

WIPO



PCT/A/XX/5

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION (PCT UNION)

ASSEMBLY

**Twentieth Session (12th Extraordinary)
Geneva, September 21 to 29, 1992**

REPORT

Adopted by the Assembly

1. The Assembly was concerned with the following items of the Consolidated Agenda (documents AB/XXIII/1 Rev.2 and AB/XXIII/6, paragraphs 16 and 17): 1, 2, 9, 9bis, 13 and 14.
2. The report on the said items, with the exception of item 9, is contained in the General Report (document AB/XXIII/6).
3. The report on item 9 is contained in this document.

ITEM 9 OF THE CONSOLIDATED AGENDA:
MATTERS CONCERNING THE PCT UNION

Accession of China to the PCT

4. The Chairman noted that discussion would be based on the proposals by the International Bureau contained in document PCT/A/XX/1, taking into account the recommendation to the Assembly, contained in paragraph 13 of document PCT/CTC/XIII/3, which the PCT Committee for Technical Cooperation had made pursuant to Articles 16(3)(e) and 32(3) of the PCT.

5. In response to an invitation by the Chairman and in accordance with Articles 16(3)(e) and 32(3) of the PCT, the Delegation of China made a statement to the Assembly. It first expressed its gratitude for the consideration being given to questions associated with China's accession to the PCT and for the welcome, support and assistance it had received from other countries and from organizations. It emphasized the importance of the PCT generally and in particular to China, which had decided to accede to the PCT as soon as possible on the understanding that Chinese would be made a filing and publication language under the PCT and that the Chinese Patent Office would be appointed as an International] Searching and Preliminary Examining Authority. The Delegation then enumerated the facts that qualified the Chinese Patent Office for becoming an International Searching and Preliminary Examining Authority.

6. The Delegation recalled some of the achievements made since the establishment of the Chinese Patent Office (CPO) in 1980, including in particular:

(a) The CPO, located in a new, modern and large building, has a computerized management system and nearly 1,400 staff.

(b) The Chinese Patent Law and Regulations of April 1, 1985, have been revised with effect on January 1, 1993; the revised law provides patent protection for pharmaceutical products and chemical substances, extends the patent term from 15 years to 20 years from the filing date, and makes other important improvements.

(c) A nation-wide system of bodies dealing with patent matters has been established. They include 54 Local Administrative Authorities for Patent Affairs, 474 Patent Agencies with 5,000 registered patent agents, the All China's Inventors' Association, several Intellectual Property Societies, the Patent Documentation Service Network and several Intellectual Property Institutes.

(d) During the period from April 1, 1985, to August 31, 1992, a total of 258,848 patent applications (including 74,295 for inventions, 45.5% of which were from 69 foreign countries and regions) were filed with the CPO which granted, during the said period, a total of 105,784 patent rights (including 14,283 for inventions, 61.6% of which were from foreign countries and regions).

(e) China is a party to the WIPO Convention and to the Paris Convention.

7. In relation to patent examination, the Chinese Patent Office had established a strong examining force with five examination departments and one re-examination board. The first examination department was in charge of various administrative functions and would, in the future, undertake the function of a PCT receiving Office. The other examination departments were in charge of substantive examination of patent applications in the mechanical, electrical, chemical and physical fields, respectively. Substantive examination included a search of the prior art and examination for novelty, inventiveness and industrial applicability. The re-examination board was in charge of re-examination and invalidation cases.

8. The Chinese Patent Office had nearly 350 examiners, all of whom had a university degree and a good knowledge of at least one foreign language. Of the examiners, one third were senior examiners, half had received training abroad, and two-thirds had more than five years experience as examiners. Examiners were trained intensively in various patent law and examination subjects by Chinese and foreign experts, and underwent probation of one to two years under a senior examiner's supervision.

