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Assembly

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PROPOSED AMENDMENTS TO THE PCT REGULATIONS

Document prepared by the International Bureau

SUMMARY

1. This document contains proposed amendments to the Regulations under the Patent Cooperation Treaty (PCT) (“the Regulations”)¹ based on the recommendations by the PCT Working Group (“the Working Group”) for submission to this session of the Assembly.

PROPOSED AMENDMENTS

2. Annexes I and II set out proposed amendments to the Regulations, as recommended by the Working Group at its sixteenth session from February 6 to 8, 2023. The proposed amendments relate to the following matters:

- (a) the procedure when an international application contains parts in different languages and all such languages are accepted by the competent receiving Office (Rules 26 and 29, as set out in Annex I); for further details, see document PCT/WG/16/8 and paragraphs 13 and 14 of document PCT/WG/16/9; and

¹ References in this document to “Articles” and “Rules” are to those of the 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 references to regional laws, regional applications, the regional phase, etc.

(b) the definition of the minimum documentation that the International Searching Authority should consult during international search, and the minimum requirements that an International Searching Authority and an International Preliminary Examining Authority must satisfy before it can be appointed and must continue to satisfy while it remains appointed (Rules 34, 36 and 63, as set out in Annex II); for further details, see document PCT/WG/16/6 and paragraphs 11 and 12 of document PCT/WG/16/9.

3. Annex III contains a “clean” text of the relevant Rules as they would stand after amendment.

4. The International Bureau has also become aware of an inconsistency between the English and French texts of Rule 82*quater*.3 allowing a receiving Office, International Searching Authority, Authority specified for supplementary search, International Preliminary Examining Authority or the International Bureau to extend time limits in the case of extraordinary circumstances for a definite period. The amendments to the Regulations to introduce this provision were adopted by the Assembly at its fifty-third (23rd ordinary) session in 2021, and entered into force on July 1, 2022 (see Annex II to document PCT/A/53/3 and paragraphs 23 to 25 of document PCT/A/53/4). Rule 82*quater*.3(c) provides for how the designated or elected Office should take into account any such extension of a time limit for an international application where national processing has started at that Office. The currently applicable English and French texts of Rule 82*quater*.3(c) are as follows (emphasis added):

“(c) The extension of a time limit under paragraph (a) or (b) need not be taken into account by any designated or elected Office if, at the time the information referred to in paragraph (a) or (b) is published, national processing before that Office has started.”

“(c) La prorogation d’un délai au titre de l’alinéa a) ou b) doit être prise en considération par tout office désigné ou élu si, au moment où l’information visée à l’alinéa a) ou b) est publiée, le traitement national auprès de cet office a débuté.”

5. Document PCT/WG/14/11 contains the proposed amendments to introduce Rule 82*quater*.3 in the Regulations that the Working Group approved in June 2021 for submission to the Assembly. Paragraph 20 of this document explains the intention of Rule 82*quater*.3(c) “to make clear that there should be no disrupting impact on designated Offices in cases where, on the one hand, the national processing began, but on the other hand, not all acts under Article 22 or 39 have yet been performed by the applicant”.

6. It is therefore proposed to amend the French text of Rule 82*quater*.3(c) to correspond to the intention of this provision as explained in paragraph 20 of document PCT/WG/14/11 and so remove the inconsistency between the English and French texts of this Rule. In addition, it is proposed to change the word “débuté” to “commencé” in the French text of this Rule for consistency with other provisions in the French text of the Regulations referring to having started or begun an action. The proposed text of Rule 82*quater*.3(c) reads as follows (additions and deletions indicated by underlined and strikethrough text, respectively):

“(c) La prorogation d’un délai au titre de l’alinéa a) ou b) ~~doit~~ n’a pas à être prise en considération par tout office désigné ou élu si, au moment où l’information visée à l’alinéa a) ou b) est publiée, le traitement national auprès de cet office a ~~débuté~~ commencé.”

ENTRY INTO FORCE, TRANSITIONAL ARRANGEMENTS AND UNDERSTANDING

7. It is proposed that the Assembly adopt the following decisions in relation to entry into force and transitional arrangements of the proposed amendments set out in Annexes I and II and paragraph 6, above:

(a) The amendments to Rules 26 and 29 set out in Annex I shall enter into force on July 1, 2024, and shall apply to any international application with an international filing date that is on or after that date.

(b) The amendments to Rules 34, 36 and 63, set out in Annex II, shall enter into force on January 1, 2026.

(c) The amendments to the French text of Rule 82^{quater}.3(c), set out in paragraph 6, above, shall enter into force on July 1, 2024.

