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PROPOSED AMENDMENTS OF THE PCT REGULATIONS:
CORRECTIONS RELATING TO DOCUMENT PCT/A/34/2

Document prepared by the International Bureau

This document reproduces the text of document PCT/A/34/2 with the addition of a number of corrections of a drafting nature intended, in particular, to avoid the use of inconsistent terminology in different provisions. The corrections, in the case of the English version, relate only to Annex II and concern Rules 20.6 (deleted text appearing on Annex II, page 11), 20.3(c) (amended text appearing on Annex II, page 12), 26bis.3(j), 48.2(b)(viii), 49ter.2(h), 51.2 and 66.1(d-bis). Each correction is noted in a footnote to the relevant text, denoted by an asterisk (*) in order to make a distinction from the footnotes appearing in document PCT/A/34/2. The corrections relate in some cases to amendments proposed in document PCT/A/34/2 and in other cases to the existing text of the Rules concerned. The main body and Annexes I and III to V of the English version of document PCT/A/34/2 are unchanged. The clean text appearing in document PCT/A/34/3 should, of course, be read subject to corrections corresponding to those appearing in the present document. For corrections of the French version of document PCT/A/34/2, which in only some instances correspond to those made in the English version, see the French version of the present document.

SUMMARY

1. This document contains proposals for amendment of the Regulations under the Patent Cooperation Treaty (PCT) as recommended by the Working Group on Reform of the PCT (“the Working Group”). The proposed amendments relate to the following matters:

- (a) International publication and the PCT Gazette in electronic form;
- (b) Addition of Arabic as a language of publication;
- (c) Exceptions to the all-inclusive designation system;
- (d) Missing elements and parts of the international application;
- (e) Restoration of the right of priority;
- (f) Rectification of obvious mistakes;
- (g) PCT minimum documentation: Addition of patent documents of the Republic of Korea.

2. The proposed amendments will help applicants to avoid loss of rights in certain circumstances, consistently with the Patent Law Treaty (PLT), while maintaining an appropriate balance between the interests of applicants and third parties. They will also take greater advantage of modern information and communications technology in the publication of PCT applications, will strengthen the international search by adding patent documents of the Republic of Korea to the PCT minimum documentation, and will make the PCT system more accessible to a wider range of applicants from developing countries by adding Arabic as a language of publication.

3. The text of the proposed amendments appears in Annexes I to III. A brief outline of the purpose of each group of amendments appears in paragraph 6(a) to (g), below, and more detailed explanations are set out in Annex V. For proposed dates of entry into force and transitional arrangements, see paragraphs 9 to 11, below, and Annex IV.

PROPOSED AMENDMENTS

4. Proposals were considered by the Working Group over the course of several sessions, the most recent being its seventh session, held in May 2005, at which the Working Group agreed on proposed amendments to be submitted to the Assembly for adoption at the present session, subject to possible further drafting changes to be made by the Secretariat (see the report of the Working Group’s seventh session in document PCT/R/WG/7/13, reproduced in the Annex to document PCT/A/34/1).

5. The proposed amendments are set out in Annexes I to III to the present document, the amendments in the three Annexes having different proposed dates of entry into force. Where further drafting changes have been included, beyond the text as agreed by the Working Group, attention is drawn to that fact in a footnote with an explanation, where necessary, in Annex V (see the French version of this document for explanations concerning drafting changes affecting the French text only). Information concerning proposed changes was

posted by the Secretariat on the PCT reform electronic forum on WIPO's website¹ for comments and suggestions by delegations and representatives. The proposals contained in this document take into account the comments and suggestions received.

6. The purpose of the proposed amendments is outlined briefly in the following subparagraphs. More detailed explanations, including listings of the Rules² involved, appear in Annex V.

(a) *International publication and the PCT Gazette in electronic form.* See Annex I and Annex V, paragraphs 2 to 12. The proposals relate to the implementation of publication in electronic form of international applications and of the PCT Gazette, whereby the legally determinative means would be publication in electronic form rather than on paper as at present. Some of the proposals are complementary to modifications of the Administrative Instructions that were promulgated with effect from April 1, 2005.

(b) *Addition of Arabic as a language of publication.* See Annex I and Annex V, paragraphs 13 to 16. The proposal, made at the request of the Government of Egypt, is to add Arabic to the list of languages in which international applications may be published.

(c) *Exceptions to the all-inclusive designation system.* See Annex I and Annex V, paragraphs 17 to 22. The proposal concerns a drafting correction to the text of Rule 4.9(b) in order to avoid an unintended effect.

(d) *Missing elements and parts of the international application.* See Annex II and Annex V, paragraphs 23 to 52. The proposals relate to the according of the international filing date in cases where certain elements or parts of the application are, or appear to be, missing when the application papers are filed. Remedies are afforded to applicants in relation to the correction of defects under Article 11(1), the later furnishing of parts of the description, claims or drawings, and the incorporation by reference of certain elements or parts which are contained in the priority document.

(e) *Restoration of the right of priority.* See Annex II and Annex V, paragraphs 53 to 80. The proposals provide for the restoration of the right of priority where the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, consistently with the provisions for restoration under the PLT.

(f) *Rectification of obvious mistakes.* See Annex II and Annex V, paragraphs 81 to 101. The proposals rationalize the operation of Rule 91 (presently entitled "Obvious Errors in Documents"), whose provisions are open to different interpretations and have at times led to inconsistent decisions. The proposals would introduce more consistent practices in PCT Offices and Authorities and would bring PCT practice into line, to the extent possible, with the provisions of the PLT relating to rectification of mistakes.

¹ See <http://www.wipo.int/pct/reform/en/index.html>.

² References in this document to "Articles" and "Rules" are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT ("the Regulations"), or to such provisions as proposed to be amended or added, as the case may be. References to "national laws", "national applications", "the national phase", etc., include reference to regional laws, regional applications, the regional phase, etc.

(g) *PCT minimum documentation: Addition of patent documents of the Republic of Korea.* See Annex III and Annex V, paragraphs 102 to 104. The proposal, made at the request of the Government of the Republic of Korea, is to include patent documents of the Republic of Korea in the PCT minimum documentation used in carrying out international searches. For the purposes of the Assembly's consideration of this proposal, advice is being sought from the PCT Committee for Technical Cooperation, whose 21st session is being convened to meet during the same period as the Assembly (see document PCT/CTC/21/2). The Committee will have available to it recommendations of the PCT Minimum Documentation Comprehensive Review Task Force that was established at the suggestion of the Meeting on International Authorities Under the PCT (see document PCT/MIA/11/14, paragraph 8).

7. It is proposed, as agreed by the Working Group, that the Assembly adopt certain understandings in relation to a small number of the proposed amendments. Draft texts of those understandings appear in Annex V, paragraphs 22, 52, 62, 64, 67, 73, 77, 78, 80 and 101.

8. A "clean" text of all of the proposed amended provisions (without underlining or striking through) appears in document PCT/A/34/3.

ENTRY INTO FORCE AND TRANSITIONAL ARRANGEMENTS

9. As agreed by the Working Group (see document PCT/R/WG/7/13, paragraph 126, reproduced in the Annex to document PCT/A/34/1), proposals concerning entry into force and transitional arrangements in respect of the proposed amendments were posted by the Secretariat on the PCT reform electronic forum on WIPO's website³ for comments and suggestions by delegations and representatives. The proposals contained in this document take into account the comments and suggestions received.

10. Different dates of entry into force are proposed for the amendments set out in each of Annexes I to III, as follows:

(i) for the proposed amendments appearing in Annex I (concerning international publication and the PCT Gazette in electronic form, addition of Arabic as a language of publication, and exceptions to the all-inclusive designation system): April 1, 2006;

(ii) for the proposed amendments appearing in Annex II (concerning missing elements and parts of the international application, restoration of the right of priority, and rectification of obvious mistakes): April 1, 2007;

(iii) for the proposed amendments appearing in Annex III (concerning addition to the PCT minimum documentation of patent documents of the Republic of Korea): yet to be proposed on the basis of advice by the PCT Committee for Technical Cooperation (see paragraph 6(g), above).

11. More detailed explanations concerning dates of entry into force and proposed transitional arrangements, including draft decisions of the Assembly, are set out in Annex IV.

³ See <http://www.wipo.int/pct/reform/en/index.html>.

12. The Assembly of the PCT Union is invited:

(i) to adopt the proposed amendments of the Regulations under the PCT set out in Annexes I to III;

(ii) to adopt the proposed decisions set out in Annex IV, paragraph 15, items (1) to (4), relating to entry into force and transitional arrangements; and

(iii) to adopt the proposed understandings relating to certain amendments as set out in Annex V, paragraphs 22, 52, 62, 64, 67, 73, 77, 78, 80 and 101.

[Annexes follow]

ANNEX I

AMENDMENTS OF THE PCT REGULATIONS¹
PROPOSED TO ENTER INTO FORCE ON APRIL 1, 2006²

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¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. A “clean” copy of the proposed amended provisions (without underlining or striking through) appears in document PCT/A/34/3.

² For dates of entry into force and transitional arrangements, see paragraphs 9 to 11 of the main body of this document and Annex IV.

Rule 4³
The Request (Contents)

4.1 to 4.8 [No change]

4.9 *Designation of States; Kinds of Protection; National and Regional Patents*⁴

(a) [No change] The filing of a request shall constitute:

(i) the designation of all Contracting States that are bound by the Treaty on the international filing date;

(ii) an indication that the international application is, in respect of each designated State to which Article 43 or 44 applies, for the grant of every kind of protection which is available by way of the designation of that State;

(iii) an indication that the international application is, in respect of each designated State to which Article 45(1) applies, for the grant of a regional patent and also, unless Article 45(2) applies, a national patent.

(b) Notwithstanding paragraph (a)(i), if, on October 5, 2005, ~~October 1, 2002~~, the national law of a Contracting State provides that the filing of an international application which contains the designation of that State and claims the priority of an earlier national application having effect in that State shall have the result that the earlier national application ceases to have effect with the same consequences as the withdrawal of the earlier national application, any request in which the priority of an earlier national application filed in that State is claimed may, ~~for as long as that national law continues to so provide~~, contain an indication that the designation of that State is not made, provided that the designated Office notifies ~~informs~~ the International Bureau by January 5, 2006, ~~January 1, 2003~~, that this paragraph shall apply in respect of designations of that State and that the notification is still in force on the international filing date. The information received shall be promptly published by the International Bureau in the Gazette.

4.10 to 4.18 [No change]

³ While the amendments of Rule 4 set out in this Annex would enter into force on April 1, 2006, further proposed amendments of Rule 4 set out in Annex II would enter into force on April 1, 2007 (see paragraph 10(ii) in the main body of the present document).

⁴ Further drafting changes have been made to Rule 4.9(b), beyond the text as agreed by the Working Group; see Annex V, paragraph 21. The Assembly is invited to adopt a proposed understanding in relation to Rule 4.9(b); see Annex V, paragraph 22. The full text of Rule 4.9(a) is shown, although unchanged, for convenient reference having regard to the proposed amendments of Rule 4.9(b) and to the proposed understanding just mentioned.

Rule 13bis
Inventions Relating to Biological Material

13bis.1 to 13bis.3 [No change]

13bis.4 *References: Time Limit for Furnishing Indications*⁵

(a) to (c) [No change]

(d) The International Bureau shall notify the applicant of the date on which it received any indication furnished under paragraph (a), and:

(i) if the indication was received before the technical preparations for international publication have been completed, publish the indication furnished under paragraph (a), and an indication of the date of receipt, together with the international application ~~indicate that date, and include the relevant data from the indication, in the pamphlet published under Rule 48;~~

(ii) [No change]

13bis.5 to 13bis.7 [No change]

⁵ A further drafting change has been made to Rule 13bis.4(d)(i), in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 4. For transitional arrangements in relation to Rule 13bis.4, see Annex IV, paragraph 15, item (1)(b)(i).

Rule 26bis⁶
Correction or Addition of Priority Claim

26bis.1 [No change]

26bis.2 *Invitation to Correct Defects in Priority Claims*⁷

(a) and (b) [No change]

(c) Where the receiving Office or the International Bureau has made a declaration under paragraph (b), the International Bureau shall, upon request made by the applicant and received by the International Bureau prior to the completion of the technical preparations for international publication, and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, publish, together with the international application, information concerning the priority claim which was considered not to have been made. A copy of that request shall be included in the communication under Article 20 ~~where a copy of the pamphlet is not used for that communication or~~ where the international application is not published by virtue of Article 64(3).

⁶ While the amendments of Rule 26bis set out in this Annex would enter into force on April 1, 2006, further proposed amendments of Rule 26bis set out in Annex II would enter into force on April 1, 2007 (see paragraph 10(ii) in the main body of the present document).

⁷ For transitional arrangements in relation to Rule 26bis.2, see Annex IV, paragraph 15, item (1)(b)(ii).

Rule 47
Communication to Designated Offices

47.1 *Procedure*⁸

(a) and (a-*bis*) [No change]

~~(a-*ter*) [Deleted] The notification under paragraph (a-*bis*) shall include any declaration referred to in Rule 4.17(i) to (iv), and any correction thereof under Rule 26*ter*.1, which was received by the International Bureau before the expiration of the time limit under Rule 26*ter*.1, provided that the designated Office has informed the International Bureau that the applicable national law requires the furnishing of documents or evidence relating to the matter to which the declaration relates.~~

(b) to (e) [No change]

47.2 to 47.4 [No change]

⁸ For transitional arrangements in relation to Rule 47.1, see Annex IV, paragraph 15, item (1)(b)(i).

Rule 48⁹
International Publication

48.1 *Form and Means*¹⁰

(a) ~~[Deleted] The international application shall be published in the form of a pamphlet.~~

(b) The ~~particulars regarding the~~ form in which and the means by which international applications are published ~~of the pamphlet and the method of reproduction~~ shall be governed by the Administrative Instructions.

48.2 *Contents*¹¹

(a) The publication of the international application ~~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); ~~the publication of the international search report in the pamphlet shall, however, not be required to include the part of the international search report which contains only matter referred to in Rule 43 already appearing on the front page of the pamphlet;~~

(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~~;~~

(vii) any request for rectification referred to in the third sentence of Rule 91.1(f)~~;~~

(viii) the ~~relevant data from any~~ indications in relation to deposited biological material furnished under Rule 13*bis* separately from the description, together with an indication of the date on which the International Bureau received such indications~~;~~

(ix) any information concerning a priority claim considered not to have been made under Rule 26*bis*.2(b), the publication of which is requested under Rule 26*bis*.2(c)~~;~~

⁹ While the amendments of Rule 48 set out in this Annex would enter into force on April 1, 2006, further proposed amendments of Rule 48 set out in Annex II would enter into force on April 1, 2007 (see paragraph 10(ii) in the main body of the present document).

¹⁰ Further drafting changes have been made to Rule 48.1, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 5. For transitional arrangements in relation to Rule 48.1, see Annex IV, paragraph 15, item (1)(b)(i).

¹¹ A further drafting change has been made to Rule 48.2(a), in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 6. Rule 48.2(a)(i) to (iv), (vi), (vii) and (ix) are proposed to be amended in the English text only. For transitional arrangements in relation to Rule 48.2, see Annex IV, paragraph 15, item (1)(b)(i). See also Annex IV, paragraph 3, in connection with Rule 48.2(a)(x).

[Rule 48.2(a), continued]

(x) any declaration referred to in Rule 4.17 ~~4.17(v)~~, and any correction thereof under Rule 26ter.1, which was received by the International Bureau before the expiration of the time limit under Rule 26ter.1.

(b) to (e) [No change]

(f) If the claims have been amended under Article 19, the publication of the international application 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 of the completion of the technical preparations for international publication, 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)(e)(i))~~, the front page 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 together with a revised front page.

(h) If, at the time of the completion of the technical preparations for international publication, the time limit for amending the claims under Article 19 has not expired, the front page pamphlet shall refer to that fact and indicate that, should the claims be amended under Article 19, then, promptly after receipt by the International Bureau of such amendments within the time limit under Rule 46.1, the full text of the claims as amended ~~either the pamphlet (containing the claims as amended) will be republished or a statement reflecting all the amendments~~ will be published together with a revised front page. ~~If 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) [Deleted] 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 *Languages of Publication*

(a) If the international application is filed in Arabic, Chinese, English, French, German, Japanese, Russian or Spanish (“languages of publication”), that application shall be published in the language in which it was filed.