9. Between April 1, 1985, and June 30, 1992, the Chinese Patent Office had searched, examined and issued first official actions in relation to 31,908 applications (accounting for 76.8% of the total number of requests for examination, and 28,987 applications had been finally disposed of by way of grant, rejection or withdrawal (61.9% of the total number of requests for examination). A special quality control would ensure the quality of search and examination.

10. In relation to patent documentation, the Chinese Patent Office had established a collection including more than 30 million patent documents from more than 20 countries, dating back to 1890. The collection also included a complete set of the periodicals contained in the non-patent literature provided for in the PCT minimum documentation. The search files were arranged according to the International Patent Classification (IPC). Means of access by examiners included search files, microfiche, CD-ROM and computer, details of which were outlined by the Delegation.

11. The Delegation pointed out that, of the PCT minimum documentation, only those documents listed in Annex III to document PCT/A/XX/I were not presently held by the Chinese Patent Office. However, arrangements had already been made for the documents covered by items 2, 3, 5 and 6 of that list to be obtained. The Delegation expressed its gratitude, in particular, to the Patent Offices of Austria, France, Germany, Switzerland and the United Kingdom, to the EPO and to WIPO and the Director General, for their generous assistance in this regard. The Delegation expected that the remaining documents covered by the list would be obtained by the Chinese Patent Office before its planned accession to the PCT in 1993.

12. The Delegation concluded its statement by pointing out that the Chinese Patent Office had, through a program of development over a number of years, built up a strong examining force, supported by a rich collection of documentation. The Office thus had the capability of carrying out the functions of an International Searching and Preliminary Examining Authority. The Delegation expressed its confidence that the Chinese patent Office would be able to fulfil the duties of an International Searching and Preliminary Examining Authority under the PCT, and expressed its hope that the Assembly would approve the Office's appointment as such an Authority with a view to China's accession to the PCT as soon as possible.

13. The Delegations of Germany, France, Bulgaria, Austria, the Republic of Korea, Japan, Australia, Hungary, the Russian Federation, Sweden, Switzerland, the United States of America, Belgium, Poland, Czechoslovakia, Canada, the United Kingdom, Denmark, Spain, Finland, Mongolia, Norway and Portugal and the Representative of the European Patent Organisation, as well as the Delegations of Egypt and Kenya and the Representative of FICPI expressed their strong support for the appointment of the Chinese Patent Office as International Searching and Preliminary Examining Authority, noting that China had succeeded in a remarkably short time in establishing a viable and efficient patent system on the basis of a modern patent law of international standard. Many delegations congratulated the Chinese Patent Office for its impressive accomplishments and noted that the accession of China to the PCT would represent a major step towards improving relations between China and the present PCT member States.

14. As recommended by the Committee for Technical Cooperation of the PCT Union and set out in paragraph 13 of document PCT/CTC/XIII/3, the Assembly unanimously:

(i) adopted the amendments to PCT Rules 11.1(f), 11.9(b) and (e) and 48.3(a) and (b), as set out in Annex II to this report, with effect on the date on which China becomes bound by the PCT;

(ii) approved the text of the Agreement between the Chinese Patent Office and WIPO, as set out in Annex I to this report;

(iii) appointed the Chinese Patent Office as International Searching and Preliminary Examining Authority with effect on the date on which China becomes bound by the PCT.

Cut-Off Date of Minimum Documentation

15. The Delegation of Australia raised the question of whether the 1920 cut-off date for minimum documentation provided in PCT Rule 34 was, at the present time, still a reasonable date. It believed that one should examine whether it was necessary to include, in the PCT minimum documentation, documents older than 50 years. The Delegation of Australia proposed that the competent bodies under the PCT should study the matter.

16. The Delegations of Sweden, Belgium, the United Kingdom and Germany, and the Representative of the European Patent Organisation, supported the proposal made by the Delegation of Australia.

17. The Representative of FICPI, while agreeing that the matter should be studied with an open mind, was concerned about the possible effects a change might have on the reliability of the international search report, and stated that his Federation would also be studying the question.

18. The Assembly decided that the desirability of revising PCT Rule 34 would be studied and that such a study should start with the consideration of the question in the December 1992 session of the PCT Committee for Technical Cooperation.

