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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

ASSEMBLY

Seventh Session (5th Extraordinary)*
Geneva, June 29 to July 3, 1981

DEVELOPMENT OF THE PCT UNION

Memorandum prepared by the International Bureau

INTRODUCTION

1. Membership of the PCT by the greatest possible number of States eligible to ratify or accede to the Treaty is but one aspect of the development of the PCT Union-questions concerning which are entrusted to the Assembly under Article 53(2) (a) (i) of the PCT. Still, at a stage when the PCT has 30 Contracting States and the number of States eligible to be members of the PCT Union (“eligible States”) is 89 (since any State party to the Paris Convention for the Protection of Industrial Property may become a member of the PCT), it is almost inescapable that membership of the PCT (and the closely related question of acceptance of Chapter II of the PCT) should be regarded as the priority question which the Assembly should consider in relation to the development of the PCT Union.

* *Editor's Note:* This electronic document has been created from the paper original and may contain errors. Please bring any such errors to the attention of the PCT Legal Division by e-mail at pct.legal@wipo.int

Membership of the PCT Union

2. The following thirteen States were bound by the PCT upon its entry into force on January 24, 1978: Cameroon, Central African Republic, Chad, Congo, Gabon, Germany (Federal Republic of), Madagascar, Malawi, Senegal, Switzerland, Togo, United Kingdom, United States of America.
3. By the end of 1978, the following seven States had also become bound by the PCT (in chronological order of the entry into force of the Treaty for the said States): France, Soviet Union, Brazil, Luxembourg, Sweden, Japan, Denmark.
4. Of the 20 States which by the end of 1978 had become bound by the PCT, fifteen had accepted Chapter II of the PCT while the following five had made reservations excluding the application of Chapter II: Denmark, France, Luxembourg, Switzerland, United States of America.
5. In 1979, the following four States became bound by the PCT (in chronological order of the entry into force of the Treaty for the said States): Austria, Monaco, Netherlands, Romania.
6. None of the said four States made a reservation excluding the application of Chapter II of the PCT.
7. In 1980 six more States became bound by the PCT. They were (in chronological order of the entry into force of the Treaty for the said States): Norway, Liechtenstein, Australia, Hungary, the Democratic People's Republic of Korea and Finland.
8. Of the six States mentioned in the preceding paragraph, two, Norway and Liechtenstein made a reservation excluding the application of Chapter II of the PCT.
9. In 1981, France withdrew its previous reservation (see paragraph 4, above), excluding the application of Chapter II of the PCT.
10. In summary, 30 States have so far become bound by the PCT of which 6 States have in force reservations excluding the application of Chapter II of the Treaty.

Promotion of Ratification of, or Accession to, the PCT

11. The Assembly has recognized the need to promote acceptance of the PCT and has taken positive and concrete steps in that regard by providing funds in the PCT budget for the International Bureau to plan and carry out activities, to make contacts and to publish documents which will "encourage as many countries as possible (from among the 89 States members of the Paris Union) to ratify or accede to the PCT" (see document AB/X/2, activity REG 01). The International Bureau will continue, within the limits of its budgetary means, pursuing actively with prospective member States questions related to their ratification of or accession to the PCT and making contacts and publishing documents promoting acceptance of the Treaty.

12. Moreover, at its fifth session (third extraordinary) held in Geneva from June 9 to 16, 1980, the Assembly adopted a resolution (set out in Annex I to this document) which invites those States members of the Paris Union which are not members of the PCT Union to take, at an early date, the steps necessary to become members of the PCT Union and requests the International Bureau to bring, on appropriate occasions, the resolution to the notice of States members of the Paris Union which are not members of the PCT Union (see the report of the said fifth session, document PCT/A/V/17, paragraph 51). In accordance with the said request, the International Bureau has, in its contacts with prospective new members of the PCT Union, been drawing the invitation of the Assembly to their attention.