(b) and (c) [No change]

48.4 to 48.6 [No change]

Rule 86
The Gazette

86.1 *Contents and Form*¹²

~~(a)~~ The Gazette referred to in Article 55(4) shall contain:

(i) for each published international application, the data specified by the Administrative Instructions taken from the front page of the [publication of the international application 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) [No change]

~~(b) [Deleted] The information referred to in paragraph (a) shall be made available in two forms:~~

~~(i) as a Gazette in paper form, which shall contain the data specified by the Administrative Instructions taken from the front page of the pamphlet published under Rule 48 (“bibliographic data”) and the matters referred to in paragraph (a)(ii) to (v);~~

~~(ii) as a Gazette in electronic form, which shall contain the bibliographic data, the drawing (if any) appearing on the said front page, and the abstract.~~

¹² Rule 86.1(ii) to (iv) are proposed to be amended in the English text only. For transitional arrangements in relation to Rule 86.1, see Annex IV, paragraph 15, item (1)(b)(iii).

86.2 *Languages; Form and Means of Publication; Timing Access to the Gazette*¹³

(a) The Gazette shall be published in English and French at the same time. The translations shall be ensured by the International Bureau in English and French. ~~The Gazette in paper form shall be published in a bilingual (English and French) edition. It shall also be published in editions in any other language, provided the cost of publication is assured through sales or subventions.~~

(b) [No change]

(c) The form in which and the means by which the Gazette is published shall be governed by the Administrative Instructions. ~~The Gazette in electronic form referred to in Rule 86.1(b)(ii) shall be made accessible in English and French at the same time, by any electronic ways and means specified in the Administrative Instructions. The translations shall be ensured by the International Bureau in English and French.~~

(d) [~~(e), continued~~] The International Bureau shall ensure that, for each published international application, the information referred to in Rule 86.1(i) is published in the Gazette ~~the making accessible of the Gazette in electronic form shall be~~ effectuated on, or as soon as possible after, the date of publication of ~~the pamphlet containing~~ the international application.

86.3 to 86.6 [No change]

¹³ Further drafting changes have been made to Rule 86.2, beyond the text as agreed by the Working Group; see Annex V, paragraph 12. For transitional arrangements in relation to Rule 86.2, see Annex IV, paragraph 15, item (1)(b)(iii).

Rule 87
Communication ~~Copies~~ of Publications

87.1 Communication of Publications on Request ~~International Searching and Preliminary Examining Authorities~~¹⁴

The International Bureau shall communicate ~~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, to International Searching Authorities, International Preliminary Examining Authorities and national Offices upon request by the Authority or Office concerned. Further details concerning the form in which and the means by which publications are communicated shall be governed by the Administrative Instructions.

87.2 ~~[Deleted]~~ *National Offices*¹⁵

~~(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. If any publication is available in more than one language, the request shall specify the language or languages in which it is desired.~~

¹⁴ Further drafting changes have been made to Rule 87.1, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 7. For transitional arrangements in relation to Rule 87.1, see Annex IV, paragraph 15, item (1)(b)(iv).

¹⁵ For transitional arrangements in relation to Rule 87.2, see Annex IV, paragraph 15, item (1)(b)(iv).

Rule 91¹⁶
Obvious Errors in Documents

91.1 *Rectification*¹⁷

(a) to (e) [No change]

(f) Any authority which authorizes or refuses any rectification shall promptly notify the applicant of the authorization or refusal and, in the case of refusal, of the reasons therefor. The authority which authorizes a rectification shall promptly notify the International Bureau accordingly. Where the authorization of the rectification was refused, the International Bureau shall, upon request made by the applicant prior to the time relevant under paragraph (g-*bis*), (g-*ter*) or (g-*quater*) and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, publish the request for rectification together with the international application. A copy of the request for rectification shall be included in the communication under Article 20 ~~where a copy of the pamphlet is not used for that communication or~~ where the international application is not published by virtue of Article 64(3).

(g) to (g-*quater*) [No change]

[Annex II follows]

¹⁶ While the amendments of Rule 91 set out in this Annex would enter into force on April 1, 2006, further proposed amendments of Rule 91 set out in Annex II would enter into force on April 1, 2007 (see paragraph 10(ii) in the main body of the present document).

¹⁷ For transitional arrangements in relation to Rule 91.1, see Annex IV, paragraph 15, item (1)(b)(ii).

ANNEX II

AMENDMENTS OF THE PCT REGULATIONS¹
PROPOSED TO ENTER INTO FORCE ON APRIL 1, 2007²

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¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. A "clean" copy of the proposed amended provisions (without underlining or striking through) appears in document PCT/A/34/3.

² For dates of entry into force and transitional arrangements, see paragraphs 9 to 11 of the main body of this document and Annex IV.

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Rule 2
Interpretation of Certain Words

2.1 to 2.3 [No change]

2.4 "Priority Period"³

(a) Whenever the term "priority period" is used in relation to a priority claim, it shall be construed as meaning the period of 12 months from the filing date of the earlier application whose priority is so claimed. The day of filing of the earlier application shall not be included in that period.

(b) Rule 80.5 shall apply *mutatis mutandis* to the priority period.

³ A further drafting change has been made to Rule 2.4(b), in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 54.

Rule 4⁴
The Request (Contents)

4.1 *Mandatory and Optional Contents; Signature*⁵

(a) and (b) [No change]

(c) The request may contain:

(i) and (ii) [No change]

(iii) declarations as provided in Rule 4.17.

(iv) a statement as provided in Rule 4.18.

(v) a request for restoration of the right of priority.

(d) [No change]

4.2 to 4.9 [No change]

4.10 *Priority Claim*

(a) Any declaration referred to in Article 8(1) (“priority claim”) may claim the priority of one or more earlier applications filed either in or for any country party to the Paris Convention for the Protection of Industrial Property or in or for any Member of the World Trade Organization that is not party to that Convention. Any priority claim shall, ~~subject to Rule 26bis.1,~~ 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) the date on which the earlier application was filed, ~~being a date falling within the period of 12 months preceding the international filing date;~~

(ii) to (v) [No change]

(b) to (d) [No change]

4.11 to 4.17 [No change]

⁴ These amendments are based on the text of Rule 4 as proposed to be amended, with effect from April 1, 2006, in Annex I of this document.

⁵ For transitional arrangements in relation to Rule 4.1(c)(iv), see Annex IV, paragraph 15, item (2)(a).

4.18 *Statement of Incorporation by Reference*⁶

Where the international application, on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, claims the priority of an earlier application, the request may contain a statement that, where an element of the international application referred to in Article 11(1)(iii)(d) or (e) or a part of the description, claims or drawings referred to in Rule 20.5(a) is not otherwise contained in the international application but is completely contained in the earlier application, that element or part is, subject to confirmation under Rule 20.6, incorporated by reference in the international application for the purposes of Rule 20.6. Such a statement, if not contained in the request on that date, may be added to the request if, and only if, it was otherwise contained in, or submitted with, the international application on that date.

4.19 ~~4.18~~ *Additional Matter*⁷

(a) The request shall contain no matter other than that specified in Rules 4.1 to 4.18 ~~4.17~~, provided that the Administrative Instructions may permit, but cannot make mandatory, the inclusion in the request of any additional matter specified in the Administrative Instructions.

(b) If the request contains matter other than that specified in Rules 4.1 to 4.18 ~~4.17~~ or permitted under paragraph (a) by the Administrative Instructions, the receiving Office shall *ex officio* delete the additional matter.

⁶ For transitional arrangements in relation to Rule 4.18, see Annex IV, paragraph 15, item (2)(a).
⁷ Further drafting changes have been made to Rule 4.19, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 49. For transitional arrangements in relation to Rule 4.19, see Annex IV, paragraph 15, item (2)(a).

Rule 11
Physical Requirements of the International Application

11.1 to 11.13 [No change]

11.14 *Later Documents*

Rules 10, and 11.1 to 11.13, also apply to any document—for example, [replacement sheets](#) ~~corrected pages~~, amended claims, translations—submitted after the filing of the international application.

Rule 12
Language of the International Application and Translation
for the Purposes of International Search and International Publication

12.1 [No change]

12.1bis Language of Elements and Parts Furnished Under Rule 20.3, 20.5 or 20.6⁸

An element referred to in Article 11(1)(iii)(d) or (e) furnished by the applicant under Rule 20.3(b) or 20.6(a) and a part of the description, claims or drawings furnished by the applicant under Rule 20.5(b) or 20.6(a) shall be in the language of the international application as filed or, where a translation of the application is required under Rule 12.3(a) or 12.4(a), in both the language of the application as filed and the language of that translation.

12.2 *Language of Changes in the International Application*⁹

(a) [No change]

(b) Any rectification under Rule 91.1 of an obvious mistake ~~error~~ in the international application shall be in the language in which the application is filed, provided that:

(i) where a translation of the international application is required under Rule 12.3(a), 12.4(a) or 55.2(a), rectifications referred to in Rule 91.1(b)(ii) and (iii) ~~91.1(e)(ii) and (iii)~~ shall be filed in both the language of the application and the language of that translation;

(ii) where a translation of the request is required under Rule 26.3ter(c), rectifications referred to in Rule 91.1(b)(i) ~~91.1(e)(i)~~ need only be filed in the language of that translation.

(c) [No change]

12.3 *Translation for the Purposes of International Search*¹⁰

(a) and (b) [No change]

(c) Where, by the time the receiving Office sends to the applicant the notification under Rule 20.2(c) ~~20.5(e)~~, the applicant has not furnished a translation required under paragraph (a), the receiving Office shall, preferably together with that notification, invite the applicant:

(i) and (ii) [No change]

(d) and (e) [No change]

12.4 [No change]

⁸ For transitional arrangements in relation to Rule 12.1bis, see Annex IV, paragraph 15, item (2)(a).

⁹ Further drafting changes have been made to Rule 12.2(b), beyond the text as agreed by the Working Group; see Annex V, paragraph 82.

¹⁰ For transitional arrangements in relation to Rule 12.3, see Annex IV, paragraph 15, item (2)(a).

Rule 20

International Filing Date Receipt of the International Application

~~20.1—Date and Number~~¹¹

~~(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt on the request of each copy received and the international application number 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~~¹²

~~(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~~¹³

~~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.~~

¹¹ For transitional arrangements in relation to Rule 20.1, see Annex IV, paragraph 15, items (2)(a) and (3)(a).

¹² For transitional arrangements in relation to Rule 20.2, see Annex IV, paragraph 15, item (2)(a).

¹³ For transitional arrangements in relation to Rule 20.3, see Annex IV, paragraph 15, item (2)(a).

20.1 ~~20.4~~ *Determination Under Article 11(1)*¹⁴

(a) Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers fulfill ~~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 the ~~his~~ identity of the applicant 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.

(c) For the purposes of Article 11(1)(ii), it shall be sufficient that the part which appears to be a description (other than any sequence listing part thereof) and the part which appears to be a claim or claims be in a language accepted by the receiving Office under Rule 12.1(a).

(d) If, on October 1, 1997, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997. The information received shall be promptly published by the International Bureau in the Gazette.

20.2 ~~20.5~~ *Positive Determination Under Article 11(1)*¹⁵

(a) If the receiving Office determines that, at the time of receipt of the papers purporting to be an international application, the requirements of ~~determination under~~ Article 11(1) were fulfilled ~~is positive~~, the receiving Office shall accord as the international filing date the date of receipt of the international application. ~~stamp on the request 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 receiving Office shall stamp the request of the international application which it has accorded an international filing date as prescribed by the Administrative Instructions. The copy whose request has been so stamped shall be the record copy of the international application.

¹⁴ The full text of Rule 20.1(c) and (d) is shown, although no changes are indicated in them in the English text, since they derive from existing Rule 20.4. Further drafting changes have been made to Rule 20.1, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 28. For transitional arrangements in relation to Rule 20.1, see Annex IV, paragraph 15, items (2)(a) and (3)(a).

¹⁵ The full text of Rule 20.2(c) is shown, although no changes are indicated in it in the English text, since it derives from existing Rule 20.5. Further drafting changes have been made to Rule 20.2(c), in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 30. For transitional arrangements in relation to Rule 20.2, see Annex IV, paragraph 15, item (2)(a).

[Rule 20.2, continued]

(c) The receiving Office shall promptly notify the applicant of the international application number and the international filing date. At the same time, it shall send to the International Bureau a copy of the notification sent to the applicant, except where it has already sent, or is sending at the same time, the record copy to the International Bureau under Rule 22.1(a).

~~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 one month, from the date of the invitation. If such time limit expires after the expiration of one 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.~~

20.3 Defects Under Article 11(1)¹⁶

(a) Where, in determining whether the papers purporting to be an international application fulfill the requirements of Article 11(1), the receiving Office finds that any of the requirements of Article 11(1) are not, or appear not to be, fulfilled, it shall promptly invite the applicant, at the applicant's option:

(i) to furnish the required correction under Article 11(2); or

(ii) where the requirements concerned are those relating to an element referred to in Article 11(1)(iii)(d) or (e), to confirm in accordance with Rule 20.6(a) that the element is incorporated by reference under Rule 4.18;

and to make observations, if any, within the applicable time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call that circumstance to the attention of the applicant.

* The following footnote should have appeared in document PCT/A/34/2: For transitional arrangements in relation to Rule 20.6, see Annex IV, paragraph 15, item (2)(a).

¹⁶ Further drafting changes have been made to Rule 20.3, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 35. For transitional arrangements in relation to Rule 20.3, see Annex IV, paragraph 15, item (2)(a).

[Rule 20.3, continued]

(b) Where, following an invitation under paragraph (a) or otherwise:

(i) the applicant furnishes to the receiving Office the required correction under Article 11(2) after the date of receipt of the purported international application but on a later date falling within the applicable time limit under Rule 20.7, the receiving Office shall accord that later date as the international filing date and proceed as provided in Rule 20.2(b) and (c);

(ii) an element referred to in Article 11(1)(iii)(d) or (e) is, under Rule 20.6(b), considered to have been contained in the international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

~~(c) 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 under paragraph (a) to correct since the requirements of provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.2 ~~Rule 20.5~~.*

20.4 20.7 *Negative Determination Under Article 11(1)*¹⁷

If the receiving Office does not, receive, within the applicable time limit under Rule 20.7, a correction or confirmation referred to in Rule 20.3(a), within the prescribed time limit, receive a reply to its invitation to correct, or if a the correction or confirmation has been received offered by the applicant but the application still does not fulfill the requirements of provided for under Article 11(1), the receiving Office ~~it~~ shall:

(i) promptly notify the applicant that the 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.

* The existing title of Rule 20.8 should have been shown as deleted in document PCT/A/34/2.
¹⁷ The full text of Rule 20.4(iv) is shown, although no changes are indicated in it, since it derives from existing Rule 20.7. Further drafting changes have been made to the introductory text of Rule 20.4 and, in the French text only, to Rule 20.4(iii), beyond the text as agreed by the Working Group; see Annex V, paragraph 37. For transitional arrangements in relation to Rule 20.4, see Annex IV, paragraph 15, item (2)(a).

20.5 Missing Parts¹⁸

(a) Where, in determining whether the papers purporting to be an international application fulfill the requirements of Article 11(1), the receiving Office finds that a part of the description, claims or drawings is or appears to be missing, including the case where all of the drawings are or appear to be missing but not including the case where an entire element referred to in Article 11(1)(iii)(d) or (e) is or appears to be missing, it shall promptly invite the applicant, at the applicant's option:

(i) to complete the purported international application by furnishing the missing part; or

(ii) to confirm, in accordance with Rule 20.6(a), that the part was incorporated by reference under Rule 4.18;

and to make observations, if any, within the applicable time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call that circumstance to the attention of the applicant.

(b) Where, following an invitation under paragraph (a) or otherwise, the applicant furnishes to the receiving Office, on or before the date on which all of the requirements of Article 11(1) are fulfilled but within the applicable time limit under Rule 20.7, a missing part referred to in paragraph (a) so as to complete the international application, that part shall be included in the application and the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

(c) Where, following an invitation under paragraph (a) or otherwise, the applicant furnishes to the receiving Office, after the date on which all of the requirements of Article 11(1) were fulfilled but within the applicable time limit under Rule 20.7, a missing part referred to in paragraph (a) so as to complete the international application, that part shall be included in the application, and the receiving Office shall correct the international filing date to the date on which the receiving Office received that part, notify the applicant accordingly and proceed as provided for in the Administrative Instructions.

(d) Where, following an invitation under paragraph (a) or otherwise, a part referred to in paragraph (a) is, under Rule 20.6(b), considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the receiving Office shall accord as the international filing date the date on which all of the requirements of Article 11(1) are fulfilled and proceed as provided in Rule 20.2(b) and (c).