International Search and International Preliminary Examination of International Applications filed in Spanish

19. Discussions were based on document PCT/A/XX/2 Rev.

20. The Delegation of Spain expressed concern of a general nature with the proposed amendments as they stood, and stated that the time available for studying the proposed amendments had been insufficient. It noted that earlier changes to PCT Rule 12.1, which provided for international search on the basis of translations of international applications filed in Spanish, had been introduced as an interim measure to enable Spain's accession to the PCT. However, those changes did not, in the Delegation's view, justify the making of amendments to similar effect in relation to international preliminary examination. The amendments proposed would worsen the situation for Spanish-speaking applicants by widening the range of circumstances in which they would be required to prepare costly translations of international applications during the international phase.

21. The Delegation noted that the Assembly had, when Spain's impending accession to the PCT was discussed in 1986, unanimously declared its willingness to appoint the Spanish Patent Office as an International Searching Authority once all the conditions prescribed by the PCT and the Regulations thereunder were fulfilled (document PCT/A/XIV/3, paragraph 9). The Spanish Patent Office had, since its accession to the PCT in 1989, made great efforts towards preparing itself to be an International Searching Authority. These efforts had included the assembling, with the valued assistance of the industrial property offices of France, Germany, Switzerland, the United States of America and other countries, of the minimum documentation under the PCT in its documents. In addition, the Spanish Office had promoted the creation of a patent documentation center in the Spanish language, whose objective was to collect all patent documents in that language. That Center had received much support from other Spanish-speaking countries. The Spanish Patent Office had commenced the preparation of state-of-the-art searches in 1991, and hoped to actively pursue appointment as an International Searching Authority in 1993.

22. The Delegation also indicated that the Spanish Patent Office would, in the event that Spain were to withdraw its reservation on Chapter II of the PCT, also hope to seek appointment as an International Preliminary Examining Authority.

23. The Delegation noted that Spain's membership of the European Patent Organisation did not preclude the appointment of the Spanish Patent Office as an International Searching Authority and as an International Preliminary Examining Authority. The Administrative Council of the European Patent Organisation had agreed that the criteria of Section III, paragraph 1, of the Protocol on Centralisation of the European Patent System were fulfilled, with the effect that the Spanish Patent Office should in due course be authorized by the Administrative Council to act as an International Searching Authority and as an International Preliminary Examining Authority under the PCT in respect of international applications filed in Spanish (see Official Journal EPO, No. 2/1986, page 49).

24. The Delegation of Spain noted with gratitude, in connection with the provisions of PCT Rule 12.1(c) and (d), that the European Patent Office had, in practice, for a limited number of international applications filed in Spanish with the Spanish Patent Office as receiving Office, waived the requirement that applicants must provide the translation required under that Rule. The Delegation observed that the European Patent Office employed more than 100 examiners with a capacity in the Spanish language, and believed that there would be benefit in exploring the possibility that the European Patent Office might afford a similar exemption to nationals and residents of other Spanish-speaking countries which might accede to the PCT.

25. The Delegation of Spain believed, in view of these various possibilities for future action which had not yet been pursued, that it would be premature to accept the proposed amendments at present.

26. The Director General emphasized that there was not yet any International Searching Authority or International Preliminary Examining Authority which had declared itself prepared to carry out international searches or international preliminary examination in respect of international applications filed in Spanish without the need for a translation. The European Patent Office had not so declared itself, and the Spanish Patent Office had not yet sought appointment as an International Searching Authority or International Preliminary Examining Authority. While the Regulations presently provided the possibility for international searches on international applications in Spanish on the basis of a translation, not even that possibility existed for international preliminary examination of international applications in Spanish. Several Latin American countries were interested in the PCT. Participation of Spain in Chapter II of the PCT was highly desirable. For all these reasons, a solution to the Spanish language question was urgent. Naturally, as soon as there will be an International Searching Authority and an International Preliminary Examining Authority which can work in Spanish, the need for translation would disappear.