8. It is further proposed that the Assembly adopt the following Understanding with regard to the interpretation of Rules 36.1(ii) and 63.1(ii):

“In adopting the amendments to Rules 36.1 and 63.1 setting out the minimum requirements referred to in Articles 16(3)(c) and 32(3), respectively, the Assembly agreed that, in the case of an intergovernmental organization that has been established for the collaboration between national Offices of the States that are members of that intergovernmental organization and does not itself issue patents or publish patent applications, the requirements in Rules 36.1(ii) and 63.1(ii) for the organization are that the national Offices of those States make available for consultation, as part of the minimum documentation, any patent issued, and any patent application published, by them and, where applicable, by their legal predecessor(s).”

9. *The Assembly of the PCT Union is invited to:*

(a) adopt the proposed amendments to the Regulations under the PCT set out in Annexes I and II and paragraph 6 of document PCT/A/55/2, and the entry into force and transitional arrangements set out in paragraph 7 of the same document; and

(b) adopt the Understanding set out in paragraph 8 of document PCT/A/55/2.

[Annexes follow]

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² Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 26

Checking by, and Correcting before, the Receiving Office of Certain Elements of the International Application

26.1 to 26.2bis [No change]

26.3 *Checking of Physical Requirements under Article 14(1)(a)(v)*

(a) Where the international application is filed in a language of publication, the receiving Office shall check:

(i) the international application for compliance with the physical requirements referred to in Rule 11 only to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication;

(ii) any translation furnished under Rule 12.3 or 26.3ter for compliance with the physical requirements referred to in Rule 11 to the extent that compliance therewith is necessary for the purpose of satisfactory reproduction.

(b) Where the international application is filed in a language which is not a language of publication, the receiving Office shall check:

(i) the international application for compliance with the physical requirements referred to in Rule 11 only to the extent that compliance therewith is necessary for the purpose of satisfactory reproduction;

(ii) any translation furnished under Rule 12.3~~, or~~ 12.4 or 26.3ter and the drawings for compliance with the physical requirements referred to in Rule 11 to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication.

26.3bis [No change]

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

(a) Where the abstract or any text matter of the drawings is filed in a language which is different from the language, subject to Rules 12.1bis and 26.3ter(e), of the description and the claims, the receiving Office shall, unless

- (i) a translation of the international application is required under Rule 12.3(a), or
- (ii) the abstract or the text matter of the drawings is in the language in which the international application is to be published,

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, 26.2, 26.3, 26.3bis, 26.5 and 29.1 shall apply *mutatis mutandis*.

(b) to (d) [No change]

(e) Where the description of an international application is filed in a language which is different from the language of the claims, or parts of the description or parts of the claims are filed in a language which is different from the language of the remainder of this element, and where all such languages are accepted by the receiving Office under Rule 12.1(a), the receiving Office shall, as appropriate, invite the applicant to furnish, within one month of the date of receipt of the international application by the receiving Office, a translation of the description or the claims, or any part thereof, such that the description and claims are in a single language which is all of the following:

- (i) one of the languages contained in the description or claims as filed;
- (ii) a language accepted by the International Searching Authority that is to carry out the international search; and
- (iii) the language in which the international application is to be published.

Rule 12.3(c) to (e) shall apply *mutatis mutandis*.

26.4 and 26.5 [No change]

Rule 29

International Applications Considered Withdrawn

29.1 *Finding by Receiving Office*

If the receiving Office declares, under Article 14(1)(b) and Rule 26.5 (failure to correct certain defects), or under Article 14(3)(a) (failure to pay the prescribed fees under Rule 27.1(a)), or under Article 14(4) (later finding of non-compliance with the requirements listed in items (i) to (iii) of Article 11(1)), or under Rule 12.3(d), ~~or~~ 12.4(d) [or 26.3ter](#) (failure to furnish a required translation or, where applicable, to pay a late furnishing fee), or under Rule 92.4(g)(i) (failure to furnish the original of a document), that the international application is considered withdrawn:

(i) the receiving Office shall transmit the record copy (unless already transmitted), and any correction offered by the applicant, to the International Bureau;

(ii) the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration, and the International Bureau shall in turn notify each designated Office which has already been notified of its designation;

(iii) the receiving Office shall not transmit the search copy as provided in Rule 23, or, if such copy has already been transmitted, it shall notify the International Searching Authority of the said declaration;

(iv) the International Bureau shall not be required to notify the applicant of the receipt of the record copy;

(v) no international publication of the international application shall be effected if the notification of the said declaration transmitted by the receiving Office reaches the International Bureau before the technical preparations for international publication have been completed.