¹⁸ Further drafting changes have been made to Rule 20.5(a)(i), (b) and (c), in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 43. For transitional arrangements in relation to Rule 20.5, see Annex IV, paragraph 15, item (2)(a).

[Rule 20.5, continued]

(e) Where the international filing date has been corrected under paragraph (c), the applicant may, in a notice submitted to the receiving Office within one month from the date of the notification under paragraph (c), request that the missing part concerned be disregarded, in which case the missing part shall be considered not to have been furnished and the correction of the international filing date under that paragraph shall be considered not to have been made, and the receiving Office shall proceed as provided for in the Administrative Instructions.

20.6 Confirmation of Incorporation by Reference of Elements and Parts¹⁹

(a) The applicant may submit to the receiving Office, within the applicable time limit under Rule 20.7, a written notice confirming that an element or part is incorporated by reference in the international application under Rule 4.18, accompanied by:

(i) a sheet or sheets embodying the entire element as contained in the earlier application or embodying the part concerned;

(ii) where the applicant has not already complied with Rule 17.1(a), (b) or (b-bis) in relation to the priority document, a copy of the earlier application as filed;

(iii) where the earlier application is not in the language in which the international application is filed, a translation of the earlier application into that language or, where a translation of the international application is required under Rule 12.3(a) or 12.4(a), a translation of the earlier application into both the language in which the international application is filed and the language of that translation; and

(iv) in the case of a part of the description, claims or drawings, an indication as to where that part is contained in the earlier application and, where applicable, in any translation referred to in item (iii).

(b) Where the receiving Office finds that the requirements of Rule 4.18 and paragraph (a) have been complied with and that the element or part referred to in paragraph (a) is completely contained in the earlier application concerned, that element or part shall be considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

(c) Where the receiving Office finds that a requirement under Rule 4.18 or paragraph (a) has not been complied with or that the element or part referred to in paragraph (a) is not completely contained in the earlier application concerned, the receiving Office shall proceed as provided for in Rule 20.3(b)(i), 20.5(b) or 20.5(c), as the case may be.

¹⁹ For transitional arrangements in relation to Rule 20.6, see Annex IV, paragraph 15, item (2)(a).

20.7 Time Limit²⁰

(a) The applicable time limit referred to in Rules 20.3(a) and (b), 20.4, 20.5(a), (b) and (c), and 20.6(a) shall be:

(i) where an invitation under Rule 20.3(a) or 20.5(a), as applicable, was sent to the applicant, two months from the date of the invitation;

(ii) where no such invitation was sent to the applicant, two months from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

(b) Where a correction under Article 11(2) or a notice under Rule 20.6(a) confirming the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e) is received by the receiving Office after the expiration of the applicable time limit under paragraph (a) but before that Office sends a notification to the applicant under Rule 20.4(i), that correction or notice shall be considered to have been received within that time limit.

20.8 Incompatibility With National Laws²¹

(a) If, on October 5, 2005, any of Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 are not compatible with the national law applied by the receiving Office, the Rules concerned shall not apply to an international application filed with that receiving Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by April 5, 2006. The information received shall be promptly published by the International Bureau in the Gazette.

(b) If, on October 5, 2005, any of Rules 20.3(a)(ii) and (b)(ii), 20.5(a)(ii) and (d), and 20.6 are not compatible with the national law applied by the designated Office, the Rules concerned shall not apply in respect of that Office in relation to an international application in respect of which the acts referred to in Article 22 have been performed before that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by April 5, 2006. The information received shall be promptly published by the International Bureau in the Gazette.

~~20.9 [Deleted] *Certified Copy for the Applicant*~~²²

~~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.~~

²⁰ For transitional arrangements in relation to Rule 20.7, see Annex IV, paragraph 15, item (2)(a).

²¹ Further drafting changes have been made to Rule 20.8(a) and (b), beyond the text as agreed by the Working Group; see Annex V, paragraph 55. For transitional arrangements in relation to Rule 20.8, see Annex IV, paragraph 15, item (2)(a). The Assembly is invited to adopt a proposed understanding in relation to Rule 20.8(a); see Annex V, paragraph 52.

²² For transitional arrangements in relation to Rule 20.9, see Annex IV, paragraph 15, item (2)(a).

Rule 21
Preparation of Copies

21.1 [No change]

21.2 *Certified Copy for the Applicant*²³

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.

²³ For transitional arrangements in relation to Rule 21.2, see Annex IV, paragraph 15, item (2)(a).

Rule 22
Transmittal of the Record Copy and Translation

22.1 *Procedure*²⁴

(a) [No change]

(b) If the International Bureau has received a copy of the notification under Rule [20.2\(c\)](#) ~~20.5(e)~~ but is not, by the expiration of 13 months from the priority date, in possession of the record copy, it shall remind the receiving Office that it should transmit the record copy to the International Bureau promptly.

(c) If the International Bureau has received a copy of the notification under Rule [20.2\(c\)](#) ~~20.5(e)~~ but is not, by the expiration of 14 months from the priority date, in possession of the record copy, it shall notify the applicant and the receiving Office accordingly.

(d) to (h) [No change]

22.2 *[Remains deleted]*

22.3 [No change]

²⁴ For transitional arrangements in relation to Rule 22.1, see Annex IV, paragraph 15, item (2)(a).

Rule 26
Checking by, and Correcting Before, the Receiving Office of Certain Elements of the International Application

26.1 Invitation Under Article 14(1)(b) to Correct ~~Time Limit for Check~~²⁵

(a) The receiving Office shall issue the invitation to correct provided for in Article 14(1)(b) as soon as possible, preferably within one month from the receipt of the international application. In the invitation, the receiving Office shall invite the applicant to furnish the required correction, and give the applicant the opportunity to make observations, within the time limit under Rule 26.2.

~~(b) [Deleted] 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 Correction²⁶

The time limit referred to in Rule 26.1 ~~Article 14(1)(b) shall be reasonable under the circumstances and~~ shall be two months ~~fixed in each case by the receiving Office. It shall not be less than one month~~ from the date of the invitation to correct. It may be extended by the receiving Office at any time before a decision is taken.

26.2bis to 26.3bis [No change]

26.3ter Invitation to Correct Defects Under Article 3(4)(i)²⁷

(a) Where the abstract or any text matter of the drawings is filed in a language which is different from the language of the description and the claims, the receiving Office shall, unless

(i) and (ii) [No change]

invite the applicant to furnish a translation of the abstract or the text matter of the drawings into the language in which the international application is to be published. Rules 26.1 ~~26.1(a)~~, 26.2, 26.3, 26.3bis, 26.5 and 29.1 shall apply *mutatis mutandis*.

(b) [No change]

(c) Where the request does not comply with Rule 12.1(c), the receiving Office shall invite the applicant to file a translation so as to comply with that Rule. Rules 3, 26.1 ~~26.1(a)~~, 26.2, 26.5 and 29.1 shall apply *mutatis mutandis*.

(d) [No change]

²⁵ A further drafting change has been made to the title of Rule 26.1, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 24. For transitional arrangements in relation to Rule 26.1, see Annex IV, paragraph 15, item (2)(a).

²⁶ For transitional arrangements in relation to Rule 26.2, see Annex IV, paragraph 15, item (2)(a).

²⁷ A further drafting change has been made to the title of Rule 26.3ter, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 24. For transitional arrangements in relation to Rule 26.3ter, see Annex IV, paragraph 15, item (2)(a).

26.4 [No change]

26.5 *Decision of the Receiving Office*²⁸

The receiving Office shall decide whether the applicant has submitted the correction within the [applicable](#) time limit under Rule 26.2, and, if the correction has been submitted within that time limit, whether the international application so corrected is or is not to be considered withdrawn, provided that no international application shall be considered withdrawn for lack of compliance with the physical requirements referred to in Rule 11 if it complies with those requirements to the extent necessary for the purpose of reasonably uniform international publication.

~~26.6 [Deleted] *Missing Drawings*~~²⁹

~~(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).~~

²⁸ For transitional arrangements in relation to Rule 26.5, see Annex IV, paragraph 15, item (2)(a).

²⁹ For transitional arrangements in relation to Rule 26.6, see Annex IV, paragraph 15, item (2)(a).

Rule 26bis³⁰
Correction or Addition of Priority Claim

26bis.1 Correction or Addition of Priority Claim

(a) The applicant may correct [a priority claim](#) or add a priority claim [to the request](#) by a notice submitted to the receiving Office or the International Bureau within a time limit of 16 months from the priority date or, where the correction or addition would cause a change in the priority date, 16 months from the priority date as so changed, whichever 16-month period expires first, provided that such a notice may be submitted until the expiration of four months from the international filing date. The correction of a priority claim may include the addition of any indication referred to in Rule 4.10.

(b) and (c) [No change]

26bis.2 ~~Invitation to Correct~~ Defects in Priority Claims³¹

(a) Where the receiving Office or, if the receiving Office fails to do so, the International Bureau, finds [in relation to a priority claim](#):

- (i) [that the international application has an international filing date which is later than the date on which the priority period expired and that a request for restoration of the right of priority under Rule 26bis.3 has not been submitted;](#)
- (ii) that ~~the~~ [a](#) priority claim does not comply with the requirements of Rule 4.10;~~;~~
or
- (iii) that any indication in ~~the~~ [a](#) priority claim is [inconsistent with](#) ~~not the same as~~ the corresponding indication appearing in the priority document;~~;~~

the receiving Office or the International Bureau, as the case may be, shall invite the applicant to correct the priority claim. [In the case referred to in item \(i\), where the international filing date is within two months from the date on which the priority period expired, the receiving Office or the International Bureau, as the case may be, shall also notify the applicant of the possibility of submitting a request for the restoration of the right of priority in accordance with Rule 26bis.3, unless the receiving Office has notified the International Bureau under Rule 26bis.3\(j\) of the incompatibility of Rule 26bis.3\(a\) to \(i\) with the national law applied by that Office.](#)

³⁰ These amendments are based on the text of Rule 26bis as proposed to be amended, with effect from April 1, 2006, in Annex I of this document.

³¹ Further drafting changes have been made to Rule 26bis.2(a) and (in the French text only) to Rule 26bis.2(c), beyond the text as agreed by the Working Group; see Annex V, paragraph 56.

[Rule 26bis.2, continued]

(b) If, ~~in response to an invitation under paragraph (a),~~ the applicant does not, before the expiration of the time limit under Rule 26bis.1(a), submit a notice correcting the priority claim ~~so as to comply with the requirements of Rule 4.10,~~ that priority claim shall, subject to paragraph (c), for the purposes of the procedure under the Treaty, be considered not to have been made (“considered void”) and the receiving Office or the International Bureau, as the case may be, shall so declare and shall inform the applicant accordingly. Any notice correcting the priority claim which is received before the receiving Office or the International Bureau, as the case may be, so declares and not later than one month after the expiration of that time limit shall be considered to have been received before the expiration of that time limit. ~~provided that a~~

(c) A priority claim shall not be considered void ~~not to have been made~~ only because:

(i) the indication of the number of the earlier application referred to in Rule 4.10(a)(ii) is missing; ~~or because~~

(ii) an indication in the priority claim is inconsistent with ~~not the same as~~ the corresponding indication appearing in the priority document; or

(iii) the international application has an international filing date which is later than the date on which the priority period expired, provided that the international filing date is within the period of two months from that date.

(d) ~~(e)~~ Where the receiving Office or the International Bureau has made a declaration under paragraph (b) or where the priority claim has not been considered void only because paragraph (c) applies, the International Bureau shall, ~~upon request made by the applicant and received by the International Bureau prior to the completion of the technical preparations for international publication, and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions,~~ publish, together with the international application, information concerning the priority claim as prescribed by the Administrative Instructions which was considered not to have been made, as well as any information submitted by the applicant concerning such priority claim which is received by the International Bureau prior to the completion of the technical preparations for international publication. Such information ~~A copy of that request~~ shall be included in the communication under Article 20 where the international application is not published by virtue of Article 64(3).

(e) Where the applicant wishes to correct or add a priority claim but the time limit under Rule 26bis.1 has expired, the applicant may, prior to the expiration of 30 months from the priority date and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, request the International Bureau to publish information concerning the matter, and the International Bureau shall promptly publish such information.

26bis.3 Restoration of Right of Priority by Receiving Office³²

(a) Where the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the receiving Office shall, on the request of the applicant, and subject to paragraphs (b) to (g) of this Rule, restore the right of priority if the Office finds that a criterion applied by it (“criterion for restoration”) is satisfied, namely, that the failure to file the international application within the priority period:

(i) occurred in spite of due care required by the circumstances having been taken;
or

(ii) was unintentional.

Each receiving Office shall apply at least one of those criteria and may apply both of them.

(b) A request under paragraph (a) shall:

(i) be filed with the receiving Office within the time limit applicable under paragraph (e);

(ii) state the reasons for the failure to file the international application within the priority period; and

(iii) preferably be accompanied by any declaration or other evidence required under paragraph (f).

(c) Where a priority claim in respect of the earlier application is not contained in the international application, the applicant shall submit, within the time limit applicable under paragraph (e), a notice under Rule 26bis.1(a) adding the priority claim.

(d) The submission of a request under paragraph (a) may be subjected by the receiving Office to the payment to it, for its own benefit, of a fee for requesting restoration, payable within the time limit applicable under paragraph (e). The amount of that fee, if any, shall be fixed by the receiving Office.

(e) The time limit referred to in paragraphs (b)(i), (c) and (d) shall be two months from the date on which the priority period expired, provided that, where the applicant makes a request for early publication under Article 21(2)(b), any request under paragraph (a) or any notice referred to in paragraph (c) submitted, or any fee referred to in paragraph (d) paid, after the technical preparations for international publication have been completed shall be considered as not having been submitted or paid in time.

³² Further drafting changes have been made to Rule 26bis.3(j) and (in the French text only) to Rule 26bis.3(a) and (e), beyond the text as agreed by the Working Group; see Annex V, paragraphs 61 and 66. The Assembly is invited to adopt proposed understandings in relation to Rule 26bis.3(a) and (f); see Annex V, paragraphs 62 and 64.

[Rule 26bis.3, continued]

(f) The receiving Office may require that a declaration or other evidence in support of the statement of reasons referred to in paragraph (b)(iii) be filed with it within a time limit which shall be reasonable under the circumstances. The applicant may furnish to the International Bureau a copy of any such declaration or other evidence filed with the receiving Office, in which case the International Bureau shall include such copy in its files.

(g) The receiving Office shall not refuse, totally or in part, a request under paragraph (a) without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances. Such notice of intended refusal by the receiving Office may be sent to the applicant together with any invitation to file a declaration or other evidence under paragraph (f).

(h) The receiving Office shall promptly:

(i) notify the International Bureau of the receipt of a request under paragraph (a);

(ii) make a decision upon the request;

(iii) notify the applicant and the International Bureau of its decision and the criterion for restoration upon which the decision was based.

(i) Each receiving Office shall inform the International Bureau of which of the criteria for restoration it applies and of any subsequent changes in that respect. The International Bureau shall promptly publish such information in the Gazette.

(j) If, on October 5, 2005, paragraphs (a) to (i) are not compatible with the national law applied by the receiving Office, those paragraphs shall not apply in respect of that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by April 5, 2006. The information received shall be promptly published by the International Bureau in the Gazette.*

* The following changes have been made to the text of Rule 26bis.3(j) appearing in document PCT/A/34/2 for the sake of consistency with the text of other similar provisions: the words “shall not apply to that receiving Office” have been replaced by “shall not apply in respect of that Office”; the words “paragraphs (a) to (i)”, second occurrence, have been replaced by “they”.

Rule 38³³
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. Such abstract shall be established in the language in which the international application is to be published or, if a translation into another language was transmitted under Rule 23.1(b) and the International Searching Authority so wishes, in the language of that translation.

38.3 *Modification of Abstract*

~~(b)~~ The applicant may, until the expiration of ~~within~~ one month from the date of mailing of the international search report, submit to the International Searching Authority:

(i) proposed modifications of the abstract; or

(ii) where the abstract has been established by the Authority, proposed modifications of, or comments on, that ~~the~~ abstract established by the International Searching Authority, or both modifications and comments;

and the Authority shall decide whether to modify the abstract accordingly. Where ~~the~~ ~~that~~ Authority modifies ~~amends~~ the abstract ~~established by it~~, it shall notify the modification ~~amendment~~ to the International Bureau.

³³ As to the wording of Rule 38 as proposed to be amended, see Annex V, paragraph 83.

