmental organization in the Assembly of the PCT Union.

2308. The CHAIRMAN replied that the answer to the first question was in the affirmative. As far as the second question was concerned, he thought that it was rather theoretical since it was extremely unlikely that the International Patent Institute would become an International Searching Authority without a single one of its member States becoming a Contracting State under the PCT.

2309. Mr. MAST (Germany (Federal Republic)) said that the difficulty indicated in his second question could be avoided if the State representing the intergovernmental organization did not have to be a member of that organization.

2310. Mr. DAHMOUCHE (Algeria) said that, whereas he agreed with the general principle that States could ask another State to act as their agent, he had hesitations about the wording of the proposal of the Delegations of France and Italy. According to that proposal, it would be the governing body of the intergovernmental organization rather than States

which would give instructions to a State. However, the matter was more of a drafting nature and the difficulty could be avoided if the authorization for representation were given by the member States of the intergovernmental organization.

2311. Mr. BOWEN (United Kingdom) said that his Delegation fully supported the proposal of the Delegations of France and Italy.

2312. Mr. LAURELLI (Argentina) said that the difficulty mentioned by the Delegation of Algeria could be avoided if the provision said that the instructions were given by the member States of the organization.

2313. Mr. FINNISS (International Patent Institute) said that in his view both the formula used in the proposal of the Delegations of France and Italy and that proposed by the Delegation of Algeria would be acceptable.

2314. Mr. SAVIGNON (France) said that perhaps the suggestions made by the Delegation of Algeria could be met if the formula were the following: "the member States of the intergovernmental organization, acting through the competent body of that organization and according to the rules of that organization."

2315. Mr. DAHMOUCHE (Algeria) said that the text which had just been suggested by the Delegation of France would meet his legal point because the instructions would be given by States and not by an organ of an intergovernmental organization.

2316. *The proposal of the Delegations of France and Italy was adopted as appearing in document PCT/DC/76 and as amended during the discussion on a suggestion made by the Delegation of Algeria.*

2317. The CHAIRMAN said that in view of the discussions on Rule 88 the whole of paragraph (3), as appearing in the Draft and as modified as far as paragraph (3)(a)(ii) was concerned, could be regarded as adopted. (Continued at 2324.)

**Article 57: Becoming Party to the Treaty** (In the signed text Article 62: Becoming Party to the Treaty) (Continued from 2172.)

2318. Mr. OHWADA (Japan), referring to the proposal of his Delegation contained in document PCT/DC/87, asked that, whenever the Draft spoke about "ratification" and "accession," it should also speak about "acceptance." It was accepted practice in technical treaties to use the term "acceptance." The Draft only spoke about ratification and accession. There was no reason for not using also the term "acceptance."

2319. Mr. BODENHAUSEN (Director of BIRPI) said that the treaties administered by BIRPI used only the two terms "ratification" and "accession" and, for reasons of uniformity, it would be preferable not to introduce an additional expression in the PCT. However, the matter was merely one of form and BIRPI had no strong feelings about it.

2320. Mr. PIETERS (Netherlands) said that his Delegation supported the proposal of the Delegation of Japan. "Acceptance" was a term used in many

treaties. It meant the act of binding a country which did not sign the treaty. The precedents of other BIRPI treaties should not determine the issue.

2321. Mr. DAHMOUCHE (Algeria) said that no State could become party to a treaty without signing it.

2322. Miss NILSEN (United States of America) said that her Delegation would prefer that only "ratification" and "accession" be used: the first term, for signatory States; the second term, for non-signatory States. A third term, whose legal significance was the same as one of the two terms – since "acceptance" and "accession" were interchangeable – would merely complicate the text. Considered from the view-point of the constitutional, internal procedure, the United States of America – and probably most other States – would have to go through the same steps whether, internationally, the act which caused it to become bound was called ratification, acceptance, or accession.

2323. Mr. OHWADA (Japan) said that his Delegation would not insist on its proposal. (Continued at 2673.)

*End of the Fourth Meeting*

## FIFTH MEETING

Wednesday, June 3, 1970, morning

**Article 54: Regulations** (In the signed text Article 58: Regulations) (Continued from 2317.)

2324. Mr. HIRABAYASHI (Japan) said that his Delegation had filed a proposal concerning a new paragraph to be inserted in the Article under discussion. It had filed it first as document PCT/DC/78 and, later, as document PCT/DC/82. In the meantime it had consulted with its Government and would withdraw both proposals. (Continued at 2668.)

**Rule 88: Amendment of the Regulations** (Continued from 2295.)

2325. Mr. BRENNAN (United States of America) presented the proposal of his Delegation, contained in document PCT/DC/80, asking that Rule 5 on the description and Rule 6 on the claims should be among the Rules whose amendment would require a unanimous decision in the Assembly, that is, that they be mentioned in Rule 88.1. He said that the reasons for the proposal had been mentioned by his Delegation in the discussion which had taken place the previous day.

2326. Mr. MAST (Germany (Federal Republic)) said that his Delegation opposed the proposal of the Delegation of the United States of America. The two Rules in question – that is, Rule 5 on the description and Rule 6 on the claims – were characteristically among those Rules which, in the light of experience, might need to be changed. It might be extremely difficult, if not impossible, to obtain unanimity for any change among 30 or 40 member States. He thought that the heavily qualified majority required for amending Rules was, generally,

a sufficient guarantee that amendments would only be made if there was a very strong feeling among most of the member States that such amendments were needed.

2327. Mr. SAVIGNON (France) said that his Delegation supported the views expressed by the Delegation of Germany (Federal Republic).

2328. Mr. OHWADA (Japan) said that his Delegation, too, supported the views of the Delegation of Germany (Federal Republic).

2329. Mr. HADDRICK (Australia) said that his Delegation also supported the views expressed by the Delegation of Germany (Federal Republic).

2330. Mr. BOWEN (United Kingdom) said that his Delegation was against the proposal of the Delegation of the United States of America since a certain degree of flexibility should be retained in respect of Rules 5 and 6.

2331. Mr. STAMM (Switzerland) said that his Delegation shared the views expressed by the Delegation of Germany (Federal Republic).

2332. Mr. TUXEN (Denmark) said that perhaps a compromise solution could be found whereby amendments of Rules 5 and 6 would require a nine-tenths majority.

2333. Mr. LAURELLI (Argentina) said that his Delegation supported the proposal of the Delegation of the United States of America.

2334. Mr. DAHMOUCHE (Algeria) said that his Delegation also supported the proposal of the United States of America.

2335. Mrs. MATLASZEK (Poland) said that her Delegation opposed the proposal of the Delegation of the United States of America.

2336. Mr. BORGGÅRD (Sweden) said that his Delegation shared the view of the Delegation of Denmark and that a compromise solution should be found by taking a step in the direction desired by the Delegation of the United States of America.

2337. Mr. NORDSTRAND (Norway) said that his Delegation shared the views expressed by the Delegation of Germany (Federal Republic).

2338. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation also shared the views of the Delegation of Germany (Federal Republic).

2339. Mr. SCHURMANS (Belgium) said that his Delegation, too, shared the views of the Delegation of Germany (Federal Republic).

2340. Mr. TUULI (Finland) said that his Delegation also supported the views expressed by the Delegation of Germany (Federal Republic).

2341. Mr. BRENNAN (United States of America) said that description and claims were two elements of any application which were of the most essential importance for granting patents. Three and a half years had been spent in negotiations to arrive at definitions which were stringent enough to satisfy the laws of the potential member States. Such a delicately arrived at compromise should not be capable of being

put into jeopardy by a decision of the majority of the Contracting States.

2342. Mr. MAST (Germany (Federal Republic)) said that the great danger of the unanimity rule – as shown by the history of the Diplomatic Conferences on the Paris Convention – was that, even when there was an urgent need for change, one or two countries could prevent it. That was why the unanimity rule should not be applied.

2343.1 Mr. DAHMOUCHE (Algeria) said that his Delegation shared, in principle, the view of the Delegation of Germany (Federal Republic) but it was a fact that there were already a number of Rules which had been placed under the unanimity rule and that, therefore, it would not be inconsistent with the previous attitude of the negotiating countries to place two more Rules under the unanimity rule if that seemed to be indispensable for some of those countries.

2343.2 His Delegation was of the opinion that the attitude of those developed countries which asked for unanimity in respect of certain Rules was illogical and perhaps dangerous for them because a single developing country could block any changes in the future. However, as a representative of a developing country, he welcomed the opportunity for any developing country to play a decisive role in future amendments of certain Rules.

2344.1 Mr. BRENNAN (United States of America) said that one of the basic principles of the US patent system, and one of the main reasons for its success, was that it had stringent requirements for full disclosure of inventions in the description and in the claims. Not all countries had the same system. Many of the other countries required merely the elucidation of the principle of the invention without much detail. If, however, through an amendment of the Rules in question – which, as presently drafted, respected the standards required by the present US law – they could be changed by a majority decision in such a way that the requirements of detailed description and claiming would be weakened, one of the basic features of the US patent system could be affected. The PCT might be regarded with suspicion by many people as a device for altering these essential features of US law if Rules 5 and 6 could be changed by less than a unanimous vote. Because of those suspicions it would be a mistake now to take a liberal view of what was considered to be an essential guarantee that the PCT would not affect the present high standards of the US patent system.

2344.2 Another solution would consist in placing the two Rules in question under the Rule according to which they could not be changed if any of the International Searching Authorities objected to the change. Such a solution would give a veto power to, among other States, the United States of America as long as it was an International Searching Authority.

2345. The CHAIRMAN asked the Delegation of the United States of America whether it could accept the proposal of the Delegation of Denmark, supported by the Delegation of Sweden, that the majority required for changing Rules 5 and 6 should be nine-tenths.

2346.1 Mr. BRENNAN (United States of America) said that no majority, however heavily qualified, would be acceptable to the Delegation of the United States of America because it would make ratification of the Treaty extremely difficult, if not impossible.

2346.2 It might be useful to defer further discussion until a working group, or contacts among delegations, could facilitate further consideration.

2347. Mr. SAVIGNON (France) said that he did not object to a period of reflection but wished to indicate straightaway that the alternative proposal presented by the Delegation of the United States of America would not be acceptable to his Delegation. France was a country which did not intend that its national Office should become an International Searching Authority. Consequently, it would not have the veto power which the alternative proposal of the Delegation of the United States of America envisaged. The matter in question was not one which was of special concern to States whose national Offices were International Searching Authorities. It was a matter of equal concern to all Contracting States. They were equally concerned by maintaining or raising standards of their patents. If Rules 5 and 6, as presently drafted, guaranteed as high a standard as the United States of America desired, there was no need to fear that the standard would be lowered by some future amendment.

2348. Mr. ALMEIDA (Portugal) said that his Delegation shared the views just expressed by the Delegation of France.

2349. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation also shared the views of the Delegation of France.

2350. Mr. BOWEN (United Kingdom) said that the persistence of the Delegation of the United States of America was regrettable. Standing almost alone, the Delegation of the United States of America was defending a position which almost all the other Delegations rejected. The basic principles of description and claims were laid down not only in Rules 5 and 6 but in Articles 5 and 6. Those Articles themselves should give sufficient guarantee that the high standards would be respected. Rules 5 and 6 concerned details whose consequences, in practice, nobody could foretell with any assurance. It was, of course, possible that the Delegation of the United States of America, seeing in those Rules much of what it had in its national law, was more confident than others that they would work in practice. However, the same Delegation should keep in mind that other countries, used to different practices, might have less confidence and that the amendment of those two Rules could become necessary.

2351. Mr. MAST (Germany (Federal Republic)) said that his Delegation saw no point in setting up a working group but would not object to deferring the discussion.

2352.1 Mr. BORGGÅRD (Sweden) said that as long as there were no signs of a possible compromise he saw no reason for creating a working group.

2352.2 However, he wished to offer for consideration the possibility of a compromise, namely, that Rules 5 and 6 be placed under the unanimity rule for a transitional period after the entry into force of the Treaty.

2353. Mr. BRENNAN (United States of America) said that his Delegation was ready to consider the compromise solution offered by the Delegation of Sweden.

2354. Mr. DAHMOUCHE (Algeria) said that, if a time for reflection was granted to the delegations, perhaps they should also reflect on the question whether all the Rules placed under the unanimity rule should not be so placed only for a transitional period.

2355. The CHAIRMAN suggested that a working group be set up to consider the compromise proposal of the Delegation of Sweden. Such a working group would consist of the Delegations of Algeria, France, Germany (Federal Republic), Sweden, the United Kingdom, and the United States of America.

2356. Mr. DAHMOUCHE (Algeria) said that he would prefer it if his Delegation was replaced by the Delegation of Portugal.

2357. The CHAIRMAN said that he would modify his suggestion accordingly.

2358. Mr. SAVIGNON (France) said that he persisted in believing that it was unnecessary to create a working group. The question of creating a working group should be put to the vote.

2359. Mr. LAURELLI (Argentina) said that the issues were so clear-cut that the creation of a working group was not desirable. Perhaps the solution suggested by the Delegation of Algeria would be the right one, namely, to subject all the Rules which could be modified only by unanimous decision to a time limit, that is to say, that such requirement would be in force only for a transitional period.

2360. Mr. LORENZ (Austria) said that it was good procedure not to put the question to the vote if the issue was of extreme importance to one of the countries and if all hope of a compromise solution had not been lost. He did not think that all hope was lost and his Delegation therefore supported the proposal to set up a working group.

2361. Mr. BRENNAN (United States of America) said that he had the impression that the establishment of a working group had been proposed by the Swedish Delegation and already seconded by his Delegation.

2362. *The proposal to set up a working group to consider the question of the requirements to be imposed on any amendment of Rules 5 and 6 was adopted by 17 votes in favor to 4 against, with no abstentions. (Continued at 2510.)*

**Article 58: Entry into Force of the Treaty** (In the signed text, Article 63: Entry into Force of the Treaty)

2363. The SECRETARY said that there were three proposals for amending the Draft, namely, one by the Delegation of the Netherlands contained in document PCT/DC/39, one by the Delegation of the United States of America contained in document PCT/DC/58,

and one by the Delegation of Italy contained in document PCT/DC/69.

2364. The CHAIRMAN said that, whereas the proposals of the Delegations of the Netherlands and the United States of America were mainly of a drafting nature, that of the Delegation of Italy was of a substantive nature and would therefore be considered first.

2365.1 Mr. MESSEROTTI-BENVENUTI (Italy), referring to the proposal of his Delegation contained in document PCT/DC/69, said that the amendments proposed were intended to make the conditions for the entry into force of the Convention more difficult to meet. The PCT would be a treaty of global scope and, consequently, it was logical to require that a higher number of countries accept it before it came into force.

2365.2 The proposal was that the minimum number of countries required for entry into force should be ten rather than five or seven as in the Draft, and that the only criterion to be retained should be that outlined in paragraph (1)(ii) of the Draft because it was based on any country's role in the international flow of inventions and that was the correct criterion for an international treaty. The criterion under paragraph (1)(i) had nothing to do with the flow of inventions between countries, had no relevance in an international treaty, and that was why the proposal suggested that it be stricken.

2366. Mr. SAVIGNON (France) said that his Delegation supported the proposal of the Delegation of Italy. That proposal had also the merit that it was simpler than the system outlined in the Draft.

2367. Mr. ALMEIDA (Portugal) said that his Delegation also supported the proposal of the Delegation of Italy. Under that proposal, entry into force would take place only if an adequate geographical application of the Treaty was secured.

2368. Mr. BOGSCH (Secretary General of the Conference) said that, under paragraph (1)(i), acceptance by five countries could put the PCT into effect whereas, under paragraph (1)(ii), seven countries would have to accept the PCT for it to come into force. Under paragraph (1)(i), three of the five countries would have to be in the category of countries in which the number of applications filed in a given year exceeded 40,000. There were only very few countries in that category but, with one exception, they were the countries in which the international flow of inventions was by far the greatest. If the Treaty entered into force by virtue of paragraph (1)(i), the number of international applications could be much greater than if it entered into force by virtue of paragraph (1)(ii).

2369. The SECRETARY said that there were only 14 countries which, according to the latest available statistics (1968), fulfilled the conditions outlined in paragraph (1)(ii). The proposal of the Delegation of Italy would require that ten out of those 14 countries accept the Treaty before it could enter into force. That seemed to be an excessive requirement which could retard the entry into force of the Treaty for a very long time.

2370. Mr. BOWEN (United Kingdom) said that his Delegation opposed the proposal of the Delegation of Italy. Paragraph (1)(i) was of great importance because, if its conditions were fulfilled, a great number of international applications were likely to be filed. Fulfilling the conditions of the proposal of the Delegation of Italy would certainly delay the entry into force of the Treaty for an undesirably long time.

2371. Mr. BORGGÅRD (Sweden) said that his Delegation shared the view that the proposal of the Delegation of Italy was unacceptable.

2372. Mr. PIETERS (Netherlands) said that his Delegation shared the views expressed by the Delegations of the United Kingdom and Sweden. If paragraph (1)(ii) were to be amended as proposed by the Delegation of Italy, the condition laid down in it would be extremely difficult to fulfill because it would require that almost all the countries which, on the basis of their statistics fell under that provision, would have to accept the Treaty.

2373. Mr. MAST (Germany (Federal Republic)) said that his Delegation also opposed the proposal of the Delegation of Italy for the reasons stated by the Secretary General of the Conference, the Secretary, and the Delegations of the United Kingdom, Sweden and the Netherlands.

2374. Mr. PUSZTAI (Hungary) said that his Delegation opposed the proposal of the Delegation of Italy and approved the Draft for the reasons stated by those Delegations which had taken the same stand.

2375. Mr. STAMM (Switzerland) said that his Delegation also objected to the proposal of the Delegation of Italy.

2376. Mr. CHERVIAKOV (Soviet Union) said that his Delegation supported the Draft as it stood.

2377. Mr. NORDSTRAND (Norway) said that his Delegation also supported the Draft as it stood.

2378. Mr. LAURELLI (Argentina) said that his Delegation favored the proposal of the Delegation of Italy as far as omitting paragraph (1)(i) was concerned. As far as amending paragraph (1)(ii) was concerned, his Delegation had no strong views.

2379. Mr. DAHMOUCHE (Algeria) said that his Delegation supported the proposal of the Delegation of Italy.

2380. Mr. SCHURMANS (Belgium) said that his Delegation also supported the proposal of the Delegation of Italy.

2381. Mr. BESAROVIĆ (Yugoslavia) suggested that the proposal of the Delegation of Italy be modified to the following effect: the number of acceptances required should be ten, among which seven ought to fulfill the requirements set forth in paragraph (1)(ii).

2382. Mr. ALENCAR NETTO (Brazil) said that his Delegation supported the proposal of the Delegation of Italy.

2383. Mr. BODENHAUSEN (Director of BIRPI) said that it might be advisable to defer a decision since certain facts which had been brought to the attention of the meeting should be studied. In particular, it

should be borne in mind that in the first few years after the entry into force of the Treaty, and when the administrative machinery would have to be organized, certain costs would have to be borne by the Contracting States. Such costs would naturally be more easily borne by the larger States, namely, those in which a high number of applications were filed. One should, therefore, think twice before eliminating paragraph (1)(i), which was aimed at the countries with the highest number of applications.

2384.1 Mr. SAVIGNON (France) said that he did not entirely agree with the arguments of the Director of BIRPI because paragraphs (1)(i) and (1)(ii) of the Draft were alternatives and, if the Treaty entered into force by virtue of paragraph (1)(ii), the financial consequences might be the same as those which, according to the Director of BIRPI, would be avoided if it entered into force by virtue of paragraph (1)(i). Furthermore, in view of the fact that the international flow of inventions was showing a tendency to grow, it was likely that, by the time paragraph (1)(ii) would be applicable, the number of countries fulfilling the conditions set forth in that provision would be more than 14.

2384.2 In any case, his Delegation was not opposed to granting the Main Committee further time for reflection.

2385. The SECRETARY called attention to the Alternative Draft, according to which the statistics would be those of a specific year, namely 1969, so that an increase in the number of States (i.e., 14) meeting the statistical requirements was not likely.

2386. Mr. BODENHAUSEN (Director of BIRPI) said that the Delegation of France was right in saying that, even under the Draft, it would be possible that a number of smaller countries – rather than also larger countries – would have to finance the foreseeable deficits of the first few years after the entry into force of the Treaty. However, what was a mere possibility in the Draft – a possibility which hopefully would be avoided if the Treaty entered into force under paragraph (1)(i) – would be unavoidable under the proposal of the Delegation of Italy.

2387. *It was decided to defer further discussion on the proposal of the Delegation of Italy.*

2388. *The proposal of the Delegation of the Netherlands contained in document PCT/DC/39 and the proposal of the Delegation of the United States of America contained in document PCT/DC/58 were referred to the Drafting Committee. (Continued at 2436.)*

**Article 59: Effective Date of the Treaty for States Not Covered by Article 58** (In the signed text, Article 63(2))

2389. *Subject to referring the proposal of the Delegation of the Netherlands contained in document PCT/DC/39 and the proposal of the Delegation of the United States of America contained in document PCT/DC/58 to the Drafting Committee, Article 59 was adopted as appearing in the Draft. (Continued at 2684.)*

**Article 60: Reservations** (In the signed text, Article 64: Reservations)

2390. Mr. OHWADA (Japan) said that the proposal of his Delegation contained in document PCT/DC/78 was to be considered withdrawn.

2391. *Paragraph (1) was adopted as appearing in the Draft, without discussion.*

2392. Mr. BOWEN (United Kingdom) said that paragraph (2)(a)(i) provided that an elected State might start national processing after 20 rather than 25 months. Such a concession would undermine one of the most basic features of Chapter II. Consequently, his Delegation was in favor of striking item (i) of paragraph (2)(a).

2393. Mr. LORENZ (Austria) said that the discussion on paragraph (2) should be deferred until Main Committee I had disposed of the proposal of the Delegation of Israel contained in document PCT/DC/41, which might have a bearing on the paragraph under discussion.

2394. Mr. TUXEN (Denmark) said that the Delegation of the United Kingdom must have misunderstood the paragraph under discussion. What that paragraph provided for was that the 25-month time limit could be shortened to 20 months only as far as the furnishing of a copy and of the translation and the publication in the national gazette of the elected State were concerned. In all other respects, in particular in respect of the payment of the national fees and the beginning of the processing of the international applications by the elected office, the 25-month time limit could not be waived but would always have to be respected.

2395. Mr. LORENZ (Austria) said that his Delegation agreed with the remarks of the Delegation of Denmark.

2396. Mr. BODENHAUSEN (Director of BIRPI) said that both paragraphs (2) and (3) of the Article under discussion dealt with substantive matters closely connected with provisions being discussed in Main Committee I. Consequently, it would seem to be preferable to await the results of the discussions in Main Committee I and only thereafter deal with paragraphs (2) and (3) in Main Committee II.

2397. Mr. MAST (Germany (Federal Republic)) said that his Delegation not only agreed with the declarations of the Director of BIRPI but would propose to go even further than he suggested and recommend that the entire Article under discussion should be referred to Main Committee I for the reasons stated by the Director of BIRPI.

2398. The CHAIRMAN said that the situation was not the same for paragraph (2) and for paragraph (3) since Main Committee I had not yet dealt with the matters concerning paragraph (2) but it had already disposed of the matters which related to paragraph (3).

2399. *It decided to ask Main Committee I to deal with paragraph (2).* (See 1453.)

2400.1 Mr. STAMM (Switzerland), referring to the proposal of his Delegation contained in document

PCT/DC/55, proposed that paragraph (3) of the Article under discussion should be deleted.

2400.2 That paragraph would allow any State to declare that international publication of international applications was not required as far as it was concerned, and that where, at the expiration of 18 months from the priority date, the international application contained the designation of only such States as had made the said kind of declarations the international application would not be published at the end of the 18 months but only at the express request of the applicant or once a national application or a patent based on an international application had been published.

2400.3 If the reservation provided for in paragraph (3) of the Draft was to be permitted, the resulting system would be extremely complicated. Furthermore, it would result in unequal treatment for the applicants. For both of those reasons, it would be much simpler, and more equitable, if all international applications, without exception, had to be published by the end of the 18<sup>th</sup> month.