29.2 to 29.4 *[No change]*

[Annex II follows]

DRAFT PROVISIONAL AMENDMENTS
TO THE PCT REGULATIONS³

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³ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 34
Minimum Documentation

34.1 *Definition*

(a) The definitions contained in Article 2(i) and (ii) shall not apply for the purposes of this Rule.

For the purposes of this Rule, "patent documents" shall include:

(i) published international applications,

(ii) published regional patents,

(iii) published national patents issued by a national Office or its legal predecessor in and after 1920,

(iv) utility certificates issued by France in and after 1920,

(v) inventors' certificates issued by the former Soviet Union, and

(vi) applications for any of the forms of protection referred to in items (ii) to (v) above, published in and after 1920.

(b) Notwithstanding paragraph (c), ~~T~~the documentation referred to in Article 15(4) ("minimum documentation") shall consist of:

(i) the "~~national~~ patent documents" as specified in paragraph ~~(e)(a)~~, that have been made available by or on behalf of the relevant national Office or its legal successor or, as the case may be, by the International Bureau in accordance with the technical and accessibility requirements specified in the Administrative Instructions and, where applicable, with the provisions of Rule 36.1(ii), and

~~(ii) the published international (PCT) applications, the published regional applications for patents and inventors' certificates, and the published regional patents and inventors' certificates,~~

(iii) such other published items of non-patent literature as the International Searching Authorities shall agree upon and which shall be published in a list by the International Bureau when agreed upon for the first time and whenever changed.

(c) In addition to consulting the required documentation set forth in paragraph (b), the International Searching Authority should also preferably consult utility model documents consisting of the utility models issued, and the utility model applications published, in and after

1920 by a national Office or its legal predecessor, provided that the said utility model documents have been made available by or on behalf of the relevant national Office or its legal successor in accordance with the technical and accessibility requirements specified in the Administrative Instructions.

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

~~(i) the patents issued in and after 1920 by France, the former Reichspatentamt of Germany, Japan, the former Soviet Union, Switzerland (in the French and German languages only), the United Kingdom, and the United States of America,~~

~~(ii) the patents issued by the Federal Republic of Germany, the People's Republic of China, the Republic of Korea and the Russian Federation,~~

~~(iii) the patent applications, if any, published in and after 1920 in the countries referred to in items (i) and (ii),~~

~~(iv) the inventors' certificates issued by the former Soviet Union,~~

~~(v) the utility certificates issued by, and the published applications for utility certificates of, France,~~

~~(vi) such patents issued by, and such patent applications published in, any other country after 1920 as are in the English, French, German or Spanish language and in which no priority is claimed, provided that the national Office of the interested country sorts out these documents and places them at the disposal of each International Searching Authority.~~

(d) Each national Office making its patent documents and, where applicable, its utility model documents available in accordance with the requirements specified in the Administrative Instructions shall:

(i) notify the International Bureau accordingly,

(ii) make newly published patent documents and, where applicable, utility model documents available regularly, and

(iii) provide to the International Bureau at least annually an authority file, detailing the current extent of the available patent documents and, where applicable, utility model documents in accordance with the Administrative Instructions.

(e) The International Bureau shall validate the availability of the patent and utility model documents notified in accordance with paragraph (d) and publish in the Gazette details of the documents concerned and the date from which they will become a part of the minimum documentation. The International Bureau shall administer a repository containing the authority files referred to in paragraph (d)(iii) as specified in the Administrative Instructions.

~~(d)(f) Where an application is republished once (for example, an Offenlegungsschrift as an Auslegeschrift) or more than once, no each International Searching Authority shall be obliged to keep all versions in its documentation only the first published version if none of the subsequently published versions contains additional matter; consequently, each such Authority shall be entitled not to keep more than one version. Furthermore, where an application is granted and is issued in the form of a patent or a utility certificate (France), no International Searching Authority shall be obliged to keep both the application and the patent or utility certificate (France) in its documentation; consequently, each such Authority shall be entitled to keep either the application only or the patent or utility certificate (France) only.~~

~~(e) Any International Searching Authority whose official language, or one of whose official languages, is not Chinese, Japanese, Korean, Russian or Spanish is entitled not to include in its documentation those patent documents of the People's Republic of China, 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)(g) For the purposes of this Rule, applications and patents which have only been laid open for public inspection are not considered published applications and patents.~~

Rule 36

Minimum Requirements for International Searching Authorities

36.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 16(3)(c) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out searches in the required technical fields;

(ii) that Office or organization must make available for consultation as part of the minimum documentation referred to in Rule 34, in accordance with the requirements specified in the Administrative Instructions, any patent issued, and any patent application published, by it, and where applicable by its legal predecessor(s);

~~(ii)(iii)~~ that Office or organization must have in its possession, or have-maintain access to, at least the minimum documentation referred to in Rule 34, for search purposes in accordance with the Administrative Instructions ~~properly arranged for search purposes, on paper, in microform or stored on electronic media;~~

~~(iii) that Office or organization must have a staff which is capable of searching the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated;~~

(iv) that Office or organization must have in place a quality management system and internal review arrangements in accordance with the common rules of international search;

(v) that Office or organization must hold an appointment as an International Preliminary Examining Authority.