Rule 43
The International Search Report

43.1 to 43.6 [No change]

43.6bis Consideration of Rectifications of Obvious Mistakes³⁴

(a) A rectification of an obvious mistake that is authorized under Rule 91.1 shall, subject to paragraph (b), be taken into account by the International Searching Authority for the purposes of the international search and the international search report shall so indicate.

(b) A rectification of an obvious mistake need not be taken into account by the International Searching Authority for the purposes of the international search if it is authorized by or notified to that Authority, as applicable, after it has begun to draw up the international search report, in which case the report shall, if possible, so indicate, failing which the International Searching Authority shall notify the International Bureau accordingly and the International Bureau shall proceed as provided for in the Administrative Instructions.

43.7 to 43.10 [No change]

³⁴ A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 43; see Annex V, paragraph 97. For transitional arrangements in relation to Rule 43.6bis, see Annex IV, paragraph 15, item (2)(b)(i).

Rule 43bis
Written Opinion of the International Searching Authority

43bis.1 *Written Opinion*³⁵

(a) [No change]

(b) For the purposes of establishing the written opinion, Articles 33(2) to (6), ~~and~~ 35(2) and ~~(3)~~ ~~35(3)~~ and Rules 43.4, 43.6bis, 64, 65, 66.1(e), 66.7, 67, 70.2(b) and (d), 70.3, 70.4(ii), 70.5(a), 70.6 to 70.10, 70.12, 70.14 and 70.15(a) shall apply *mutatis mutandis*.

(c) [No change]

³⁵ Further drafting changes, beyond the amendments of the Regulations agreed by the Working Group, have been made to Rule 43bis.1(b); see Annex V, paragraph 97. For transitional arrangements in relation to Rule 43bis.1(b), see Annex IV, paragraph 15, item (2)(b)(i).

Rule 48³⁶
International Publication

48.1 [No change]

48.2 *Contents*³⁷

(a) The publication of the international application shall contain:

(i) to (vi) [No change]

(vii) where the request for publication under Rule 91.3(d) was received by the International Bureau before the completion of the technical preparations for international publication, any request for rectification of an obvious mistake, any reasons and any comments referred to in Rule 91.3(d) ~~referred to in the third sentence of Rule 91.1(f);~~

(viii) [No change]

(ix) any information concerning a priority claim referred to in Rule 26bis.2(d) ~~considered not to have been made under Rule 26bis.2(b), the publication of which is requested under Rule 26bis.2(c);~~

(x) any declaration referred to in Rule 4.17, and any correction thereof under Rule 26ter.1, which was received by the International Bureau before the expiration of the time limit under Rule 26ter.1;

(xi) any information concerning a request under Rule 26bis.3 for restoration of the right of priority and the decision of the receiving Office upon such request, including information as to the criterion for restoration upon which the decision was based.

(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, unless Rule 8.2(b) applies;

(iii) the abstract; if the abstract is both in English and in another language, the English text shall appear first;

³⁶ These amendments are based on the text of Rule 48 as proposed to be amended, with effect from April 1, 2006, in Annex I of this document.

³⁷ Further drafting changes, beyond the amendments of the Regulations agreed by the Working Group, have been made to Rule 48.2(a), (b), (i) and (j); see Annex V, paragraph 84. The Assembly is invited to adopt a proposed understanding in relation to Rule 48.2(a)(xi); see Annex V, paragraph 67. For transitional arrangements in relation to Rule 48.2(b)(v), see Annex IV, paragraph 15, item (2)(a).

[Rule 48.2(b), continued]

(iv) where applicable, an indication that the request contains ~~a~~ any declaration referred to in Rule 4.17 which was received by the International Bureau before the expiration of the time limit under Rule 26*ter*.1;

(v) where the international filing date has been accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part, an indication to that effect, together with an indication as to whether the applicant, for the purposes of Rule 20.6(a)(ii), relied on compliance with Rule 17.1(a), (b) or (b-bis) in relation to the priority document or on a separately submitted copy of the earlier application concerned;

(vi) where applicable, an indication that the published international application contains information under Rule 26bis.2(d);

(vii) where applicable, an indication that the published international application contains information concerning a request under Rule 26bis.3 for restoration of the right of priority and the decision of the receiving Office upon such request;

(viii) where applicable, an indication that the applicant has, under Rule 26bis.3(f), furnished copies of any declaration or other evidence to the International Bureau.*

(c) to (h) [No change]

(i) If the authorization of a rectification of an obvious mistake in the international application referred to in Rule 91.1 is received by or, where applicable, given by the International Bureau after completion of the technical preparations for international publication, a statement reflecting all the rectifications shall be published, together with the sheets containing the rectifications, or the replacement sheets and the letter furnished under Rule 91.2, as the case may be, and the front page shall be republished.

(j) If, at the time of completion of the technical preparations for international publication, a request under Rule 26bis.3 for restoration of the right of priority is still pending, the published international application shall contain, in place of the decision by the receiving Office upon that request, an indication to the effect that such decision was not available and that the decision, when it becomes available, will be separately published.

(k) If a request for publication under Rule 91.3(d) was received by the International Bureau after the completion of the technical preparations for international publication, the request for rectification, any reasons and any comments referred to in that Rule shall be promptly published after the receipt of such request for publication, and the front page shall be republished.

48.3 to 48.6 [No change]

* The incorrect reference in Rule 48.2(b)(viii) as it appears in document PCT/A/34/2 to “Rule 26bis.3(d)” has been replaced by a reference to “Rule 26bis.3(f)”.

Rule 49ter
Effect of Restoration of Right of Priority by Receiving Office;
Restoration of Right of Priority by Designated Office

49ter.1 Effect of Restoration of Right of Priority by Receiving Office³⁸

(a) Where the receiving Office has restored a right of priority under Rule 26bis.3 based on a finding by it that the failure to file the international application within the priority period occurred in spite of due care required by the circumstances having been taken, that restoration shall, subject to paragraph (c), be effective in each designated State.

(b) Where the receiving Office has restored a right of priority under Rule 26bis.3 based on a finding by it that the failure to file the international application within the priority period was unintentional, that restoration shall, subject to paragraph (c), be effective in any designated State whose applicable national law provides for restoration of the right of priority based on that criterion or on a criterion which, from the viewpoint of applicants, is more favorable than that criterion.

(c) A decision by the receiving Office to restore a right of priority under Rule 26bis.3 shall not be effective in a designated State where the designated Office, a court or any other competent organ of or acting for that designated State finds that a requirement under Rule 26bis.3(a), (b)(i) or (c) was not complied with, taking into account the reasons stated in the request submitted to the receiving Office under Rule 26bis.3(a) and any declaration or other evidence filed with the receiving Office under Rule 26bis.3(b)(iii).

(d) A designated Office shall not review the decision of the receiving Office unless it may reasonably doubt that a requirement referred to in paragraph (c) was complied with, in which case the designated Office shall notify the applicant accordingly, indicating the reasons for that doubt and giving the applicant an opportunity to make observations within a reasonable time limit.

(e) No designated State shall be bound by a decision of the receiving Office refusing a request under Rule 26bis.3 for restoration of the right of priority.

(f) Where the receiving Office has refused a request for the restoration of the right of priority, any designated Office may consider that request to be a request for restoration submitted to that designated Office under Rule 49ter.2(a) within the time limit under that Rule.

(g) If, on October 5, 2005, paragraphs (a) to (d) are not compatible with the national law applied by the designated Office, those paragraphs shall not apply in respect of that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by April 5, 2006. The information received shall be promptly published by the International Bureau in the Gazette.

³⁸ Further drafting changes have been made to Rule 49ter.1(c) and (g) and, in the French text only, to Rule 49ter.1(a), (b) and (e), beyond the text as agreed by the Working Group; see Annex V, paragraphs 68 and 69. The Assembly is invited to adopt a proposed understanding in relation to Rule 49ter.1(g); see Annex V, paragraph 73.

49ter.2 Restoration of Right of Priority by Designated Office³⁹

(a) Where the international application claims the priority of an earlier application and has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the designated Office shall, on the request of the applicant in accordance with paragraph (b), restore the right of priority if the Office finds that a criterion applied by it (“criterion for restoration”) is satisfied, namely, that the failure to file the international application within the priority period:

- (i) occurred in spite of due care required by the circumstances having been taken;
or
- (ii) was unintentional.

Each designated Office shall apply at least one of those criteria and may apply both of them.

(b) A request under paragraph (a) shall:

(i) be filed with the designated Office within a time limit of one month from the applicable time limit under Article 22;

(ii) state the reasons for the failure to file the international application within the priority period and preferably be accompanied by any declaration or other evidence required under paragraph (c); and

(iii) be accompanied by any fee for requesting restoration required under paragraph (d).

(c) The designated Office may require that a declaration or other evidence in support of the statement of reasons referred to in paragraph (b)(ii) be filed with it within a time limit which shall be reasonable under the circumstances.

(d) The submission of a request under paragraph (a) may be subjected by the designated Office to the payment to it, for its own benefit, of a fee for requesting restoration.

(e) The designated Office shall not refuse, totally or in part, a request under paragraph (a) without giving the applicant the opportunity to make observations on the intended refusal within a time limit which shall be reasonable under the circumstances. Such notice of intended refusal may be sent by the designated Office to the applicant together with any invitation to file a declaration or other evidence under paragraph (c).

³⁹ Further drafting changes have been made to Rule 49ter.2(h) and (in the French text only) to Rule 49ter.2(a) and (b)(i), beyond the text as agreed by the Working Group; see Annex V, paragraph 75. For transitional arrangements in relation to Rule 49ter.2, see Annex IV, paragraph 15, item (2)(b)(ii). The Assembly is invited to adopt proposed understandings in relation to Rule 49ter.2(a), (b) and (h); see Annex V, paragraphs 77, 78 and 80.

[Rule 49ter.2, continued]

(f) Where the national law applicable by the designated Office provides, in respect of the restoration of the right of priority, for requirements which, from the viewpoint of applicants, are more favorable than the requirements provided for under paragraphs (a) and (b), the designated Office may, when determining the right of priority, apply the requirements under the applicable national law instead of the requirements under those paragraphs.

(g) Each designated Office shall inform the International Bureau of which of the criteria for restoration it applies, of the requirements, where applicable, of the national law applicable in accordance with paragraph (f), and of any subsequent changes in that respect. The International Bureau shall promptly publish such information in the Gazette.

(h) If, on October 5, 2005, paragraphs (a) to (g) are not compatible with the national law applied by the designated Office, those paragraphs shall not apply in respect of that Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by April 5, 2006. The information received shall be promptly published by the International Bureau in the Gazette.*

* The following change has been made to the text of Rule 49ter.2(h) appearing in document PCT/A/34/2 for the sake of consistency with the text of other similar provisions: the words “shall not apply to that designated Office” have been replaced by “shall not apply in respect of that Office”.

Rule 51
Review by Designated Offices

51.1 *Time Limit for Presenting the Request to Send Copies*⁴⁰

The time limit referred to in Article 25(1)(c) shall be two months computed from the date of the notification sent to the applicant under Rule [20.4\(i\)](#) ~~20.7(i)~~, 24.2(c) or 29.1(ii).

51.2 *Copy of the [Notification](#) ~~Notice~~*^{41, *}

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 [notification](#) ~~notice~~ referred to in Rule [20.4\(i\)](#) ~~20.7(i)~~.

51.3 [No change]

⁴⁰ For transitional arrangements in relation to Rule 51.1, see Annex IV, paragraph 15, item (2)(a).
⁴¹ A further drafting change has been made to Rule 51.2, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 24. For transitional arrangements in relation to Rule 51.2, see Annex IV, paragraph 15, item (2)(a).

* The word “notice” appearing in the existing text of Rule 51.2 in document PCT/A/34/2 has been replaced, by way of a further proposed amendment, in both the title and the text of the Rule, by the word “[notification](#)”.

Rule 51bis
Certain National Requirements Allowed Under Article 27

*51bis.1 Certain National Requirements Allowed*⁴²

(a) to (d) [No change]

(e) The national law applicable by the designated Office may, in accordance with Article 27, require the applicant to furnish a translation of the priority document, provided that such a translation may only be required:

(i) where the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable; or

(ii) where the international filing date has been accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part, for the purposes of determining under Rule 82ter.1(b) whether that element or part is completely contained in the priority document concerned, in which case the national law applicable by the designated Office may also require the applicant to furnish, in the case of a part of the description, claims or drawings, an indication as to where that part is contained in the translation of the priority document.

(f) [No change] If, on March 17, 2000, the proviso in paragraph (e) is not compatible with the national law applied by the designated Office, that proviso shall not apply in respect of that Office for as long as that proviso continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by November 30, 2000. The information received shall be promptly published by the International Bureau in the Gazette.

51bis.2 and 51bis.3 [No change]

⁴² Further drafting changes have been made to Rule 51bis.1, beyond the text as agreed by the Working Group, in that no change is now proposed to existing Rule 51bis.1(f). For explanation and for transitional arrangements in relation to Rule 51bis.1 generally, and to Rule 51bis.1(e) and (f) in particular, see Annex IV, paragraphs 8 to 11 and paragraph 15, items (2)(a) and (3)(b). The full text of Rule 51bis.1(f) is shown, although unchanged, for convenient reference having regard to the transitional arrangements just mentioned.

Rule 55
Languages (International Preliminary Examination)

55.1 [No change]

55.2 *Translation of International Application*⁴³

(a) [No change]

(a-bis) A translation of the international application into a language referred to in paragraph (a) shall include any element referred to in Article 11(1)(iii)(d) or (e) furnished by the applicant under Rule 20.3(b) or 20.6(a) and any part of the description, claims or drawings furnished by the applicant under Rule 20.5(b) or 20.6(a).

(b) [No change]

(c) If the requirements of paragraphs (a) and (a-bis) are ~~requirement of paragraph (a) is~~ not complied with and paragraph (b) does not apply, the International Preliminary Examining Authority shall invite the applicant to furnish the required translation within a time limit which shall be reasonable under the circumstances. That time limit shall not be less than one month from the date of the invitation. It may be extended by the International Preliminary Examining Authority at any time before a decision is taken.

(d) If the applicant complies with the invitation within the time limit under paragraph (c), the said requirements ~~requirement~~ shall be considered to have been complied with. If the applicant fails to do so, the demand shall be considered not to have been submitted and the International Preliminary Examining Authority shall so declare.

55.3 [No change]

⁴³ For transitional arrangements in relation to Rule 55.2, see Annex IV, paragraph 15, item (2)(a).

Rule 64
Prior Art for International Preliminary Examination

64.1 *Prior Art*⁴⁴

(a) [No change]

(b) For the purposes of paragraph (a), the relevant date shall ~~will~~ be:

(i) subject to items (ii) and (iii), 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 and has an international filing date which is within the priority period, the filing date of such earlier application, unless the International Preliminary Examining Authority considers that the priority claim is not valid;

(iii) where the international application under international preliminary examination claims the priority of an earlier application and has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the filing date of such earlier application, unless the International Preliminary Examining Authority considers that the priority claim is not valid for reasons other than the fact that the international application has an international filing date which is later than the date on which the priority period expired.

64.2 and 64.3 [No change]

⁴⁴ Further drafting changes have been made to Rule 64.1(b), beyond the text as agreed by the Working Group; see Annex V, paragraph 57.

Rule 66
Procedure Before the International Preliminary Examining Authority

66.1 *Basis of the International Preliminary Examination*⁴⁵

(a) to (d) [No change]

(d-bis) A rectification of an obvious mistake that is authorized under Rule 91.1 shall, subject to Rule 66.4bis, be taken into account by the International Preliminary Examining Authority for the purposes of the international preliminary examination.*

(e) [No change]

66.1bis to 66.4 [No change]

66.4bis *Consideration of Amendments, ~~and~~ Arguments and Rectifications of Obvious Mistakes*⁴⁶

Amendments, ~~or~~ arguments and rectifications of obvious mistakes need not be taken into account by the International Preliminary Examining Authority for the purposes of a written opinion or the international preliminary examination report if they are received by, authorized by or notified to that Authority, as applicable, after it ~~that Authority~~ has begun to draw up that opinion or report.

66.5 *Amendment*

Any change, other than the rectification of an obvious mistake errors, 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 to 66.9 [No change]

⁴⁵ A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 66.1; see Annex V, paragraph 97. For transitional arrangements in relation to Rule 66.1, see Annex IV, paragraph 15, item (2)(b)(i).

* A typographical error appearing in Rule 66.1(d-bis) in document PCT/A/34/2 has been corrected by deleting the repeated words "by the".

