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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

ASSEMBLY

Sixth Session (4th Extraordinary)*
Geneva, September 22 to 26, 1980

AMENDMENT OF THE REGULATIONS UNDER THE PCT

Memorandum prepared by the International Bureau

AMENDMENTS NOT FORMALLY ADOPTED BY THE ASSEMBLY AT ITS FIFTH SESSION

1. Rule 88.4 of the Regulations under the PCT ("PCT Regulations") provides that any proposal for amending inter alia a provision referred to in Rule 88.1 "shall, if the proposal is to be decided upon in the Assembly, be communicated to all Contracting states at least 2 months prior to the opening of that session of the Assembly which is called upon to make a decision on the proposal."
2. At its fifth session (3rd extraordinary), held in Geneva from June 9 to 16, 1980, the Assembly deferred taking a decision to adopt proposals to amend Rule 22.3 of the PCT Regulations since the proposals had not been communicated to the Contracting states a sufficient time prior to the opening of the session to meet the requirements of Rule 88.4. "The Assembly also agreed unanimously that, considering the exhaustive discussion which had taken place, the formal adoption of the proposed amendments at the next session of the Assembly should take place without reopening of the discussion on the proposals and that no new communication of the proposals to that next session was necessary in order to comply

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with Rule 88.4, to the extent the proposals were not amended.” (See the Report, document PCT/A/V/17, paragraph 13).

3. In the course of its discussion of the amendment proposed to be made to Rule 22.3(a), the Assembly noted that, as a consequence of the proposed amendment, the reference to “14 months” in Rule 22.2(e) would have to be amended to read “15 months” since the period of 14 months in Rule 22.2(e) was aligned to the period of 14 months under Rule 22.3(a) (see the Report, document PCT/A/V/17, paragraph 24).

4. In the course of its discussion of the amendment proposed to be made to Rule 22.3(b), the Assembly noted a suggestion that appropriate amendments to Rules 22.3(b) and 82 should be proposed for its next session by the International Bureau “ensuring that Rule 82 would in future apply also to mailings by a national Office or intergovernmental organization and in particular to the transmittal of the record copy by the receiving Office, and taking into account any consequential amendments in Rule 82 resulting from the amendment of Rule 22.3(b)” (see the Report, document PCT/A/V/17, paragraph 25).

5. The Annex to this document contains the texts of paragraphs (a) and (b) of Rule 22.3, amended in accordance with the proposals considered by the Assembly at its said fifth session (see documents PCT/A/V/4, page 43, and PCT/A/V/S, page 7). While no new communication of the proposals, at least to those States which were Contracting States at the time of the said fifth session, is required having regard to the decision of the Assembly mentioned in paragraph 2, above, it is to be noted that the further communication of the proposals in this document satisfies, in any event, the requirements of Rule 88.4.

6. Having regard to the conclusion reached as to the need to make a consequential amendment to Rule 22.2(e) (see paragraph 3, above), the Annex to this document also contains the text of that Rule as so consequentially amended.

7. With regard to the discussion of the amendment of Rules 22.3(b) and 82 referred to in paragraph 4, above, the International Bureau is of the opinion that Rule 22.3(b) may be simply deleted, as proposed in document PCT/A/V/5, page 7, and agreed to by the Assembly (see the Report, document PCT/A/V/17, paragraph 13), in view of the possibility of interpreting Rules 82.1(a) and 82.2(a) (once Rule 22.3(b) is deleted and the references thereto in Rules 82.1(a) and 82.2(a) are deleted) as applying to the mailing of a document by a national Office or intergovernmental organization as well as to the mailing of a document by the applicant or his representative.

8. Upon the assumption that no question is raised with respect to its application of the interpretation mentioned in paragraph 7, above, in the case of the transmittal of the record copy and that, should the occasion admittedly unlikely arise, the national Office or other intergovernmental organization which is the addressee of a document would apply the like interpretation, the only texts of amendments which the International Bureau has included in the Annex as a consequence of the discussion mentioned in paragraph 4, above, are amended texts of Rules 82.1(a) and 82.2(a), in which the references to Rule 22.3, contained in the existing texts, have been deleted.

9. *The Assembly is invited*

(i) *to note its previous decision referred to in paragraph 2, above, to adopt the amendments to Rule 22.3 (as reflected by the texts appearing in the Annex to this document) without reopening its discussion;*

(ii) *to amend Rule 22.3 as set out in the Annex to this document;*

(iii) *to amend Rule 22.2(e) as set out in the Annex to this document;*

(iv) *to amend Rules 82.1(a) and 82.2(a) as set out in the Annex to this document;*

(v) *to decide that the amendments referred to in (ii), (iii) and (iv), above, shall enter into effect on October 1, 1980.*

QUESTIONS ARISING OUT OF AMENDMENTS ADOPTED BY THE ASSEMBLY AT ITS FIFTH SESSION

10. At its said fifth session, the Assembly amended Rule 80.6 by:

(i) adding to the existing text of Rule 80.6 a second sentence providing an additional case in which a day later than the day of the date appearing on the document may be used for computing a period which is usually counted from the day of the date of the document;

(ii) adding a new paragraph (b) under which a receiving Office would be able to exclude the application of (paragraph (a) of) the Rule by a written notification to that effect given to the International Bureau (see the Report, document PCT/A/V/17, paragraph 12 and Annex II. page 29).