Rule 63

Minimum Requirements for International Preliminary Examining Authorities

63.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 32(3) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out examinations in the required technical fields;

(ii) that Office or organization must make available for consultation as part of the minimum documentation referred to in Rule 34, in accordance with the requirements specified in the Administrative Instructions, any patent issued, and any patent application published, by it, and where applicable by its legal predecessor(s);

~~(ii)~~(iii) that Office or organization must have at its ready disposal at least the minimum documentation referred to in Rule 34, properly arranged for examination purposes;

~~(iii) that Office or organization must have a staff which is capable of examining in the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated;~~

(iv) that Office or organization must have in place a quality management system and internal review arrangements in accordance with the common rules of international preliminary examination;

(v) that Office or organization must hold an appointment as an International Searching Authority.

[Annex III follows]

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Rule 26

Checking by, and Correcting before, the Receiving Office of Certain Elements of the International Application

26.1 to 26.2*bis* [No change]

26.3 *Checking of Physical Requirements under Article 14(1)(a)(v)*

(a) Where the international application is filed in a language of publication, the receiving Office shall check:

(i) the international application for compliance with the physical requirements referred to in Rule 11 only to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication;

(ii) any translation furnished under Rule 12.3 or 26.3*ter* for compliance with the physical requirements referred to in Rule 11 to the extent that compliance therewith is necessary for the purpose of satisfactory reproduction.

(b) Where the international application is filed in a language which is not a language of publication, the receiving Office shall check:

(i) the international application for compliance with the physical requirements referred to in Rule 11 only to the extent that compliance therewith is necessary for the purpose of satisfactory reproduction;

(ii) any translation furnished under Rule 12.3, or 12.4 or 26.3*ter* and the drawings for compliance with the physical requirements referred to in Rule 11 to the extent that compliance therewith is necessary for the purpose of reasonably uniform international publication.

26.3*bis* [No change]

26.3ter *Invitation to Correct Defects under Article 3(4)(i)*

(a) Where the abstract or any text matter of the drawings is filed in a language which is different from the language, subject to Rules 12.1*bis* and 26.3ter(e), of the description and the claims, the receiving Office shall, unless

- (i) a translation of the international application is required under Rule 12.3(a), or
- (ii) the abstract or the text matter of the drawings is in the language in which the international application is to be published,

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, 26.2, 26.3, 26.3*bis*, 26.5 and 29.1 shall apply *mutatis mutandis*.

(b) to (d) [*No change*]

(e) Where the description of an international application is filed in a language which is different from the language of the claims, or parts of the description or parts of the claims are filed in a language which is different from the language of the remainder of this element, and where all such languages are accepted by the receiving Office under Rule 12.1(a), the receiving Office shall, as appropriate, invite the applicant to furnish, within one month of the date of receipt of the international application by the receiving Office, a translation of the description or the claims, or any part thereof, such that the description and claims are in a single language which is all of the following:

- (i) one of the languages contained in the description or claims as filed;
- (ii) a language accepted by the International Searching Authority that is to carry out the international search; and
- (iii) the language in which the international application is to be published.

Rule 12.3(c) to (e) shall apply *mutatis mutandis*.

26.4 and 26.5 [*No change*]

Rule 29

International Applications Considered Withdrawn

29.1 *Finding by Receiving Office*

If the receiving Office declares, under Article 14(1)(b) and Rule 26.5 (failure to correct certain defects), or under Article 14(3)(a) (failure to pay the prescribed fees under Rule 27.1(a)), or under Article 14(4) (later finding of non-compliance with the requirements listed in items (i) to (iii) of Article 11(1)), or under Rule 12.3(d), 12.4(d) or 26.3*ter* (failure to furnish a required translation or, where applicable, to pay a late furnishing fee), or under Rule 92.4(g)(i) (failure to furnish the original of a document), that the international application is considered withdrawn:

(i) the receiving Office shall transmit the record copy (unless already transmitted), and any correction offered by the applicant, to the International Bureau;

(ii) the receiving Office shall promptly notify both the applicant and the International Bureau of the said declaration, and the International Bureau shall in turn notify each designated Office which has already been notified of its designation;

(iii) the receiving Office shall not transmit the search copy as provided in Rule 23, or, if such copy has already been transmitted, it shall notify the International Searching Authority of the said declaration;

(iv) the International Bureau shall not be required to notify the applicant of the receipt of the record copy;

(v) no international publication of the international application shall be effected if the notification of the said declaration transmitted by the receiving Office reaches the International Bureau before the technical preparations for international publication have been completed.