2401.1 Mr. BOGSCH (Secretary General of the Conference) outlined the history of paragraph (3) in the Draft.

2401.2 Some national laws provided for publication after 18 months, whereas others did not provide for any publication of applications. One of the basic concepts underlying the PCT negotiations was that, unless it was absolutely unavoidable, the PCT should not require changes in national laws.

2401.3 An earlier Draft of the Treaty had provided that international publication would take place only if, among the designated States, there was at least one which, according to its national law, published national applications after 18 months.

2401.4 Those countries which had no publication on the national level had already made a substantial concession in the course of the negotiations when they agreed to modify the previous Drafts and accepted that those countries which did not have the system of publication on the national level would have to make a reservation, instead of relying on a general rule of the Treaty, if they wished that their system be included in the PCT system.

2401.5 Whereas it was true that accepting the proposal of the Delegation of Switzerland would make the provision simpler, it had to be borne in mind that, in some countries there was a strong feeling that the applicant should be able to control the publication of his application. He could preserve such control whenever paragraph (3) became applicable.

2401.6 It was to be expected that, in actual fact, the number of international applications which would not be published after 18 months because of the application of paragraph (3) would be extremely small. It would be small because the number of countries providing for publication after 18 months was already large and was constantly growing, so that international applications that would designate only such countries as those in which national applications were not published, and which used the faculty given

them in paragraph (3), would, in all likelihood, be very few in number. It was also to be expected that the reluctance of certain applicants to see their applications published after 18 months would also be greatly diminished because, in many important countries, even if they did not use the PCT, they could simply not avoid such publication.

2402. Mr. SAVIGNON (France) said that his Delegation supported the proposal of the Delegation of Switzerland. However, if any one of the States which might wish to use the faculty provided for in paragraph (3) declared that that provision was very important for it, his Delegation would not object to its adoption since the matter was not one of principle but merely a question of what was simplest and most practical.

2403. Mr. BRENNAN (United States of America) said that, for his Delegation, acceptance of paragraph (3) was desirable.

2404. Mr. ROBINSON (Canada) said that, for his Delegation too, acceptance of paragraph (3), although not vital, was desirable.

2405. Mr. LORENZ (Austria) said that his Delegation could accept the elimination of paragraph (3) but, if it was important for some countries to maintain it, it could also accept the decision to maintain the paragraph in question.

2406. Mr. STAMM (Switzerland) said that the Delegation of Switzerland would not insist and its proposal could be considered withdrawn.

2407. *Paragraph (3) was adopted as appearing in the Alternative Draft.*

2408. *Paragraph (4) (in the signed text, paragraph (6)), was adopted as appearing in the Draft, without discussion.*

2409. *Paragraph (5) (in the signed text, paragraph (7)), was adopted as appearing in the Draft, without discussion. (Continued at 2690.)*

**Article 61: Gradual Application** (In the signed text, Article 65: Gradual Application)

2410. Mr. ALMEIDA (Portugal), referring to the proposal of his Delegation and the Delegation of Argentina contained in document PCT/DC/68, proposed the addition to paragraph (1) of the words: "This provision also applies to requests for international-type search."

2411. *Paragraph (1) was adopted as amended by the proposal of the Delegations of Argentina and Portugal.*

2412. Mr. BRENNAN (United States of America) said that he wished to reserve the position of his Delegation on paragraph (2) as long as Main Committee I had not disposed of Rule 42.

2413. *Note having been taken of the reservation of the Delegation of the United States of America, paragraph (2) was adopted. (Continued at 2691.)*

**Article 62: Denunciation** (In the signed text, Article 66: Denunciation)

2414. *Article 62 was adopted as appearing in the Draft, without discussion. (Continued at 2693.)*

**Article 63: Signature and Languages** (In the signed text, Article 67: Signature and Languages)

2415. The SECRETARY enumerated the proposals for amendment made in connection with this Article: the proposal of the Delegation of the Netherlands contained in document PCT/DC/39, that of the Delegation of Switzerland contained in document PCT/DC/57, that of the Delegation of the United States of America contained in document PCT/DC/58, and that of the Delegations of Brazil and Portugal contained in document PCT/DC/62.

2416. Mr. PIETERS (Netherlands), referring to the proposal of his Delegation contained in document PCT/DC/39, asked that paragraph (1)(a) specify that both the English and the French texts were equally authentic.

2417. Mr. STAMM (Switzerland) seconded the proposal of the Delegation of the Netherlands, which was similar to the proposal made by his own Delegation in document PCT/DC/57.

2418. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, said that in paragraph (1)(a) the words "single copy" should be replaced by the words "single original" and added that the proposal was of a drafting nature.

2419. *The proposal of the Delegation of the United States of America contained in document PCT/DC/58 was referred to the Drafting Committee.*

2420. Mr. BOWEN (United Kingdom) said that his Delegation agreed with the proposal of the Delegation of the Netherlands.

2421. Mr. SAVIGNON (France) said that his Delegation also supported the proposal of the Delegation of the Netherlands.

2422. Mr. ROBINSON (Canada) said that his Delegation also supported the proposal of the Delegation of the Netherlands.

2423. Mr. SCHURMANS (Belgium) expressed the support of his Delegation for the proposal of the Delegation of the Netherlands.

2424. Mr. LAURELLI (Argentina) said that, if the Treaty provided for the case of conflict between the French and the English texts, the French should prevail.

2425. *The proposal of the Delegation of Switzerland contained in document PCT/DC/57 and the proposal of the Delegation of the Netherlands contained in document PCT/DC/39 were adopted to the extent that they provided for the addition of the words "both texts being equally authentic."*

2426. *Subject to the above decisions on the proposals of the Delegations of the United States of America, of the Netherlands and of Switzerland, paragraph (1)(a) was adopted as appearing in the Draft.*

2427. Mr. BAHADIAN (Brazil), referring to the proposal made by his Delegation and the Delegation

of Portugal in document PCT/DC/62, suggested that Portuguese be added to the languages in which, according to paragraph (1)(b), official texts of the Treaty would be established. There were 120 million people speaking Portuguese and, in ten years, the population of Brazil alone would reach 140 million. Portuguese being thus one of the main languages of the world, was justified in being included among the languages in which official texts would be established.

2428. *The proposal of the Delegations of Brazil and Portugal that Portuguese be added to the languages enumerated in paragraph (1)(b) was adopted as contained in document PCT/DC/62.*

2429. Mr. STAMM (Switzerland), referring to the proposal of his Delegation contained in document PCT/DC/57, asked that the following sentence be added to paragraph 1(b) "In case of differences of opinion on the interpretation of the various texts, the French and English texts shall prevail."

2430. Mr. BODENHAUSEN (Director of BIRPI) expressed the view that, after the modification of paragraph (1)(a), there seemed to be no need for the proposal of the Delegation of Switzerland.

2431. Mr. STAMM (Switzerland) withdrew the proposal of his Delegation.

2432. *Subject to the decision made on the proposal of the Delegations of Brazil and Portugal referred to above, paragraph (1)(b) was adopted as appearing in the Draft.*

2433. Mr. BOWEN (United Kingdom) asked whether paragraph (2) should not specify the place where the Treaty would remain open for signature.

2434. Mr. BODENHAUSEN (Director of BIRPI) suggested that the paragraph be completed by stating that the Treaty would remain open for signature at Washington.

2435. *Subject to the addition of the words "at Washington," paragraph (2) was adopted.* (Continued at 2694.)

*End of the Fifth Meeting*

## SIXTH MEETING

Wednesday, June 3, 1970, afternoon

**Article 58: Entry into Force of the Treaty** (In the signed text, Article 63: Entry Into Force of the Treaty) (Continued from 2388.)

2436. Mr. MESSEROTTI-BENVENUTI (Italy) said that, in order to facilitate a compromise on the questions posed by paragraph (1), his Delegation withdrew its proposal contained in document PCT/DC/69.

2437. Mr. SAVIGNON (France) proposed that the Main Committee vote on the question whether two possibilities or only one possibility for entry into force should be incorporated in the Treaty; in other words, whether paragraph (1) should have two items as it had in the Draft.

2438.1 Mr. BOGSCH (Secretary General of the Conference) said that item (i) served two purposes.

The first purpose was that by providing that three of the five States would have to meet the requirement of 40,000 domestic applications in a given year the Soviet Union was essentially covered since it was a country which did not meet the requirement in item (ii) but did meet the requirement of 40,000 domestic applications. The other purpose was that by providing that there would be no statistical requirements for two of the five countries mentioned in item (i) any developing country, even with a small number of applications, could therefore contribute towards bringing the Treaty into force.

2438.2 Perhaps the best solution would be to merge items (i) and (ii) and provide that the Treaty would enter into force if seven States accepted it and among those States two would not have to meet any statistical requirement and five would have to meet at least one of the three statistical requirements now inscribed in items (i) and (ii) of the Draft.

2439. Mr. SAVIGNON (France) said that the suggestion of the Secretary General had the merit of simplifying the provision. However, the number of seven acceptances was too low. Ten acceptances should be required, of which four would have to meet the statistical requirements and six would not have to meet any statistical requirement.

2440. Mr. DAHMOUCHE (Algeria) asked that the suggestion of the Secretary General be put in writing so that the delegations could study it.

2441. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the proposal of the Delegation of France that the total number of acceptances should be ten. However, five (rather than four) of those ten should have to meet at least one of the statistical requirements, and five (rather than six) would not have to meet any of the statistical requirements.

2442. *It was decided to defer further discussion on paragraph (1) until the proposals made orally during the meeting had been submitted in writing.* (Continued at 2466.)

**Article 64: Depositary Functions** (In the signed text, Article 68: Depositary Functions)

2443. The SECRETARY said that there were two proposals for amendment, one submitted by the Delegation of the Netherlands (document PCT/DC/39) and the other submitted by the Delegation of the United States of America (document PCT/DC/58).

2444. Mr. PIETERS (Netherlands) said that the essence of the proposal of his Delegation contained in document PCT/DC/39 appeared in the proposal of the Delegation of the United States of America contained in document PCT/DC/58.

2445. Miss NILSEN (United States of America), referring to the proposal of her Delegation contained in document PCT/DC/58, proposed that paragraph (1) should read as follows: "The original of this Treaty shall be deposited with the Director General when it is no longer open for signature."

2446. *It was decided that paragraph (1) should read as follows: "The original of this Treaty, when no*



*longer open for signature, shall be deposited with the Director General."*

2447. *Paragraphs (2), (3) and (4) were adopted as appearing in the Draft, without discussion. (Continued at 2695.)*

**Article 65: Notifications** (In the signed text, Article 69: Notifications)

2448. The SECRETARY said that the Delegation of Japan having withdrawn its proposal contained in document PCT/DC/78 the only remaining proposal for amendment was that of the Delegation of the Netherlands contained in document PCT/DC/39.

2449. Mr. PIETERS (Netherlands) said that the proposal of his Delegation contained in document PCT/DC/39 was merely of a drafting nature and could be referred to the Drafting Committee.

2450. *The Article was adopted as appearing in the Draft, on the understanding that the Drafting Committee was free to make formal changes on the basis of the proposal of the Delegation of the Netherlands and in the light of any relevant decision which would be made by Main Committee I. (Continued at 2696.)*

**Article 50: Assembly** (In the signed text, Article 54: Executive Committee) (Continued from 2188.)

2451. Mr. BESAROVIĆ (Yugoslavia) presented the proposal of his Delegation, contained in document PCT/DC/81, suggesting the adoption of a separate article on the Executive Committee. The proposal had been prepared in collaboration with the Secretary of the Main Committee and was based on the corresponding provisions of the Stockholm Act of the Paris Convention as well as on discussions which had taken place earlier in Main Committee II.

2452. Mr. LORENZ (Austria) said that his Delegation supported the proposal of the Delegation of Yugoslavia.

2453. Mr. LAURELLI (Argentina) asked whether the article on the Executive Committee should not specify its role in connection with the recommendations of the Committee for Technical Cooperation.

2454. The SECRETARY replied that the matter was covered by paragraph (6)(a)(vi), which provided that the Executive Committee must "perform such other functions as are allocated to it under this Treaty."

2455. Mr. BOWEN (United Kingdom) said that there was no provision paralleling Article 14(6)(b) of the Stockholm Act of the Paris Convention. That provision should be paralleled and the following subparagraph added to paragraph (6): "(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."

2456. Mr. BODENHAUSEN (Director of BIRPI) said that he would welcome the adoption of the suggestion of the Delegation of the United Kingdom.

2457. Mr. SHER (Israel) asked whether the other Special Unions created under the Paris Union had a similar provision in their administrative clauses.

2458. Mr. BODENHAUSEN (Director of BIRPI) replied in the affirmative.

2459. *It was decided to complete paragraph (6) by adding a subparagraph (b) as proposed by the Delegation of the United Kingdom.*

2460. Mr. DAHMOUCHE (Algeria) proposed that the reference in paragraph (2)(a), as appearing in document PCT/DC/81, should not be limited to subparagraph (b) of paragraph (8) of the Article on finances but should also refer to subparagraph (a) of the same paragraph.

2461. *It was decided to modify paragraph (2)(a) according to the proposal of the Delegation of Algeria.*

2462. *Subject to the amendments indicated above, the proposal for a new article on the Executive Committee was adopted as contained in document PCT/DC/81. (Continued at 2640.)*

**In the signed text, Article 59: Disputes** (No provision in the Drafts)

2463. Mr. PIETERS (Netherlands) introduced the proposal of the Delegations of Austria, France, Japan, the Netherlands, Switzerland and Zambia, contained in document PCT/DC/86 (hereinafter referred to as the proposal of "the Six Delegations"), concerning the adoption of a new article on disputes.

2464. Mr. LAURELLI (Argentina) requested that this question be deferred until the delegations had had more time to study the proposal of the Six Delegations.

2465. *Discussion on the proposal for a new article on disputes was deferred. (Continued at 2514.)*

*End of the Sixth Meeting*

## SEVENTH MEETING

Thursday, June 4, 1970, morning

**Article 58: Entry into Force of the Treaty** (In the signed text, Article 63: Entry Into Force of the Treaty) (Continued from 2442.)

2466.1 The CHAIRMAN opened the discussion on the proposal of the Secretariat for a new text for paragraph (1) contained in document PCT/DC/91.

2466.2 The proposal provided that the entry into force of the Treaty should require acceptance by eight countries, of which four did not need to meet any statistical requirement and the other four needed to meet one of three statistical requirements, namely: (i) 40,000 national applications in 1969, or (ii) 1,000 or 500 outgoing applications in 1969, or (iii) 10,000 or 5,000 incoming applications in 1969. A choice would have to be made between the pairs of figures indicated in items (ii) and (iii).

2467. Mr. ALMEIDA (Portugal) said that the conditions proposed in document PCT/DC/91 seemed to be generally easier to fulfill than those which were

proposed in the Alternative Draft, and, therefore, as between the two, his Delegation preferred the Alternative Draft.

2468. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation supported the Draft presented by the Secretariat as appearing in document PCT/DC/91, and would prefer the lower figures, i.e., 500 instead of 1,000, and 5,000 instead of 10,000.

2469. Mr. COMTE (Switzerland) proposed that the higher figures be retained (1,000 and 10,000, respectively), and that the total number of acceptances should be ten, of which four would have to meet any one of the three statistical requirements.

2470. Mr. ALMEIDA (Portugal) said that his Delegation supported the proposal of the Delegation of Switzerland.

2471. Mr. BOGSCH (Secretary General of the Conference) said that, in his view, the conditions of the proposal contained in document PCT/DC/91 were more difficult to fulfill than the conditions provided for in the Alternative Draft since under the latter three countries having more than 40,000 applications, together with two countries not meeting any statistical requirements, would have sufficed. In view of the manifest interest in the PCT of countries having the highest number of applications, it was probably not very difficult to find three countries which met the said statistical requirements, and it was, of course, easy to find two countries not meeting any statistical requirement. According to the new proposal, the number of countries having to meet the statistical requirements would be raised by one and the number of countries not meeting any statistical requirement would be raised by two.

2472. The SECRETARY said that if the lower figures (500 and 5,000, respectively) were to be accepted the number of countries which could meet the statistical requirements would rise from 14 to 20.

2473. Mr. PIETERS (Netherlands) said that his Delegation could accept the proposal contained in document PCT/DC/91 and would much prefer to have the higher figures (1,000 and 10,000, respectively) appear in it.

2474. Mr. MAST (Germany (Federal Republic)) said that his Delegation was not convinced that the conditions laid down in document PCT/DC/91 were more difficult to meet than the conditions in the Alternative Draft. Consequently, his Delegation would have a slight preference for the Alternative Draft. It could, however, go along with the proposal contained in document PCT/DC/91.

2475.1 Mr. SAVIGNON (France) said that his Delegation approved of that part of the proposal contained in document PCT/DC/91 according to which the number of countries with statistical requirements and the number of countries without any statistical requirement would be the same. Such a provision would establish an equilibrium between developed and developing countries.

2475.2 As far as the countries meeting statistical requirements were concerned, his Delegation would prefer the adoption of the higher figures (1,000

and 10,000, respectively), as already suggested by the Delegation of Switzerland.

2476. Mr. BRENNAN (United States of America) said that the proposal contained in document PCT/DC/91 seemed to be generally acceptable, particularly if the higher figures (1,000 and 10,000, respectively) were to be adopted. One of the distinct advantages of the proposal over the Alternative Draft was that the number of countries was raised to eight, which would mean that applicants could, from the outset, choose from among a certain number of countries to be designated. Furthermore, the higher number of countries would also be beneficial in connection with the division of the expenses in the early stages of the application of the Treaty.

2477. Mr. LORENZ (Austria) said that his Delegation supported the proposal contained in document PCT/DC/91 and expressed a preference for the lower numbers (500 and 5,000, respectively).

2478. Mr. DAHMOUCHE (Algeria) said that his Delegation could accept the proposal contained in document PCT/DC/91 provided that it did not refer to the statistics of 1969. The statistics might change considerably between 1969 and the year which would precede the entry into force of the Treaty, and some of the countries which, in 1969, would not yet meet the statistical requirements might be able to meet them later. Brazil, for example, could be in that category.

2479. Mr. BOGSCH (Secretary General of the Conference) said that the proposal could be modified so as to take into account the statistics of 1969 or any year thereafter.

2480. Mr. ROBINSON (Canada) said that the latest available yearly statistics would seem to be a better solution than referring to any specific year. He wished to know why the proposal spoke of inventors' certificates and utility certificates and not only of patents.

2481.1 Mr. BOGSCH (Secretary General of the Conference) said that referring to the "latest available statistics" would also seem to be acceptable though it might cause some difficulties if a country met the statistical requirements in 1969 but fell below them in later years and those years were still before the entry into force of the Treaty.

2481.2 Inventors' certificates had been inserted mainly in order to cover the case of the Soviet Union, in which more than 100,000 applications were filed each year of which the overwhelming majority were for inventors' certificates. The reference to "utility certificates" was necessary because of the new French law under which not only patents but also utility certificates could be applied for.

2482. Mr. MAST (Germany (Federal Republic)) said that his Delegation would not insist on adopting the Alternative Draft but would go along with the proposal contained in document PCT/DC/91, provided that the higher figures (1,000 and 10,000, respectively) were adopted. It would also prefer a reference to a specific year as far as the statistics were concerned since it was necessary for a country when it deposited its instrument of ratification or accession to

know whether it did or did not meet any of the statistical requirements.

2483. Mr. BOWEN (United Kingdom) said that his Delegation could accept the proposal contained in document PCT/DC/91 although it would have preferred the Alternative Draft.

2484. Mr. PRETNAR (Yugoslavia) said that if the lower figures (500 and 5,000, respectively) were adopted item (i) could be eliminated since every country falling under item (i) would also fall under either item (ii) or item (iii).

2485. Mr. BOGSCH (Secretary General of the Conference) said that much depended on whether the proposal of the Delegation of Algeria was to be accepted or not. The statistics for 1968 or 1969 were known but those for future years were uncertain. As far as the Soviet Union was concerned, it would probably always fulfill the condition laid down in item (i).

2486. Mr. CHERVIAKOV (Soviet Union) said that his Delegation supported the proposal contained in document PCT/DC/91 as it stood. It was important that item (i) be maintained.

2487. Mr. OHWADA (Japan) said that his Delegation supported the proposal contained in document PCT/DC/91 on the understanding that the higher figures (1,000 and 10,000, respectively) would be inscribed in it and that the statistics would refer to a specific year: 1969, 1970, or 1971.

2488. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation was still convinced that the lower figures (500 and 5,000, respectively) should be adopted since more countries could then meet the statistical requirements.

2489. Mr. LAURELLI (Argentina) said that his Delegation supported the views expressed by the Delegation of Yugoslavia.

2490. Mr. LORENZ (Austria) said that his Delegation also supported the views expressed by the Delegation of Yugoslavia.

2491. Mr. ALENCAR NETTO (Brazil) said that his Delegation also supported the views expressed by the Delegation of Yugoslavia.

2492. Mr. BORGGÅRD (Sweden) said that his Delegation had a slight preference for the higher numbers (1,000 and 10,000, respectively) but could also accept the lower numbers.

2493. Mr. AKPONOR (Zambia) said that a compromise solution would be to provide for the higher number (1,000) in item (ii) and for the lower number (5,000) in item (iii).

2494. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation would prefer the higher numbers (1,000 and 10,000, respectively).

2495. *The proposal for the lower numbers (500 and 5,000, respectively) was rejected and the proposal for the higher numbers (1,000 and 10,000, respectively) was adopted by 10 votes in favor to 9 against, with 3 abstentions.*

2496. Mr. COMTE (Switzerland) said that his Delegation insisted that the total number of acceptances should be ten rather than eight.

2497. Mr. LAURELLI (Argentina) said that his Delegation supported the proposal of the Delegation of Switzerland.

2498. Mr. BOGSCH (Secretary General of the Conference) expressed the view that much of the compromise character of the proposal of the Secretariat contained in document PCT/DC/91 would be lost if the total number of acceptances was raised to ten.

2499. Mr. PIETERS (Netherlands) said that his Delegation was opposed to the proposal of the Delegation of Switzerland. Eight seemed to be a reasonable number of countries to bring the Treaty into operation.

2500. Mr. MESSEROTTI-BENVENUTI (Italy) reminded the meeting that the original proposal of the Delegation of Switzerland had been to raise not only the total number from eight to ten but also the number of countries which would have to meet the statistical requirements from four to six.

2501. *The proposal of the Delegation of Switzerland was rejected by 16 votes against to 4 in favor, with 10 abstentions.*

2502. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation had abstained in the vote because it considered that the proposal of the Secretariat contained in document PCT/DC/91 was a compromise, each element of which was equally important.

2503. *A proposal to raise the total number of accessions from eight to ten without raising the number of States which would have to meet the statistical requirements from four to six was rejected by 15 votes against to 1 in favor, with 13 abstentions.*

2504. Mr. LAURELLI (Argentina) reiterated the view of his Delegation that the proposal of the Delegation of Canada should be accepted and the latest available yearly statistics should apply.

2505. Mr. DAHMOUCHE (Algeria) said that the latest available statistics should be understood as referring to the year preceding the deposit of a State's instrument of ratification or accession.

2506. Mr. ALENCAR NETTO (Brazil) said that his Delegation also supported the proposal of the Delegation of Canada.

2507. Mr. AKPONOR (Zambia) said that his Delegation shared the views just expressed by the Delegation of Algeria.

2508. The CHAIRMAN said that it was understood that the most recent annual statistics would refer to the year which was the most recent year concerning which statistics were available at the time the instrument of ratification or accession was deposited.

2509. *Subject to the above understanding, and retaining the higher figures (1,000 and 10,000, respectively), the proposal contained in document PCT/DC/91 was adopted. (Continued at 2684.)*

**Rule 88: Amendment of the Regulations**  
(Continued from 2362.)

2510.1 Mr. BORGGÅRD (Sweden), in his capacity of Chairman of the Working Group set up to consider the proposal of the Delegation of the United States of America (document PCT/DC/80), introduced the report of the Working Group contained in document PCT/DC/93.