27. The Delegation of Chile, speaking as an observer, indicated that Chile had, as a Spanish-speaking country, cooperated with the Spanish Patent Office in its efforts to develop the Documentation Center with Spanish language documents. As far as international search and preliminary examination were concerned, the Delegation noted that the International Bureau had proposed a solution to a problem with which Spanish-speaking countries were faced. The Delegation looked forward to the time when Spanish would be fully used as a working language under the PCT.

28. The Representative of the European Patent Organisation confirmed that, having regard to the Protocol on the Centralisation of the European Patent System, the Spanish Patent Office would be entitled to act as an International Searching and Preliminary Examining Authority for applicants from Spain and from other Spanish-speaking countries. Currently, the European Patent Office, in practice, conducted international searches on international applications filed in Spanish with the Spanish Patent Office as receiving Office without requiring a translation as provided by PCT Rule 12.1(c). That was made on the basis of an informal arrangement with Spain, in view of the fact that Spain was a Contracting State of the European Patent Convention. The Representative was not, at that stage, in a position to offer an extension of that arrangement to international applications filed in Spanish in States other than Spain.

29. The Director General noted that the informal arrangement between the European Patent Organisation and Spain was not applicable to Latin-American Spanish-speaking countries and

in any case did not deal with international preliminary examination. He once again pointed out that the amendments proposed by the International Bureau were intended to apply to international applications filed in Spanish only until such time as they were able to be subjected to international search and international preliminary examination by an International Searching and Preliminary Examining Authority without the need for a translation, and suggested that this circumstance should be expressed by the Assembly in adopting the proposed Rules.

30. The Delegation of Spain indicated that its concerns would be largely met by the Director General's suggestion and that, if that suggestion was adopted, it could agree to the proposed amendments.

31. The Delegate of France, noting that he was also Chairman of the Administrative Council of the European Patent Organisation, indicated that the carrying out of international searches by the European Patent Office on international applications filed in Spanish could be considered further, but he would not wish any assumption to be made as to such a possible decision.

32. The Delegation of Germany pointed out that, although the discussion had so far been restricted to international applications filed in the Spanish language, the proposed amendments were not limited to such applications. The Chairman observed that the document under consideration made this clear, although its title mentioned only international applications filed in Spanish.

33. The Delegation of Portugal stated that the Rules concerned should apply in all cases where an international application was filed in a language for which there was no competent International Preliminary Examining Authority prepared to undertake the international preliminary examination without the need for a translation.

34. The Assembly agreed with a suggestion by the Delegation of the United Kingdom that the word "However," be inserted at the beginning of the second sentence of PCT Rule 92.2(a) as proposed to be amended.

35. The Assembly noted the position of the Delegation of Spain and unanimously adopted the amendments to the Regulations under the PCT as set out in Annex II to this report, and decided that those amendments would enter into force on January 1, 1993. The Assembly agreed that the adopted amendments would cease to be applicable with respect to international applications filed in Spanish as soon as a competent International Searching and Preliminary Examining Authority was available to carry out, without the need for a translation, international searches and international preliminary examinations in respect of international applications filed in Spanish.

Amendment to Rule 91.1 of the Regulations under the PCT (obvious errors in documents)

36. Discussions were based on document PCT/A/XX/3, a proposal by the United Kingdom.

37. The Delegation of the United Kingdom introduced its proposal, noting that earlier proposals to amend Rule 91.1 had been considered by the PCT Committee for Administrative and Legal Matters and by the Assembly at its eighteenth session. The Delegation emphasized

that the problems dealt with by its proposal were amongst the most serious of those encountered by applicants using PCT procedures and were urgently in need of resolution.

38. The Delegation of France seconded, and the International Bureau indicated its full agreement with, the United Kingdom's proposal.