29.2 to 29.4 *[No change]*

Rule 34
Minimum Documentation

34.1 *Definition*

(a) The definitions contained in Article 2(i) and (ii) shall not apply for the purposes of this Rule. For the purposes of this Rule, "patent documents" shall include:

- (i) published international applications,
- (ii) published regional patents,
- (iii) published national patents issued by a national Office or its legal predecessor in and after 1920,
- (iv) utility certificates issued by France in and after 1920,
- (v) inventors' certificates issued by the former Soviet Union, and
- (vi) applications for any of the forms of protection referred to in items (ii) to (v) above, published in and after 1920.

(b) Notwithstanding paragraph (c), the documentation referred to in Article 15(4) ("minimum documentation") shall consist of:

(i) the "patent documents" as specified in paragraph (a) that have been made available by or on behalf of the relevant national Office or its legal successor or, as the case may be, by the International Bureau in accordance with the technical and accessibility requirements specified in the Administrative Instructions and, where applicable, with the provisions of Rule 36.1(ii), and

(ii) such other published items of non-patent literature as the International Searching Authorities shall agree upon and which shall be published in a list by the International Bureau when agreed upon for the first time and whenever changed.

(c) In addition to consulting the required documentation set forth in paragraph (b), the International Searching Authority should also preferably consult utility model documents consisting of the utility models issued, and the utility model applications published, in and after 1920 by a national Office or its legal predecessor, provided that the said utility model documents have been made available by or on behalf of the relevant national Office or its legal successor in accordance with the technical and accessibility requirements specified in the Administrative Instructions.

(d) Each national Office making its patent documents and, where applicable, its utility model documents available in accordance with the requirements specified in the Administrative Instructions shall:

(i) notify the International Bureau accordingly,

(ii) make newly published patent documents and, where applicable, utility model documents available regularly, and

(iii) provide to the International Bureau at least annually an authority file, detailing the current extent of the available patent documents and, where applicable, utility model documents in accordance with the Administrative Instructions.

(e) The International Bureau shall validate the availability of the patent and utility model documents notified in accordance with paragraph (d) and publish in the Gazette details of the documents concerned and the date from which they will become a part of the minimum documentation. The International Bureau shall administer a repository containing the authority files referred to in paragraph (d)(iii) as specified in the Administrative Instructions.

(f) Where an application is published more than once, each International Searching Authority shall be obliged to keep in its documentation only the first published version if none of the subsequently published versions contains additional matter.

(g) For the purposes of this Rule, applications and patents which have only been laid open for public inspection are not considered published applications and patents.

Rule 36

Minimum Requirements for International Searching Authorities

36.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 16(3)(c) shall be the following:

- (i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out searches in the required technical fields;
- (ii) that Office or organization must make available for consultation as part of the minimum documentation referred to in Rule 34, in accordance with the requirements specified in the Administrative Instructions, any patent issued, and any patent application published, by it, and where applicable by its legal predecessor(s);
- (iii) that Office or organization must have in its possession, or maintain access to, at least the minimum documentation referred to in Rule 34, for search purposes in accordance with the Administrative Instructions;
- (iv) that Office or organization must have in place a quality management system and internal review arrangements in accordance with the common rules of international search;
- (v) that Office or organization must hold an appointment as an International Preliminary Examining Authority.

Rule 63

Minimum Requirements for International Preliminary Examining Authorities

63.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 32(3) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out examinations in the required technical fields;

(ii) that Office or organization must make available for consultation as part of the minimum documentation referred to in Rule 34, in accordance with the requirements specified in the Administrative Instructions, any patent issued, and any patent application published, by it, and where applicable by its legal predecessor(s);

(iii) that Office or organization must have at its ready disposal at least the minimum documentation referred to in Rule 34, properly arranged for examination purposes;

(iv) that Office or organization must have in place a quality management system and internal review arrangements in accordance with the common rules of international preliminary examination;

(v) that Office or organization must hold an appointment as an International Searching Authority.

[End of Annex III and of document]