2510.2 The Working Group proposed that a new Rule be inserted between Rules 88.1 and 88.2 in the Draft and that the new Rule should provide as follows: "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 5 years after the entry into force of the Treaty: (i) Rule 5 (The Description), (ii) Rule 6 (The Claims), (iii) the present paragraph."

2510.3 Thus, Rule 5 and 6 could be amended only by unanimous consent during the first five years after the entry into force of the Treaty. Once that five-year period expired, the said two Rules could be amended by a three-fourths majority in the Assembly.

2511. Mr. BRADERMAN (United States of America) expressed his Delegation's thanks to the Working Group, whose proposal was acceptable to his Delegation.

2512. Mr. ROBINSON (Canada) suggested that the words "during the first 5 years after the entry into force of the Treaty" should be placed at the beginning of the provision.

2513. *The proposal of the Working Group contained in document PCT/DC/93 was adopted as orally amended by the Delegation of Canada.* (Continued at 2606.)

**In the signed text, Article 59: Disputes** (No provision in the Drafts) (Continued from 2465.)

2514. Mr. MATHON (Netherlands), referring to the proposal of the Six Delegations contained in document PCT/DC/86, said that the proposed new Article would parallel Article 28 of the Stockholm text of the Paris Convention. Since the PCT had many complicated provisions it would seem that an article on disputes would be even more necessary in the PCT than in the Paris Convention. It should be noted that any Contracting State could make a reservation to the effect that it did not accept the compulsory jurisdiction of the International Court of Justice and could exclude, as far as it was concerned, the application of the proposed new Article.

2515. Mr. ALMEIDA (Portugal), referring to the proposal of his Delegation contained in document PCT/DC/92, said that its purpose was to allow any Contracting State to make the reservation at a later time than the time at which it deposited its instrument of ratification or accession.

2516. Mr. BODENHAUSEN (Director of BIRPI) said that if the proposal of the Delegation of Portugal were to be accepted it would be necessary to provide that any reservation made after the bringing of an action before the International Court of Justice could not apply to that action.

2517. Mr. ALMEIDA (Portugal) agreed with the view expressed by the Director of BIRPI.

2518. Mr. DAHMOUCHE (Algeria) also agreed with the observations of the Director of BIRPI. Furthermore, he thought that the provision "unless States concerned agree on some other method of settlement" in the proposal of the Six Delegations was redundant with the words "not settled by negotiation" and should therefore be omitted.

2519. Mr. PUSZTAI (Hungary) said that the compulsory jurisdiction of the International Court of Justice was contrary to the sovereignty of States. Consequently, his Delegation opposed the proposal of the Six Delegations as well as the proposal of the Delegation of Portugal.

2520. Mr. BODENHAUSEN (Director of BIRPI) said that States sharing the views of the Delegation of Hungary could always make use of the possibility of reservation provided for in the proposal of the Six Delegations.

2521. Mr. BOWEN (United Kingdom) said that his Delegation supported the proposal of the Six Delegations. However, for the reasons stated by the Director of BIRPI, it opposed the proposal of the Delegation of Portugal.

2522. Mr. CHERVIAKOV (Soviet Union) said that his Delegation was opposed to the compulsory jurisdiction of the International Court of Justice and also to the proposal of the Six Delegations. The International Court of Justice could still be used, on a voluntary basis, by any Contracting State but for that purpose no provision was needed in the Treaty.

2523. Mrs. MATLASZEK (Poland) said that her Delegation shared the views of the Delegations of Hungary and the Soviet Union. Should the proposal of the Six Delegations be accepted, paragraphs (2) and (3) thereof should be transferred to the Article dealing with reservations.

2524. The CHAIRMAN said that the proposal of the Delegation of Poland would be referred to the Drafting Committee.

2525. Mr. CHERVIAKOV (Soviet Union) said that his Delegation would not insist on a vote on the proposal of the Six Delegations provided it was clearly understood that the possibility of reservation would be fully maintained.

2526. Mr. MATHON (Netherlands) said that his Delegation was opposed to the proposal of the Delegation of Portugal for the reasons stated by the Director of BIRPI.

2527. Mr. MAST (Germany (Federal Republic)) said that his Delegation shared the view expressed by the Delegation of the Netherlands.

2528. Mr. ALMEIDA (Portugal), on a question from the Chairman, said that his Delegation maintained its proposal. He was prepared to submit an amendment to its proposal in order to take into account the point raised by the Director of BIRPI and some of the delegations.

2529. *Further discussion on the proposed new article on disputes was deferred.* (Continued at 2588.)

**Article 53: Finances** (In the signed text, Article 57: Finances) (Continued from 2279.)

2530.1 The SECRETARY introduced the report contained in document PCT/DC/90, of the Working Group established in order to explore the possibilities of a compromise solution concerning paragraphs (5) and (7).

2530.2 As far as paragraph (5) was concerned, it was proposed to delete the words "and other pertinent factors" appearing in paragraph 5(b) of the Draft and to replace them by the following sentence: "The contribution of any State cannot, however, exceed 20% of the total of all contributions."

2530.3 As far as paragraph (7) was concerned, it was proposed to add to the text appearing in paragraph 7(b) of the Draft the following words: "on the basis of principles similar to those provided for in paragraph (5)(b)."

2531.1 Mr. BRENNAN (United States of America) said that his Delegation supported the solution proposed by the Working Group. It was difficult to establish objective criteria for evaluating the interest of each country in the PCT since that interest depended on many factors, such as the number of applications, the service rendered to competitors and the public at large by the international publication, the general technological development of any given country, etc.

2531.2 A ceiling of 20% for the contribution of each State to the deficit was to be welcomed because it would protect any State against an excessive participation. It was to be noted that the maximum share of any Contracting State in the budget of the Paris Union was approximately 3%, so that the 20% limit proposed by the Working Group was already a substantial departure from the situation existing in the Paris Union.

2532. Mr. DAHMOUCHE (Algeria) asked that Rule 34 of the Rules of Procedure of the Conference concerning reconsideration of proposals adopted or rejected should be applied.

2533. Mr. LAURELLI (Argentina) said that the proposal of the Working Group was in contradiction with the principles behind the Article already adopted concerning the entry into force of the Treaty. According to that Article, the countries having a great number of applications would have a determining role in causing the entry into force of the Treaty. Their financial responsibility for the years immediately following the entry into force should take that role into account. Any of those countries which had to meet the statistical requirements of the Article concerning the entry into force might cause far more than 20% of the work and expenses of the International Bureau in the first few years. Consequently, there was absolutely no logical reason for limiting the share of any of the countries to 20%. The proposal of the Working Group was totally unacceptable. (Continued at 2534.)

*End of the Seventh Meeting*

## EIGHTH MEETING

Thursday, June 4, 1970, afternoon

**Article 53: Finances** (In the signed text, Article 57: Finances) (Continued from 2533.)

2534.1 Mr. MAST (Germany (Federal Republic)) said that his Delegation, which had reserved its position in the Working Group, was opposed to the proposal of that Group as far as it called for adding to paragraph (5)(b) the sentence: "The contribution of any State cannot, however, exceed 20% of the total of all contributions." The 20% limit could very well be beneficial to the Government of his country because one could easily imagine a combination of countries putting the PCT into effect in which the number of international applications filed by German nationals would exceed 20% of the total of the international applications. However, the principle of the 20% limit did not seem to be just for the very reason that the work caused by the nationals of any Contracting State might far exceed 20% of the total work caused by the PCT in the International Bureau. While it was of course true that considerations other than the number of international applications also influenced the evaluation of the interest of each State in the PCT, that number was nevertheless the most important of all considerations.

2534.2 His Delegation would be ready to accept, as far as paragraph (5)(b) was concerned, either the recommendation of the Working Group without, however, its last sentence, or the text contained in the Draft.

2535. Mr. BORGGÅRD (Sweden) said that, while the principle applying in the Paris Convention could perhaps also be applied in the PCT to developed countries, he was not sure whether the same principle could be applied in the PCT to developing countries, from which a very small number of international applications might emanate.

2536. Mr. DAHMOUCHE (Algeria) suggested that the sentence concerning the 20% limit should be deleted. Such a limitation would unduly restrict the power of free appreciation which should be left to the Assembly of the International Patent Cooperation Union. Furthermore, it might lead to unjust results when any given country used the PCT to a greater extent than 20% of its total use.

2537. Mr. BOWEN (United Kingdom) said that his Delegation continued to believe that the only just basis for distributing any possible deficit among the Contracting States was the number of the international applications emanating from each State. The 20% limit could lead to unjust results as had been pointed out by the Delegation of Germany (Federal Republic). Furthermore, the 20 limitation, if combined with the principle of the number of international applications, could lead to a situation in which less than 100% of the deficit would be covered. Such a result would obviously be unacceptable because there would be no one to finance the balance of the deficit.

2538. Mr. COMTE (Switzerland) said that his Delegation too was opposed to the last sentence of the

proposal of the Working Group, providing for the 20% limit, for the reasons already stated by the Delegations of Germany (Federal Republic), Sweden, Algeria, and the United Kingdom.

2539.1 Mr. BESAROVIĆ (Yugoslavia) said that, for the reasons stated by the previous speakers, his Delegation was also opposed to the 20% limit.

2539.2 He wondered why the Working Group had not tried to find a definition for the words "other factors" appearing in the Draft. After all, finding such a definition was the task – and the only task at that – with which the Working Group had been entrusted.

2540.1 Mr. BRENNAN (United States of America) said that whereas his Delegation was ready to enumerate the "other factors" all the members of the Working Group except the Delegation of the Soviet Union were of the opinion that only one factor, namely, that of the number of international applications emanating from each State, should be retained in the text.

2540.2 He failed to understand why certain delegations which had accepted the 20% limit in the Working Group were now opposed to it. That limit was five or six times higher than the limit existing in the Paris Convention, so that the PCT would already be much more liberal in that respect than the Paris Convention.

2540.3 He urged the members of the Working Group – except Germany (Federal Republic), which had reserved its position in that Group – to stick to the compromise they had already reached. Otherwise, his Delegation would insist that a long list of "other factors" should be included in the text of the Treaty.

2540.4 He was under the impression that the Delegation of Argentina, which had spoken in the previous meeting but was not present in the present meeting, had misunderstood the proposal of the Working Group because that proposal had nothing to do with the Article concerning the entry into force of the Treaty.

2541. Mr. TUXEN (Denmark) said that his Delegation agreed with the speakers who opposed the inclusion of the 20% limit. Such a limitation would be dangerous because it would lead to a situation where small countries, particularly developing countries, would be paying much more than would be justified by the number of international applications filed by their nationals.

2542. Mr. PIETERS (Netherlands) said that his Delegation too was opposed to the 20% limit for the reasons already expressed by the Delegations of Germany (Federal Republic), the United Kingdom, Sweden, and Switzerland. He said that it agreed with the earlier declaration of the Delegation of Algeria according to which the words "other factors" could be omitted from the Draft without changing its sense. Even if the Draft merely said that the amount of the contributions of each Contracting State was to be decided by the Assembly with due regard to the number of international applications which had emanated from each of them, other factors could also be taken into consideration by the Assembly.

2543. Mr. BRENNAN (United States of America) said that he was under the impression that most delegations in the Working Group understood that if only the words "with due regard to the number of international applications filed" were to be maintained no other criteria could be taken into account by the Assembly.

2544. Mr. BESAROVIĆ (Yugoslavia) said that one of the "other factors" which the Assembly should take into consideration would be the economic and financial situation of any Contracting State, particularly a developing State.

2545. Mr. HADDRICK (Australia) said that he too was surprised that some delegations which had accepted the 20% upper limit in the Working Group were now objecting to it. Perhaps by raising that upper limit to 25% more delegations could accept the idea of an absolute limit on contributions.

2546. Mr. CHERVIAKOV (Soviet Union) said that it had always been the view of his Delegation that the only criterion which should be taken into account was the number of international applications emanating from each Contracting State. His Delegation was not necessarily objecting to writing an upper limit – which might be more than 20% and could, for example, be 25% or 30% – into the Treaty although he could also see the arguments which militated against any limitation.

2547. Mr. BRADERMAN (United States of America) said that, since the proposal of the Working Group had been subscribed to by a number of delegations, it should be regarded as a formal proposal introduced and seconded and a vote should be taken on it.

2548. Mr. ASHER (Canada) said that his Delegation, for the reasons stated by the Delegation of Germany (Federal Republic), was also opposed to the 20% limit.

2549. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation supported the proposal of the Working Group.

2550. Mr. BODENHAUSEN (Director of BIRPI) said that it should be understood that, if the 20% limit was accepted, then a situation could arise where countries which, on the basis of the number of international applications, would have to pay a certain amount might find themselves having to pay a larger amount in order to cover the deficit which, after the payment of the contributions limited by the 20% rule, would remain uncovered.

2551. Mr. BRADERMAN (United States of America) said that whereas the Director of BIRPI was right it was nowhere stated that all deficits would have to be covered immediately and to the extent of 100%. Some of the deficit could be carried over from one year to the next.

2552. Mr. BODENHAUSEN (Director of BIRPI) said that the mere fact that some of the deficit would not be covered would not mean that the distribution would change. The 20% limit would still apply.

2553. Mr. BOWEN (United Kingdom) said that it was true that in the Working Group his Delegation had

not objected to the 20% limit. However, after having heard the arguments in the meeting, it was no longer convinced that the principle on which the 20% limitation was based was right. Consequently, if the question was put to a vote, his Delegation would abstain.

2554. Mr. MAST (Germany (Federal Republic)) said that perhaps the distribution formula could be drawn up so that it could take into account not only the number of incoming but also the number of outgoing applications,

2555. Mr. HADDRICK (Australia) said that the proposal just made by the Delegation of Germany (Federal Republic) had been considered by the Working Group but discarded because it would complicate the system too much. He wished to know whether the Delegation of the United States of America could accept the raising of the limit from 20% to 25%.

2556.1 Mr. BRADERMAN (United States of America) said that the US Congress had put a limit on the percentage the United States could subscribe for the purposes of any intergovernmental organization. If there was no limitation of any kind in the PCT, it would be possible that the limit set by the US Congress would be surpassed, in which case the United States of America would have no other choice but to leave the International Patent Cooperation Union.

2556.2 The proposal to raise the limit from 20% to 25% would be acceptable to his Delegation.

2557. Mr. LAURELLI (Argentina) said that as long as the limit of 20% was not substantially raised his Delegation could not accept it.

2558. Mr. MAST (Germany (Federal Republic)) said that since his Delegation was opposed to the principle of limitation it would oppose any limitation, whether it was 20% or 25%.

2559. Mr. HADDRICK (Australia) said that his Delegation persisted in believing that speaking of "other pertinent factors" would introduce a degree of uncertainty which would make the provision unacceptable. The compromise worked out by the Working Group might not be entirely logical but such things did happen in the case of compromises. He urged the Main Committee to accept it.

2560. Mr. MESSEROTTI-BENVENUTI (Italy) said that he would prefer it if a vote could be taken on the 25% limit because it seemed to him that that would be acceptable to a larger number of countries.

2561. Mr. DAHMOUCHE (Algeria) said that the only written proposal before the Committee was a proposal for a 20% limit and therefore that was the only proposal that could be put to the vote. In a similar situation, in the previous meeting, the Delegation of Portugal had been invited to make an amendment in writing and his oral amendment had not been accepted for voting purposes.

2562. Mr. HADDRICK (Australia) said that there was a difference between the two situations: the amendment presented orally by the Delegation of Portugal was a complicated one and therefore needed

to be put in writing: substituting 25% for 20% was a simple matter, instantly intelligible to everybody, and could therefore be put to the vote without any risk of confusion.

2563. The CHAIRMAN suggested that the vote should be taken first on the 25% limit and then on the 20% limit,

2564. Mr. BRADERMAN (United States of America) said that one should either put the principle of limitation or the proposal of the Working Group for a 20% limit to a vote, but not the proposal for a 25% limit.

2565. Mr. LAURELLI (Argentina) said that the vote should first be taken on the proposal which was furthest removed from the Draft.

2566. *The proposal of the Working Group contained in document PCT/DC/90 concerning the inclusion of a sentence in paragraph (5)(b) reading as follows: "The contribution of any State cannot, however, exceed 20% of the total of all contributions," was rejected by 12 votes against to 5 in favor, with 12 abstentions.*

2567. *The same sentence, providing for a 25% limit was rejected by 11 votes against to 8 in favor, with 9 abstentions.*

2568. The CHAIRMAN said that as to the question whether "other factors" should be mentioned in paragraph (5)(b) or should be expounded and, if so, how, that question should be referred to the Working Group.

2569. Mr. HADDRICK (Australia) said that he thought that it would serve no useful purpose to refer the question to the Working Group since that Group had tried to define "other factors" but had not succeeded. Consequently, the best thing would be to speak only about the number of international applications and not about other factors.

2570. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation continued to believe that the provision should also refer to the economic and financial situation of each State, particularly if the State was a developing country.

2571. Mr. BOWEN (United Kingdom) said that there were so many different factors that one could, and in any given situation should, take into consideration that it was undesirable to try to mention them in the text of the Treaty. The words "due regard" in the Draft would be a sufficient safeguard that factors other than the number of international applications could also be taken into account. It was very difficult to define for the purposes of a legal text which countries were developing and which were not. Since the number of international applications seemed to be the most pertinent factor in any case, specifying that sole factor would be quite sufficient.

2572. Mr. SAVIGNON (France) said that if the text mentioned expressly any factor other than the number of international applications then such other factor would be put on the same footing as the number of international applications. Such a result, however, was undesirable because the most important factor was undoubtedly the number of international

applications. However, the fact that only one factor was expressly mentioned did not exclude taking other factors into account, in a secondary way, since the text did not say that the principle of the number of international applications was the only one to be applied. On the contrary, it said that it was merely a factor to which due regard had to be paid.

2573. Mr. BORGGÅRD (Sweden) said that his Delegation agreed with the views expressed by the Delegations of the United Kingdom and France.

2574. Mr. LULE (Uganda) said that his Delegation was in favor of a flexible formula since one could count on the wisdom of the Assembly in applying it in a just and equitable way.

2575. Mr. CHONA (Zambia) said that if the matter was referred back to the Working Group he wished that Group to consider the participation in any deficit of countries from which no international application would emanate. A maximum should be provided for such countries.

2576. Mr. CHERVIAKOV (Soviet Union) said that the Working Group had already decided to delete the words "and other pertinent factors." If the question was to be reopened, it would have to be prepared by a new Working Group.

2577.1 The CHAIRMAN said that the assignment of the Working Group had been to define "other relevant factors." It had been unable to agree on such a definition and had recommended that the words "and other relevant factors" be deleted.

2577.2 He would therefore proceed to put paragraph (5)(b) to the vote without the last sentence concerning the limitation, which had just been rejected, and without the last words of the first sentence, reading as follows: "and other pertinent factors." It was, of course, to be understood that since the sentence, as it remained, still contained the words "with due regard" the Assembly was free to apply criteria in addition to the criterion of the number of international applications emanating from each State.

2578. *Paragraph (5)(b), reading as follows: "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," was adopted by 26 votes in favor to none against, with 4 abstentions.*

2579. Mr. BOWEN (United Kingdom) asked what the meaning of paragraph (5)(c) was.

2580. The SECRETARY replied that if any financial year closed with a deficit the Assembly could decide to ask that it be covered by contributions. That was what subparagraphs (a) and (b) provided for. However, the Assembly might decide to carry forward the deficit, but it could do so only if some means, other than contributions, were found to cover the deficit provisionally, that is, if there were other sources from which expenses in excess of income could be paid. Such other sources could be a loan from the Swiss Government, an appropriation from the reserve fund, or a withdrawal from the working

capital fund. That was what subparagraph (c) was intended to provide for.

2581. *Paragraph (5)(c) was adopted as appearing in the Draft, on the understanding that its text would be clarified by the Drafting Committee.*

2582. The CHAIRMAN invited comments on the proposal of the Working Group concerning paragraph (7)(b). That provision would read as follows: "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)." The words "on the basis of principles similar to those provided for in paragraph (5)(b)" constituted a proposal by the Working Group to be added to the Draft.

2583. Mr. COMTE (Switzerland) said that he could not understand the proposal of the Working Group since the principle in paragraph (5)(b) was the principle of the number of international applications, which could obviously not be applied to the constitution of a working capital fund, since the constitution of such a fund would precede the filing of any significant number of international applications.

2584. Mr. BRADERMAN (United States of America) said that his Delegation shared the views of the Delegation of Switzerland.

2585. The SECRETARY said that when the Working Group made the proposal it was of the opinion that the working capital fund was not necessarily to be constituted at the very beginning of the Treaty's existence. It could be constituted two or three years after its entry into force when there was already a significant flow of international applications. In the meantime advances from the Swiss Government could take the place of a working capital fund.

2586. Mr. BRADERMAN (United States of America) said that, since one of the elements contained in the proposal of the Working Group concerning paragraph (5)(b) had been removed from the text by the Main Committee, the same difficulties which had been noted by his Delegation in connection with the removal of the element in that paragraph could also appear in connection with paragraph (7)(b).

2587. *Paragraph (7)(b) was adopted as appearing in the proposal of the Working Group (document PCT/DC/90). (Continued at 2664.)*

**In the signed text, Article 59: Disputes** (No provision in the Drafts) (Continued from 2529.)

2588. Mr. ALMEIDA (Portugal) said that his Delegation no longer intended to file an amendment to its proposal contained in document PCT/DC/92 and that it withdrew the said proposal.

2589. *The Article on disputes was adopted as appearing in the proposal of the Six Delegations contained in document PCT/DC/86, on the understanding that the Drafting Committee was free to make formal changes, in particular to transfer paragraphs (2) and (3) to the Article on reservations. (Continued at 2669.)*



**Rule 84: Expenses of Delegations**

2590. Mr. SHER (Israel) said that the Drafting Committee should look into the question of the meaning of the word "delegation." It should be understood that "delegation" meant any delegation participating in any of the organs established by the Treaty and not only delegations in the Assembly.

2591. *Rule 84 was adopted as appearing in the Draft, on the understanding that the observations of the Delegation of Israel would be referred to the Drafting Committee.* (Continued at 2701.)

**Rule 85: Absence of Quorum in the Assembly**

2592. *Rule 85 was adopted as appearing in the Alternative Draft, without discussion* (Continued at 2703.)

**Rule 86: The Gazette**

2593. Mr. ALENCAR NETTO (Brazil) said that his Delegation had a proposal contained in document PCT/DC/45 but since it was going to present a new proposal, it wished to reserve the right to revert to Rule 86.

2594. *Rule 86 was adopted as appearing in the Alternative Draft, with the understanding that the Delegation of Brazil may revert to it.* (Continued at 2706.)

**Rule 87: Copies of Publications**

2595. Mr. SHER (Israel) said that in Rule 87.2(a) as appearing in the Alternative Draft the words "in which it is designated" should be deleted since the sorting out of international applications in which any given country was designated would probably cost more than sending all the international applications to each national Office.

2596. Mr. COMTE (Switzerland) agreed with the proposal of the Delegation of Israel.

2597. Mr. CHAVANNES (Netherlands) said that his Delegation also shared the views of the Delegation of Israel.

2598. Mr. ALMEIDA (Portugal) said that his Delegation agreed with the purpose of the proposal of the Delegation of Israel but considered it to be unnecessary since the Alternative Draft already achieved that purpose.

2599. The CHAIRMAN said that the copies in question were not the copies which were communicated or transmitted under Articles 20 or 22 (those copies were not necessarily the printed publications) but copies of the printed publication.

2600. Mr. CHAVANNES (Netherlands) said that the copies received under Articles 20 or 22 were needed for processing the international application whereas the copies which each country would receive under the Rule under discussion would be for their search files and libraries.

2601. Mr. BOWEN (United Kingdom) said that giving additional copies to the designated States might substantially increase the costs.

2602. Mr. SHER (Israel) said that, as he had stated before, the cost would be higher if a differentiation

had to be made – when the distribution of printed copies was organized – between designated States for the purposes of each international application. That was why it would be more economical to send a copy of each international application to every national Office whether it was designated or not.