11. The International Bureau understands that the written notification under Rule 80.6(b) may relate only to the additional case covered by the new second sentence of Rule 80.6(a) and not to the case covered by the first sentence of Rule 80.6(a) which already applies in all Contracting states without limitation. Indeed, it was because the Delegations of certain Contracting States stated that their national laws applied the first sentence of Rule 80.6(a) and that those laws would have to be amended before the second sentence could be applied that the possibility of excluding the application of the second sentence was agreed upon.

12. Accordingly, the International Bureau will, when publishing Rule 80.6(b), add the following footnote:

For any receiving Office which excludes the application of paragraph (a), former Rule 80.6 remains applicable. Former Rule 80.6 reads as follows:

Date of Documents

Where a period starts on the day of the date of a document or letter emanating from a national Office or intergovernmental organization, any interested party may prove that the said document or letter was mailed on a day later than the date it bears, in which case the date of actual mailing shall, for the purposes of computing the period, be considered to be the date on which the period starts.”

13. An alternative to what is mentioned in paragraph 12, above, would be to amend the first sentence of Rule 80.6(b) by adding the words “the second sentence of” before the reference therein to “paragraph (a).”

14. The Assembly is invited

(i) to endorse the understanding of the International Bureau mentioned in paragraph 11, above;

(ii) if it endorses the understanding mentioned in (i) above, to consider which of the alternatives mentioned in paragraphs 12 and 13 above it prefers;

(iii) if it prefers the alternative mentioned in paragraph 13, to amend the first sentence of Rule 80.6 (b) accordingly.

THE SCHEDULE OF FEES

15. Proposals for the fixing, by the Assembly, of new amounts for the fees listed in the Schedule of Fees are contained in document AB/XI/2, paragraph 23(iii) and Annex D. The Schedule of Fees appearing in the Annex to this document will, when completed by the insertion of the new amounts decided upon by the Assembly, replace the existing Schedule of Fees.

[Annex follows]

TRANSMITTAL OF THE RECORD COPY

22.1 [No change]

22.2 *Alternative Procedure*

(a) [No change]

(b) [No change]

(c) [No change]

(d) [No change]

(e) Where the receiving Office does not hold the record copy at the disposal of the applicant by the date fixed in paragraph (d), or where, after having asked for the record copy to be mailed to him, the applicant has not received that copy at least 10 days before the expiration of 13 months from the priority date, the applicant may transmit a copy of his international application to the International Bureau. This copy (“provisional record copy”) shall be replaced by the record copy or, if the record copy has been lost, by a substitute record copy certified by the receiving Office on the basis of the home copy, as soon as practicable and, in any case, before the expiration of 15 months from the priority date.

22.3 *Time Limit under Article 12(3)*

(a) The time limit referred to in Article 12(3) shall be:

(i) where the procedure under Rule 22.1 or Rule 22.2(c) applies, 14 months from the priority date;

(ii) where the procedure under Rule 22.2(d) applies, 14 months from the priority date, except that, where a provisional record copy is filed under Rule 22.2(e), it shall be 14 months from the priority date for the filing of the provisional record copy, and 15 months from the priority date for the filing of the record copy.

(b) [Delete]

22.4 [No change]

22.5 [No change]

RULE 82

IRREGULARITIES IN THE MAIL SERVICE

82.1 Delay or Loss in Mail

(a) Any interested party may offer evidence that he has mailed the document or letter 5 days prior to the expiration of the time limit. Except in cases where surface mail normally arrives at its destination within 2 days of mailing, or where no airmail service is available, such evidence may be offered only if the mailing was by airmail. In any case, evidence may be offered only if the mailing was by mail registered by the postal authorities.

(b) [No change]

(c) [No change]

82.2 Interruption in the Mail Service

(a) Any interested party may offer evidence that on any of the 10 days preceding the day of expiration of the time limit the postal service was interrupted on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, in the locality where the interested party resides or has his place of business or is staying.

(b) [No change]

SCHEDULE OF FEES

<u>Fees</u>	<u>Amounts</u>
1. Basic Fee: (Rule 15.2 (a)) if the international application contains not more than 30 sheets if the international applications contains more than 30 sheets	... Swiss francs ... Swiss francs plus Swiss francs for each sheet in excess of 30 sheets
2. Designation Fee: (Rule 15.2 (a))	... Swiss francs
3. Handling Fee (Rule 57.2 (a))	... Swiss francs
4. Supplement to the Handling Fee (Rule 57.2 (b))	... Swiss francs
<i>Surcharges</i>	
5. Surcharge for late payment: (Rule 16bis.2 (a))	Minimum: 200 Swiss francs Maximum: 500 Swiss francs

[End of document]