39. The Delegation of the United States of America expressed its sympathy with the objectives of the proposal, noting that it was designed to make the PCT more user-friendly and to afford more flexibility in enabling applicants to rectify errors which might adversely affect their rights. However, the Delegation raised the question of compatibility of the proposal with Article 11 of the PCT, and pointed out that it would be undesirable if an international application rectified under the Rule was liable to challenge because of lack of such compatibility. This was important in the interests of both applicants and third parties. The Delegation therefore proposed that consideration of the proposal be deferred, and that the International Bureau be invited to prepare a document studying the relationship between Article 11 and the proposal and to convene a meeting of the PCT Committee for Administrative and Legal Matters to consider the legal implications in greater detail.

40. The Delegation of Japan also expressed sympathy for the objectives of proposal, but was not in a position to support the proposal as presented. It believed that the proposal could allow rectifications which broaden the disclosure in an international application so as to include new matter not present in the international application as originally filed. In its view, the contents of the priority document were not relevant for the purposes of determining the scope of the original disclosure in the international application itself. The Delegation expressed particular concern that the interests of third parties might be adversely affected.

41. Moreover, the Delegation of Japan noted that the question of correction of applications was due for discussion in July 1993 in the context of the proposed Patent Law Treaty, and was of the opinion that it would therefore be premature for the Assembly to make a decision on the United Kingdom's proposal at this stage. However, the Delegation indicated that it would not oppose further consideration of the question by the PCT Committee for Administrative and Legal Matters.

42. The Delegation of Sweden, with which the Delegations of Finland, Canada, Norway, Australia, Austria and Germany agreed, stated that it was in favor of the proposal but would not object to further study of the question by the PCT' Committee for Administrative and Legal Matters.

43. The Delegation of the United Kingdom expressed its appreciation for this support and indicated its agreement to such further study. It suggested that the Committee be convened at an early opportunity to enable work to proceed rapidly, with a view to resolving the concerns expressed and to putting the matter to the Assembly for decision at its next meeting.

44. The Representative of the European Patent Organisation welcomed the proposal as a step in the right direction. The interests of both applicants and third parties should be taken into account. The Representative supported the suggestion that the question be further considered by the PCT Committee for Administrative and Legal Matters. The Representative also noted that Rule 88 of the Implementing Regulations to the European Patent Convention bore a strong similarity to PCT Rule 91.1, and felt it advisable that the two Rules and the relevant practice in relation to them be as uniform as possible. The European Patent Office

was awaiting a pending decision of the Enlarged Board of Appeal which was expected to deal with various aspects of rectification of errors. The Representative believed that the decision would be helpful for further consideration of the United Kingdom's proposal, and indicated that he would, after making enquiries, advise the International Bureau of when the decision could be expected.

45. The Director General stated that the fact that the proposed Patent Law Treaty contained provisions on amendments and corrections of patent application should not prevent the early consideration of the United Kingdom's proposal.

46. The Delegations of Sweden and France supported the Director General's statement.

47. The Assembly decided not to consider the United Kingdom's proposal further at its present session and invited the International Bureau to convene an early meeting of the PCT Committee for Administrative and Legal Matters for a detailed study of the proposal.

Amendments to the Regulations Under the PCT in Connection With Certain Newly Independent States

48. Discussions were based on document PCT/A/XX/4.

49. In introducing its proposal, the International Bureau noted that the system contained in the proposal had been specially created in response to a situation not envisaged in the PCT itself.

50. The Delegation of the Russian Federation expressed agreement with the proposal, noting that it appeared to meet fully the previously unforeseen situation which had arisen with the cessation of the existence of the Soviet Union.

51. The Delegation of Ukraine, in supporting the proposal, observed that a time gap between the cessation of the existence of the Soviet Union and the deposit of a declaration of continuation was inevitable. The Delegation stated that Ukraine was ready to fulfil its obligations under the proposed Rules.