2603. Mr. MAST (Germany (Federal Republic)) said that a situation should not be created which would weaken the International Bureau's prospects of receiving national publications in exchange for international applications.

2604. Mr. SHER (Israel) said that even if it was not stated explicitly it was still understood that the Paris Convention required national Offices to give their publications free of charge to each other and to the International Bureau.

2605. *Rule 87 was adopted as appearing in the Alternative Draft except that the words "in which it is not designated" in Rule 87.2(a) were deleted.* (Continued at 2708.)

*End of the Eighth Meeting*

**NINTH MEETING**

Friday, June 5, 1970, morning

**Rule 88: Amendment of the Regulations**  
(Continued from 2513.)

2606. *Rule 88.2 and Rule 88.3 (Rule 88.3 and Rule 88.4 in the signed text) were adopted as appearing in the Draft, without discussion.* (Continued at 2711.)

**Rule 89: Administrative Instructions**

2607. *Rule 89 was adopted as appearing in the Draft, without discussion.* (Continued at 2713.)

**Rule 90: Representation**

2608. *Rule 90 was adopted as appearing in the Alternative Draft, without discussion.* (Continued at 2715.)

**Rule 91: Obvious Errors of Transcription**

2609. Mr. BOWEN (United Kingdom), referring to the proposal of his Delegation contained in document PCT/DC/26, said that the purpose of the amendment was to provide, in paragraph (d)(ii) and (iii), that the request for rectification must be presented before a certain time limit, namely, during the time when the international application was still in the hands of the International Searching Authority or the International Preliminary Examining Authority.

2610. Mr. BRENNAN (United States of America) said that he was in agreement with the intent of the proposal of the United Kingdom but thought that some redrafting would have to be made since, as it stood, it could be interpreted as providing that no authorization for any rectification would be needed from anybody once the matter was no longer before the said Authorities. That, of course, was not the case.

2611. Mr. COMTE (Switzerland) said that, if the proposal of the Delegation of the United Kingdom

was to be accepted, paragraph (d)(iv) would have to give the International Bureau power to authorize rectification once the time limits provided for in the proposal of the Delegation of the United Kingdom had expired.

2612. Mr. BOWEN (United Kingdom) said that his Delegation shared the views expressed by the Delegation of Switzerland. The International Bureau should be entitled to authorize corrections, for example in the amendment of the claims under Article 19, once the files were no longer with the International Searching or Preliminary Examining Authority.

2613. Mr. BRENNAN (United States of America) said that the extension of the powers of the International Bureau, as suggested by the Delegations of Switzerland and the United Kingdom, might cause some difficulties since the International Bureau would have to pass judgment on questions of substantive patent law, namely, whether an error was an obvious error of transcription or an error in substance.

2614. Mr. BODENHAUSEN (Director of BIRPI) said that the proposal of the Delegation of the United Kingdom concerning items (ii) and (iii) was, of course, logical since the Authorities referred to in those provisions could not pass judgment on requests for corrections in applications which were no longer under active consideration by them. On the other hand, as far as item (iv) was concerned, he had doubts whether the International Bureau should be burdened with the responsibility of judging whether a correction offered in the claims, description, or other substantive parts of the application, related to an obvious error of transcription or not.

2615. Mr. BOWEN (United Kingdom) said that his Delegation recognized the difficulty referred to by the Director of BIRPI. One of the solutions would be not to give any opportunity for correction once the application was no longer under active consideration by the said Authorities; the other would be to pass the request for correction filed with the International Bureau to those Authorities for their opinion. Perhaps the best solution would be to deny all possibility of making corrections in any part of the international application, other than the request, once the time limits proposed in the amendment of his Delegation had expired.

2616. Mr. SHER (Israel) expressed the view that, even if the applicant was cut off from any further possibility of making corrections, as suggested by the Delegation of the United Kingdom, no real harm would be done to him because he could always make corrections in the national phase.

2617. Mr. BRENNAN (United States of America) said that he too was of the opinion that, once the time limits indicated in the proposal of the United Kingdom had expired, there should be no further opportunity to correct in the international phase.

2618. Mr. COMTE (Switzerland) said that the description of the time limits in the Rule were necessary because, otherwise, any request for rectification, however late it was presented, would have to be referred to the International Searching

Authority or the International Preliminary Examining Authority.

2619. Mr. BRENNAN (United States of America) said that, subject to drafting, the proposal of the Delegation of the United Kingdom should be accepted.

2620. *The proposal of the Delegation of the United Kingdom concerning paragraph (d)(ii) and (iii) was accepted, on the understanding that the Drafting Committee was free to suggest a different expression of the ideas contained in the said proposal.*

2621. *Subject to the above decision, Rule 91 was adopted as appearing in the Alternative Draft.* (Continued at 2716.)

#### **Rule 92: Correspondence**

2622. *Rule 92 was adopted as appearing in the Alternative Draft without discussion.* (Continued at 2719.)

#### **Rule 93: Keeping of Records and Files**

2623. *Rule 93 was adopted as appearing in the Alternative Draft without discussion.* (Continued at 2724.)

#### **Rule 94: Furnishing of Copies by the International Bureau and the International Preliminary Examining Authority**

2624. Mr. BOWEN (United Kingdom) asked whether there was any reason that the Rule spoke only about the International Bureau and the International Preliminary Examining Authority, and not also about the International Searching Authority.

2625. Mr. BODENHAUSEN (Director of BIRPI) replied that he saw no reason why the International Searching Authority should be mentioned.

2626. Mr. BRENNAN (United States of America) said that there might be good reason for not speaking about the International Searching Authority in the Rule under consideration since it was only the International Bureau and the International Preliminary Examining Authority which would be in possession of the complete file of the international application, including any amendments and corrections.

2627. Mr. BODENHAUSEN (Director of BIRPI) suggested that a decision be deferred.

2628. Mr. BOWEN (United Kingdom) suggested that any reference to the International Preliminary Examining Authority should also be omitted in the Rule under consideration.

2629. *Further discussion on Rule 91 was deferred.* (Continued at 2631.)

#### **Rule 95: Availability of Translations**

2630. *Discussion on Rule 95 was deferred.* (Continued at 2633.)

#### **Rule 94: Furnishing of Copies by the International Bureau and the International Preliminary Examining Authority** (Continued from 2629.)

2631. Mr. BOGSCH (Secretary General of the Conference) said that the reason for which Rule 94 did

not refer to the International Searching Authority was that that Authority would not necessarily be in possession of the complete file of the international application.

2632. *Rule 91 was adopted as appearing in the Alternative Draft.* (Continued at 2726.)

**Rule 95: Availability of Translations** (Continued from 2630.)

2633. Mr. BOGSCH (Secretary General of the Conference) said that the Alternative Draft represented a considerable simplification in comparison with the Draft, a simplification which had been suggested in the last Committee of Experts meeting by the Delegation of Switzerland.

2634. *Rule 95 was adopted as appearing in the Alternative Draft.* (Continued at 2727.)

*End of the Ninth Meeting\**

## TENTH MEETING

Thursday, June 11, 1970, morning

2635. The CHAIRMAN opened the discussion on the report of the Drafting Committee contained in document PCT/DC/108.

**Article 50: Assembly** (In the signed text, Article 53: Assembly) (Continued from 2188.)

2636. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee.

2637. Mr. COMTE (Switzerland) said that paragraph (1)(a) which reads "The Assembly shall consist of the Contracting States" should refer to paragraph (8) of the Article on finances so as to cover the case of the State on whose territory the Organization had its headquarters and which would be a member of the Assembly even before it became a Contracting State.

2638. *The proposal of the Delegation of Switzerland to refer, in paragraph (1)(a), to paragraph (8) of the Article dealing with finances was adopted.*

2639. *Subject to the above decision, Article 50 was adopted as appearing in document PCT/DC/108.* (Continued at 2731.)

**In the signed text, Article 54: Executive Committee** (No separate article in the Drafts) (Continued from 2462.)

2640. Mr. BALMARY (France), as Chairman of the Drafting Committee, introduced the text established by his Committee.

2641. Mr. COMTE (Switzerland) said that, if the State on whose territory the Organization had its headquarters was not to be taken into consideration in computing the reeligible two-thirds, paragraph (5)(b) should state so.

2642. The SECRETARY said that the question raised by the Delegation of Switzerland concerned the computation of the two-thirds but did not concern the question of re-election.

2643. Mr. COMTE (Switzerland) did not insist on his proposal.

2644. *The Article on the Executive Committee (50bis in document PCT/DC/108) was adopted as appearing in that document.* (Continued at 2734.)

**Article 51: International Bureau** (In the signed text, Article 55: International Bureau) (Continued from 2193.)

2645. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the text of the Article on the International Bureau,

2646. *The Article on the International Bureau was adopted as appearing in document PCT/DC/108.*

**Article 52: Committee for Technical Cooperation** (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2265.)

2647. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the Article under discussion.

2648. Mr. BESAROVIĆ (Yugoslavia) recalled that in a previous meeting his Delegation had proposed that paragraph (2)(a) be completed by the following words: "with due regard to an equitable representation and with due regard to the economic development of the various States."

2649. Mr. DAHMOUCHE (Algeria) said that his Delegation too was of the opinion that the proposal of the Delegation of Yugoslavia should be accepted. It should be noted that "equitable" representation did not mean necessarily a mathematically proportionate representation.

2650. Mr. LAURELLI (Argentina) said that his Delegation too was of the opinion that there should be an express reference to an equitable representation of developing countries.

2651. Mr. BRENNAN (United States of America) said that, in view of the fact that by virtue of paragraph (2)(b) International Searching and Preliminary Examining Authorities were *ex officio* members of the Committee for Technical Cooperation, countries whose national Offices acted as such Authorities would already be among the members of the said Committee. Consequently, a reference to an equitable geographical distribution might be desirable.

2652. Mr. ALENCAR NETTO (Brazil) said that his Delegation was in agreement with the observations made by the Delegations of Algeria, Argentina and Yugoslavia.

2653. Mr. SAVIGNON (France) said that it was much more necessary to speak about representation of the developing countries, if their representation was to be achieved on the Committee, than of an equitable geographical distribution, because in every geographical area there were highly developed countries and if they were selected as members, the

\* Main Committee II met jointly with Main Committee I in the afternoon of June 10, 1970. The joint meeting is reported on as the 25<sup>th</sup> meeting of Main Committee I.

Committee would have a geographically equitable distribution and still not have sufficient members among developing countries. Consequently, it would be better not to speak about geographical distribution, but directly state that developing countries should have an equitable representation.

2654. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the suggestion of the Delegation of France.

2655. Mr. DAHMOUCHE (Algeria) said that his Delegation too agreed with the proposal of the Delegation of France.

2656. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation preferred the original proposal of the Delegation of Yugoslavia.

2657. Mr. BORGGÅRD (Sweden) said that his Delegation favored the proposal of the Delegation of France.

2658. *The proposal to add the following words to paragraph (2)(a): "with due regard to an equitable representation of developing countries" was accepted by 23 votes in favor to 2 against, with 5 abstentions.*

2659. Mr. PHAF (Netherlands) said that some reference to paragraph (5) should be made in paragraph (6)(a). For example, paragraph (6)(a) could be introduced by the words: "In any case."

2660. *The proposal to add the words "In any case" at the beginning of paragraph (6)(a) was adopted.*

2661. Mr. BOWEN (United Kingdom) asked that the Drafting Committee look into the question whether paragraph (3)(i) needed any coordination with the provisions of the new Chapter concerning information services.

2662. *The proposal of the Delegation of the United Kingdom was adopted.*

2663. *Subject to the decisions recorded above, the Article on the Committee for Technical Cooperation was adopted as appearing in document PCT/DC/108. (Continued at 2736.)*

**Article 53: Finances (In the signed text, Article 57: Finances)** (Continued from 2587.)

2664. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the Article under consideration.

2665. Mr. NORDSTRAND (Norway) said that the Drafting Committee should look into the question whether any reference should be made in the Article under discussion to the last Article of the new Chapter on information services, an Article which also dealt with financial questions.

2666. *The Committee decided to refer the request of the Delegation of Norway to the Drafting Committee.*

2667. *Subject to the above understanding, the Article on finances was adopted as appearing in document PCT/DC/108.*

**Article 54: Regulations** (In the signed text, Article 58: Regulations) (Continued from 2324.)

2668. *The Article on the Regulations was adopted as appearing in document PCT/DC/108, without discussion.*

**In the signed text, Article 59: Disputes** (No provision in the Drafts) (Continued from 2589.)

2669. Mr. BALMARY (France), as Chairman of the Drafting Committee, said that the provisions on the possibility of making reservations in respect of the Article under discussion would appear in the Article on reservations.

2670. *The article on disputes was adopted as appearing in document PCT/DC/108, without discussion.*

**Article 55: Revision of the Treaty** (In the signed text, Article 60: Revision of the Treaty) (Continued from 2141.)

2671. *The Article on revision of the Treaty was adopted as appearing in document PCT/DC/108, without discussion.*

**Article 56: Amendment of Certain Provisions of the Treaty** (In the signed text, Article 61: Amendment of Certain Provisions of the Treaty) (Continued from 2151.)

2672. *The Article on the amendment of certain provisions of the Treaty was adopted as appearing in document PCT/DC/108, without discussion.*

**Article 57: Becoming Party to the Treaty** (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2323.)

2673.1 Mr. DAHMOUCHE (Algeria) said that his Delegation saw no good reason for paragraph (3), which referred to the so-called territorial clause of the Stockholm Act of the Paris Convention. That Article amounted to the recognition of the colonial system. His Government had not accepted the Stockholm Act of the Paris Convention and did not desire to become bound by it as far as the PCT was concerned.

2673.2 For those reasons, paragraph (3) should be omitted.

2674. The CHAIRMAN said that since paragraph (3) had already been adopted by the Main Committee there was no place in that Committee to rediscuss the question since the Main Committee was at that time concerned only with the question whether the Drafting Committee had correctly implemented the former's decisions. However, any Delegation could raise the question of substance in the Plenary of the Conference.

2675. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation agreed with the proposal of the Delegation of Algeria to the effect that paragraph (3) should be omitted.

2676. Mr. ARTEMIEV (Soviet Union) said that when ratifying the Stockholm Act his country had expressly objected to Article 24 of that Act. For the same reasons as those which had prompted that objection and which had been explained by the Delegations of Algeria and Yugoslavia, the Delegation

of the Soviet Union also supported the proposal that paragraph (3) should be omitted.

2677. Mr. AKPONOR (Zambia) said that his Delegation too supported the proposal of the Delegations of Algeria and Yugoslavia.

2678. Mr. LULE (Uganda) asked what the position of a country which had not accepted the Stockholm Act of the Paris Convention would be in respect of the paragraph under discussion.

2679. Mr. BOGSCH (Secretary General of the Conference) said that, as the Director of BIRPI had explained in an earlier meeting, there was no legal difficulty in that respect.

2680. Mrs. MATLASZEK (Poland) said that her Delegation also supported the views expressed by the Delegation of Algeria.

2681. Mr. ALENCAR NETTO (Brazil) wished the reservation of his Delegation in respect of paragraph (3) to be recorded. The more so as his country had not accepted the Stockholm Act of the Paris Convention.

2682. Mr. LAURELLI (Argentina) said that his Delegation also associated itself with the views expressed by the Delegation of Algeria and other delegations sharing that view.

2683. *The Article on becoming party to the Treaty was adopted as appearing in document PCT/DC/108. (Continued at 2729.)*

**Article 58: Entry into Force of the Treaty and Article 59: Effective Date of the Treaty for States Not Covered by Article 58** (In the signed text, Article 63: Entry Into Force of the Treaty) (Continued from 2509 and 2389, respectively.)

2684. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the Article under discussion.

2685. Mr. BRENNAN (United States of America) asked whether the objective of paragraph (1)(b) was to exclude utility models from being taken into account when the statistical requirements entered into consideration.

2686. The CHAIRMAN replied that that was precisely the intention of paragraph (1)(b).

2687. Mr. BOWEN (United Kingdom) asked whether it was also the intention to exclude patents of addition.

2688. Mr. MAST (Germany (Federal Republic)) said that patents of addition should not be excluded.

2689. *On the above understanding, the Article on the entry into force of the Treaty was adopted as appearing in document PCT/DC/108. (Continued at 2738.)*

**Article 60: Reservations** (In the signed text, Article 64: Reservations) (Continued from 1620 and 2409.)

2690. *The Article on reservations was adopted as appearing in document PCT/DC/108, without discussion. (Continued at 2740.)*

**Article 61: Gradual Application** (In the signed text, Article 65: Gradual Application) (Continued from 2413.)

2691. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the said Article.

2692. *The Article on gradual application was adopted as appearing in document PCT/DC/108, without discussion.*

**Article 62: Denunciation** (In the signed text, Article 66: Denunciation) (Continued from 2414.)

2693. *The Article on denunciation was adopted as appearing in document PCT/DC/108, without discussion.*

**Article 63: Signature and Languages** (In the signed text, Article 67: Signature and Languages) (Continued from 2435.)

2694. *The Article on signature and languages was adopted as appearing in document PCT/DC/108, without discussion.*

**Article 64: Depositary Functions** (In the signed text, Article 68: Depositary Functions) (Continued from 2447.)

2695. *The Article on depositary functions was adopted as appearing in document PCT/DC/108, without discussion.*

**Article 65: Notifications** (In the signed text, Article 69: Notifications) (Continued from 2450.)

2696. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee in the said Article.

2697. Mr. SHER (Israel) said that the reference to notifications under Article 32 should be added.

2698. *It was agreed that the Drafting Committee would look into the proposal of the Delegation of Israel.*

2699. *Subject to the above understanding, the Article on notifications was adopted as appearing in document PCT/DC/108. (Continued at 2742.)*

*End of the Tenth Meeting*

## ELEVENTH MEETING

Thursday, June 11, 1970, afternoon

2700. The CHAIRMAN said that the consideration of the text proposed by the Drafting Committee in document PCT/DC/108 would continue.

**Rule 84: Expenses of Delegations** (Continued from 2591.)

2701. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made by his Committee.

2702. *Rule 84 was adopted as appearing in document PCT/DC/108.*

**Rule 85: Absence of Quorum in the Assembly** (Continued from 2592.)

2703. Mr. ALMEIDA (Brazil) said that the title of Rule 85.1 should be "Consultation by Correspondence," as in the Draft, rather than "Voting by Correspondence" since the written replies of the States might also contain comments and express abstentions.

2704. The SECRETARY said that, naturally, each State could make comments and could abstain. However, what was important was that there should be a clear expression of position which required a "yes" or a "no," in other words, a vote.

2705. *Rule 85 was adopted as appearing in document PCT/DC/108.*

**Rule 86: The Gazette** (Continued from 2594.)

2706. Mr. ALENCAR NETTO (Brazil) said that his Delegation intended to introduce an amendment and asked for the right to do so later.

2707. *Subject to the possibility of reopening the discussion in the light of any later proposal by the Delegation of Brazil, Rule 86 was adopted as appearing in document PCT/DC/108.* (Continued at 2728.)

**Rule 87: Copies of Publications** (Continued from 2605.)

2708. Mr. BALMARY (France), as Chairman of the Drafting Committee, said that the words "in which it is not designated" in Rule 87.2(a) had been maintained since it appeared to the Drafting Committee that, without them, there would be an undesirable duplication in respect of designated Offices.

2709. Mr. COMTE (Switzerland) said that his impression was that the Main Committee was rather of the opinion that the said words should be deleted since designated Offices needed several copies of the same application. The copies received under Articles 13, 20 or 22 were needed in connection with the processing of the international application, whereas the copies which would be received under the Rule under discussion would go into the search files and other collections of the national Offices.

2710. *Subject to deleting the words "in which it is not designated" in Rule 87.2(a), Rule 87 was adopted as appearing in document PCT/DC/108.* (Continued at 2744.)

**Rule 88: Amendment of the Regulations** (Continued from 2606.)

2711. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2712. *Rule 88 was adopted as appearing in document PCT/DC/108.*

**Rule 89: Administrative Instructions** (Continued from 2607.)

2713. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2714. *Rule 89 was adopted as appearing in document PCT/DC/108.*

**Rule 90: Representation** (Continued from 2608.)

2715. *Rule 90 was adopted as appearing in document PCT/DC/108.*

**Rule 91: Obvious Errors of Transcription** (Continued from 2621.)

2716. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2717. Mr. BOWEN (United Kingdom) suggested that the words "or the making of a declaration under Article 34(4)(a)" be added at the end of Rule 91.1(g)(iii).

2718. *Subject to consideration of the proposal of the Delegation of the United Kingdom by the Drafting Committee, Rule 91 was adopted as appearing in document PCT/DC/108.* (Continued at 2746.)

**Rule 92: Correspondence** (Continued from 2622.)

2719. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2720. Mr. ASHER (Canada) asked whether the last sentence of Rule 92.1(a) ("The letter shall be signed by the applicant.") could be interpreted as meaning that the agent of the applicant could sign instead of the applicant.

2721. The SECRETARY, referring to Rule 90.2(a), replied in the affirmative.

2722. Mr. BRENNAN (United States of America) said that paragraph 92.2(d) should be replaced by the text appearing in document PCT/DC/12, since it contained a simple clerical error.

2723. *Subject to the correction of the error in question, Rule 92 was adopted as appearing in document PCT/DC/108.* (Continued at 2748.)

**Rule 93: Keeping of Records and Files** (Continued from 2623.)

2724. Mr. BALMARY (France), as Chairman of the Drafting Committee, explained the changes made in the Rule under consideration.

2725. *Rule 93 was adopted as appearing in document PCT/DC/108.*

**Rule 94: Furnishing of Copies by the International Bureau and the International Preliminary Examining Authority** (Continued from 2632.)

2726. *Rule 94 was adopted as appearing in document PCT/DC/108.*

**Rule 95: Availability of Translations** (Continued from 2634.)

2727. *Rule 95 was adopted as appearing in document PCT/DC/108.*

**Rule 86: The Gazette** (Continued from 2707.)

2728. Mr. ALENCAR NETTO (Brazil) said that his Delegation withdrew its proposals contained in documents PCT/DC/45 and PCT/DC/110.

**Article 57: Becoming Party to the Treaty** (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2683.)

2729.1 Mr. DAHMOUCHE (Algeria) said that his Delegation did not intend to reopen discussion on the Article but wished to inform the Main Committee that it had prepared a document (PCT/DC/111) in which it proposed three solutions to the problem of the so-called territorial clause.

2729.2 Alternative I would consist in deleting paragraph (3); Alternative II would consist in making it possible for any State to exclude the application of paragraph (3) by a reservation; Alternative III would consist in adding a new paragraph (paragraph (4)) to the Article under consideration, reading as follows: "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."

2729.3 After further reflection and an exchange of views with others, it had appeared that Alternative I was not acceptable to a number of delegations. Consequently, Alternative I was withdrawn.

2729.4 If Alternative II were adopted, then full satisfaction would be given both to those countries which wished to have a territorial clause and those which did not wish to have one.

2729.5 Alternative III would also appear to be capable of giving satisfaction to all States. Those wishing to have a territorial clause would be satisfied because paragraph (3) would be maintained. Those, however, which were of the opinion that no country could lawfully claim to have any sovereignty over the so-called territories could safeguard their position of principle because they would expressly reserve their opinion by virtue of paragraph (4).

2730. The CHAIRMAN suggested that the question whether discussions should be reopened on the Article under consideration, and whether the proposal of the Delegation of Algeria should be considered, should be reserved for a subsequent meeting of the Main Committee so as to allow delegations to reflect further on the matter. (Continued at 2750.)

**Article 50: Assembly** (In the signed text, Article 53: Assembly) (Continued from 2639.)

2731. The CHAIRMAN said that during the recess the Secretariat had noted the changes still to be made in the Articles and Rules discussed earlier and that those changes would now be presented to the Main Committee.

2732. The SECRETARY said that the words "subject to Article 53(8)" should be inserted in paragraph (1)(a).

2733. *The said change was adopted.*

**Article 50: Assembly** (In the signed text, Article 54: Executive Committee) (Continued from 2644.)

2734. The SECRETARY said that paragraph (2)(a) should start with the words: "The Executive Committee shall, subject to Article 53(8), consist of ..."

