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PROPOSED AMENDMENT TO RULE 26
OF THE REGULATIONS UNDER THE PCT

Proposal by the Delegation of France

1. The French Delegation approves the intention expressed in paragraphs 5 and 6 of Chapter 12 of document PCT/A/XI/3 with regard to the excusing of certain physical defects, yet notes that the proposal for the amendment of Rule 26.5 leaves doubt as to the procedure that should be observed by the receiving Office regarding the correction of some defects.
2. Under Rule 26.3, the purpose of the checking of the physical requirements referred to in Rule 11 is to avoid defects that would not allow reasonably uniform international publication. II According to this interpretation the receiving Office therefore must not send an invitation to correct when the defects detected do not come into this category.
3. According to paragraph 5 of Chapter 12 of document PCT/A/XI/3, certain receiving Offices (including the French Office) send an invitation to correct for any defect in relation to the conditions referred to in Rule 11, regardless of its seriousness.

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4. It seems appropriate therefore to take advantage of the amendment of Rule 26 in order to specify more accurately the procedure to be followed according to one or other of these two approaches:

(i) 26.3 The invitation to correct a defect under Article 14(1) (a) (v) shall not be sent where the physical requirements referred to in Rule 11 are so complied with as to permit reasonably uniform international publication.

Alternatively:

(ii) 26.3 The invitation to correct a defect under Article 14(1) (a) (v) shall be sent if the physical requirements referred to in Rule 11 are not complied with, provided that, in the absence of correction, the international application shall not be considered withdrawn if the defect detected does not hinder reasonably uniform international publication.

5. In both cases, the qualification (“provided that” to “international publication”) proposed as an addition to paragraph (a) of Rule 26.5 would be deleted. It is irrelevant if Rule 26.3 is worded according to (i) and unnecessary if it is worded according to (ii).

6. Although the French Office is at present applying the procedure under Rule 26.3 indicated in (ii), the French Delegation’s preference is nevertheless for that indicated in (i), which seems to be the simplest both for the applicant and for the receiving Office; however, if the proposed addition to Rule 26.5, which leaves unchanged the present uncertainty as to the procedure to be applied, is to be retained, Rule 26.3 must be deleted, as its substance is incorporated in the new Rule 26.

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