⁴⁶ A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 66.4bis; see Annex V, paragraph 97. For transitional arrangements in relation to Rule 66.4bis, see Annex IV, paragraph 15, item (2)(b)(i).

Rule 70
International Preliminary Report on Patentability by
the International Preliminary Examining Authority
(International Preliminary Examination Report)

70.1 [No change]

70.2 *Basis of the Report*⁴⁷

(a) to (d) [No change]

(e) If a rectification of an obvious mistake is taken into account under Rule 66.1, the report shall so indicate. If a rectification of an obvious mistake is not taken into account pursuant to Rule 66.4bis, the report shall, if possible, so indicate, failing which the International Preliminary Examining Authority shall notify the International Bureau accordingly and the International Bureau shall proceed as provided for in the Administrative Instructions.

70.3 to 70.15 [No change]

70.16 *Annexes to the Report*⁴⁸

(a) Each replacement sheet under Rule 66.8(a) or (b) and; each replacement sheet containing amendments under Article 19 ~~and each replacement sheet containing rectifications of obvious errors authorized under Rule 91.1(e)(iii)~~ shall, unless superseded by later replacement sheets or amendments resulting in the cancellation of entire sheets under Rule 66.8(b), be annexed to the report. Replacement sheets containing amendments under Article 19 which have been considered as reversed by an amendment under Article 34 and letters under Rule 66.8 shall not be annexed.

(b) [No change]

70.17 [No change]

⁴⁷ A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 70.2; see Annex V, paragraph 97. For transitional arrangements in relation to Rule 70.2(e), see Annex IV, paragraph 15, item (2)(b)(i).

⁴⁸ A further drafting change has been made to Rule 70.16, beyond the text as agreed by the Working Group; see Annex V, paragraph 98.

Rule 76
Translation of Priority Document;
Application of Certain Rules to Procedures Before Elected Offices

76.1, 76.2 and 76.3 *[Remain deleted]*

76.4 [No change]

76.5 *Application of Certain Rules to Procedures Before Elected Offices*⁴⁹

Rules 13~~ter~~.3, 22.1(g), 47.1, 49, 49~~bis~~, [49~~ter~~](#) and 51~~bis~~ shall apply, provided that:

(i) to (v) [No change]

⁴⁹ For transitional arrangements in relation to Rule 76.5, see Annex IV, paragraph 15, item (2)(b)(iii).

Rule 82ter
Rectification of Errors Made
by the Receiving Office or by the International Bureau

82ter.1 *Errors Concerning the International Filing Date and the Priority Claim*⁵⁰

(a) If the applicant proves to the satisfaction of any designated or elected Office that the international filing date is incorrect due to an error made by the receiving Office or that the priority claim has been erroneously considered void by the receiving Office or the International Bureau ~~not to have been made~~, and if the error is an error such that, had it been made by the designated or elected Office itself, that Office would rectify it under the national law or national practice, the said Office shall rectify the error and shall treat the international application as if it had been accorded the rectified international filing date or as if the priority claim had not been considered void ~~not to have been made~~.

(b) Where the international filing date has been accorded by the receiving Office under Rule 20.3(b)(ii) or 20.5(d) on the basis of the incorporation by reference under Rules 4.18 and 20.6 of an element or part but the designated or elected Office finds that:

- (i) the applicant has not complied with Rule 17.1(a), (b) or (b-bis) in relation to the priority document;
- (ii) a requirement under Rule 4.18, 20.6(a)(i) or 51bis.1(e)(ii) has not been complied with; or
- (iii) the element or part is not completely contained in the priority document concerned;

the designated or elected Office may, subject to paragraph (c), treat the international application as if the international filing date had been accorded under Rule 20.3(b)(i) or 20.5(b), or corrected under Rule 20.5(c), as applicable, provided that Rule 17.1(c) shall apply *mutatis mutandis*.

(c) The designated or elected Office shall not treat the international application under paragraph (b) as if the international filing date had been accorded under Rule 20.3(b)(i) or 20.5(b), or corrected under Rule 20.5(c), without giving the applicant the opportunity to make observations on the intended treatment, or to make a request under paragraph (d), within a time limit which shall be reasonable under the circumstances.

(d) Where the designated or elected Office, in accordance with paragraph (c), has notified the applicant that it intends to treat the international application as if the international filing date had been corrected under Rule 20.5(c), the applicant may, in a notice submitted to that Office within the time limit referred to in paragraph (c), request that the missing part concerned be disregarded for the purposes of national processing before that Office, in which case that part shall be considered not to have been furnished and that Office shall not treat the international application as if the international filing date had been corrected.

⁵⁰ Further drafting changes have been made to Rule 82ter.1(b) and to Rule 82ter.1(c) (in the French text only), beyond the text as agreed by the Working Group; see Annex V, paragraph 25. For transitional arrangements in relation to Rule 82ter.1, see Annex IV, paragraph 15, item (2)(a).

Rule 91⁵¹

Rectification of Obvious Mistakes ~~Errors~~ in the International Application and Other Documents

91.1 *Rectification of Obvious Mistakes*⁵²

(a) An obvious mistake ~~Subject to paragraphs (b) to (g-*quater*), obvious errors~~ in the international application or another document ~~other papers~~ submitted by the applicant may be rectified in accordance with this Rule if the applicant so requests.

(b) The rectification of a mistake shall be subject to authorization by the “competent authority”, that is to say:

(i) in the case of a mistake in the request part of the international application or in a correction thereof—by the receiving Office;

(ii) in the case of a mistake in the description, claims or drawings or in a correction thereof, unless the International Preliminary Examining Authority is competent under item (iii)—by the International Searching Authority;

(iii) in the case of a mistake in the description, claims or drawings or in a correction thereof, or in an amendment under Article 19 or 34, where a demand for international preliminary examination has been made and has not been withdrawn and the date on which international preliminary examination shall start in accordance with Rule 69.1 has passed—by the International Preliminary Examining Authority;

(iv) in the case of a mistake in a document not referred to in items (i) to (iii) submitted to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau, other than a mistake in the abstract or in an amendment under Article 19—by that Office, Authority or Bureau, as the case may be.

~~[(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;~~

~~(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.~~

⁵¹ These amendments are based on the text of Rule 91 as proposed to be amended, with effect from April 1, 2006, in Annex I of this document.

⁵² Further drafting changes have been made to Rule 91.1(e) and, in the French text only, to Rule 91.1(b), (c) and (d), beyond the text as agreed by the Working Group; see Annex V, paragraphs 86 and 90.

[Rule 91.1, continued]

(c) The competent authority shall authorize the rectification under this Rule of a mistake if, and only if, it is obvious to the competent authority that, as at the applicable date under paragraph (f), something else was intended than what appears in the document concerned and that nothing else could have been intended than the proposed rectification.

~~[(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. 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.~~

(d) In the case of a mistake in the description, claims or drawings or in a correction or amendment thereof, the competent authority shall, for the purposes of paragraph (c), only take into account the contents of the description, claims and drawings and, where applicable, the correction or amendment concerned.

(e) In the case of a mistake in the request part of the international application or a correction thereof, or in a document referred to in paragraph (b)(iv), the competent authority shall, for the purposes of paragraph (c), only take into account the contents of the international application itself and, where applicable, the correction concerned, or the document referred to in paragraph (b)(iv), together with any other document submitted with the request, correction or document, as the case may be, any priority document in respect of the international application that is available to the authority in accordance with the Administrative Instructions, and any other document contained in the authority's international application file at the applicable date under paragraph (f).

(f) The applicable date for the purposes of paragraphs (c) and (e) shall be:

(i) in the case of a mistake in a part of the international application as filed—the international filing date;

(ii) in the case of a mistake in a document other than the international application as filed, including a mistake in a correction or an amendment of the international application—the date on which the document was submitted.

[Rule 91.1, continued]

(g) A mistake shall not be rectifiable under this Rule if:

- (i) the mistake lies in the omission of one or more entire elements of the international application referred to in Article 3(2) or one or more entire sheets of the international application;
- (ii) the mistake is in the abstract;
- (iii) the mistake is in an amendment under Article 19, unless the International Preliminary Examining Authority is competent to authorize the rectification of such mistake under paragraph (b)(iii); or
- (iv) the mistake is in a priority claim or in a notice correcting or adding a priority claim under Rule 26bis.1(a), where the rectification of the mistake would cause a change in the priority date;

provided that this paragraph shall not affect the operation of Rules 20.4, 20.5, 26bis and 38.3.

~~[(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.~~

~~[(g)] The authorization for rectification referred to in paragraph (e) shall, subject to paragraphs (g bis), (g ter) and (g quater), be effective:~~

~~(i) where it is given by the receiving Office or by the International Searching Authority, if its notification to the International Bureau reaches that Bureau before the expiration of 17 months from the priority date;~~

~~(ii) where it is given by the International Preliminary Examining Authority, if it is given before the establishment of the international preliminary examination report;~~

~~(iii) where it is given by the International Bureau, if it is given before the expiration of 17 months from the priority date.~~

~~(g bis) [Deleted] If the notification made under paragraph (g)(i) reaches the International Bureau, or if the rectification made under paragraph (g)(iii) is authorized by the International Bureau, after the expiration of 17 months from the priority date but before the technical preparations for international publication have been completed, the authorization shall be effective and the rectification shall be incorporated in the said publication.~~

~~(g ter) [Deleted] Where the applicant has asked the International Bureau to publish his international application before the expiration of 18 months from the priority date, any notification made under paragraph (g)(i) must reach, and any rectification made under paragraph (g)(iii) must be authorized by, the International Bureau, in order for the authorization to be effective, not later than at the time of the completion of the technical preparations for international publication.~~

[Rule 91.1, continued]

~~(g-*quater*) [Deleted] Where the international application is not published by virtue of Article 64(3), any notification made under paragraph (g)(i) must reach, and any rectification made under paragraph (g)(iii) must be authorized by, the International Bureau, in order for the authorization to be effective, not later than at the time of the communication of the international application under Article 20.~~

~~(h) ~~[(d)]~~ Where the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau discovers Rectification may be made on the request of the applicant. The authority having discovered what appears to be a rectifiable obvious mistake in the international application or another document, it ~~an obvious error~~ may invite the applicant to ~~present a~~ request ~~for~~ rectification ~~as provided in paragraphs (e) to (g-*quater*)~~ under this Rule. ~~Rule 26.4 shall apply *mutatis mutandis* to the manner in which rectifications shall be requested.~~~~

91.2 Requests for Rectification⁵³

A request for rectification under Rule 91.1 shall be submitted to the competent authority within 26 months from the priority date. It shall specify the mistake to be rectified and the proposed rectification, and may, at the option of the applicant, contain a brief explanation. Rule 26.4 shall apply *mutatis mutandis* as to the manner in which the proposed rectification shall be indicated.

91.3 Authorization and Effect of Rectifications⁵⁴

~~(a) [91.1(f)]~~ The competent authority shall promptly decide whether to authorize or refuse to authorize a rectification under Rule 91.1 and ~~Any authority which authorizes or refuses any rectification~~ shall promptly notify the applicant and the International Bureau of the authorization or refusal and, in the case of refusal, of the reasons therefor. The International Bureau shall proceed as provided for in the Administrative Instructions, including, as required, notifying the receiving Office, the International Searching Authority, the International Preliminary Examining Authority and the designated and elected Offices of the authorization or refusal. ~~The authority which authorizes a rectification shall promptly notify the International Bureau accordingly.~~

(b) Where the rectification of an obvious mistake has been authorized under Rule 91.1, the document concerned shall be rectified in accordance with the Administrative Instructions.

⁵³ A further drafting change has been made to Rule 91.2, in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 95.

⁵⁴ Further drafting changes, beyond the amendments of the Regulations agreed by the Working Group, have been made to Rule 91.3; see Annex V, paragraph 97. The Assembly is invited to adopt a proposed understanding in relation to Rule 91.3(f); see Annex V, paragraph 101.

[Rule 91.3, continued]

(c) Where the rectification of an obvious mistake has been authorized, it shall be effective:

(i) in the case of a mistake in the international application as filed, from the international filing date;

(ii) in the case of a mistake in a document other than the international application as filed, including a mistake in a correction or an amendment of the international application, from the date on which that document was submitted.

~~(d) [91.1(f), continued]~~ Where the competent authority refuses to authorize a rectification under Rule 91.1 ~~authorization of the rectification was refused~~, the International Bureau shall, upon request submitted to it ~~made~~ by the applicant within two months from the date of the refusal, ~~prior to the time relevant under paragraph (g bis), (g ter) or (g quater)~~ and subject to the payment of a special fee whose amount shall be fixed in the Administrative Instructions, publish the request for rectification, the reasons for refusal by the authority and any further brief comments that may be submitted by the applicant, if possible together with the international application. A copy of the request, reasons and comments (if any) ~~for rectification~~ shall if possible be included in the communication under Article 20 where the international application is not published by virtue of Article 64(3).

(e) The rectification of an obvious mistake need not be taken into account by any designated Office in which the processing or examination of the international application has already started prior to the date on which that Office is notified under Rule 91.3(a) of the authorization of the rectification by the competent authority.

(f) A designated Office may disregard a rectification that was authorized under Rule 91.1 if it finds that it would not have authorized the rectification if it had been the competent authority.

[Annex III follows]

ANNEX III

AMENDMENTS OF THE PCT REGULATIONS¹
PROPOSED TO ENTER INTO FORCE ON [DATE YET TO BE PROPOSED]²

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¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. A “clean” copy of the proposed amended provisions (without underlining or striking through) appears in document PCT/A/34/3.

² For dates of entry into force and transitional arrangements, see paragraphs 9 to 11 of the main body of this document and Annex IV. The date of entry into force of the proposed amendments set out in Annex III is yet to be proposed on the basis of advice from the PCT Committee for Technical Cooperation; see paragraphs 6(g) and 10(iii) of the main body of this document.

Rule 34
Minimum Documentation

34.1 *Definition*³

(a) and (b) [No change]

(c) Subject to paragraphs (d) and (e), the “national patent documents” shall be the following:

(i) [No change]

(ii) the patents issued by the Federal Republic of Germany, [the Republic of Korea](#) and the Russian Federation,

(iii) to (vi) [No change]

(d) [No change]

(e) Any International Searching Authority whose official language, or one of whose official languages, is not Japanese, [Korean](#), Russian or Spanish is entitled not to include in its documentation those patent documents of Japan, [the Republic of Korea](#), the Russian Federation and the former Soviet Union as well as those patent documents in the Spanish language, 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 six 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) [No change]

[Annex IV follows]

³ Further drafting changes have been made to Rule 34.1(e), in the French text only, beyond the text as agreed by the Working Group; see Annex V, paragraph 105.

ANNEX IV

ENTRY INTO FORCE
AND TRANSITIONAL ARRANGEMENTS

1. This Annex sets out proposals, including draft decisions by the Assembly, for dates of entry into force and transitional arrangements in respect of the proposed amendments of the PCT Regulations set out in Annexes I to III (see paragraphs 4 to 6 of the main body of this document).

Annex I: Proposed date of entry into force: April 1, 2006

2. The amendments set out in Annex I, which relate to international publication and the PCT Gazette in electronic form, the addition of Arabic as a language of publication, and exceptions to the all-inclusive designation system, are proposed to enter into force on April 1, 2006, and to apply to international applications whose international filing date is on or after April 1, 2006, subject to appropriate transitional arrangements.

3. Under proposed amended Rule 48.2(a)(x), the publication of the international application will include the full text of any declarations submitted by the applicant under Rule 4.17(i) to (iv) in addition to, as at present, any submitted under Rule 4.17(v). While the electronic version of the international application as published for the purposes of amended Rule 48 will include such additional declarations from the time when the amended Rule comes into force, it may not be possible at that time for them to be included in copies of the international application provided by the International Bureau in other forms (for example, copies on paper or on CD-ROM), pending the development of the necessary systems, which may take some months. However, a notification of the fact that such declarations have been submitted (see Rule 48.2(b)(iv)) will continue to be included in all versions of the published application.

4. A draft decision that is proposed to be adopted by the Assembly concerning entry into force and transitional arrangements in respect of the amendments appearing in Annex I is set out in item (1) under paragraph 15, below.

Annex II: Proposed date of entry into force: April 1, 2007

5. Implementation of the amendments set out in Annex II, which relate to missing elements and parts of the international application, restoration of the right of priority, and rectification of obvious mistakes, will require a considerable amount of preparation. New procedures will need to be developed, and extensive revision will be needed to the Administrative Instructions (including the Forms annexed thereto), the PCT Receiving Offices Guidelines, the PCT International Search and Preliminary Examination Guidelines, and the PCT Applicant's Guide. Other explanatory materials will also need to be prepared for the purpose of informing users of the system about its new features. It is thus proposed that these amendments should enter into force on April 1, 2007, and should apply to international applications whose international filing date is on or after April 1, 2007, subject to appropriate transitional arrangements.