2735. *The said change was adopted.*

**Article 52: Committee for Technical Cooperation** (In the signed text, Article 56: Committee for Technical Cooperation) (Continued from 2663.)

2736.1 The SECRETARY said that paragraph (2)(a) should be completed by the following words: "with due regard to an equitable representation of developing countries."

2736.2 Furthermore, paragraph (6)(a) should start with the words: "In any case."

2736.3 Finally, in paragraph (6)(b), the word "the" should be deleted in the expression "with the appropriate comments."

2737. *The said changes were adopted.*

**Article 58: Entry into Force of the Treaty** (In the signed text, Article 63: Entry into Force of the Treaty) (Continued from 2689.)

2738. The SECRETARY said that the words "for patents' inventors' certificates and utility certificates" appearing in paragraph (1)(a)(i), (ii) and (iii) should be deleted.

2739. *The said changes were adopted.*

**Article 60: Reservations** (In the signed text, Article 64: Reservations) (Continued from 2690.)

2740. The SECRETARY said that in paragraph (4)(a) the words "for the Protection of Industrial Property" should be added after the words "Paris Convention."

2741. *The said change was adopted.*

**Article 65: Notifications** (In the signed text, Article 69 Notifications) (Continued from 2699.)

2742. The SECRETARY said that a new item (item (vii)) should be added to the end of the Article, reading as follows "any declarations made under Article 31(4)."

2743. *The said change was adopted.*

**Rule 87: Copies of Publications** (Continued from 2710.)

2744. The SECRETARY said that in Rule 87.2(a) the words "in which it is not designated" should be deleted.

2745. *The said change was adopted.*

**Rule 91: Obvious Errors of Transcription** (Continued from 2718.)

2746. The SECRETARY said that Rule 91.1(e)(ii) should read as follows: "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."

2747. *The said change was adopted.*

**Rule 92: Correspondence** (Continued from 2723.)

2748. The SECRETARY said that Rule 92.2(d) should read as follows: "Any letter from the applicant to the International Bureau shall be in English or French."

2749. *The said change was adopted.*

*End of the Eleventh Meeting*

## TWELFTH MEETING

Friday, June 12, 1970, afternoon

**Article 57: Becoming Party to the Treaty** (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2730.)

2750. The CHAIRMAN said that the preliminary question before the Main Committee was whether discussion should be reopened on the Article under consideration on the basis of the proposal of the Delegation of Algeria contained in document PCT/DC/111.

2751. *It was decided to reopen discussion on Article 57.*

2752.1 Mr. DAHMOUCHE (Algeria) said that in the light of the discussions which his Delegation had had with other delegations, it would seem that Alternative III, as contained in document PCT/DC/111, would be preferable to Alternative II. Alternative III would have to undergo some changes as to form but not as to substance.

2752.2 In any case, Alternative I was withdrawn.

2753. Mr. ALENCAR NETTO (Brazil) said that his Delegation supported Alternative III.

2754. Mr. LABRY (France) said that the wording of Alternative III did not seem to correspond exactly to the intent of the Delegation of Algeria. It referred to the recognition of "legal implications that might arise from" declarations made under paragraph (3). The new paragraph should speak about the factual situation concerning any given country or territory and should provide that any Contracting State could understand paragraph (3) as not implying the recognition or tacit acceptance by it of such factual situation.

2755. Mr. DAHMOUCHE (Algeria) said that the Delegation of France had correctly interpreted the intent of the proposal of the Delegation of Algeria.

2756. Mr. BRADERMAN (United States of America) asked what the impact of the proposal under discussion would be on an international application which would be filed by a resident of Hong Kong and in which Algeria would be designated.

2757. Mr. DAHMOUCHE (Algeria) replied that the question was of a practical nature and that the proposal of the Delegation of Algeria was not intended to deal with practical questions. What the proposal of his Delegation aimed at was to ensure that any declaration made under paragraph (3) by any country should not be capable of being interpreted as having the approval of the Government of Algeria.

2758. Mr. LABRY (France) said that his Delegation favored the inclusion of a new paragraph along the lines previously mentioned by it.

2759.1 Mr. ARTEMIEV (Soviet Union) said that his Delegation would have preferred Alternative I, that is, the deletion of paragraph (3), and regretted that that Alternative had been withdrawn.

2759.2 Under the circumstances, his Delegation could accept a new paragraph and proposed that it be drafted as follows: "However, the declaration of notification made under Article 24 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property cannot be understood as recognition or tacit acceptance by any other Contracting State of the legal *status quo* concerning the territory mentioned in such declaration or notification."

2760. The CHAIRMAN said that there were now three different wordings for a new paragraph before the Main Committee, namely, that proposed by the Delegation of Algeria, that proposed by the Delegation of France, and that proposed by the Delegation of the Soviet Union. Perhaps a working group should be set up to establish an agreed text.

2761. Mr. MESSEROTTI-BENVENUTI (Italy) said that his Delegation did not see the need for a working group. The proposal of the Delegation of the Soviet Union seemed to be the best among the three.

2762. Mr. PHAF (Netherlands) said that the new paragraph proposed by the Delegation of the Soviet Union should speak about declarations made under paragraph (3) rather than declarations made under the Paris Convention.

2763. Mr. LABRY (France) said that the observations of the Delegation of the Netherlands were pertinent and thus could be used to modify the proposal of the Delegation of the Soviet Union.

2764. Mr. BOWEN (United Kingdom) said that his Delegation would have preferred no addition whatsoever to paragraph (3). However, among all the proposals made, that of the Delegation of the Soviet Union seemed to be the least objectionable. In any case, his Delegation needed some more time to consider it.

2765. Mr. BESAROVIĆ (Yugoslavia) said that his Delegation would prefer that the proposal of the Delegation of the Soviet Union be accepted. If that proposal was not accepted, his Delegation would support the proposal of the Delegation of Algeria.

2766. Mr. BOGSCH (Secretary General of the Conference) said that, in view of the importance of the issue under discussion, it would seem to be preferable not to press for an immediate decision but to give some time to the interested delegations to work out together an agreed text.

2767. Mr. DAHMOUCHE (Algeria) said that since the principle behind the three proposals was the same and was generally accepted, it would be more correct to speak about the setting up of a drafting group rather than a working group. The group would simply have the task of finding a clear wording for the principle, which seemed to encounter no objection.

2768. The CHAIRMAN said that he would ask the Secretary General to make a proposal after



consultation with the Delegations of Algeria, France, the United Kingdom, and the Soviet Union.

2769. *The procedure suggested by the Chairman was adopted.* (Continued at 2770.)

*End of the Twelfth Meeting*

### THIRTEENTH MEETING

Monday, June 15, 1970, afternoon

**Article 57: Becoming Party to the Treaty** (In the signed text, Article 62: Becoming Party to the Treaty) (Continued from 2769.)

2770.1 The CHAIRMAN introduced document PCT/DC/118, which contained the report of the Drafting Group composed of the Delegations of Algeria, France, the Soviet Union, and the United Kingdom.

2770.2 The Drafting Group suggested that paragraph (4) should read as follows: "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."

2770.3 As was stated in the report of the Drafting Group, the Delegation of the United Kingdom reserved its position on the substance of the proposed text.

2771. Mr. ARMITAGE (United Kingdom) said that his Government did not welcome the sort of provision which paragraph (4) would constitute in a Treaty. Paragraph (3) was in the Treaty for purely practical purposes to facilitate acceptance of the Treaty and the operation of the Treaty in different territories. Paragraph (4), on the other hand, was declaratory rather than functional. However, since it seemed to be

in some way a counterweight to paragraph (3), and although his Government would prefer it if paragraph (4) were not included in the Treaty, it would not oppose its inclusion if it was the general consensus of the Main Committee that paragraph (4) should be in the Treaty.

2772. Mr. DAHMOUCHE (Algeria) said that his Delegation appreciated the conciliatory attitude of the Delegation of the United Kingdom.

2773. Mr. CHERVIAKOV (Soviet Union) said that his Delegation was most displeased that paragraph (3) had been included. However, as a sign of his Delegation's willingness to participate in a compromise solution, it could accept the maintenance of paragraph (3) provided that paragraph (4), as proposed by the Drafting Group, was included. The latter paragraph explained the position both of the Delegation of the Soviet Union and of the delegations of many other States which objected, and continued to object, to colonial clauses in treaties and especially in a new treaty.

2774. Mr. BRADERMAN (United States of America) said that his Delegation also recognized the difference of opinion which existed on the subject under consideration and on the question how it should be handled in the Treaty. It was of the opinion that the compromise solution reached would meet the needs of all concerned.

2775. *Paragraph (4) was adopted as appearing in document PCT/DC/118.*

### Closing of the Work of the Main Committee

2776. The CHAIRMAN declared that the Main Committee had completed its work and closed its meetings.

*End of the Thirteenth Meeting*

*End of the Deliberations of Main Committee II*



**POST-CONFERENCE  
DOCUMENTS**



# HISTORY OF THE PATENT COOPERATION TREATY

PCT/PCD/1  
WIPO/BIRPI

October 16, 1970 (Original: English)

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## INTRODUCTION

1. The present memorandum is a chronological account of the main decisions and consultations leading to the adoption of the Patent Cooperation Treaty (PCT) and the PCT Regulations.

2. The account is broken down into four Chapters, the first dealing with the events of 1966 and 1967, the second with those of 1968, the third with those of 1969, and the fourth with the events of 1970 up to the date of the signing of the PCT on June 19, 1970. They cover a period of three years and nine months.

### THE YEARS 1966 AND 1967

#### *Origin and First Consultations*

3. On a proposal presented by the Delegation of the United States of America, the Executive Committee of the International (Paris) Union for the Protection of Industrial Property adopted, on September 29, 1966, the following recommendation (see BIRPI document CEP/II/12, paragraph 46):

“The Executive Committee of the International (Paris) Union for the Protection of Industrial Property (Second Session, Geneva, September 29, 1966),

#### *Having noted:*

that all countries issuing patents, and particularly the countries having a preliminary novelty examination system, have to deal with very substantial and constantly growing volumes of applications of increasing complexity,

that in any one country a considerable number of applications duplicate or substantially duplicate applications concerning the same inventions in

other countries thereby increasing further the same volume of applications to be processed, and

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,

#### *Recommends:*

that the Director of BIRPI undertake urgently a study on solutions tending to reduce the duplication of effort both for applicants and national patent offices in consultation with outside experts to be invited by him and giving due regard to the efforts of other international organizations and groups of States to solve similar problems, with a view to making specific recommendations for further action, including the conclusion of special agreements within the framework of the Paris Union.”

4. In accordance with the above recommendation, the Director of BIRPI consulted with experts both from the six States which have the highest number of applications and from the International Patent Institute. The six States were the following: France, Germany (Federal Republic), Japan, Soviet Union, United Kingdom, United States of America. The consultations took place during the months of January to April 1967.

#### *First Draft Treaty (1967)*

5. On the basis of these consultations, a draft Treaty (“the 1967 Draft”) was prepared by BIRPI under the tentative title “Patent Cooperation Treaty.” This draft (PCT/1/3), together with related documents

(PCT/I/1, 2, 4, 5), all dated May 31, 1967, served as a basis for the discussions of a Committee of Experts, organized and convened by BIRPI at Geneva in October 1967.

*Committee of Experts of 1967*

6. The Committee of Experts of 1967 "on the PCT Plan" sat from October 2 to 10, 1967. Those 23 States in which, according to the latest available yearly statistics, more than 5000 applications had been filed were invited to participate as members of the Committee. They all accepted and attended. They were the following: Argentina, Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, France, Germany (Federal Republic), Italy, Japan, Mexico, Netherlands, Norway, Poland, South Africa, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America. Two States, Hungary and India, were represented by observers.

7. The following seven intergovernmental organizations were represented: United Nations, International Patent Institute, Organization of American States, Council of Europe, European Communities, European Free Trade Association, African and Malagasy Industrial Property Office.

8. Ten non-governmental organizations, representing inventors, industrialists, patent lawyers and patent agents, were invited and were represented. They were the following: Committee of National Institutes of Patent Agents, Council of European Industrial Federations, European Industrial Research Management Association, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents, National Association of Manufacturers (USA), Union of European Patent Agents, Union of Industries of the European Community.

9. Representatives of governments, intergovernmental organizations, and non-governmental organizations, had equal opportunities to participate in the discussions.

10. The report of the Committee of Experts was published in document PCT/I/11.

*Conference of Representatives of the Paris Union (1967)*

11. The program of BIRPI concerning the Patent Cooperation Treaty, including the plan to hold a diplomatic conference in 1969 (later postponed until 1970) for the establishment of the Treaty, was considered by the Conference of Representatives of the Paris Union in its session of December 1967.

12. The Conference of Representatives was at that time the principal organ of the Paris Union. All member countries of the Union were members of the Conference.

13. The Conference expressed the view that preparatory work for the Treaty should be vigorously pursued and approved the program and budget proposals presented in relation to this preparatory work, including plans for a diplomatic conference.

THE YEAR 1968

*Meetings During the First Half of 1968*

14. In the first six months of 1968, numerous consultations took place with a view to preparing the new-second-draft of the Patent Cooperation Treaty.

15. First, the question of *international search* was considered in meetings, held on January 18 and 20, 1968, with representatives of the ten non-governmental organizations enumerated in paragraph 8, above; on January 23 to 25, with experts of the six States referred to in paragraph 4, above, and the International Patent Institute; and in a Working Group from March 25 to 29, 1968, to which the same 25 States and the same intergovernmental and non-governmental organizations were invited as had been invited to the 1967 Committee of Experts (see paragraphs 6, 7, 8, above). (The Japan Patent Association was also invited but was not represented.) The documents of this Working Group comprise the PCT/II series (1 to 7).

16. Then, the questions of *international application and international preliminary examination* were considered in meetings, held on April 22 and 23, and April 25 and 26, 1968, with representatives of the ten non-governmental organizations referred to above; and on April 29 to May 3, 1968, with experts of the six States referred to above and the International Patent Institute.

17. On the basis of the advice of the 1967 Committee of Experts and the advice received in the above-mentioned seven meetings, BIRPI prepared the new, *second draft of the PCT* and the first full draft of the PCT Regulations. After having submitted these drafts to a meeting, held from June 25 to 27, 1968, of representatives of the six States referred to above and the International Patent Institute, and after making a few amendments to the drafts on the basis of that meeting and holding a brief discussion in an information meeting on July 1, 1968, to which the rest of the 25 States referred to in paragraph 15 and the International Patent Institute were invited, the drafts ("the 1968 Drafts") were published as working documents PCT/III/5 and 6, on July 15, 1968.

*The 1968 Drafts*

18. The 1968 Drafts were communicated to all the member countries of the Paris Union and all the intergovernmental and non-governmental organizations referred to in paragraphs 7 and 8, above, plus the newly founded International Federation of Inventors Associations, which had more than four months to study them in preparation for the 1968 Committee of Experts.

*Executive Committee of the Paris Union (1968)*

19. The Executive Committee of the Paris Union, comprising 20 member countries, noted with approval, when it met from September 24 to 27, 1968, the progress made so far and established the program for further action, with 1969 or 1970 as the target date for the Diplomatic Conference.

*Committee of Experts of 1968*

20. All member countries of the Paris Union and a number of intergovernmental and non-governmental organizations were invited to the Committee of Experts which was held at Geneva from December 2 to 10, 1968. The following 41 States, 7 intergovernmental organizations and 11 non-governmental organizations were represented by a total of some 150 delegates:

*States:* Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Cuba, Czechoslovakia, Denmark, Finland, France, Germany (Federal Republic), Greece, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Lebanon, Luxembourg, Monaco, Netherlands, Norway, Philippines, Poland, Portugal, Romania, Senegal, South Africa, Soviet Union, Spain, Sweden, Switzerland, Turkey, Uganda, United Arab Republic, United Kingdom, United States of America.

*Intergovernmental Organizations:* United Nations, United Nations Industrial Development Organization, International Patent Institute, Organization of American States, Council of Europe, European Communities, European Free Trade Association.

*Non-Governmental Organizations:* Committee of National Institutes of Patent Agents, Council of European Industrial Federations, European Industrial Research Management Association, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Inventors Associations, International Federation of Patent Agents, Japan Patent Association, National Association of Manufacturers (United States of America), Union of European Patent Agents, Union of Industries of the European Community. (The Inter-American Association of Industrial Property was invited but did not attend.)

21. All participants, whether representing governments or organizations, had an equal right and opportunity to participate in the debate and propose amendments to the Drafts.

22. The Committee examined the 1968 Drafts, article by article, and rule by rule. Its deliberations, and particularly its proposals for amendments to the 1968 Drafts – whether approved, disapproved, or not voted upon – were recorded in detail in the report adopted by the Committee itself (PCT/III/31).

## THE YEAR 1969

*“The Revised Drafts”*

23. On the basis of the deliberations of the 1968 Committee of Experts, BIRPI revised the 1968 Drafts (“the Revised Drafts”) and issued them on March 13, 1969 (PCT/R/2 and 3), to those States and organizations which it had convened to meetings in April and May 1969.

*Consultations in April and May, 1969*

24. Three meetings were convened by BIRPI during the months of April and May, 1969, for the purpose of considering the Revised Drafts.

25. The first was a meeting of government experts and it took place from April 21 to 24, 1969. In addition to the six States with whose national Offices the highest number of applications are filed, those members of the Council of Europe Working Group on Patents which were not among the said six were also invited in order to secure the possibility of complete coordination with the Group’s main task, the revision of the European Convention Relating to the Formalities Required for Patent Applications. Thus, altogether, nine States were invited and they all participated. They were the following: France, Germany (Federal Republic), Japan, Netherlands, Soviet Union, Sweden, Switzerland, United Kingdom, United States of America.

26. The second was a meeting held on April 28 and 29, 1969, to which the following non-governmental organizations were invited and they all participated: Council of European Industrial Federations, European Industrial Research Management Association, International Chamber of Commerce, International Federation of Inventors Associations, Japan Patent Association, National Association of Manufacturers (United States of America), Union of Industries of the European Community.

27. The third was a meeting held on May 1 and 2, 1969, to which the following non-governmental organizations were invited and they all participated: The Authorized Association of Japanese Patent Attorneys, Committee of National Institutes of Patent Agents, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Federation of Patent Agents, Union of European Patent Agents.

28. In addition to the above meetings, BIRPI received advice and suggestions in writing and orally from many persons.

29. The International Patent Institute was invited to and participated in the meetings referred to in paragraphs 25, 26, 27 and 30.

*The 1969 Drafts*

30. On the basis of the results of these consultations and suggestions, BIRPI once more revised the drafts of both the PCT and the PCT Regulations, and, after a two-day meeting, on June 16 and 17, 1969, with experts of the nine Governments referred to in paragraph 25, above, issued them under the date of July 11, 1969 (“the 1969 Drafts”).

31. These Drafts consisted of the Draft PCT and the Draft PCT Regulations (documents PCT/DC/4 and 5). They were accompanied by a document tracing the history of the plan for a PCT (PCT/DC/1), a document summarizing the provisions of the Drafts (PCT/DC/2), a document indicating the main differences between the 1968 Drafts and the 1969 Drafts (PCT/DC/3) as well as a document containing a PCT glossary and a subject index to the 1969 Drafts (PCT/DC/6).

*Executive Committee of the Paris Union (1969)*

32. The Executive Committee of the Paris Union, comprising 20 member countries, noted with approval,

when it met from September 22 to 26, 1969, the progress made so far and the plans for holding a diplomatic conference in 1970 for the negotiation and adoption of the Treaty. The Executive Committee also noted with approval the plan to hold the Diplomatic Conference in Washington, provided a formal invitation was received in time from the US Government.

#### THE YEAR 1970

##### *Written Comments on the 1969 Drafts*

33. All member States of the Paris Union were invited to make comments and suggestions in respect of the 1969 Drafts. The following did so and their replies were published in document form by BIRPI: Austria, Cameroon, Denmark, Finland, Germany (Federal Republic), Hungary, Israel, Italy, Japan, Netherlands, Norway, South Africa, Soviet Union, Sweden, Switzerland, United Kingdom, United States of America. A similar invitation was sent to non-governmental organizations, among which the following responded: Asian Patent Attorneys Association, Council of European Industrial Federations, European Industrial Research Management Association, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Inventors Associations, International Federation of Patent Agents, Pacific Industrial Property Association, Union of Industries of the European Community (documents PCT/DC/7, 8, 9, 10, 13, 15, 36, 37, 38).

##### *Preparatory Study Group (1970)*

34. The member countries of the Paris Union and a number of intergovernmental and non-governmental organizations were invited to the Preparatory Study Group on the Draft Patent Cooperation Treaty Regulations, which was held in Geneva from March 9 to 19, 1970. The following 40 States, 9 intergovernmental organizations and 11 non-governmental organizations were represented by a total of some 130 participants:

*States:* Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Cuba, Czechoslovakia, Denmark, Finland, France, Gabon, Germany (Federal Republic), Hungary, Iran, Ireland, Italy, Japan, Lebanon, Luxembourg, Monaco, Netherlands, Norway, Poland, Portugal, Romania, South Africa, Soviet Union, Spain, Sweden, Switzerland, Syria, Turkey, United Arab Republic, United Kingdom, United States of America, Yugoslavia.

*Observer State:* India.

*Intergovernmental Organizations:* United Nations, United Nations Conference on Trade and Development, Council of Europe, Commission of the European Communities, European Free Trade Association, Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents, International Patent Institute, African and Malagasy Industrial Property Office, Organization of American States.

*Non-Governmental Organizations:* Asian Patent Attorneys Association, Committee of National Institutes of Patent Agents, Council of European Industrial Federations, European Industrial Research Management Association, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Inventors Associations, International Federation of Patent Agents, Japan Patent Association, National Association of Manufacturers (United States of America), Union of Industries of the European Community.

35. All participants, whether representing governments or organizations, had an equal right and opportunity to participate in the debates and propose amendments to the Draft Regulations.

36. The Study Group considered, paragraph by paragraph, each of the 95 rules of the PCT Draft Regulations. When the discussion made consideration or the changing of the corresponding article in the Draft Treaty necessary, the Study Group also dealt with such article.

37. The Study Group reached general agreement on a number of changes affecting some two-thirds of the Draft Rules. Its conclusions are recorded in a 57-page report which the Study Group adopted on the last day of its meeting (PCT/WGR/17).

##### *Alternative Proposals for the Diplomatic Conference*

38. On the basis of the conclusions reached in the March 1970 Working Group, BIRPI issued, under the date of May 20, 1970, two new documents (PCT/DC/11 and 12) for the convenience of the Diplomatic Conference.

##### *Washington Diplomatic Conference, 1970*

39. The "Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970" took place, at the invitation of the Government of the United States of America, in Washington from May 25 to June 19, 1970. The meetings were held at the conference premises of the Department of State.

40. Member States of the Paris Union invited to the Conference had the right to vote in the Conference. States members of the United Nations and the UN Specialized Agencies which were not members of the Paris Union were invited as observers. A number of intergovernmental and international non-governmental organizations were also invited as observers.

41. The following 55 States members of the Paris Union, 23 observer States, 11 intergovernmental organizations and 11 international non-governmental organizations were represented by a total of some 300 participants

*States Members of the Paris Union:* Algeria, Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cameroon, Canada, Central African Republic, Denmark, Dominican Republic, Finland, France, Gabon, Germany (Federal Republic), Holy See, Hungary, Indonesia, Iran, Ireland, Israel, Italy, Ivory Coast, Japan, Luxembourg, Madagascar, Malawi, Malta, Mauritania, Mexico, Monaco, Netherlands, Niger, Norway, People's Republic of the Congo, Philippines, Poland, Portugal, Romania, South



Africa, Soviet Union, Spain, Sweden, Switzerland, Togo, Trinidad and Tobago, Turkey, Uganda, United Arab Republic, United Kingdom, United States of America, Uruguay, Yugoslavia, Zambia.

*Observer States:* Barbados, Bolivia, Burundi, Chile, China (Republic of), Costa Rica, Ecuador, Ghana, Guatemala, Guyana, Jamaica, Jordan, Laos, Libya, Malaysia, Nicaragua, Panama, Paraguay, Peru, Republic of Korea, Rwanda, Saudi Arabia, Thailand.