13. The Assembly is invited to confirm the said resolution set out in Annex I.

Regional Patent Treaties

14. At its said fifth session, the Assembly “took note of the situation which resulted from the fact that not all member States of certain regional patent treaties were also members of the PCT Union.” In this regard, “the Assembly noted, furthermore, the disadvantages resulting therefrom for the applicants since the latter could not fully benefit from the advantages to be obtained by using the PCT system and the regional system by filing a single application, disadvantages which make it desirable for the users of the (PCT) system that the said States adhered as soon as possible to the Treaty” (ibid, paragraph 53).

15. At the time of the said fifth session, there were two regional treaties the European Patent Convention and the Libreville Agreement having member States which were not also party to the PCT. In the case of member States of the European Patent Convention which were not party to the PCT (Belgium and Italy), the International Bureau had reported to the Assembly on the particular problems of the users of the PCT system and had stressed the particular desirability of all States, which were then party to the European Patent Convention, or would become party in the future, to become also party to the PCT. It is expected that the problems noted due to Belgium and Italy not being party to the PCT will disappear by the end of 1981 or shortly thereafter. Consultations with the competent Authorities of Belgium and Italy have led to the firm expectation that an instrument of ratification by Belgium will be deposited in the near future and that a similar instrument will be deposited by Italy before the end of this year.

16. With regard to the Libreville Agreement, it was not considered that the problems were as great having regard to the kind of patent (unitary patent) granted by the African Intellectual Property Organization (OAPI). However, in the intervening period since the said fifth session, OAPI has stated that, by virtue of a decision of its Administrative Council, OAPI applies the provisions of the (not-yet-in-force) Bangui Act of the Libreville Agreement in the case of international applications which designate a State which is a member State of the Libreville Agreement. Since Article 6(2) of the Bangui Act provides that the designation of a member State has the effect of the designation of all those member States which are also party to the PCT (but has no effect with respect to member States which are not party to the PCT), the problems for applicants using the PCT system are, in fact, no less in the case of the Libreville Agreement in the event that an OAPI patent effective in any of its member States which are not party to the PCT is desired, than was noted previously where such a situation was seen to exist in the case of the European Patent Convention. In consequence, with regard to the States which are party to the Libreville Agreement, the disadvantages referred to in

paragraph 14, above, will apply until such of those States as are not yet party to the PCT (at present, those States are Benin, Ivory Coast, Mauritania, Niger and Upper Volta) adhere to the PCT.

17. The Assembly is invited to reaffirm its position with regard to regional patent treaties indicated in paragraph 14, above.

Chapter II of the PCT

18. It has been noted in paragraphs 9 and 10 above that seven of the thirty Contracting States party to the PCT made a reservation excluding the application, as far as those States were concerned, of Chapter II and that one of those States France has subsequently withdrawn its reservation.

19. The withdrawal by France of its reservation is consistent with the interest expressed by the Assembly at its above-mentioned fifth session in the acceptance of Chapter II by all Contracting States (see the Report, document PCT/A/V/17 paragraph 54).

20. The Assembly is invited

(i) to note the present state of acceptance of Chapter II of the Treaty;

(ii) to renew the expression of its interest in the acceptance of Chapter II by all Contracting States .

[Annex follow]

ANNEX

Resolution

The Assembly of the International Patent Cooperation Union
(PCT Union)

Noting that the membership in the PCT Union is open to the States which are members of the Paris Union for the Protection of Industrial Property.

Being Convinced that the participation in the PCT Union of as many States as possible of the Paris Union is in the interests of those States and their industries.

Resolves to:

- (1) Invite those States members of the Paris Union which are not members of the PCT Union to take, at an early date, the steps necessary to become members of the PCT Union;
- (2) Request the International Bureau, on occasions when it appears appropriate to do so, to bring this resolution to the notice of States members of the Paris Union which are not members of the PCT Union.

[End of Annex and of document]