6. In the context of adopting the proposed amendments of the Regulations set out in Annex II relating to missing elements and parts of the international application, it is proposed that the Assembly adopt a decision ensuring that reservations already in force under existing Rule 20.4(d) will continue to be effective under that provision as renumbered Rule 20.1(d).

7. In connection with the transitional arrangements for entry into force of Rules 43.6*bis*, 43*bis*.1(b), 66.1, 66.4*bis* and 70.2(e) set out in item (2)(b)(i) under paragraph 15, below, the Administrative Instructions will need to be modified to ensure that the International Searching Authority and/or the International Preliminary Examining Authority, as applicable, are notified by the International Bureau of any rectification authorized under present Rule 91.1.

8. Existing Rule 51*bis*.1(e) allows designated Offices to require the applicant to furnish a translation of the priority document only if the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable. Proposed new item (ii) of Rule 51*bis*.1(e) adds a further circumstance in which designated Offices may require a translation of the priority document, namely, where there has been an incorporation by reference under Rules 4.18 and 20.6 of a missing element or part of the application.

9. Existing Rule 51*bis*.1(f) enabled reservations to be made, during a limited period which has now expired, as to the applicability of existing Rule 51*bis*.1(e) where the national law was incompatible with that Rule, which is now proposed to be renumbered as Rule 51*bis*.1(e)(i). It appears, however, that no reservation provision is needed in relation to new Rule 51*bis*.1(e)(ii), for the reasons outlined in the following paragraphs.

10. Those Offices which have not made reservations in relation to existing Rule 51*bis*.1(e) will in fact be entitled, after the addition of new item (ii), to request translations of priority documents in a wider range of circumstances than is the case for them at present, and therefore no further reservation provision is needed for their benefit in respect of the change.

11. The (small number of) Offices which have made reservations in relation to existing Rule 51*bis*.1(e) are presently not restricted as to the circumstances in which they may require translations of priority documents. That situation ought not to be affected by the addition of new Rule 51*bis*.1(e)(ii), so existing reservations should continue to be effective under the amended provision and no further reservation provision is needed. The proposed decision in paragraph 15, item (3)(b), below, serves to ensure that those existing reservations remain effective. Of course, when the incompatibility that gave rise to the need for a designated Office to make a reservation ceases to exist, the Office concerned should so inform the International Bureau.

12. Draft decisions that are proposed to be adopted by the Assembly concerning entry into force and transitional arrangements in respect of the amendments appearing in Annex II are set out in items (2) and (3) under paragraph 15, below.

Annex III: Proposed date of entry into force yet to be proposed

13. As regards the amendments set out in Annex III relating to the proposed addition of patent documents of the Republic of Korea to the PCT Minimum Documentation (proposed amendments of Rule 34), it is to be noted that, for the purposes of the Assembly's consideration of this proposal, advice is being sought from the PCT Committee for Technical Cooperation, whose 21st session is being convened to meet during the same period as the Assembly. The Committee will have available to it recommendations of the PCT Minimum Documentation Comprehensive Review Task Force that was established at the suggestion of the Meeting on International Authorities Under the PCT (see paragraph 6(g) in the main body of this document).

14. Consequently, the present document does not contain a proposal for a specific date of entry into force of the proposed amendments of Rule 34. Such proposal will be submitted to the Assembly on the basis of advice by the PCT Committee for Technical Cooperation. The wording of a draft decision concerning entry into force and transitional arrangements is, however, set out in item (4) under paragraph 15, below.

Proposed Decisions

15. It is proposed that the Assembly adopt the following decisions concerning entry into force and transitional arrangements in respect of the proposed amendments of the Regulations set out in Annexes I to III:

“(1) The amendments set out in Annex I:

(a) shall enter into force on April 1, 2006, and shall apply to international applications whose international filing date is on or after April 1, 2006;

(b) shall not apply to international applications whose international filing date is before April 1, 2006, provided that:

(i) Rules 13*bis*.4, 47.1, 48.1 and 48.2 as amended shall apply to international applications whose international filing date is before April 1, 2006, and which are published under Article 21 on or after April 1, 2006;

(ii) Rules 26*bis*.2 and 91.1 as amended shall apply to international applications whose international filing date is before April 1, 2006, and whose communication under Article 20 is on or after April 1, 2006;

(iii) Rules 86.1 and 86.2 as amended shall apply to issues of the Gazette published on or after April 1, 2006, regardless of the international filing dates of the international applications to which those issues relate;

(iv) Rules 87.1 and 87.2 as amended shall apply to the communication of international applications, the Gazette and other publications on or after April 1, 2006, regardless, where applicable, of the international filing dates of the international applications concerned.

“(2) The amendments set out in Annex II:

(a) shall enter into force on April 1, 2007, and shall apply to international applications whose international filing date is on or after April 1, 2007, provided that Rules 4.1(c)(iv), 4.18, 4.19, 12.1*bis*, 12.3, 20.1 to 20.9, 21.2, 22.1, 26.1, 26.2, 26.3*ter*, 26.5, 26.6, 48.2(b)(v), 51.1, 51.2, 51*bis*.1, 55.2 and 82*ter*.1 as amended shall not apply to international applications in respect of which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office before April 1, 2007;

(b) shall not apply to international applications whose international filing date is before April 1, 2007, provided that:

(i) Rules 43.6*bis*, 43*bis*.1(b), 66.1, 66.4*bis* and 70.2(e) as amended shall apply to international search reports, written opinions and international preliminary

examination reports established on or after April 1, 2007, in respect of international applications whose international filing date is before April 1, 2007, as though the references in those Rules to rectifications of obvious mistakes authorized under Rule 91.1 as amended were references to rectifications of obvious errors authorized under existing Rule 91.1;

(ii) Rule 49*ter*.2 as amended shall apply to international applications whose international filing date is before April 1, 2007, and in respect of which the acts referred to in Article 22(1) are performed on or after April 1, 2007;

(iii) Rule 76.5 as amended, to the extent that it has the effect of making Rule 49*ter*.2 applicable, shall apply to international applications whose international filing date is before April 1, 2007, and in respect of which the acts referred to in Article 39(1)(a) are performed on or after April 1, 2007.

“(3) Furthermore, in relation to the amendments set out in Annex II:

(a) information as to incompatibility given to the International Bureau under existing Rule 20.4(d) shall be considered to remain effective under Rule 20.1(d) as amended;

(b) information as to incompatibility given to the International Bureau under Rule 51*bis*.1(f) in relation to existing Rule 51*bis*.1(e) shall be considered to remain effective under Rule 51*bis*.1(f) in relation to Rule 51*bis*.1(e) as amended.

“(4) The amendments set out in Annex III shall enter into force on [*date to be proposed*] and shall apply to any international search carried out on or after [*date to be proposed*].”¹

[Annex V follows]

¹ As to the date of entry into force of the amendments set out in Annex III, see paragraphs 13 and 14, above, and paragraph 6(g) in the main body of this document.

ANNEX V

EXPLANATORY NOTES

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1. This Annex sets out more detailed explanations of the amendments of the PCT Regulations that are proposed in the main body of the document and set out in Annexes I to III. Proposed decisions concerning entry into force and transitional arrangements are set out in Annex IV. A number of understandings that are proposed to be adopted by the Assembly in connection with the adoption of certain amendments are set out in this Annex in paragraphs 22, 52, 62, 64, 67, 73, 77, 78, 80 and 101, below.

A. INTERNATIONAL PUBLICATION AND THE PCT GAZETTE IN ELECTRONIC FORM

2. See the main body of this document at paragraph 6(a) and the proposed amendments of Rules 13*bis*.4, 26*bis*.2, 47.1, 48.1, 48.2, 86.1, 86.2, 87.1, 87.2 and 91.1 set out in Annex I, with proposed date of entry into force of April 1, 2006, and transitional arrangements as set out in Annex IV. Details of consideration by the Working Group on Reform of the PCT at its seventh session are set out in document PCT/R/WG/7/13, paragraphs 118 to 125 (reproduced in the Annex to document PCT/A/34/1).

Publication of International Applications in Electronic Form (Rules 13bis.4, 26bis.2, 47.1, 48.1, 48.2, 86.1(a), 87.1, 87.2 and 91.1)

3. Following consultations pursuant to Rule 89.2(b) with Offices, Authorities and users of the PCT system, Section 406 of the Administrative Instructions has been modified, with effect from April 1, 2005, so as to enable the International Bureau to fulfill its legal obligation under Article 21 to publish international applications by way of publication in electronic form. The wording of a number of provisions in the Regulations that were drafted in the context of paper publication systems needs to be adapted to the new electronic environment. Proposals to amend Rules 13*bis*.4, 26*bis*.2, 47.1, 48.1, 48.2, 86.1(a), 87.1, 87.2 and 91.1 accordingly are contained in Annex I to this document. In particular, it is proposed to delete the term “pamphlet” throughout the Regulations, in most instances replacing it with the term “published international application”, noting that the term “pamphlet” connotes paper publication and would be misleading in the context of electronic publication.

4. See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 13*bis*.4(d)(i).

5. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 48.1.

6. See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 48.2(a).

7. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 87.1.

PCT Gazette in Electronic Form (Rules 86.1(b) and 86.2)

8. It is proposed to amend the Regulations to enable the International Bureau to fulfill its legal obligation to publish a Gazette by way of publication in electronic form, noting in particular that:

(i) today, electronic means of publication (the Internet and physical media such as CD-R and DVD) are increasingly being used by patent Offices to fulfill their legal obligations to publish applications and official notifications;

(ii) there has been a significant decrease in subscriptions to the paper Gazette in recent years and a concurrent increase in “hits” on the Internet version of the electronic Gazette;

(iii) as the paper Gazette is not text searchable by automated means, its usefulness for users (Offices and others) is therefore limited; and

(iv) the income generated by subscriptions to the paper Gazette has not covered WIPO’s cost of production in recent years.

9. A proposal to amend Rule 86 accordingly, and to move to the Administrative Instructions matters of detail concerning the form in which and the means by which the Gazette is published, is contained in Annex I.

10. The format and content of the proposed new version of the electronic Gazette are outlined in document PCT/R/WG/7/10, paragraphs 13 to 15. Further details concerning the electronic Gazette will be provided to Offices and users of the system in the context of the consultations under Rule 89.2(b) on proposed modifications of the Administrative Instructions designed to implement amended Rule 86.1.

11. If an Office or Authority prefers to receive the electronic Gazette on a physical medium rather than online via WIPO’s website, the International Bureau will, aside from its legal obligation under Article 55(4) to publish a Gazette, continue to provide, under Rule 87 as proposed to be amended, a copy of the electronic Gazette on CD-ROM, free of charge, to that Office or Authority.

12. Further drafting changes have been made to Rule 86.2, beyond the text as agreed by the Working Group. The word “; Timing” has been added to the title. The sentence “The International Bureau shall ensure that the publication of the Gazette shall be effected on, or as soon as possible after, the date of publication of the international application.” has been moved, further amended, from paragraph (a) to proposed new paragraph (d). See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 86.2.

B. ADDITION OF ARABIC AS A LANGUAGE OF PUBLICATION

13. See the main body of this document at paragraph 6(b) and the proposed amendments of Rule 48.3 set out in Annex I, with proposed date of entry into force of April 1, 2006, and transitional arrangements as set out in Annex IV. Details of consideration of the matter by the Working Group at its seventh session are set out in document PCT/R/WG/7/13, paragraphs 97 to 101 (reproduced in the Annex to document PCT/A/34/1).

14. Present Rule 48.3(a) lists the languages in which international applications may be published (“languages of publication”): Chinese, English, French, German, Japanese, Russian and Spanish. Under Rule 48, an international application filed in one of those languages is published in the language in which it was filed. An international application which is not filed in a language of publication is published as a translation of the international application furnished by the applicant into a language of publication (that translation may also be used for the purposes of the international search).

15. At the request of the Government of Egypt, it is proposed to add Arabic to the list of languages of publication referred to in Rule 48.3(a), which will mean that an international application filed in Arabic would be published in that language. It is recalled that Arabic is one of the six official languages of the United Nations.

16. The addition of Arabic as a language of publication will also have a bearing on several other language related questions, as outlined in document PCT/R/WG/7/10, paragraphs 6 to 15. However, no change is needed to the Rules concerned.

C. EXCEPTIONS TO ALL-INCLUSIVE DESIGNATION SYSTEM

17. See the main body of this document at paragraph 6(c) and the proposed amendments of Rule 4.9 set out in Annex I, with proposed date of entry into force of April 1, 2006, and transitional arrangements as set out in Annex IV. Details of consideration of the matter by the Working Group at its seventh session are set out in document PCT/R/WG/7/13, paragraphs 35 to 37 (reproduced in the Annex to document PCT/A/34/1).

18. Present Rule 4.9(b) was adopted by the PCT Assembly in 2002 with effect from January 1, 2004, to provide for one limited exception to the all-inclusive coverage of all Contracting States, designed to address the issue of the “self-designation” provisions which appear in the national law of certain Contracting States. The objective of Rule 4.9(b) was to allow for a limited exclusion from the all-inclusive designation system only in those cases where an international application claims the priority of an earlier national application filed in a Contracting State where the “self-designation” provisions apply, assuming of course that a notification of incompatibility has been given under the Rule by the designated Office concerned. However, the wording of the Rule on a literal reading had the unintended effect of allowing the exclusion of such a State in the case of any international application, whether or

not it claims the priority of an earlier national application filed in that State, that is, whether or not the issue of “self-designation” arises in the particular case.

19. It is therefore proposed to make a drafting correction to Rule 4.9(b) so as to state expressly that exclusion of such a State is only allowed in respect of an international application in which the priority of an earlier national application filed in such a State is claimed.

20. The opportunity is also taken to deal with another difficulty in the wording of existing Rule 4.9(b) in that it makes the exclusion of a State with “self-designation” provisions in its national law dependent on whether the national law continues to provide for the self-designation situation. Rather, in the interests of certainty for applicants, Offices and third parties, it seems preferable to make the ability to make such exclusions dependent on the existence of a current notification by the designated Office concerned, and the revised wording thus relates the making of such an exclusion dependent on whether a notification under the provision is still in force at the international filing date.

21. Further drafting changes have been made to Rule 4.9(b), beyond the text as agreed by the Working Group. The expected date of adoption of the amendments, “October 5, 2005”, has been inserted replacing the reference in the Working Group documents to “[*date of adoption of these modifications by the PCT Assembly*]”, and “January 5, 2006” has been inserted replacing “[*three months from the date of adoption of these modifications by the PCT Assembly*]”.

22. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 4.9(b), to note that, in order to avoid the need for complicated transitional provisions, notifications of incompatibility under amended Rule 4.9(b) will be required to be given by all affected designated Offices, even if they have already given notifications under the existing Rule.

D. MISSING ELEMENTS AND PARTS OF THE INTERNATIONAL APPLICATION

23. See the main body of this document at paragraph 6(d) and the proposed amendments of Rules 4.1(c)(iv), 4.18, 4.19, 12.1*bis*, 12.3, 20.1 to 20.9, 21.2, 22.1, 26.1, 26.2, 26.3*ter*, 26.5, 26.6, 48.2(b)(v), 51.1, 51.2, 51*bis*.1, 55.2 and 82*ter*.1 set out in Annex II, with proposed date of entry into force of April 1, 2007, and transitional arrangements as set out in Annex IV. Details of consideration of the matter by the Working Group at its seventh session are set out in document PCT/R/WG/7/13, paragraphs 12 to 34 (reproduced in the Annex to document PCT/A/34/1).

24. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rules 26.1, 26.3*ter*. and 51.2.

25. Further drafting changes have been made to Rule 82*ter*.1(b), beyond the text as agreed by the Working Group. At the end of item (i), the word “or” has been deleted. The words “filing date was accorded” have been replaced by the words “filing date has been accorded”. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 82*ter*.1.

New Structure of Rule 20

26. It is proposed to revise the structure of Rule 20 by moving to the Administrative Instructions matters of detail related to the stamping of dates, etc., leaving the Rule to deal only with matters related to the according of the international filing date, including procedures and consequences concerning the correction of defects under Article 11(2), the later furnishing of missing parts, and the incorporation by reference of certain elements or parts. The proposed amendments also align the order of the provisions dealing with the according of the international filing date with the (logical chronological) order in which a receiving Office proceeds when it decides whether to accord, and which date to accord, as the international filing date.