*Intergovernmental Organizations:* United Nations, United Nations Conference on Trade and Development, United Nations Industrial Development Organization, International Patent Institute, International Institute for the Unification of Private Law, African and Malagasy Industrial Property Office, Commission of the European Communities, European Free Trade Association, Industrial Development Centre for Arab States, Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents, Organization of American States.

*International Non-Governmental Organizations:* Asian Patent Attorneys Association, Committee of National Institutes of Patent Agents, Council of European Industrial Federations, European Industrial Research Management Association, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Inventors Associations, International Federation of Patent Agents, Pacific Industrial Property Association, Union of Industries of the European Community.

42. All participants, whether representing governments or organizations, had the right and opportunity to participate in the debates but only representatives of the member States of the Paris Union had the right to propose amendments and to vote.

43. During the Conference, amendments were proposed in writing by the following States: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany (Federal

Republic), Ireland, Israel, Italy, Ivory Coast, Japan, Madagascar, Monaco, Netherlands, Norway, Poland, Portugal, Romania, Soviet Union, Spain, Sweden, Switzerland, Togo, Uganda, United Arab Republic, United Kingdom, United States of America, Uruguay, Yugoslavia, Zambia. (See documents PCT/DC/13, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 34.Rev., 34.Rev./Corr., 35, 39, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76, 77, 78, 80, 81, 82, 83, 84, 85, 86, 89, 92, 94, 95, 96, 97, 98, 99, 100, 104, 105, 110, 111, 117.)

44. The Patent Cooperation Treaty and the annexed Regulations were unanimously adopted on June 17, 1970. Forty-seven Paris Union member States had the right to vote; forty-four voted for and none against. When abstentions were called for no delegation came forward.

45. The Conference also unanimously adopted a Resolution recommending certain interim measures pending the entry into force of the Treaty. This Resolution was proposed by Algeria, Germany (Federal Republic), Japan, Soviet Union and Sweden (see document PCT/DC/126).

46. The text of the Treaty, the Regulations and the Resolution, as well as the list of participants, were published in the August 1970 issue of «*Industrial Property*», the monthly review of BIRPI.

47. On June 19, 1970, the Treaty was opened for signature and on that day it was signed by the following 20 States: 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 of America, Yugoslavia.

48. The Treaty remains open for signature in the US Department of State until the end of 1970.

49. A supplement to the present document will indicate the names of those States which will have signed the Treaty between June 19 and December 31, 1970.\*

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\* Editor's Note: As a supplement to the list of Signatory States found in paragraph 47, the following 15 States signed the Treaty between June 19 and December 31, 1970: Argentina, Austria, Belgium, France, Iran, Ivory Coast, Luxembourg, Madagascar, Monaco, Netherlands, Romania, Senegal, Soviet Union, Syria, Togo.

# SUMMARY AND ADVANTAGES OF THE PATENT COOPERATION TREATY

PCT/PCD/2  
WIPO/BIRPI

October 16, 1970 (Original: English)

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### PART I

#### SUMMARY OF THE PATENT COOPERATION TREATY

1. This Part of the present document first states the aims of the Patent Cooperation Treaty (hereinafter referred to as "the Treaty") adopted and signed at Washington on June 19, 1970. It then briefly summarizes the provisions of the Treaty as to the procedures thereunder, as well as to information and technical assistance. In connection with the procedures under the Treaty, it calls attention to some special features useful for the full understanding of such procedures.

2. This Part of the document also explains what kinds of provisions were written into the Treaty and

into the Regulations, and what other documents will still have to be drawn up before the Treaty becomes operational.

3. Finally, this Part examines the Treaty's relation to other existing or planned systems of international cooperation in the patent field.

#### *Aims of the Treaty*

4. The Treaty has two principal aims, one in the field of *procedures* for obtaining legal protection for inventions, the other in the field of the dissemination of technical *information* and the organization of technical *assistance*, particularly for developing countries.

#### *Procedures*

5. In the field of procedures, the Treaty has two principal aims. One is to save effort – time, work,

money – both for the applicant and the national Offices<sup>1</sup> in cases where patents<sup>2</sup> are sought for the same invention in a number of countries.<sup>3</sup>

6. The other is to increase the likelihood of granting strong patents,<sup>4</sup> particularly in countries not having all the facilities necessary for a thorough search and examination. By “strong” patents is meant patents granted for inventions which by meeting all the conditions of patentability are likely to withstand challenge in the courts.

7. The saving of effort for the applicant consists primarily in allowing him to file one international application (in one place, in one language, for one set of fees) having – subject to certain conditions – the effect of a national application in each and all of the Contracting States in which he desires to obtain protection.

8. The saving of effort for the national Offices consists primarily in their receiving international search reports and possibly also international preliminary examination reports, both of which considerably reduce the work of examination.

9. The likelihood of granting strong patents follows from the fact that international search reports and international preliminary examination reports have to meet high standards which are internationally regulated, and that they are expected to be issued by authorities whose great expertise in the matter of searching and examining patent applications is amply proven and generally recognized and whose activities under the Treaty will be internationally coordinated.

#### *Information and Technical Assistance*

10. The informational aim, in the language of the Preamble to the Treaty, is “to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions.”

11. Access to such information is facilitated not only by the publication of the international application but also by the fact that such publication is accompanied by the publication of an abstract and of the international search report. That report allows scientists and industrialists interested in the field, including the applicant’s competitors, to understand the invention more easily and assess its technical and economic significance.

12. Access to such information is accelerated by the fact that international applications are generally published upon the expiration of a fixed and relatively short period of time, namely, 18 months from the priority date.

13. Easier and more rapid access to technical information is of particular interest to developing countries, which are generally in urgent need of technology. The Treaty expressly deals with this interest of developing countries: it provides that the information services of the International Bureau must 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” (Article 50(3)); and it provides for technical assistance for developing countries “in developing their patent systems individually or on a regional basis” (Article 51(3)(a)).<sup>5</sup>

#### *Brief Summary of the Procedures Under the Treaty*

##### *Three Main Features and Two Phases*

14. The Treaty consists of three main features: international application, international search, and international preliminary examination. The first two are inseparable in the sense that the only way to international search is through the filing of an “international application” and that all international applications are subject to international search. These two features are mandatory: every State becoming party to the Treaty must apply them and no applicant choosing to use the Treaty can avoid them. These two features, together, are usually referred to as “the First Phase” (or “Phase I”) of the Treaty, or, because the provisions relating to them are contained in the first Chapter of the Treaty, as the procedure “under Chapter I.”

15. The third feature – international preliminary examination – is optional. Any Contracting State may decide not to adhere to those provisions of the Treaty which concern international preliminary examination, and each applicant may decide for himself whether he wants to take advantage of international preliminary examination. This feature is usually referred to as “the Second Phase” (or “Phase II”) of the Treaty, or, because the provisions relating to it are contained in the second Chapter of the Treaty, as the procedure “under Chapter II.” Naturally, for Contracting States or applicants choosing not to use Phase II, Phase I is the only international phase.

##### *Steps Constituting the First Phase*

16. The FIRST PHASE consists of the following steps: the applicant files an international application with his national Office (“the receiving Office”); that Office checks the international application to see whether it is in order as to form, particularly whether it complies with those minimum requirements which enable it to acquire an international filing date; the same Office sends – direct or through the applicant –

<sup>1</sup> “National Office,” throughout this document, means the government authority of a Contracting State or the intergovernmental authority entrusted with the grant of patents.

<sup>2</sup> “Patents,” throughout this document, should be understood as meaning all kinds of protection for inventions, including in particular inventors’ certificates (a form of protection for inventions known in the Soviet Union and some other countries).

<sup>3</sup> This aim is stated in the Preamble to the Treaty as being “to simplify and render more economical the obtaining of protection for inventions where protection is sought in several countries.”

<sup>4</sup> This aim is stated in the Preamble to the Treaty as being “to perfect the legal protection of inventions.”

<sup>5</sup> The aim of assisting developing countries is expressed in the Preamble to the Treaty, in particular by the words: “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.”

one copy of the international application to the International Bureau (for the purposes of the record) and one copy direct to the International Searching Authority (it should be noted that the receiving Office and the International Searching Authority may be one and the same); the International Searching Authority searches the international application, that is, tries to discover any relevant prior art, and establishes a report (“the international search report”) which consists of bare citations of documents believed to be relevant for the purposes of examination; the international search report and, where requested, copies of the documents cited therein are first transmitted to the applicant, who may maintain the international application as it is, withdraw it, or amend the claims, and, in the last case, file also a brief statement explaining the amendments and indicating any impact that the amendments might have on the description and the drawings; the international application, together with the international search report, is then communicated to the national Office of each Contracting State designated by the applicant. It is only then<sup>6</sup> that the national fees (if any) and the translations (if there is a language difference) become due, and processing and examination by the said national Office (“the national phase”) can start.

17. The international application is published by the International Bureau. Such publication generally takes place promptly after the expiration of 18 months from the priority date.<sup>7</sup> It may take place earlier, that is, if the applicant so requests. On the other hand, it may take place later or not at all, that is, if the applicant seeks protection only in Contracting States which have declared that they do not require international publication. When only such States are “designated,” international publication takes place promptly after the first national publication of the international application or the grant of the first patent. If neither of these two events ever occurs, the international application remains unpublished.

18. The Treaty makes no provision for the national phase except that it guarantees that it cannot start until at least the expiration of the 20<sup>th</sup> month after the priority date, and that the applicant must be given an opportunity, in each designated State, to amend the international application (claims, description, and drawings). This is true even in respect of States having a “registration system.” Otherwise, each Contracting State will maintain its present patent law, or may change it as it pleases in the future, subject

<sup>6</sup> However, even if the international search report is not completed by the end of the 20<sup>th</sup> month from the priority date (see the following footnote), the national fees must be paid and the translations must be furnished by that date and the national processing may start without the said report (unless any national Office wants to wait longer, which it has the right to do). But since, in all typical cases, the international search will have been completed by that time, this situation will rarely arise and the 20-month time limit merely serves the purpose of assuring designated Offices that they do not have to wait indefinitely.

<sup>7</sup> “Priority date” means the filing date of any earlier application whose priority is claimed in the international application. If the international application does not contain such a claim, “priority date” means the international filing date of the international application itself.

only to the restriction that it is not allowed to prescribe different, stricter, formal requirements for the international application than the Treaty prescribes.

19. Any international search must conform to the same standards, irrespective of the identity of the International Searching Authority (see also paragraphs 33 to 35, below).

#### *Effects of the First Phase*

20. The filing of an international application has two legal effects:

(i) the international application has the effect of a national application in each and all of the designated States;<sup>8</sup>

(ii) the processing of the international application before the designated Offices is delayed – that is, does not start (except at the express request of the applicant) – at least until the expiration of 20 months after the priority date and, normally, until the international search report has become available.

21. Each of those legal effects has important practical consequences.

22. The consequence of the first is that the applicant can cause the existence of applications in many countries by filing *one* international application in *one* language and paying *one* set of fees.

23. The consequence of the second is that national processing starts under far more advantageous conditions both for the applicant and for the national Offices than without the Treaty: for the applicant, because he has a more informed opinion on the value of his invention; for the national Offices, because a substantial part of the examination task – namely the searching for prior art – is already completed. Upon request, the applicant and any designated Office can receive copies of the documents cited in the international search report. Furthermore the furnishing of translations (where there is a language difference) and the payment of national fees (if any) become due much later – at least eight months later – than without the Treaty.

#### *Steps Constituting the Second Phase*

24. The SECOND PHASE consists of the following steps: the applicant demands international preliminary examination; the demand must be addressed to the International Preliminary Examining Authority; that Authority conducts the international preliminary examination which is essentially directed to the questions whether the claimed invention is new, involves an inventive step (is non-obvious), and is industrially applicable; the applicant and the Authority communicate with each other during the international preliminary examination and the applicant is given at least one opportunity to amend the claims, the description, and the drawings; then the international preliminary examination report is established; this report does 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 merely states – by a “Yes” or “No” – in relation to each claim whether such claim

<sup>8</sup> See, however, paragraph 61, below.

seems to satisfy the said three criteria and each such statement is accompanied by citations and other explanations; finally, the report and, where requested, copies of the documents cited therein which were not cited in the international search report are communicated to the applicant and the national Offices of the States in which the applicant wishes to use the international preliminary examination report ("elected States"). It is only then<sup>9</sup> that the national fees (if any) and the translations (if there is a language difference) become due, and examination and other processing in the said national Offices ("the national phase") can start.

25. The international preliminary examination report is not published. The very fact that international preliminary examination has been demanded remains confidential. Possible withdrawal of the demand and the results of the international preliminary examination are equally confidential.

26. Any international preliminary examination report has to conform to the same standards, irrespective of the identity of the International Preliminary Examining Authority (see also paragraphs 33 to 35, below).

27. The Treaty makes no provision for the national phase except that it guarantees that it cannot start until at least the expiration of the 25<sup>th</sup> month after the priority date, and that the applicant must be given an opportunity, in each elected State, to amend the international application (claims, description, drawings). Otherwise, each State may maintain its present law, whether on the substance of patentability or on the procedure, as the Treaty contains no other requirements to which the national law has to conform.

#### *Effects of the Second Phase*

28. The only legal effect of using the Second Phase is – as already indicated – that the processing of the international application before the national Offices is delayed – that is, it cannot start – at least until the expiration of the 25<sup>th</sup> month after the priority date, that is, normally, until the international preliminary examination report has become available.

29. The practical effect of using the Second Phase is of the same kind – but to a greatly enhanced degree – as that of using the First Phase: national processing starts under very much more advantageous conditions both for the applicant and the national Offices than without the Treaty or with Phase I only of the Treaty. The applicant has, thanks to the international preliminary examination report, a strong indication of

his chances of obtaining patents. The elected Offices save most, if not practically all, of the effort of examination. All that remains for them to do, under normal circumstances, is to draw conclusions from the said report on the question of patentability in the light of the national laws.

#### *Some Special Features of the Procedures under the Treaty*

##### *Optional Character of the Treaty*

30. It is to be noted that no Contracting State can require that any foreign applicant seeking protection in that State seek the said protection through an international application under the Treaty rather than through a national application (as he does today where there is no international application). If protection in any Contracting State may be obtained in the form of a national patent or a regional patent, the State may decide that only a regional patent – and not a national patent – may be obtained through an international application. (Even in such a State, however, a national patent may be obtained through a national application.)

31. Furthermore, it is to be noted that, even where an applicant seeks protection through an international application, no Contracting State party also to Chapter II can require that the applicant use that Chapter, that is, no such State can require him to produce an international preliminary examination report.

32. Finally, it is to be noted that no Contracting State which is not bound by Chapter II can be forced to delay national examination and processing beyond 20 months from the priority date since no applicant could use the Phase II procedure in such a State.

##### *International Searching and Preliminary Examining Authorities*

33. It is expected that the International Patent Institute will be one of the International Searching and Preliminary Examining Authorities, that is, that it will establish both international search reports and international preliminary examination reports.

34. Furthermore, it is expected that some of the national Offices will be International Searching and/or Preliminary Examining Authorities. The Treaty prescribes criteria: minimum documentation, minimum staff, minimum language capacity. To date, the national Offices of six countries have indicated, unofficially, that they would probably wish to become International Searching and Preliminary Examining Authorities. They are: Austria, Germany (Federal Republic), Japan, Soviet Union, Sweden, United States. The United Kingdom Patent Office has indicated, unofficially, that it probably would wish to become an International Preliminary Examining Authority but not an International Searching Authority.

35. Although the Treaty aims at a single International Searching Authority, it is so drafted that the existence of several International Searching Authorities is assumed. The main reasons for this are of a practical nature: it is cheaper and easier to use the existing facilities than to boost those of the

<sup>9</sup> However, if the international preliminary examination report is not completed by the end of the 25<sup>th</sup> month from the priority date, the national fees must be paid and the translations must be furnished by that date and the national processing may start without the said report (unless any national Office wants to wait longer, which it has the right to do). But since, in all typical cases, the international preliminary examination is completed by that time, this situation will rarely arise and the 25-month time limit merely serves the purpose of assuring elected Offices that they do not have to wait indefinitely. Furthermore, any country accepting Chapter II may make a reservation under which it can require the furnishing of a translation by the expiration of the same time limit as under Chapter I (i.e., 20 months from the priority date).

International Patent Institute; it is more convenient – at least to Austrian, German, Japanese, Soviet, Swedish and US applicants, as well as to applicants who are nationals of countries members of the International Patent Institute, that is, Belgian, British, French, Luxembourg, Monaco, Netherlands, Swiss and Turkish nationals – to be nearer to the International Searching Authority and to turn to services they are used to; international applications could probably not be filed either in the Japanese language or in the Russian language if they had to be searched in the International Patent Institute.

#### *Length of the Procedure*

36. The following paragraphs deal with the typical case – the case which may be expected to be the normal case. In non – typical cases, the procedure may take a shorter or a longer time than is indicated below.

37. All time limits relate to the priority date, which – it is recalled – means: (i) the filing date of an *earlier* application if the international application claims the priority of such an application, (ii) the filing date of the international application *itself* if that application contains no priority claim.

38. *Phase I.* – The international application is filed at the end of the 12<sup>th</sup> month. It is transmitted to the International Searching Authority and the International Bureau at the end of the 13<sup>th</sup> month. The international search is carried out during the next three months (the 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup>), but in time for the international search report to be sent to the applicant in the course of the 16<sup>th</sup> month. The applicant has two months (the 17<sup>th</sup> and the 18<sup>th</sup>) to amend the claims, and the following two months (the 19<sup>th</sup> and the 20<sup>th</sup>) to prepare the required translations. (It is recalled that he will have to pay the national fees and furnish the translations at the earliest by the end of the 20<sup>th</sup> month.)

39. *Phase II.* – The applicant, having received the international search report by the end of the 16<sup>th</sup> month<sup>10</sup> uses the 17<sup>th</sup> and 18<sup>th</sup> months to make up his mind whether to demand international preliminary examination. He files this demand by the end of the 18<sup>th</sup> month. The first written opinion issues two months later, by the end of the 20<sup>th</sup> month. The applicant has two months (the 21<sup>st</sup> and the 22<sup>nd</sup>) to reply to the opinion. The International Preliminary Examining Authority issues the report one month later, that is, by the end of the 23<sup>rd</sup> month. The applicant has the following two months (the 24<sup>th</sup> and the 25<sup>th</sup>) to prepare the required translations. (It is recalled that he will have to pay the national fees and generally furnish the translations at the earliest by the end of the 25<sup>th</sup> month.)

<sup>10</sup> If international preliminary examination is demanded before the international search is started, and if it is the same International Authority which performs the international search and the international preliminary examination, the two procedures may be “telescoped” in part. The first opinion may issue at the same time as the international search report, that is, by the end of the 16<sup>th</sup> rather than the 20<sup>th</sup> month. The four months so gained may then be used to allow for a second written opinion and a second reply in the international preliminary examination phase.

#### *Languages*

40. Any *international application* has to be drawn up in a language which the competent International Searching Authority can handle. The national Offices in Moscow, Munich, Stockholm, Tokyo, Vienna and Washington would thus accept international applications drawn up in Russian, German, Swedish, Japanese, German and English, respectively. The International Patent Institute can handle international applications in Dutch, English, French and German. If Italy and a few Spanish-speaking countries become party to the Treaty, the International Patent Institute could probably undertake to handle international applications in Italian or Spanish, respectively.

41. The *international search report* and the *international preliminary examination* report are drawn up in the language in which the international application must be published.

42. *Translations* of the international application, when translations are required for the purposes of the national procedure, are prepared by the applicant. The international search report is translated into English only (it mainly consists of symbols and numbers only), whereas the international preliminary examination report is translated into any of six languages (English, French, German, Japanese, Russian, Spanish), as required by the elected Offices, under the responsibility of the International Bureau.

43. The *publication*, in pamphlet form, of the international application is effected in the language in which it was filed, if filed in English, French, German, Japanese, or Russian. If filed in another language, it is translated under the responsibility of the competent International Searching Authority and is published in English. If the international application is published in French, German, Japanese, or Russian, the abstract and the international search report appear in the pamphlet in two languages: the language of the international application and English. The first page of the pamphlet contains bibliographical data, a typical drawing (possibly reduced), and the abstract, to facilitate a quick appraisal and to make this frequently possible even when the language of the international application is unknown to the reader.

44. The *Gazette entry* in respect of each international application consists of these same three elements. The Gazette is published at least in English and French and also in additional languages for which the necessary subscriptions or subventions will be assured. German, Japanese and Russian will almost certainly, and Spanish probably, be among such languages.

45. *Availability of full translations to third parties.* – The International Bureau may obtain, upon request, from any designated or elected Office a copy of the translation of the international application furnished by the applicant to that Office. The International Bureau sells copies of such translations to third parties.

### *Fees*

46. *First Phase.* – The filing of an international application is subject to the payment of one fee in any case, and possibly one or two additional fees.

47. The fee which is due in any case is called the “*international fee.*” It is intended to cover the expenses of the International Bureau, including the cost of preparing copies for the designated Offices, the cost of publication, and the cost of translating the abstract and the international search report, where required. Its amount depends on the number of the designated States and it increases if the international application contains more than 30 sheets.

48. The international fee consists of two parts: the “*basic fee*” amounting to US \$45.00 or 194 Swiss francs, and the “*designation fees*” amounting to US \$12.00 or 52 Swiss francs or, in certain cases, to US \$14.00 or 60 Swiss francs. As many designation fees are to be paid as there are States designated, provided that, where a regional patent is sought for certain designated States, only one designation fee is to be paid. If the international application contains more than 30 sheets, the basic fee is increased by US \$1.00 or 4.30 Swiss francs per sheet.

49. Each receiving Office may, if it wishes, charge a “*transmittal fee,*” intended to cover the expenses of formality checking and transmittal of copies of the international application to the International Bureau and the International Searching Authority.

50. The amount of such fee will probably never exceed US \$20.00 or 86 Swiss francs.

51. Each International Searching Authority may, if it wishes, charge a “*search fee*” for the work of performing the international search. Some national Offices *qua* International Searching Authorities may decide not to charge such a search fee at all. The International Patent Institute *qua* International Searching Authority will charge such a fee but whether all of it will be covered by the applicant or whether part of it may be covered by the subventions granted by the State of the applicant is a question to which the answer will probably vary from State to State”.<sup>11</sup>

52. The question frequently asked is what is the minimum number of countries that ought to be designated to make the use of the possibilities offered by the Treaty “worthwhile.” It is believed that choosing or not choosing to file an international application does not generally depend on the designation of a particular minimum number of countries. It is worthwhile filing an international application if the applicant wishes to have more time for reflection, if he wishes to postpone the moment when he has to pay the cost of preparing translations and the national fees, and if he wishes to reduce or eliminate the number of national proceedings in which he would otherwise have to engage only to abandon them later if he lost interest in his international application or lost hope of its success. The essential

question is how much investment such advantages are worth. They may be worth something even if only one State is designated. For further considerations on the cost question, see paragraphs 98 to 114, below.

53. *Second Phase.* – The demand for international preliminary examination is subject to the payment of one fee in any case, and possibly one additional fee.

54. The fee which is due in any case is called the “*handling fee.*” It is intended to cover the expenses of the International Bureau, including the cost of preparing copies and translations of the international preliminary examination report for the national Offices of the various elected States. Its amount depends on the number of the languages – maximum six – into which the international preliminary examination report must be translated.

55. The handling fee is US \$14.00 or 60 Swiss francs if the said report requires no translations, and is augmented by the same amount for each of the six languages (English, French, German, Japanese, Russian, Spanish) for which, in the given case, a translation is required.

56. Each International Preliminary Examining Authority may, if it wishes, charge a “*preliminary examination fee.*” The situation is similar to that described in connection with the search fee (see paragraph 51, above).

### *Formalities*

57. One of the most outstanding features of the Treaty is that the formalities of international application are laid down by the Treaty and the Regulations and are binding on all Contracting States. This reduces the cost to the applicant. Drawings do not have to be redrawn. The applicant knows that an international application which is good as far as form and contents are concerned in his home country is also good in any of the other Contracting States. Form and contents mean not only the physical requirements and the identification data but also the form and manner of describing and claiming.