52. The Delegation of France, while agreeing that provisions were needed to deal with the situation which had arisen, expressed its concern as to the legal basis for the proposal. First, the Delegation was not of the opinion that it would be by a declaration of continuation that successor States would become member States, since, in the Delegation's view, the fact that a State was a successor State made that State a Contracting State. Second, the Delegation was of the opinion that the Soviet Union had not ceased to exist; it continued to exist as the Russian Federation. The Delegation proposed certain modifications of the wording of the proposed Rules designed to overcome these legal problems.

53. The Delegation of Japan stated that it agreed with the intention behind the proposal of the International Bureau. However, the Delegation expressed concern as to the general legal basis of the proposed system. It was not clear whether Article 58(1) of the PCT enabled the Assembly to make Regulations governing declarations of continuation; rather, the Assembly should deal with such cases by way of making decisions. The Delegation observed that a declaration could be deposited by a successor State which in fact was not diplomatically

recognized by one or more of the existing Contracting States. A declaration deposited under proposed PCT Rule 32.1 could, in the Delegation's view, only be effective if the existing PCT Contracting States recognized the successor State.

54. The Director General pointed out that the making of Regulations is, in itself, a decision of the Assembly. In any event, Article 58(1)(ii) and (iii) of the PCT provided, in itself, a sufficient legal basis for the proposed new Rules. The application of the PCT or of any of the international treaties administered by WIPO to a State could not be denied by another State on the ground there were no diplomatic relations between the two States since the mutual obligations provided for in a multilateral treaty flowed from that treaty, and that treaty alone; consequently the lack of diplomatic recognition was irrelevant. The Director General also noted that direct benefits under the proposed new Rules would be enjoyed, in particular, by applicants from Contracting States other than the successor State because such applicants could, under the proposed new Rules, extend their rights to the successor State having deposited a declaration of continuation.

55. The Delegation of Germany pointed out that benefits would also accrue to the successor States concerned, particularly in relation to the importation of technology associated with the granting of patents to nationals and residents of other Contracting States. As to the legal basis of the proposed new Rules, the Delegation's view was that the Assembly was clearly competent to act; the mode by which a decision was expressed (by making Regulations or otherwise) was not relevant.

56. Noting the concerns expressed by the Delegation of France, the International Bureau modified its proposal in relation to proposed new PCT Rule 32.1(d) by omitting the words "as a successor State."

57. In response to a query by the Delegation of Germany, the International Bureau advised that the extension fee required under proposed PCT Rule 32.1(c)(ii) would be payable in every case, even if the maximum fee for ten designations had already been paid. Although the extension fee was of the same amount as the designation fee, it was a different fee which was not subject to the maximum amount payable for designation fees. The extension fee was intended to cover the costs incurred by the International Bureau in its operations under the proposed Rules.

58. The Delegations of Switzerland, the United Kingdom, Australia, the Netherlands, the Democratic People's Republic of Korea, Austria and Belgium joined those who had already expressed their support for the International Bureau's proposal. Satisfaction and congratulations were expressed for the rapid and creative approach taken by the International Bureau in addressing the unusual situation posed by the ceasing of the existence of the Soviet Union.

59. The Assembly adopted PCT Rules 32.1 and 32.2 as set out in Annex II to this report and decided that the said Rules would enter into force on October 1, 1992.

60. The Delegations of France and Japan stated that, had a vote been taken the question, they would have voted against the adoption of the said Rules.

[Annexes follow]

PCT/A/XX/5

ANNEX I

AGREEMENT

between

the CHINESE PATENT OFFICE

and the WORLD INTELLECTUAL PROPERTY ORGANIZATION

in relation to the functioning of

the CHINESE PATENT OFFICE as

an International Searching and International Preliminary
Examining Authority under the Patent-Cooperation Treaty

The Chinese Patent Office and the World Intellectual Property Organization

hereby agree as follows:

Article 1

Terms and Expression Used in the Agreement

(1) For the purposes of this Agreement:

(a) “Treaty” means the Patent Cooperation Treaty;

(b) “Regulations” means the Regulations under the Treaty;

(c) “Administrative Instructions” means the Administrative Instructions under the Treaty;

(d) “Article” (except where a specific reference is made to an Article of this Agreement) means an Article of the Treaty;

(e) “Rule” means a Rule of the Regulations;

(f) “Contracting State” means a State party to the Treaty;

(g) “Authority” means the Chinese Patent Office.