Determination under Article 11(1) (Rule 20.1)

27. Rule 20.1 as proposed to be amended corresponds to present Rule 20.4, except for some minor drafting changes. It deals with general questions related to the determination under Article 11(1).

28. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 20.1.

Positive Determination under Article 11(1) (Rule 20.2)

29. Rule 20.2 as proposed to be amended by and large corresponds to present Rule 20.5, except that paragraphs (a) and (b) are amended so as to clarify that this Rule deals with the according of the international filing date where the receiving Office determines that the international application, *at the time of receipt*, fulfills all requirements under Article 11(1).

30. See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 20.2(c).

Apparent Defects Under Article 11(1) (Rule 20.3)

31. Rule 20.3 as proposed to be amended deals with the procedures and consequences relating to all Article 11(1) defects, making a distinction between, on the one hand, defects under Article 11(1)(i), (ii) and (iii)(a) to (c) (relating to nationality and residence requirements, language, indication that application is intended as an international application, designations of countries, and name of applicant) and, on the other hand, defects under Article 11(1)(iii)(d) and (e) (relating to a missing description or missing claim or claims; see Rule 20.3(a)(ii)), noting that, depending on what action is taken by the applicant in relation to a defect, the according of the international filing date may or may not be affected.

32. Where the receiving Office finds that any of the requirements of Article 11(1)(i), (ii) and (iii)(a) to (c) are not or appear to be not fulfilled, it will invite the applicant to furnish the required correction under Article 11(2). The furnishing by the applicant of the required correction will normally affect the according of the international filing date, which will be the date on which the receiving Office receives that correction (see Rule 20.3(a)(i) and (b)(i) as proposed to be amended), provided that all other requirements of Article 11(1) are fulfilled.

33. Where the receiving Office finds that any of the requirements of Article 11(1)(iii)(d) and (e) are not or appear not to be fulfilled, it will invite the applicant to either furnish the required correction or confirm that the element concerned referred to in Article 11(1)(iii)(d) or (e) is incorporated by reference under Rule 4.18. Where the applicant furnishes the required correction under Article 11(2), the international filing date will be the date on which the receiving Office receives the required correction (see Rule 20.3(a)(ii) and (b)(i) as proposed to be amended), provided that all other requirements of Article 11(1) are fulfilled.

34. However, where the applicant confirms the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e) which is completely contained in an earlier application the priority of which is claimed in the international application, that element will be considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, and the international filing date will be the date on which all Article 11(1) requirements are fulfilled (see Rule 20.3(a)(ii) and (b)(ii) as proposed to be amended).

35. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 20.3.

Negative Determination Under Article 11(1) (Rule 20.4)

36. Rule 20.4 as proposed to be amended corresponds to present Rule 20.7 and deals with negative determinations under Article 11(1), that is, where the receiving Office refuses to accord an international filing date. Rule 20.4 is proposed to be amended so as to take into account the possibility that the applicant, rather than filing a correction under Article 11(2), may confirm the incorporation by reference of an element referred to in Article 11(1)(iii)(d) or (e).

37. Further drafting changes have been made to the introductory text of Rule 20.4, beyond the text as agreed by the Working Group. The reference to Rule 20.3(b) has been replaced by a reference to Rule 20.3(a). See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 20.4(iii).

Missing Parts (Rule 20.5)

38. Rule 20.5 as proposed to be amended deals with the procedures and consequences relating to the later furnishing of certain parts of the description, claims and drawings (not including the case where an entire element referred to in Article 11(1)(iii)(d) or (e) is or appears to be missing but including the case where all of the drawings are or appear to be missing). Depending on the action taken by applicant following an invitation to furnish a part of the description, claims or drawings which is or appears to be missing, the according of the international filing date may or may not be affected.

39. Where the applicant furnishes a missing part to the receiving Office on or before the date on which all of the requirements of Article 11(1) are fulfilled but within the applicable time limit under Rule 20.7, that part will be included in the purported international application and the international filing date will be the date on which all of the requirements of Article 11(1) are fulfilled (see Rule 20.5(b) as proposed to be amended).

40. Where the applicant furnishes a missing part to the receiving Office after the date on which all of the requirements of Article 11(1) were fulfilled but within the applicable time limit under Rule 20.7, that part will be included in the international application and the international filing date will be corrected to the date on which the receiving Office received that part (see Rule 20.5(c) as proposed to be amended). In such a case, the applicant will be given the opportunity to request the receiving Office to disregard the missing part concerned, in which case the missing part would be considered not to have been furnished and the correction of the international filing date not to have been made (see Rule 20.5(e) as proposed to be amended).

41. The Administrative Instructions and/or the Receiving Office Guidelines will need to be modified so as to prescribe the procedure to be followed by the receiving Office with regard to notifications to be sent to the International Bureau and the International Searching Authority, in particular in the case where the record and search copies have not yet been transmitted by the time when the missing part is included and the filing date corrected.

42. Where the applicant confirms, in accordance with Rule 20.6(a), that a part of the description, claims or drawings was incorporated by reference under Rule 4.18 and the receiving Office finds that all the requirements of Rule 4.18 and 20.6(a) are complied with, that part will be considered to have been contained in the purported international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, and the international filing date will be the date on which all of the requirements of Article 11(1) are fulfilled (see Rule 20.5(d) as proposed to be amended).

43. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 20.5(a)(i), (b) and (c).

Statement of Incorporation by Reference and Confirmation of Such Statement (Rules 4.18 and 20.6)

44. Under Rule 4.18 as proposed to be amended, where the international application, on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, claims the priority of the earlier application, the applicant will be entitled to include in the request a statement of incorporation by reference that, where any element of the international application referred to in Article 11(1)(iii)(d) or (e) or any part of the description, claims or drawings referred to in Rule 20.5(a) which is not otherwise contained in the international application is completely contained in the earlier application, that element or part is, subject to confirmation under Rule 20.6(a), incorporated by reference in the international application for the purposes of Rule 20.6.

45. In order to achieve, to the extent possible, consistency in receiving Offices' practices in determining whether a missing element or part was completely contained in the earlier application, it will be necessary to draft and consult on appropriate modifications of the PCT Receiving Office Guidelines in advance of the entry into force of the amendments concerned.

46. Generally, under Rule 20.6(a) as proposed to be amended, the applicant will be required, for the purposes of incorporation by reference of a missing element or part under Rule 20.6, to furnish a (simple or non-certified) copy of the earlier application, within the applicable time limit under Rule 20.7 unless, within that time limit, the priority document is

available to the receiving Office because the applicant has already complied with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document.

47. Where the priority document is available to the receiving Office within the applicable time limit under Rule 20.7, the receiving Office will base its finding under Rule 20.6(b) on the priority document, and the front page of the published application will under Rule 48.2(b)(v) contain, for the benefit of designated and elected Offices, an indication to that effect. Where, however, the priority document is not available to the receiving Office within the applicable time limit under Rule 20.7 because the applicant did not, within that time limit, comply with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document, the receiving Office will base its finding under Rule 20.6(b) on the simple copy of the earlier application furnished by the applicant under Rule 20.6(a). The front page of the published application will under Rule 48.2(b)(v) contain an indication to the effect that the applicant, for the purposes of Rule 20.6(a)(ii), relied on a separately submitted (non-certified) copy of the earlier application rather than on compliance with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document.

48. In the latter case, during national phase procedures, where the priority document continues not to be available to the designated or elected Office because the applicant still has not complied with Rule 17.1(a), (b) or (b-*bis*) in relation to the priority document, or where the priority document is available to the designated or elected Office but that Office finds that that the element or part concerned is not completely contained in the priority document, that Office will under Rule 82*ter*.1(b) be entitled to treat the application, in the case of a missing element, as if the international filing date had been accorded under Rule 20.3(b)(i) or, in the case of a missing part, as if the international filing date had been accorded under either Rule 20.5(b) or (c), as the case may be, provided that the Office will under Rule 82*ter*.1(c) first have to give the applicant an opportunity to furnish the priority document within a time limit which is reasonable under the circumstances. In order to be able to make a determination under Rule 82*ter*.1(b), the designated or elected Office will be permitted under Rule 51*bis*.1(e)(ii) to require the applicant to furnish a translation of the priority document where that document is not in a language accepted by the Office for the purposes of national processing.

49. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 4.19.

Time Limit (Rule 20.7)

50. Rule 20.7 as proposed to be amended provides for the time limits within which the applicant may furnish corrections of Article 11(1) defects (including the furnishing of missing elements), furnish missing parts or confirm the incorporation by reference of elements or parts.

*Incompatibility With National Laws (Rules 20.8 and 51*bis*.1)*

51. Reservation provisions are included under Rule 20.8 as proposed to be amended in respect of both receiving Offices and designated Offices whose applicable national law is not compatible with the envisaged amendments of the PCT Regulations concerning the incorporation by reference of elements referred to in Article 11(1)(iii)(d) and (e) and parts of the description, claims or drawings.

52. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 20.8(a), to note that the availability of the procedure under that Rule depends on the existence of an incompatibility with the Rules referred to in that Rule of the national law applicable to a national Office in its capacity as a PCT receiving Office, as distinct from its capacity as a designated Office, and that such incompatibility might arise either from express national law provisions dealing with the subject matter in question or from the more general operation of the national law.

E. RESTORATION OF THE RIGHT OF PRIORITY

53. See the main body of this document at paragraph 6(e) and the proposed amendments of Rules 2.4, 4.1(v), 4.10, 26bis.2(a) to (d), 26bis.3, 48.2(a)(ix) and (xi), 48.2(b)(iv), (vi), (vii) and (viii), 48.2(j), 49ter.1, 49ter.2, 64.1, 76.5 and 82ter.1(a) set out in Annex II, with proposed date of entry into force of April 1, 2007, and transitional arrangements as set out in Annex IV. Details of consideration of the matter by the Working Group at its seventh session are set out in document PCT/R/WG/7/13, paragraphs 38 to 59 (reproduced in the Annex to document PCT/A/34/1).

54. See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 2.4(b).

55. Further drafting changes have been made to Rule 20.8(a) and (b), beyond the text as agreed by the Working Group. The expected date of adoption of the amendments, “October 5, 2005”, has been inserted replacing the reference in the Working Group documents to “[*date of adoption of these modifications by the PCT Assembly*]”, and “April 5, 2006” has been inserted replacing “[*six months from the date of adoption of these modifications by the PCT Assembly*]”.

56. Further drafting changes have been made to Rule 26bis.2(a), beyond the text as agreed by the Working Group. At the end of item (i), the word “or” has been deleted. In the last line of paragraph (a), the reference to “Rule 26bis.3(i)” has been replaced by a reference to “Rule 26bis.3(j)”, and the reference to “Rule 26bis.3(a) to (h)” has been replaced by a reference to “Rule 26bis.3(a) to (i)”. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 26bis.2.

57. A further drafting change has been made to the English text only of Rule 64.1(b), beyond the text as agreed by the Working Group. In the introductory text, for the sake of consistency with other provisions, the word “will” has been replaced by “shall”. See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 64.1(b).

Automatic Retention of Priority Claim During International Phase (Rule 26bis.2(c)(iii))

58. The proposed amendments relating to the restoration of the right of priority provide for the automatic retention, during the international phase, of a priority claim where the international application has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date. Such a priority claim will be retained irrespective of whether the applicant requests the receiving Office to restore the right of priority, and even where such a request is made but refused by the receiving Office. Such a priority claim will therefore be taken into account during the

international phase for the purposes of international search and international preliminary examination, and for the purpose of the computation of time limits, including that for entry into the national phase. In other words, because of the automatic retention of the priority claim, the filing date of the earlier application whose priority is claimed will be the “priority date” under Article 2(xi) for the purpose of computing time limits, irrespective of whether or not the receiving Office restores the right of priority (provided, of course, that the priority claim in question is the only priority claim contained in the international application or, where several priority claims are contained in the application, that the priority claim in question relates to the earliest application whose priority is claimed). The effect of this will be that all time limits under the Treaty and Regulations which are calculated on the basis of the priority date, including those for entry into the national phase under Articles 22(1) and 39(1)(b), may expire up to 14 months earlier than if the priority claim was considered not to have been made (“void”).

Restoration of the Right of Priority by the Receiving Office during the International Phase (Rules 26bis.3 and 48.2)

59. As a general rule, any receiving Office will have to provide for the restoration of the right of priority during the international phase, any exception to that general rule being provided only by way of a reservation by a receiving Office. Each receiving Office will be free to apply either the more strict criterion of “due care” or the less strict criterion of “unintentionality”.

60. Following adoption of the proposed amendments by the Assembly, the International Bureau will need to consider drafting a more detailed explanation of those terms for inclusion in the PCT Receiving Office Guidelines, taking into account any standards that are currently applied under the national laws applicable in Contracting States.

61. See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 26bis.3.

62. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 26bis.3(a), to note that a receiving Office may, if it wishes, apply both criteria for restoration and leave the choice to the applicant as to which criterion is sought to be applied in a specific case, noting that it would be advantageous for the applicant to obtain a positive finding by the receiving Office on the stricter criterion of “due care” since such a finding would in general be effective in all designated States, unlike a finding on the less strict “unintentionality” criterion. Furthermore, a receiving Office will be free to apply, upon request of the applicant, first the “due care” criterion and then, if the receiving Office finds that that criterion is not complied with, the “unintentionality” criterion.

63. Under Rule 26bis.3(f) as proposed to be amended, the receiving Office will be free to require that a declaration or other evidence in support of the statement of reasons for the failure to file the international application within the priority period be filed with it.

64. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 26bis.3(f), to note that the question of what information or evidence each receiving Office is entitled to require in support of a request for

restoration of the right of priority under Rule 26bis.3(f) is a matter left to national law and practice.

65. In order to promote consistency of standards as regards declarations and evidence which would be acceptable under Rule 26bis.3(f), the International Bureau will draft a more detailed explanation of the term “a declaration or other evidence in support of the statement of reasons” for inclusion in the Administrative Instructions and/or Receiving Office Guidelines and will suggest other possible steps aimed at promoting the sharing of relevant decisions, taking into account any standards that are currently applied under the national laws applicable in Contracting States.

66. Further drafting changes have been made to Rule 26bis.3(j), beyond the text as agreed by the Working Group. The expected date of adoption of the amendments, “October 5, 2005”, has been inserted replacing the reference in the Working Group documents to “[*date of adoption of these modifications by the PCT Assembly*]”, and “April 5, 2006” has been inserted replacing “[*six months from the date of adoption of these modifications by the PCT Assembly*]”.

67. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 48.2(a)(xi), to note that information as to the criterion for restoration upon which the decision by the Office was based (“due care” criterion, “unintentionality” criterion, or both criteria) will be included in the publication of the international application under new Rule 48.2(a)(xi).

Effect of Receiving Office Decision on Designated States (Rule 49ter.1)

68. Further drafting changes have been made to Rule 49ter.1(c), beyond the text as agreed by the Working Group. The words “a requirement of any of” have been replaced (in the English text only) by the words “a requirement under”, the reference in the fourth line to “Rule 26bis.3(a) or (b)(i) or (iii)” has been replaced by a reference to “Rule 26bis.3(a), (b)(i) or (c)”, and the reference in the last line to “Rule 26bis.3(b)(ii)” has been replaced by a reference to “Rule 26bis.3(b)(iii)”. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 49ter.1(a), (b), (c) and (e).

69. Further drafting changes have been made to Rule 49ter.1(g), beyond the text as agreed by the Working Group. The expected date of adoption of the amendments, “October 5, 2005”, has been inserted replacing the reference in the Working Group documents to “[*date of adoption of these modifications by the PCT Assembly*]”, and “April 5, 2006” has been inserted replacing “[*six months from the date of adoption of these modifications by the PCT Assembly*]”.

70. A decision by a receiving Office to restore a right of priority based on the criterion of “due care” will, as a general rule, be effective in all designated States, any exception to that general rule being provided only by way of a reservation by a designated Office under Rule 49ter.1(g). A decision by a receiving Office to restore a right of priority based on the criterion of “unintentionality” will be effective only in those designated States whose applicable national law provided for restoration of the right of priority based on that criterion or on a criterion which, from the viewpoint of applicants, is more favorable than that criterion.

71. However, a decision by a receiving Office to restore a right of priority will not be effective in a designated State in which the relevant provisions do not apply consequent to a notification under Rule 49ter.1(g) that the provisions concerned were not compatible with its national law. It will also not be effective in a designated State if the designated Office, a court or any other competent organ finds that a substantive requirement for restoration of the right of priority by the receiving Office has not been complied with. However, a decision by a receiving Office to restore a right of priority will not be ineffective in a designated State merely because a procedural requirement for such restoration has not been complied with, for example, because a required fee has not been paid.