58. It has been said that this very uniformity is dangerous as far as the form and manner of describing and claiming are concerned. The form and manner prescribed by the Treaty and the Regulations – say the same critics – may be contrary to the traditions, the judicial practice, and the idiosyncrasies of a country. (The form and manner are not, of course, contrary to the *laws* and *regulations* of any country, as every Contracting State has to accept the prescribed form and manner.) It is believed that this view is unduly pessimistic since, once the laws and regulations of a country accept the international form and manner, it does not seem to be unrealistic to presume that traditions, judicial practice, or idiosyncrasies, will adjust to the new form and manner. In any case, the applicant has the right to amend the claims, the description and the drawings before each national Office, and he may amend them before each such Office differently.

### *International-Type Search*

59. The national law of any Contracting State may permit applicants to obtain from the competent

<sup>11</sup> The national Office of each designated State may, when the international application reaches it, require the payment of the usual *national fees.*

International Searching Authority a search conforming to the criteria provided for in the Treaty but carried out on their *national* applications (“international-type search”). Moreover, the national law of any Contracting State may subject any national application filed with its national Office to an international-type search. In such cases, the said International Searching Authority must, to the extent possible, use the results of the international-type search in establishing the international search report on the *international* application. In addition, the International Searching Authority must refund the search fee to the extent to which the international search report could be based on the results of the international-type search.

#### *Reservations*

60. It has been already stated that any Contracting State may declare that it shall not be bound by Chapter II (see paragraph 15, above) and that any Contracting State bound by Chapter II may declare that it will apply, for the purposes of furnishing translations and publishing them, the 20-month rather than the 25-month time limit (see footnote 9 under paragraph 24, above).

61. Three additional possibilities of reservations are provided for in the Treaty. One allows any Contracting State to declare that it does not require the international publication of international applications. Another allows any Contracting State to differentiate between an international filing date abroad and an actual filing date at home for prior art purposes. The third allows any Contracting State to refuse to recognize the jurisdiction of the International Court of Justice.

#### *Brief Summary of the Information and Technical Assistance Features of the Treaty*

##### *Publication of International Applications and International Search Reports*

62. It has already been stated that international applications, together with the international search reports relating to them, are generally published and that such publication occurs generally 18 months after the priority date of the application (see paragraphs 17 and 43, above). It is to be noted also that an international Gazette will be published once a week in several languages and will contain the bibliographical data, abstracts and typical drawings of each published international application as well as other useful information.

##### *Patent Information Services*

63. The Treaty provides that the International Bureau may furnish services by providing technical and other pertinent information available to it on the basis of published documents, primarily patents and published applications. Such information services may be provided by the International Bureau either directly or through International Searching Authorities or other national or international specialized institutions. The details will be fixed by the Assembly of the Contracting States. Among the types of information contemplated are: identification of documents relating to a certain technical field or

problem; identification of documents issued in different countries but relating to the same invention; identification of documents showing the same person as inventor or applicant; identification of patents in force or no longer in force at a given date in any given country.

64. The information services will 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. Governments of developing countries should receive such information services below cost if the difference can be covered from profits or grants-in-aid.

##### *Technical Assistance*

65. The Treaty provides for the organization and supervision of technical assistance to developing countries in developing their patent systems individually or on a regional basis. For example, an existing industrial property office in a developing country could be assisted in becoming a channel for technical information to local industry by selecting for and forwarding to such industry all patent documents coming from abroad which are of possible interest to that industry in keeping abreast with technological developments throughout the world. Moreover, a national or regional industrial property office could be assisted in procuring the materials and training the manpower necessary for effecting a meaningful examination of the technical aspects of inventions. The Treaty itself provides that technical assistance comprises the training of specialists, the loaning of experts, and the supplying of equipment both for demonstration and for operational purposes.

66. For financing such assistance, the International Bureau will seek to enter into agreements with international financing organizations, the United Nations and agencies thereof, particularly the United Nations Development Programme.

##### *The Treaty, the Regulations and Other Instruments*

67. The provisions establishing the system and governing its application are or will be embodied, depending on their nature and their importance, in the following instruments: the Treaty, the Regulations, the Administrative Instructions, and agreements to be concluded by the International Bureau with each International Searching and Preliminary Examining Authority.

##### *The Treaty and the Regulations*

68. The most important matters are contained in the *Treaty*: the limits to the obligations of Contracting States; guarantees of their basic rights; basic obligations and guarantees of the basic rights of the applicants; the main duties of the International Bureau, the receiving Offices, and the International Searching and Preliminary Examining Authorities. Most of the provisions of the Treaty may be amended only in the way in which treaties are usually amended: the amendments are adopted by a special conference and come into effect only for those countries which ratify them. Since ratifications are by nature slow (because, in many States, they have to be processed



through legislative bodies), the Treaty provides, in the case of certain provisions, for a simpler and faster procedure for amendment. There are two sets of such provisions. One consists of the provisions fixing time limits. These can be modified by a unanimous decision of the Contracting States. The other consists of some of the purely administrative provisions, mainly those relating to the Secretariat and the finances of the International Patent Cooperation Union, which may be amended by the Assembly of that Union. As to the latter, it should be noted that the Stockholm Conference of 1967 provided for a similar solution for the Paris Convention and the Special Agreements under that Convention.

69. The *Regulations* are about twice as long as the Treaty. They include all the details which are believed to have any possible effect on, or be of any possible interest to, the applicant, the Contracting States, and the International Searching and Preliminary Examining Authorities. The Regulations may be amended by the Assembly. Amendment requires unanimity for certain specified provisions, unanimity during a five-year transitional period for certain other specified provisions, and a three-fourths majority for all the others. For certain provisions of special concern to International Searching and Preliminary Examining Authorities, amendment can be prevented by a veto on the part of any State whose national Office is such an Authority or, as far as the International Patent Institute is concerned, by the veto of a specified member State of that Institute.

#### *Administrative Instructions and Agreements*

70. The *Administrative Instructions* will pick up those minutiae which have no effect on the rights and obligations of anybody but which are useful because they introduce order and uniformity into official procedures. Where to place a stamp, how to draft forms transmitting documents, how to route papers – these are typical subjects which the Administrative Instructions will deal with. They will be drawn up by the International Bureau under various safeguards, including the right of the Assembly of the Contracting States to impose the introduction of modifications.

71. *Agreements with International Searching and Preliminary Examining Authorities.* – These agreements will see to it that the international search and the international preliminary examination will be carried out in strict conformity with the Treaty and the Regulations. Furthermore, they will provide for other procedural and administrative details required to ensure smooth cooperation among the authorities whose joint efforts are necessary to make the system work. The agreements, as far as the International Bureau is concerned, will require approval by the Assembly of the Contracting States. As far as the other party to each agreement is concerned, the question of approval is a matter for such party. For example, the International Patent Institute will probably have to obtain the approval of its Administrative Council before it can become bound by any such agreement.

72. The Administrative Instructions and the agreements in question will be drawn up just before

the Treaty becomes operational, that is, once the required number of ratifications or accessions has been obtained.

#### *Entry Into Force*

73. The Treaty will enter into force after at least eight States have accepted it through ratification or accession. Four of these States must satisfy specified statistical conditions placing them among the States with the highest numbers of applications.

#### *The Treaty and Other Efforts for International Cooperation in the Patent Field*

74. The drafters of the Patent Cooperation Treaty found much inspiration in the plans and achievements of the last two decades in the field of international patent cooperation.

75. The International Patent Institute and the International Patent Classification are, in themselves, elements without which it would be much more difficult to imagine the system.

76. Work on the “European Patent” plan and the Nordic Patent Application System, as well as the work of the Council of Europe, were constantly kept in mind when preparing the Treaty.

77. It should be emphasized, however, that the Treaty is fundamentally different from the only existing system and all the planned systems of international cooperation in the field of patents.

78. The only existing system is that instituted by the Libreville Agreement of 1962 concerning the constitution of the African and Malagasy Industrial Property Office. Under that system, the said Office grants patents valid in all its member States (presently 13).

79. Under the Nordic System, a patent granted on a Nordic patent application by the national Office of one of the four Nordic countries (Denmark, Finland, Norway, Sweden) would be a patent also in two or three of the other Nordic countries as designated.

80. The “Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents” (Conférence intergouvernementale pour l’institution d’un système européen de délivrance de brevets) plans the conclusion of a Convention under which a European patent would be granted by an international body (the “European Patent Office”) with effect in a group of European States. Whereas the effect of this European patent in the said States would be governed by national laws, the six States members of the European Economic Community (Belgium, France, Germany (Federal Republic), Italy, Luxembourg, Netherlands) intend to conclude an additional Convention which would make the European patent uniform in its effects for the territory of the said six States.

81. The African, the Nordic and the European plans have this much in common, that they provide for *the grant* of a regional patent. The additional Convention envisaged by the “Six” in Europe is expected to contain also a series of provisions for the period *after* the European patent is granted (rules on duration, nullity, compulsory and other licenses, rules on infringement and its repression). The Patent

Cooperation Treaty deals with none of these subjects. It does not provide for the grant of patents. Nor does it contain rules on matters arising after the grant. Under the Treaty, only part of the pre-grant procedure is international. The grant itself and everything that follows remain under the exclusive national sovereignty of each Contracting State.

82. Thus, the scope of the Patent Cooperation Treaty is much narrower than that of the systems which deal with regional patents. It deals only with the filing of the international application and provides for aids for the national examination to be carried out once the application reaches the Contracting States. Furthermore, for its implementation, the Treaty relies entirely on existing institutions, namely, the national Offices, the International Patent Institute, and the International Bureau of the World Intellectual Property Organization (WIPO).

83. Notwithstanding the differences between the Patent Cooperation Treaty, on the one hand, and the Libreville Agreement as well as the plans of the European and Nordic countries, on the other hand, the Patent Cooperation Treaty is not in conflict with either the Libreville Agreement or the said plans. The Libreville Agreement will continue undisturbed and the plans of the European and Nordic countries may be put into effect before or after the Patent Cooperation Treaty becomes operational.

## PART II

### MAIN ADVANTAGES OF THE PATENT COOPERATION TREATY

84. This Part of the present document enumerates the expected main advantages of the Patent Cooperation Treaty for examining Offices, for both examining and non-examining Offices, for the inventor or applicant, for developed countries, for developing countries, for technological information in general, for the public, and for the patent system in general.

85. Under the chapter dealing with the advantages for the inventor and the applicant, an analysis of the expected impact of the Patent Cooperation Treaty on the cost of patent prosecution is attempted.

#### *Advantages for Examining Offices*

86. Examining Offices are able to make substantial economies since the system renders superfluous, for most applications filed by foreigners, all or most of the work of searching, and also – when an international preliminary examination report issues – most of the work of examination. In the overwhelming majority of countries, such applications exceed in number applications filed by nationals. Japan and the United States are among the rare exceptions but, in these countries, the absolute number of foreign applications is in itself impressive (28,000 and 31,000, respectively, in 1969) and has been approached or exceeded in only four countries (38,000 in the United Kingdom, 34,000 in Germany (Federal Republic), 32,000 in France, and 30,000 in Canada). Some of the Socialist countries are also among the exceptions but, owing presumably to the recent

intensification of East-West trade and expanding scientific and technical cooperation, the number of foreign applications filed in those countries is constantly and rapidly growing. In the Soviet Union, for example, the number has more than tripled within the past five years.

87. Even national Offices which are distrustful – and, in the beginning, they might well be – as to the quality of the international search reports and preliminary examination reports, and which subject them to a certain control, have a “flying start” in their work, since such work is rather in the nature of completing, checking and criticizing than starting from scratch in complete isolation as national Offices do at present.

#### *Advantages for Both Non-Examining and Examining Offices*

88. Both kinds of Offices make economies in the cost of handling applications, since their work of verification as to compliance with prescriptions of form becomes practically superfluous.

89. Both kinds of Offices can save part of the cost of publishing. If the international publication is in their national language, they can forgo republication altogether, or they can decide to publish only the abstracts in their national gazettes. This solution may be chosen even by countries which have a different language: they may find it sufficient to publish, in their national language, abstracts only, and to keep the complete translations in their files, copies of which may then be ordered by anyone who becomes interested on the basis of the abstracts or the full foreign texts.

90. The system does not reduce the revenues of the national Offices unless they voluntarily decide to give a rebate on national fees in consideration of the savings they make through the Treaty and in order to make the use of the international application route more attractive to the applicant. Such rebates would be more than offset by savings in expenditure thanks to the Treaty. In any case, the most “profitable” source of revenue of most national Offices is the annual fees or renewal fees. The Treaty does not touch those fees either, unless, again, voluntary rebates are accorded.

#### *Advantages for the Inventor or Applicant*

91. Applicants – that is, inventors or their employers or assignees – may file their applications in their own country with effect in foreign countries, have more time to make up their minds as to those foreign countries in which they want to seek protection, and in a typical case they have to spend much less money in the pre-grant (or pre-denial) stage than at present.

92. If the applicant is not following the international procedure offered by the Treaty, he must start preparations for filing abroad three to nine months before the expiration of the priority period. He must prepare translations of his application and must have them put in a more or less different form for each country. Under the Treaty, the applicant, within the priority year, makes only one

application (the international application), which may be identical both as to language and form with his own national application, or which involves one – and only one – translation and redrafting. True, the cost of further translations has to be met eventually, but not until eight or more months later than under a procedure which does not use the Treaty, and only if, having seen the international search report, the applicant is still interested in the countries concerned. Moreover, the – even greater – cost of redrafting (recasting as to form and expression) for each and every country does not arise, even later, or arises only to a limited extent (when the claims or the description are amended).

93. The international search report helps the applicant to make up his mind whether it is worth while continuing his efforts. If he decides that it is not, he saves all subsequent costs, including the fee for a demand for an international preliminary examination report.

94. The international preliminary examination report also helps the applicant to make up his mind whether to press for patents and, if the report is unfavorable, he will think twice before he does.

95. All applicants residing near an International Preliminary Examining Authority are able to conduct their dialogue concerning the issuance of the international preliminary examination report in their own *language* and with the Authority with which they are most familiar and which is geographically near.

96. Even those applicants not residing nearby will frequently be able to use an International Authority in which they have special confidence, and which may be nearer than most of the countries in which they seek protection. They will deal in a language which may not be their own but, in any case, will be a world language generally known in scientific and technological circles.

97. It is true that, where complications arise, the applicant may have to operate, as he does without the Treaty, in unfamiliar and distant Offices and in languages with which he is totally unfamiliar. But by that time he has in his arsenal an international search report and possibly an international preliminary examination report, both of international standing. He, too, has a “flying start.”

98. *Expected Impact of the Treaty on the Cost of Patent Prosecution.* – In the following paragraphs (99 to 114), an estimate is attempted of the impact of the Treaty on the cost of patent prosecution up to grant. “The PCT route” denotes using the Treaty, whereas “the traditional route” means using the method of filing separately in each country in which protection is sought.

99. For both routes, only those cost factors are considered which arise up to the grant of patents or the refusal of such grant. Consequently, costs which arise at the time of the grant (granting fees, publication fees) or after (annual fees or renewal fees) are not considered. Neither are the costs considered which may possibly arise on account of certain complications during the prosecution – such as defense in certain States in the case of opposition or, in the United

States, in the case of interference – since these costs may arise both under the PCT (in the national phase) and under the traditional route.

100. In calculating the costs, what may be regarded as the typical case will be considered and a few assumptions have to be made, although it is recognized that there will always be non-typical cases in which the calculations may yield different results.

101. Among the assumptions to be made are those concerning the amounts of the fees. Taking the fees for which amounts are specified in the PCT Regulations, the international fee (for a 30-sheet application) is \$45.00 for the basic fee and \$14.00 per country for the designation fee, as it is expected that most designated States will require the furnishing of a copy under Article 13. It is assumed that the transmittal fee (which, according to preliminary calculations, should be between \$10.00 and \$20.00, if it is to cover all the costs of the receiving Office) will be \$15.00.

102. It is more difficult to determine the probable amount of the search fee since great variations are expected. This fee may be zero in a country like the Soviet Union, or it may be relatively low (probably between \$25.00 and \$50.00) in other countries where national Offices will be International Searching Authorities, and it may be higher (perhaps between \$100.00 and \$150.00) when the International Searching Authority is the International Patent Institute. It is emphasized that these amounts are not based on any indications from the prospective International Searching Authorities – which have not yet fixed their fees – but merely on what would seem to be possible in view of their present fee structures and subsidizing policies *in the absence of* the Treaty. In the following paragraphs, a \$100.00 search fee will be assumed in order to make the calculation roughly applicable also in cases where the international search will be carried out in the International Patent Institute. Where that search is carried out in other Authorities, the figure, and the world average, would probably be much below \$100.00.

103. Furthermore, on the basis of an extensive international survey carried out by the International Bureau, it is assumed that under the traditional route the average cost of prosecuting an application up to grant is \$350.00. This cost comprises the honoraria of the patent agent or attorney for preparing the application (when it is a first application) and transforming and translating it (when it is a subsequent application). It is realized that a first application usually costs more because the creative work needed is greater but, since the cost of translation in subsequent applications is usually considerable, the average may be acceptable for the purposes of a rough calculation. It is assumed further that, whereas the honoraria under the PCT route will be somewhat higher for the international application (including its prosecution in one country), say \$400.00, mainly because of the increased responsibility of the attorney or agent, they will be lower – perhaps by as much as one-third – for the prosecution in the national phase (because some of the

work will not have to be repeated or is more in the nature of routine as it is based on common rules), say \$250.00.

104. It is also assumed, on the basis of the extrapolated results of the said survey, that an estimated 20% of the international applications will be withdrawn before they enter the national phase. Withdrawals will be prompted not only by unfavorable search reports but also by the mere passing of time, since between the 12<sup>th</sup> and the 20<sup>th</sup> month the applicant may lose interest in trying to obtain patents for various reasons, including the realization of the fact that he will not be able to exploit his invention commercially.

105. Furthermore, it is assumed that the number of designated States is seven. This, again, is based on the statistics of present averages concerning the number of countries in which protection is sought for any given invention. It does not take into account the expected impact of the availability of the PCT route, an impact which will probably mean a certain increase in the number of such countries.

106. Finally, it is assumed that the national fee (called in some countries "filing fee," and including, where such fee exists in countries having a deferred examination system, the national "search fee") is \$50.00 per country.

107. On the basis of the above assumptions – and dealing only with Phase I – the comparative cost factors are the following:

108. <i>Costs under the traditional route:</i>	US\$
108.1 Honorarium for first application . . . .	350
108.2 Honoraria for six additional applications 6 x \$350 . . . . .	2,100
108.3 National fee in seven countries: 7 x \$50 . . . . .	350
Total	2,800

109. <i>Costs and saving under the PCT route:</i>	US\$
109.1 <i>Cost:</i> Honorarium for international application and prosecution in one country . . . . .	400
109.2 <i>Cost:</i> Honoraria for prosecutions in the national phases in six countries: 6 x \$250 . . . . .	1,500
109.3 <i>Cost:</i> Fees under the PCT (international fee: \$45 + (7 x \$14.00)= \$143.00; transmittal fee: \$15; search fee: \$100); total: 143 + 15 + 100 = . . . . .	258
109.4 <i>Cost:</i> National fees in seven countries: 7 x \$50 . . . . .	350
(The subtotal of costs, <i>without savings</i> , is thus 400 + 1,500 + 258 + 350 = 2,508, i.e., 10% less than the costs under the traditional route.)	
109.5 <i>Saving:</i> Withdrawal, that is, 20% of the honoraria in six countries (20% of \$1,500 = \$300) (any saving in the	

honorarium in the home country disregarded) and of the national fees in seven countries (20% of \$350 = \$70): \$300 + 70 = . . . . . -370

109.6 *Saving:* 8 months' interest (6% *per annum* i.e., 4% for 8 months) on the remaining 80% of the honoraria (80% of \$1,500 = 1,200) and national fees (80% of \$350 = \$280), since they will become due 8 months later than under the traditional route because of the 20-month waiting period in the PCT: 4% of 1,200 + 280 = 4% of 1,480 = . -59  
(The subtotal of savings under the PCT route is thus 370 + 59 = 429.)

(Deducting the savings (\$429) from the costs (\$2,508) the result is \$2,079.)

110. <i>Difference of costs under the two routes:</i>	
Costs under the traditional route . . . .	2,800
Costs, after deduction of savings, under the PCT route . . . . .	2,079
	<hr/>
Difference . . . . .	721

111. In other words, the PCT route will cost, to the applicant, approximately 26% less than the traditional route. This percentage of savings will become higher if the number of designated States increases, as it probably will, not only because of the other advantages of the Treaty but also because of the ever growing internationalization of trade.

112. The impact of the international preliminary examination will probably be similar. The international preliminary examination fee and the honorarium for the prosecution of the international application before the International Preliminary Examining Authority will be a factor increasing the cost but it will cause more savings than Phase I alone since the withdrawals will probably be more frequent and/or the honoraria in the national phases – because of the better preparation in the international phase – somewhat lower.

113. It is emphasized, once again, that the above considerations apply to a typical case or rather represent the *average* result of typical cases going through Phase I only. Any individual case may lead to other results which may sometimes be very different. For example, if any individual application is maintained in *all* the designated States and if full use is *not* made of the 20-month waiting period, some of the potential savings (savings in honoraria) will materialize, others (interest) might, and still others (savings on account of withdrawals) will not. On the other hand, if the international search report or the mere passing of the additional 8-month period available for reflection or any other circumstance (such as loss of interest in the invention, loss of potential licensees) prompts the withdrawal of the international application, the savings will affect not 20% but 100% of the national fees and honoraria, which, in the above calculation, will mean a net saving of some 85% of the cost of the traditional route.

114. Finally, it is recalled that the savings analyzed above represent only one of the several advantages which the PCT route represents for applicants and inventors.

#### *Advantages for Developed Countries*

115. Developed countries have relatively large numbers of inventors. They would constitute the majority of the applicants filing international applications. The savings achieved for the applicant described above, as well as the savings of national Offices through the utilization of the international search and preliminary examination reports accompanying the applications filed by foreign applicants, will certainly more than counter-balance expenditure for the establishment and maintenance of the services provided for by the Treaty and may even save an outflow of money from their countries.

116. By allowing stronger patents to be obtained (particularly in non-examining countries) with less effort and cost, the Treaty will induce inventors to seek protection in more countries, and for more inventions than at the present time. This would expand the export and foreign investment potential of the developed countries to which those inventors belong.

#### *Advantages for Developing Countries*

117. Most developing countries have a non-examining system. Whereas in developed countries the chances of granting worthless patents are diminished by the expertise both of the patent attorneys or agents assisting the applicant and of the courts, in many developing countries these safeguards are to a large extent missing. The need for examination is thus greater in developing countries but, because of the scarcity of technically trained persons and adequate documentation, and because of the high cost of examination, such countries are even less in a position to introduce an examining system – even if they joined efforts on a regional basis – than developed countries. In this respect the Treaty is especially helpful to developing countries in overcoming these problems so that they may develop and perfect their own patent systems.

118. The Treaty offers a clear and simple interim solution, at least until such time as developing countries perfect their own patent systems, to the problem which a notable report of the United Nations Secretariat called the “dilemma (of the Governments of most developing countries) between the dangers of a distorted patent system and the practical difficulty, if not impossibility, of marshalling the broad range of highly qualified technicians and scientific source materials which would be needed to permit an adequate novelty search” (UN document E/4319 of March 27, 1967, page 24).

119. The solution resides in the fact that, under the Treaty, developing countries do not need the persons and materials to make a novelty search because such a search – and, even more, the international preliminary examination – will be effected by the International Searching and Preliminary Examining Authorities; the solution further resides in the fact that their patent

systems will not be “distorted” because international applications accompanied by international preliminary examination reports give a high degree of reliability to their patent grants. In fact, their patents will generally be just as reliable, justified and strong as those of the most developed countries having the most sophisticated corps of patent examiners.