(2) All other terms and expressions used in this Agreement which are also used in the Treaty, the Regulations or the Administrative Instructions have, for the purposes of this Agreement, the same meaning as in the Treaty, the Regulations and the Administrative Instructions.

Article 2

Basic Obligations

(1) The Authority shall carry out international search and international preliminary examination in accordance with, and perform such other functions of an International Searching and International Preliminary Examining Authority as are provided under the Treaty, the Regulations, the Administrative Instructions and this Agreement. In carrying out international search and international preliminary examination, the Authority shall be guided

by the Guidelines for International Search and for International Preliminary Examination to be Carried Out under the Patent Cooperation Treaty. The Authority shall apply and observe all the common rules of international search and of international preliminary examination.

(2) The Authority and the International Bureau shall, having regard to their respective functions under the Treaty, the Regulations, the Administrative Instructions and this Agreement, render, to the extent possible, mutual assistance in the performance of their functions thereunder.

Article 3 **Competence of Authority**

(1) The Authority shall act as an international Searching Authority for all international applications filed with the receiving Office of, or acting for, any Contracting State indicated in Annex A of this Agreement, provided that the receiving Office specifies the Authority for that purpose and that such applications are in one of the languages specified in Annex A of this Agreement.

(2) The Authority shall act as an International Preliminary examining Authority for all international applications filed with the receiving Office of, or acting for, any Contracting State indicated in Annex A of this Agreement, provided that the receiving Office specifies the Authority for that purpose and that such applications are in one of the languages specified in Annex A of this Agreement.

Article 4 **Subject Matter Not Required to be Searched or Examined**

The Authority shall not be obliged to search, by virtue of Article 17(2)(a)(i), or shall not be obliged to examine, by virtue of Article 34(4)(a)(i), any international application to the extent that it considers that the international application relates to subject matter set forth in Rule 39.1 or Rule 67.1, as the case may be, with the exception of the subject matter specified in Annex B of this Agreement.

Article 5 **Fees and Charges**

(1) A schedule of all fees of the Authority, and all other charges which the Authority is entitled to make, in relation to its function as an International Searching and International Preliminary Examining Authority, is set out in Annex C of this Agreement.

(2) The Authority shall, under the conditions and to the extent set out in Annex C of this Agreement, refund the whole or part of the search fee paid where an international search report can be wholly or partly based on the results of an earlier search made by the Authority (Rules 16.3 and 41.1) or where the international application is withdrawn or considered withdrawn before the start of the international search.

(3) The Authority shall, under the conditions and to the extent set out in Annex C of this Agreement, refund the whole or part of the preliminary examination fee paid where the demand is considered as if it had not been submitted (Rule 58.3) or where the demand or the international application is withdrawn by the applicant before the start of the international preliminary examination.

Article 6 **Classification**

For the purposes of Rules 43.3(a) and 70.5(b), the Authority shall indicate solely the International Patent Classification.

Article 7 **Languages of Correspondence Used by the Authority**

For the purposes of correspondence, including forms, other than with the International Bureau, the Authority shall use the language, specified in Annex A of this Agreement, which is the language of the international application.

Article 8 **International-Type Search**

The Authority shall carry out international-type searches to the extent decided by it.

Article 9 **Entry Into Force of the Agreement**

This Agreement shall enter into force on the day on which China becomes bound by the PCT.

Article 10 **Duration and Renewability of the Agreement**

This Agreement shall remain in force for five years. At the latest four years after its entry into force, the parties to this Agreement shall start negotiations for its renewal.

Article 11 **Amendment**

(1) Without prejudice to paragraphs (2) and (3), amendments may, subject to approval by the Assembly of the International Patent Cooperation Union, be made to this Agreement by agreement between the parties hereto; they shall take effect on the date agreed upon by them.