72. A reservation provision is included under Rule 49ter.1(g) as proposed to be amended in respect of designated Offices whose applicable national law is not compatible with the envisaged amendments of the PCT Regulations concerning the restoration of the right of priority.

73. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 49ter.1(g), to note that the giving of a notification of incompatibility under Rule 49ter.1(g) will have both procedural and substantive effects; for example, there will be consequences both in terms of calculating the time limit for national phase entry before the designated Office concerned and in terms of the assessment of novelty and inventive step during the national search and examination.

Prior Art for the Purposes of International Search, the Establishment of the Written Opinion by the International Searching Authority and International Preliminary Examination (Rule 64.1)

74. Under Rule 64.1(b) as proposed to be amended, where the international application claims the priority of an earlier application but has an international filing date which is later than the date on which the priority period expired but within the period of two months from that date, the “relevant date” for the purposes of the international preliminary examination (Rule 64) will be the priority date, unless the International Preliminary Examining Authority considers that the priority claim is not valid for reasons other than the fact that the international application has an international filing date which is later than the date on which the priority period expired. By virtue of Rule 43bis.1(b), this date will also be the “relevant date” for the purposes of establishing the written opinion by the International Searching Authority.

Restoration of the Right of Priority by Designated Office during the National Phase (Rule 49ter.2)

75. Further drafting changes have been made to Rule 49ter.2(h), beyond the text as agreed by the Working Group. The expected date of adoption of the amendments, “October 5, 2005”, has been inserted replacing the reference in the Working Group documents to “[date of adoption of these modifications by the PCT Assembly]”, and “April 5, 2006” has been inserted replacing “[six months from the date of adoption of these modifications by the PCT Assembly]”. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 49ter.2.

76. As a general rule, any designated Office will have to provide for the restoration of the right of priority in the national phase, any exception to that general rule being provided only

by way of a reservation by a designated Office under Rule 49*ter*.2(h). The designated Office, when deciding on a request for restoration, will be free to apply either the more strict criterion of “due care” or the less strict criterion of “unintentionality.” In practice, of course, restoration of the right of priority by a designated Office during the national phase will only be necessary where the receiving Office has not already restored the right of priority with effect for the designated Office concerned.

77. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 49*ter*.2(a), to note that a designated Office may, if it wishes, apply both criteria for restoration and leave the choice to the applicant as to which criterion is sought to be applied in a specific case. Furthermore, a designated Office will be free to apply, upon request of the applicant, first the “due care” criterion and then, if the designated Office finds that that criterion is not complied with, the “unintentionality” criterion.

78. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 49*ter*.2(b)(i), to note that, where the effect of the international application provided for in Article 11(3) ceases because the applicant fails to perform the acts referred to in Article 22 or 39(1) within the applicable time limit but the designated Office reinstates the rights of the applicant with respect to that international application in accordance with Rule 49.6 or 76.5(ii), respectively, such reinstatement will extend to all time limits calculated on the basis of the applicable time limit under Article 22 or 39(1), respectively, including the time limit under Rule 49*ter*.2(b)(i).

79. A reservation provision is included in Rule 49*ter*.2(h) as proposed to be amended in respect of designated Offices whose applicable national law is not compatible with the envisaged amendments of the PCT Regulations concerning the restoration of the right of priority.

80. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 49*ter*.2(h), to note that any designated Office whose national law provides for a criterion more stringent than the “due care” criterion or does not provide for restoration of the right of priority at all may make use of the reservation provision in Rule 49*ter*.2(h). Designated Offices whose applicable national law provides for the restoration of the right of priority based on requirements similar but not identical to the requirements under Rule 49*ter*.2(a) and (b) will not need to make use of the reservation provision if the requirements under the applicable national law are, from the viewpoint of applicants, at least as favorable as the requirements under Rule 49*ter*.2(a) and (b).

F. RECTIFICATION OF OBVIOUS MISTAKES

81. See the main body of this document at paragraph 6(f) and the proposed amendments of Rules 11.14, 12.2, 26*bis*.1, 26*bis*.2(e), 38.2, 38.3, 43.6*bis*, 43*bis*.1, 48.2(a)(vii), 48.2(i), 48.2(k), 66.1, 66.4*bis*, 66.5, 70.2, 70.16, 91.1, 91.2 and 91.3 set out in Annex II, with proposed date of entry into force of April 1, 2007, and transitional arrangements as set out in Annex IV. Details of consideration of the matter by the Working Group at its seventh session are set out in document PCT/R/WG/7/13, paragraphs 60 to 70 (reproduced in the Annex to document PCT/A/34/1).

82. Further drafting changes have been made to Rule 12.2(b), beyond the text as agreed by the Working Group. The proposed amendments of paragraph (b)(i) and (ii) are consequential on the proposed amendments of Rule 91.1 (see below).

83. As agreed by the Working Group (see document PCT/R/WG/7/13, paragraph 62), Rule 38 has been amended by changing the wording of present Rule 38.2(b) and renumbering it as Rule 38.3; the text of proposed new Rule 38.3 is as had been suggested in document PCT/R/WG/7/13, paragraph 62.

International Publication (Rule 48.2)

84. Further drafting changes have been made to Rule 48.2, beyond the text as agreed by the Working Group. In Rule 48.2(a), proposed item (xi) (which read “any information concerning the authorization of a rectification of an obvious mistake referred to in the second sentence of Rule 91.3(b)”) has been omitted; see also paragraph 97, below, for related changes to Rule 91.3 and other Rules. In Rule 48.2(b), the numbering of items (v) to (viii) has been adjusted. In Rule 48.2(b)(vi) and (vii) and (j), the term “pamphlet” has been replaced by the words “published international application”. In Rule 48.2(i), the words “(containing any information referred to in paragraph (a)(xi))” have been deleted. See the French version of this document for an explanation of a further drafting change, beyond the text as agreed by the Working Group, made to the French text only of Rule 48.2(j).

Competent Authorities (Rule 91.1(b))

85. Rule 91.1(b) as proposed to be amended makes it clear which are the “competent authorities” responsible for authorizing the rectification of obvious mistakes appearing in the different elements of the international application and in related documents, bearing in mind the responsibilities of the different authorities in the different stages of the international phase. Under the proposals, the finding whether an alleged mistake is obvious and thus rectifiable will be made:

(a) in the case of a mistake in the request part of the international application or in a correction thereof—by the receiving Office;

(b) in the case of a mistake in the description, claims or drawings or in a correction thereof, unless the International Preliminary Examining Authority is competent under paragraph (c), below—by the International Searching Authority;

(c) in the case of a mistake in the description, claims or drawings or in a correction thereof, or in an amendment under Article 19 or 34, where a demand for international preliminary examination has been made and has not been withdrawn and the date on which international preliminary examination shall start in accordance with Rule 69.1 has passed—by the International Preliminary Examining Authority;

(d) in the case of a mistake in a document not referred to in paragraphs (a) to (c), above, submitted to the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau, other than a mistake in the abstract or in an amendment under Article 19—by that Office, Authority or Bureau, as the case may be.

86. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 91.1(b), (c) and (d).

“Obvious” to the Competent Authority (Rule 91.1(c))

87. Under Rule 91.1(c) as proposed to be amended, a mistake will be considered obvious if, and only if, it is obvious to the competent authority that, as at the applicable date under Rule 91.1(f), something else was intended than what appears in the document concerned and that nothing else could have been intended than the proposed rectification. Under the proposed amendments, no special attributes are ascribed to the person in the competent authority making the finding under Rule 91.1(c) whether an alleged mistake is “obvious” and thus rectifiable; the matter is simply left to the “competent authority”.

Extrinsic Documents (Rule 91.1(d) and (e))

88. Under Rule 91.1(e) as proposed to be amended, the question whether the competent authority may rely on extrinsic documents will depend on which part of the international application is involved:

(a) in the case of a mistake in the description, claims or drawings or in a correction or amendment thereof, the finding by the competent authority will have to be made only on the basis of the contents of the description, claims and drawings and, where applicable, the correction or amendment concerned; or

(b) in the case of a mistake in the request part of the international application or a correction thereof, or in a document referred to in paragraph 85(d), above, the finding by the competent authority will have to be made only on the basis of the contents of the international application itself and, where applicable, the correction concerned, or the document referred to in paragraph 85(d), above, together with any other document submitted with the request, correction or document, as the case may be, any priority document in respect of the international application available to the authority in accordance with the Administrative Instructions, and any other document contained in the authority’s international application file at the applicable date under Rule 91.1(f).

89. The suggested approach to priority documents is based on the view that a priority document, being part of the general official record, should be taken into account for the purpose of rectifying an obvious mistake in the request, etc., if it is available to the competent authority in the practical sense, without imposing any special or restrictive requirements on the applicant, noting particularly that the provision of priority documents on paper by traditional means is becoming a thing of the past. It is envisaged that the Administrative Instructions will provide for account to be taken of a priority document if it is available, for example, through being furnished by the applicant, issued by the same Office in its capacity as a national Office, or available from a digital library. This may be contrasted with other provisions relating to priority documents where they are used for the purposes of establishing the scope of the disclosure or the according of a filing date, in which case more strict requirements are appropriate.

90. As agreed by the Working Group (see document PCT/R/WG/7/13, paragraph 65), upon further review by the Secretariat of the appropriateness in Rule 91.1(e) of the words “any priority document”, it is proposed to further amend Rule 91.1(e), beyond the text as agreed by

the Working Group, by replacing the words “any priority document” by the words “any priority document in respect of the international application that is”.

Applicable Date (Rule 91.1(f))

91. The applicable date to be used in determining the allowability of a rectification of a mistake is:

(a) in the case of a mistake in a part of the international application as filed—the international filing date;

(b) in the case of a mistake in a document other than the international application as filed, including a mistake in a correction or an amendment of the international application—the date on which the document was submitted.

Mistakes Not Rectifiable Under Rule 91 (Rule 91.1(g))

92. Rule 91 as proposed to be amended generally applies in parallel with other correction procedures, such as the correction procedures offered under Rules 26*bis* or 26*ter*. However, so as not to add further complexity to the system with regard to the computation of time limits calculated on the basis of the priority date, a mistake in a priority claim or in a notice correcting or adding a priority claim submitted under Rule 26*bis* will not be rectifiable under Rule 91.1 where the rectification of such mistake would cause a change in the priority date of the international application. Such a mistake will only be correctable by way of submitting a notice under Rule 26*bis* within the applicable time limit under that Rule. Where the time limit under Rule 26*bis*.1 for submitting a notice of correction or addition of the priority claim has expired, the applicant will be entitled, under proposed new Rule 26*bis*.2(e), to request the International Bureau to publish information concerning the priority claim, with a view to pursuing the matter further in the national phase before the designated or elected Offices.

93. Similarly, a mistake in the abstract will also not be rectifiable under Rule 91.1, nor an amendment under Article 19 unless the International Preliminary Examination Authority is competent to authorize the rectification of such mistake under Rule 91.1(b)(iii) as proposed to be amended. Note, however, that a mistake in the abstract will in effect be correctable under proposed new Rule 38.3. As at present, a mistake which lies in the omission of one or more entire elements of the international application referred to in Article 3(2) or one or more entire sheets of the international application will not be rectifiable under Rule 91.1, but this does not preclude the possibility that a remedy may be available under the provisions relating to missing elements and parts of the application.

Request for Rectification (Rule 91.2)

94. It is proposed to set the time limit for submitting a request for rectification at 26 months from the priority date, with the aim of leaving sufficient time for the completion of all the necessary actions before the end of the international phase.

95. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 91.2.

Effect of Rectifications on International Search and International Preliminary Examination (Rules 43.6bis, 43bis.1, 66.1, 66.4bis, 70.2, 70.16 and 91.3)

96. Under these Rules, a rectification of an obvious mistake that is authorized by the International Searching Authority or the International Preliminary Examining Authority under Rule 91.1, or notified to the Authority under Rule 91.3(a), has to be taken into account by the Authority concerned for the purposes of the international search report, the written opinion by the International Searching Authority or the international preliminary examination report, except if it is so authorized or notified after the Authority has begun to draw up the written opinion or report concerned. If a rectification of an obvious mistake is taken into account, the written opinion or the report concerned will so indicate. If a rectification of an obvious mistake is not taken into account, the written opinion or report concerned will, if possible, so indicate, failing which the Authority concerned would notify the International Bureau accordingly and the International Bureau would proceed as provided for in the Administrative Instructions. It is envisaged that the Administrative Instructions would provide for the International Bureau to inform all Offices and Authorities concerned.

97. A number of further proposed amendments of the Regulations relating to rectifications of obvious mistakes, beyond the text as agreed by the Working Group, are included in the present document (see document PCT/R/WG/7/13, paragraph 63). Those further amendments appear in Rule 43.6bis (added); Rule 43bis.1(b); Rule 66.1(d-bis) (added); Rule 66.4bis; Rule 70.2(e) (added); Rule 91.3(a), second sentence (by adding the words “, including, as required, notifying the receiving Office, the International Searching Authority, the International Preliminary Examining Authority and the designated and elected Offices of the authorization or refusal”); and Rule 91.3(b) (the paragraph as considered by the Working Group has been omitted and its substance dealt with in the Rules just mentioned).

98. In view of the fact that any rectification authorized by the competent authority will be published (either as part of the published international application or, under Rule 48.2(i), in the form of a statement reflecting all rectifications, together with a revised front page), there is no longer any need under Rule 70.16 for annexing rectifications authorized by the International Preliminary Examining Authority to the international preliminary examining report, and a further drafting change has therefore been made to the text of the latter Rule, beyond the text as agreed by the Working Group, by deleting the words “and each replacement sheet containing rectifications of obvious errors authorized under Rule 91.1(e)(iii)”.

Effect of Rectifications on Designated or Elected Offices (Rule 91.3(e) and (f))

99. Proposed new Rule 91.3(e) provides that the rectification of an obvious mistake need not be taken into account by any designated or elected Office in which processing or examination of the international application has already started prior to the date on which the designated or elected Office is notified of the authorization of the rectification by the competent authority.

100. While it can be expected that designated and elected Offices will normally take authorized rectifications into account for the purposes of the national phase, they will be able to look into the matter according to their national practice, noting that rectifications may relate to substantive questions of patentability. On the other hand, such Offices will not be obliged to perform a check in each case. Proposed new Rule 91.3(f) thus provides that a designated (or elected) Office may disregard a rectification that was authorized by the competent

authority if it finds that it would not have authorized the rectification if it had been the competent authority. This would include the case where, due to a notification of incompatibility under Rule 20.8(b), the Office does not recognize the text of the description, claims or drawings upon which the rectification was based (see paragraphs 51 and 52, above, and the proposed understanding in paragraph 101, below).

101. *Proposed understanding:* The Assembly is invited, in connection with the adoption of amended Rule 91.3(f), to note that, where a designated Office has given a notification of incompatibility under Rule 20.8(b) in respect of the application of provisions relating to the incorporation by reference of missing elements or parts, that Office will not be obliged, in determining for the purposes of Rule 91.3(f) whether it would have authorized the rectification, to take into account the contents of any description, claims or drawings incorporated by reference under Rule 20.6.

G. PCT MINIMUM DOCUMENTATION: ADDITION OF PATENT DOCUMENTS OF THE REPUBLIC OF KOREA

102. See the main body of this document at paragraph 6(g) and the proposed amendments of Rule 34.1 set out in Annex III, with proposed date of entry into force yet to be fixed. Details of consideration of the matter by the Working Group at its seventh session are set out in document PCT/R/WG/7/13, paragraphs 102 to 107 (reproduced in the Annex to document PCT/A/34/1).

103. At the request of the Government of the Republic of Korea, it is proposed to amend Rule 34 so as to include patent documents published by the Korean Intellectual Property Office in the PCT minimum documentation. The documents include patents and published applications for patents, and English language abstracts of patents or published patent applications, but not utility models.

104. As is presently the case for patent documents in Japanese, Russian and Spanish which form part of the PCT minimum documentation, International Authorities for which Korean is not an official language will not be required to include patent documents of the Republic of Korea in their search collections unless an English language abstract is available. The practical result of this will be that the International Authorities, other than the Korean Intellectual Property Office, will only be required to include those documents published from 1979 onwards.

105. See the French version of this document for an explanation of further drafting changes, beyond the text as agreed by the Working Group, made to the French text only of Rule 34.1(e).

[End of Annex V and of document]