120. Naturally, the system offered under the Treaty not only protects developing countries against granting patents to foreign applicants who do not deserve them and who could thus have imposed “unjustified monopoly restrictions” (*ibidem*) on their national economy, but it also ensures that their own inventors and industrialists receive patents on which they can rely and which do not crumble when foreign competitors attack them or enter the market.

121. Developing countries, by being able to offer meaningful protection to foreign entrepreneurs owning patented technology, will find such foreign entrepreneurs more willing to transfer (sell or license) the said technology and will, in general, attract more foreign investment. The industrialization of such countries will thereby be accelerated.

122. Developing countries will derive a special benefit from the Treaty as far as technical documentation is concerned. Assembling and using the world’s patent literature – a source *par excellence* of recent and valuable technological information – is costly and unwieldy and presents practically insuperable language problems. The Treaty will make available, in the form of international applications accompanied by international search reports and possibly also international preliminary examination reports and easy-to-handle technical abstracts, the cream of the inventions, classified according to branches of technology, and in world languages.

123. Provisions in the Treaty on technical services will particularly or exclusively benefit developing countries.

124. The patent information services, described above (paragraphs 63 and 64), although useful also to developed countries, will be particularly useful to developing countries as the Treaty expressly provides that they must be operated in a way particularly facilitating the acquisition by developing countries – provided they are party to the Treaty – of technical knowledge and technology, including available published know-how.

125. The technical assistance provided for in the Treaty and described in paragraphs 65 and 66, above, is, of course, for the special and sole benefit of developing countries.

#### *Advantages for Technological Information in General*

126. The problems described in paragraph 122, above, are perhaps not insuperable for developed countries. But even for them, the Treaty will, as a kind of by-product, make access to most of the patent literature very much easier and cheaper than under existing conditions.

127. Similar considerations apply to the patent information services referred to in paragraphs 63 and 64, above.

*Advantages for the Public*

128. The Treaty gives substance to the much quoted principle according to which applicants are granted patents in exchange for disclosure. In the present system, such disclosure frequently does not occur until many years after the date of the application, that is, at a time when it no longer reveals anything new. Under the Treaty, this can happen only in the most unusual circumstances, that is, when all of the designated States are States that have declared that they do not require the international publication of international applications. In most cases, at least one of the designated States is a State that has not made such a declaration. In all such cases, disclosure takes place in the form of the international publication of the international application in one of the world languages, with abstracts at least in English and French and probably other languages as well, promptly after the expiration of 18 months from the priority date.

129. Naturally, the patent information services provided for in the Treaty will also be available and thus of advantage to the public.

*Advantages for the Patent System in General*

130. The patent system, as it exists today, is much criticized. It is said to be wasteful of human talent, to be expensive and slow, and to yield in the various

countries patents of such differing value that they do not even deserve to be called by the same name.

131. No attempt is made here to form a judgement on those accusations. But it is beyond doubt that the Treaty, by eliminating considerable duplication of effort, eliminates useless operations and reduces the cost of prosecuting applications. It is also certain that the Treaty generally shortens the time required for examination and the grant of patents and thus also shortens the period during which the applicant, would-be licensees, and competitors are in a state of uncertainty, not knowing whether patents will be granted or not. It is also to be anticipated that the Treaty will make the value of patents more uniform.

132. Should the Treaty succeed – as it is designed to succeed – in making the seeking and granting of patents simpler and cheaper, and in making the value of patents granted by different countries more similar and, generally, stronger, not only will the criticisms levelled against the existing situation be answered, but the patent system itself will become more useful. It will then be accepted in countries which are skeptical about its general usefulness, and it will be put to better use in countries where it exists. All this should contribute to the development of technological progress, which is so urgently needed to improve the living conditions of most of mankind.

# MAIN DIFFERENCES BETWEEN THE 1969 DRAFTS AND THE TREATY AND REGULATIONS

PCT/PCD/3  
WIPO/BIRPI

October 16, 1970 (Original: English)

## *Introduction*

1. For the purpose of the present document, “the Draft Treaty” and “the Draft Regulations” mean the Draft Patent Cooperation Treaty (PCT) and the Draft PCT Regulations as contained in documents PCT/DC/4 and 5, respectively, both of July 11, 1969, whereas “the Treaty” and “the Regulations” mean the Treaty and the Regulations as adopted by the Diplomatic Conference in Washington and signed on June 19, 1970.

2. The aim of the present memorandum is to enumerate the *main* differences of *substance* between the Drafts on the one hand and the Treaty and the Regulations on the other hand. Minor differences of substance and differences in presentation or style 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 Treaty*

3. *Preamble.* – In contrast to the Draft Treaty, the Treaty contains a preamble. It enumerates the aims for the attainment of which the Contracting States have concluded the Treaty.

4. *Purpose of Applications.* – The Draft Treaty spoke about applications for patents (Article 1(1)). The Treaty speaks about applications for the protection of inventions (Article 1 (1)). This change was motivated by the desire to place forms of protection other than patents, particularly inventors’ certificates, on the same level as patents.

5. *Technical Services.* – Whereas the Draft Treaty spoke only about one aim, namely, cooperation in the filing, searching and examination of applications (Article 1(1)), the Treaty also speaks about the aim of rendering special technical services (Article 1(1)). The means for attaining the second aim are specified in Articles 50 and 51 of the Treaty.

6. *References to Regional Arrangements.* – Whereas the Article on definitions (Article 2) in the Draft Treaty equated regional and national institutions only as far as Offices were concerned (item (i)), the Treaty extends this equating also to the notions of application, patent and national law (items (vi), (ix), (x), and (xii)). The origins of such provisions were in Article 44 of the Draft Treaty.

7. *Significance of Abstract.* – It is the Treaty itself which provides that the abstract merely serves the

purpose of technical information (Article 3(3)). In the Drafts this idea was mentioned in the Draft Regulations and merely incidentally (Rule 8.3(ii)).

8. *Application for Regional Patents.* – The Treaty expressly deals with the possibility of asking for regional patents (Article 4(1)(ii)), whereas the Draft Treaty did not.

9. *Naming of the Inventor.* – Whereas the Draft Treaty required that the inventor be named in the international application (Article 4(1)(iii)), that requirement is maintained in the Treaty only where the national law of at least one of the designated States requires that he be named at the time of filing a national application (Article 4(1)(v)). Otherwise, the name of the inventor may be furnished later or not at all, depending on the national law of the designated State (Articles 4(1)(v), 4(4) and 22(1)).

10. *Priority Claim Based on Applications for Inventors’ Certificates.* – In connection with any priority claim based on a national application, the Draft Treaty merely referred to the Paris Convention, whereas the Treaty refers to the Stockholm Act of the same Convention (Article 8(2)(a)). It thus clearly establishes the obligation for each Contracting State to recognize priority claims based on earlier applications for inventors’ certificates (cf. Article 4, Section I, of the Stockholm Act).

11. *Persons Who May File.* – According to the Draft Treaty, the Assembly could decide to allow residents or nationals of specified States other than Contracting States to file international applications (Article 9(2)). According to the Treaty, the Assembly may make such a decision only in respect of residents or nationals of States party to the Paris Convention (Article 9(2)). (Residents and nationals of Contracting States have the right to file international applications without the Assembly’s authorization.)

12. *Effect of International Filing.* – The Draft Treaty provided that the international application had the effect of a regular national application in each designated State as of the international filing date (Article 11(3)). The Treaty contains a clarification to the effect that the international filing date is to be considered to be the actual filing date in each designated State (Article 11(3)). The same provision of the Treaty also refers to a possible exception to this principle. That exception enables any Contracting State to make a reservation with respect to the time from which the prior art effect operates and is contained in Article 64(4) of the Treaty. It appeared also, in its essence, in the Draft Treaty (Article 27(5)),

last sentence), but did not require an express reservation.

13. *International-Type Search.* – According to the Draft Treaty, an international-type search of a national application required not only the permission of the national law applied by the receiving Office but also the initiative of the applicant (Article 15(5)). Under the Treaty, the said initiative is not necessary as international-type search may also be ordered *ex officio* (Article 15(5)(b)).

14. *Reference to the International Patent Institute.* – Whereas the Draft Treaty did not refer expressly to the International Patent Institute, the Treaty does so, naming it as one of the possible International Searching Authorities (Article 16(1)).

15. *Establishment of a Single International Searching Authority.* – The Treaty speaks about the existence of several International Searching Authorities “pending the establishment of a single International Searching Authority” (Article 16(2)). It does not set any time limit for the establishment of the single Authority. The Draft Treaty contained no provision similar to that quoted above.

16. *Lack of Unity of Invention.* – The Draft Treaty provided that in case of lack of unity of invention the International Searching Authority would invite the applicant either to restrict the claims or to pay additional fees (Article 17(3)(a)). Under the Treaty, in the same situation, the Authority will search the main invention and invite the applicant to pay additional fees for the searching of the other inventions (Article 17(3)(a)).

17. *Amendments Going Beyond the Disclosure.* – Whereas both the Draft Treaty and the Treaty provide that amendments of the claims before the International Bureau may not go beyond the disclosure (Article 19(2)), only the Treaty provides that non-compliance with this prohibition has no effect in any designated State which permits amendments to go beyond the disclosure (Article 19(3)). This principle was not expressly provided for in the Draft Treaty.

18. *Availability of Copies of Cited Documents.* – The Treaty provides that, at the request of the designated Office or the applicant, the International Searching Authority will send to it or to him, respectively, copies of the documents cited in the international search report (Article 20(3)). The Treaty provides for a similar obligation for the International Preliminary Examining Authority in respect of documents cited in the international preliminary examination report and not cited in the international search report (Article 36(4)). There were no such provisions in the Draft Treaty.

19. *Consequences of Possible Loss of Effect of the International Application in a Designated State.* – The Treaty makes it clear that these consequences are the same as the consequences of the withdrawal of any national application in that State (Article 24(1)). This clarification was missing in the Draft Treaty.

20. *Compulsory Representation by Local Agent.* – The Treaty makes it clear that national Offices may require that applicants be represented by agents having

the right to practice before them and have a local address for the purpose of receiving notifications (Article 27(7)). Such a clarification was missing in the Draft Treaty.

21. *Amendments in the National Phase.* – The Treaty provides, as did the Draft Treaty, that the applicant must be given an opportunity to amend his international application before the designated and elected Offices (Articles 28(1) and 41(1)). The Treaty also states a necessary corollary to this principle, namely, that no designated or elected Office may grant a patent, or refuse the grant of a patent, before the time limit allowed for amendment has expired (except with the express consent of the applicant) (Articles 28(1) and 41(1)). Furthermore, the Treaty also makes it clear that amendments in the national phase must be in accordance with the national law of the designated or elected State in all respects not provided for in the Treaty and the Regulations (Articles 28(3) and 41(3)). These clarifications were missing in the Draft Treaty.

22. *Persons Who May Demand International Preliminary Examination.* – According to the Draft Treaty, only residents and nationals of Contracting States bound by Chapter II were entitled to demand international preliminary examination (Article 31(2)). The Treaty provides that persons who are entitled to file international applications may demand international preliminary examination even if they are residents or nationals of a State not party to the Treaty or not bound by Chapter II where the Assembly of the International Patent Cooperation Union so provides (Article 31(2)(b)), and that such residents or nationals may elect any Contracting State bound by Chapter II which has declared that it is prepared to be elected by such applicants (Article 31(4)(b)).

23. *Regional Treaties Which May Provide That Regional Patents May Be Sought Through International (PCT) Applications.* – The Treaty provides, in effect, that only such regional patent treaties may provide for the application for regional patents via the PCT route as give the right of filing regional applications to all persons who are entitled to file international (PCT) applications (Article 45(1)). For example, the European Patent Conventions may allow the filing of PCT applications for the obtaining of regional patents only if such Conventions allow any person who may file PCT applications to file European patent applications. There was no such limitation in the Draft Treaty.

24. *Limiting the Use of International Applications to the Obtaining of Regional Patents Where, Through National Applications, National Patents Could Be Obtained.* – The Treaty provides, in effect, that the national law of any State party to both the Treaty and a regional patent treaty may allow the use of international (PCT) applications only for the obtaining of a regional patent and not for the obtaining of a national patent (Article 45(2)). There was no such limitation in the Draft Treaty.

25. *Patent Information Services.* – The Treaty provides that the International Bureau may furnish information services on the basis of published documents, primarily patents and published



applications, and that such services must be operated in a way particularly facilitating the acquisition of technology by developing countries. These services are provided for and several details are fixed in Article 50 of the Treaty. There were no corresponding provisions in the Draft Treaty.

26. *Technical Assistance.* – The Treaty provides for the establishment of a Committee for Technical Assistance with the task of organizing and supervising technical assistance to developing countries in developing their patent systems individually or on a regional basis. The establishment of the Committee is provided for and several details, particularly the financing of the technical assistance programs, are fixed in Article 51 of the Treaty. There were no corresponding provisions in the Draft Treaty.

27. *Financing of Information Services and Technical Assistance.* – The Treaty provides that nothing in Articles 50 and 51 shall affect the financial provisions of the Treaty (Article 52). There was no corresponding provision in the Draft Treaty.

28. *Executive Committee.* – The Treaty contains more details on the organization and the tasks of an Executive Committee to be elected by the Assembly of the International Patent Cooperation Union than did the Draft Treaty. See, in particular, Article 54 of the Treaty.

29. *Committee for Technical Cooperation: Composition.* – The Treaty provides that the Assembly shall determine the composition of such a Committee, with due regard to an equitable representation of developing countries (Article 56(2)(a)). There was no such provision in the Draft Treaty.

30. *Committee for Technical Cooperation: Tasks.* – As to the tasks of the Committee, the Treaty specifies that they will also include giving advice and making recommendations as to the solution of the technical problems specifically involved in the establishment of a single International Searching Authority (Article 56(3)(iii)). There was no such provision in the Draft Treaty.

31. *Amendment of the Regulations.* – The Draft Treaty provided that the Assembly could, in cases where no stricter requirements were prescribed, amend the Regulations by two-thirds of the votes cast (Article 54(2)(b)). The Treaty raised this proportion to three-fourths (Article 58(2)(b)).

32. *Disputes.* – The Treaty provides for the jurisdiction of the International Court of Justice (Article 59) but allows any Contracting State not to accept the stipulation of such jurisdiction (Article 64(5)). Neither provision appeared in the Draft Treaty.

33. *Initial Entry Into Force of the Treaty.* – The Treaty provides that it shall enter into force upon ratification or accession by eight States, provided at least four of them each meet certain statistical requirements as to the number of applications filed in that State, or fled by its residents or nationals abroad, according to the most recent annual statistics (Article 63(1)). The Draft Treaty provided for a smaller number of States (five or seven) and a

somewhat different combination of the statistical conditions (Article 58(1)).

#### *Main Differences in the Regulations*

34. *Declaration of Priority in Request.* – The Regulations provide that the declaration of priority referred to in Article 8(1) shall be made in the request (Rule 4.10(a)). The Draft Regulations did not contain any express provision to that effect.

35. *Description: Statement on Exploitation in Industry.* – The Regulations provide that, among other things, the description must 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 (Rule 5.1(a)(vi)). The corresponding provision in the Draft Regulations provided that the description must 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 (Rule 5.1(a)(vi)).

36. *Dependent Claims.* – The provisions on dependent claims are more precise in the Regulations (Rule 6.4) than they were in either of the two alternatives of the Draft Regulations (Rule 6.4). Furthermore, the Regulations allow reference to multiple dependent claims in the alternative (Rule 6.4(a)).

37. *Claims: Utility Models.* – The Regulations provide in effect that the rules on claims may be set aside in the national phase if the international application is eventually for a utility model (Rules 6.5 and 78.3). There was no corresponding provision in the Draft Regulations.

38. *Unity of Invention.* – The question which claims of different categories may be combined without destroying unity of invention merely on account of such combination is answered with more precision in the Regulations (Rule 13.2) than it was in either of the two alternatives of the Draft Regulations (Rule 13.2).

39. *Unity of Invention: Utility Models.* – The Regulations provide in effect that the rules on unity of invention may be set aside in the national phase if the international application is eventually for a utility model (Rules 13.5 and 78.3). There was no corresponding provision in the Draft Regulations.

40. *International Search Fee: Partial Refund.* – The Regulations provide, under certain conditions, for the partial refund to the applicant of the international search fee when it is paid in respect of an invention which has already been the subject of an international search (Rule 16.3). There was no corresponding provision in the Draft Regulations.

41. *Translation of the Priority Document.* – The Regulations set a time limit (the same as that under Articles 22 and 39, that is, generally, 20 or 25 months, respectively, from the priority date) before the expiration of which a designated or elected Office cannot require that the applicant furnish a translation

of any priority document (Rules 17.2(a) and 76.4). The Draft Regulations contained no such provision.

42. *Minimum Documentation.* – The rule on minimum documentation (Rule 34) is more detailed in the Regulations than it was in the Draft Regulations, in particular as far as Japanese and Russian language patent documents, and English, French and German language patent documents of States which were not covered by the Draft Regulations, are concerned.

43. *Minimum Requirements for International Searching Authorities.* – The Regulations provide that any International Searching Authority must have at least 100 qualified searchers (Rule 36.1(i)). Under the Draft Regulations, this number was 150 (Rule 36.1(i)).

44. *Communication to Designated Offices.* – Draft Rule 47.1 has been supplemented by a new provision (Rule 47.1(e) of the Regulations) to the effect that, where any designated Office has waived the requirement of the communication to it by the International Bureau of a copy of the international application under Article 20, the International Bureau when notifying the applicant of the effected communications will, at the request of that Office or the applicant, send the copy intended for that Office to the applicant himself.

45. *Time Limit for Amendments in the National Phase.* – This time limit has been fixed in the Regulations (Rule 52.1(a)) in a way more favorable to the applicant than it was in the Draft Regulations (Rule 52.1(a)). In particular, the Draft Regulations provided that the time limit for making amendments under Article 28 before designated Offices in which processing or examination starts without special request should be the same as that applicable under Article 22 (generally 20 months from the priority date). The Regulations provide that the applicant may

make such amendments within one month from the fulfillment of the requirements under Article 22, provided that, if the communication of the international application (under Rule 47.1) has not been effected by the expiration of the time limit applicable under Article 22, the applicant may amend his application not later than 4 months after such expiration date.

46. *Copies of Publications of the International Bureau.* – Under the Regulations, any national Office of a Contracting State 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 the Regulations (Rule 87.2). There was no such provision in the Draft Regulations.

47. *Amendment of the Rule on Modification of Time Limits.* – Under the Regulations, amendment of Rule 81 (Modification of Time Limits Fixed in the Treaty) requires unanimity (Rule 88.1(vi)). According to the Draft Treaty and Regulations, Rule 81 would have been amendable by a two-thirds vote of the Assembly (Articles 54(2)(b) and 50(6)).

48. *Possible Amendment of the Rules on the Description and the Claims.* – The Regulations provide that, during the first 5 years after the entry into force of the Treaty, Rules 5 (The Description) and 6 (The Claims) may be amended only by unanimous decision of the Assembly (Rule 88.2). After the transitional period, these Rules may be amended by three-fourths of the votes cast (Article 58(2)(b)). Under the Draft Treaty and Regulations, these Rules would have been amendable by a two-thirds vote of the Assembly (Articles 54(2)(b) and 50(6)).

## **NOTES ON THE PATENT COOPERATION TREATY**

**PCT/PCD/4**                      December 10, 1970 (Original: English)  
WIPO/BIRPI

Editor's Note: *The Notes on the Patent Cooperation Treaty contained in this document are reproduced as footnotes to the text of the Articles found on pages 11 to 76.*

## **NOTES ON THE REGULATIONS UNDER THE PATENT COOPERATION TREATY**

**PCT/PCD/5**                      June 22, 1971 (Original: English)  
WIPO/BIRPI

Editor's Note: The Notes on the Regulations under the Patent Cooperation Treaty contained in this document are reproduced as footnotes to the text of the Regulations found on pages 77 to 161.

## **INDEX TO THE PATENT COOPERATION TREATY AND THE REGULATIONS UNDER THE TREATY**

**PCT/PCD/6**                      February 25, 1971 (Original: English)  
WIPO/BIRPI

Editor's Note: *The Index to the Patent Cooperation Treaty and the Regulations under the Treaty found in this document is reproduced in a slightly revised version as the Catchword Index to the Patent Cooperation Treaty and Regulations under the Patent Cooperation Treaty found on pages 798 to 826.*



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## NOTE CONCERNING THE USE OF THE INDEXES

*There are five indexes in all: two indexes to the Patent Cooperation Treaty and the Regulations under the Treaty, one index to the States represented at the Conference, one index to the Organizations represented at the Conference and one index to the participants in the Conference.*

*The first of the two indexes to the Treaty and Regulations thereunder lists each Article and Rule; the second is a catchword (subject matter) index. These two indexes refer to particular Articles and Rules by their number as found in the final text. Where a given Article or Rule was numbered differently in earlier documents referred to in an index, an appropriate notation is given indicating the number of the Article or Rule in that document. Anyone using these two indexes may refer either directly to a particular Article or Rule as found in the first index or may consult the second index with a catch-word or subject matter indication to determine the relevant Article and Rule citations to be used in consulting the first index.*

*Throughout the indexes, with the exception of the Catchword Index, which cites Articles and Rules, all numbers refer to **page numbers** unless they are italicized, in which case the number refers to the **paragraph number** of the verbatim For summary minutes. Page numbers given for the signed text of the Treaty, the final text of the Regulations, or the drafts (PCT/DC/4, 5, 11, 12), refer to the page where a given Article or Rule appears, whereas page numbers referred to in regard to other documents refer to the page on which the text of the document begins.*



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- Main Committee I: *1350-1359, 1874*

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## B. CATCHWORD INDEX TO THE PATENT COOPERATION TREATY AND THE REGULATIONS UNDER THE TREATY

### List of Catchwords

ABBREVIATED EXPRESSION	COMMITTEES
ABSTENTION	COMMON AGENT
ABSTRACT as Part of International Application	COMMUNICATION
ABSTRACT in Minimum Documentation	COMPETENT
ACCESS	COMPUTATION
ACCESSION	COMPUTER PROGRAMS
ACCOUNTS OF UNION	CONFIDENTIAL NATURE
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ADMINISTRATIVE INSTRUCTIONS	CONTINUATION
ADVANCES	CONTINUATION-IN-PART
AGENT	CONTRACTING STATES
AGREEMENT	CONTRIBUTIONS
AIRMAIL	COOPERATION
AMENDMENT	COORDINATION COMMITTEE
ANIMAL VARIETIES	COPY of International Application
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APPLICANT	CORRESPONDENCE
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APPLICATION (INTERNATIONAL -)	CRITERIA
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APPLICATION OF TREATY AND REGULATIONS	DAY
APPOINTMENT	DECLARATION
ARTICLE	DEFECTS
ASSEMBLY OF UNION	DEFICIT
ATTORNEY	DEFINITIONS
AUDITING	DELAY
AUTHENTIC TEXT	DELAYING of National Procedure
AUTHORITY (INTERNATIONAL -)	DELEGATE
AVAILABILITY OF COPIES	DELEGATION
BASIC FEE	DEMAND for International Preliminary Examination
BECOMING BOUND BY TREATY	DENUNCIATION
BECOMING PARTY TO TREATY	DEPENDENT CLAIM
BEST MODE	DEPOSIT
BIOLOGICAL PROCESSES FOR PRODUCTION OF PLANTS AND ANIMALS	DESCRIPTION
BUDGET OF UNION	DESIGNATED OFFICE
BUSINESS	DESIGNATION FEE
CALENDAR	DESIGNATION OF STATES
CERTIFICATE OF ADDITION	DETERMINATION
CERTIFIED COPIES	DEVELOPING COUNTRIES
CHANGE IN PERSON OR NAME OF APPLICANT	DIAGNOSTIC METHODS
CHAPTER	DIRECTOR GENERAL of World Intellectual Property Organization
CHECK LIST	DISCLOSURES
CHECKING of International Application	DISPARAGING STATEMENTS
CHOICE	DISPUTE
CITATIONS	DOCUMENTATION of International Searching and Preliminary Examining Authorities
CLAIMING PRIORITY	DOCUMENTS
CLAIMS	DRAWINGS
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