(2) Without prejudice to paragraph (3), amendments may be made to the Annexes of this Agreement by agreement between the Director General of the World Intellectual Property Organization and the Authority; they shall take effect on the date agreed upon by them.

(3) The Authority may, by notice in writing given to the Director General of the World Intellectual Property Organization:

(i) add to the States and languages listed in Annex A of this

(ii) amend the schedule of fees and other charges contained in Annex C of this Agreement.

(4) Any amendment notified under paragraph (3) shall take effect on the date specified by the Authority, provided that for any increase of fees or other charges contained in Annex C that date is at least one month later than the date on which the notification is received by the International Bureau.

Article 12
Termination of the Agreement

(1) This Agreement shall terminate before the expiration of the five-year period referred to in Article 10 of this Agreement:

(i) if the Authority gives the Director General of the World Intellectual Property Organization written notice to terminate this Agreement; or

(ii) if the Director General of the World Intellectual Property Organization gives the Authority written notice to terminate this Agreement.

(2) The termination of this Agreement under paragraph (1) shall take effect one year after receipt of the notice by the other party, unless a longer period is specified in such notice or unless both parties agree on a shorter period.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

DONE at Geneva, thisth day of September 1992, in two originals in the Chinese and English languages, each text being equally authentic.

For the Authority by:

For the World Intellectual Property Organization by:

.....

.....

ANNEX A
STATES AND LANGUAGES

Under Article 3 of the Agreement, the Authority

(i) shall act for the following States:

China,

any developing country that the Authority will specify;

(ii) specifies the following languages:

Chinese,

English.

ANNEX B
SUBJECT MATTER NOT EXCLUDED
FROM SEARCH OR EXAMINATION

The subject matter set forth in Rule 39.1 or Rule 67.1 which, under Article 4 of the Agreement, is not excluded from search or examination, is the following:

Subject matter which is searched or examined in Chinese national applications.

ANNEX C

**FEES AND CHARGES FOR INTERNATIONAL SEARCH
AND PRELIMINARY EXAMINATION**

Part I: Schedule of Fees and Charges

Kind of fee or charge

	Amount (RMB Yuan)
Search fee (Rule 16.1(a)).....	800
Additional fee (Rule 40.2(a)).....	800
Preliminary examination fee (Rule 58.1(b)).....	800
Additional fee (Rule 68.3(a)).....	800
Cost of copies (Rules 44.3(b), 71.2(b) and 94.1)	2 per page

Part II: Conditions and Extent of Refunds of the Search Fee and of the
Preliminary Examination Fee

(1) Any amount paid by mistake, without cause, or in excess of the amount due, for fees indicated in Part I shall be refunded.

(2) Where the international application is withdrawn or is considered withdrawn, under Article 14(1), (3) or (4), before the start of the international search, the amount of the search fee paid shall be fully refunded.

(3) Where the Authority benefits from an earlier search to the full extent or to a substantially prevailing portion, 75% of the search fee paid shall be refunded.

(4) In the cases provided for under Rule 58.3, the amount of the preliminary examination fee paid shall be fully refunded.

(5) If the international application or the demand is withdrawn before the start of the international preliminary examination, the amount of the preliminary examination fee paid shall be fully refunded.

[Annex II follows]

AMENDMENTS TO PCT REGULATIONS

Rule 10
Terminology and Signs

10.1 Terminology and Signs

(a) to (e) [No change]

(f) When the international application or its translation is in Chinese, English or Japanese, the beginning of any decimal fraction shall be marked by a period, whereas, when the international application or its translation is in a language other than Chinese, English or Japanese, it shall be marked by a comma.

10.2 [No change]

Rule 11
Physical Requirements of the International Application

11.1 to 11.8 [No change]

11.9 Writing of Text Matter

(a) [No change]

(b) Only graphic symbols and characters, chemical or mathematical formulae, and certain characters in the Chinese or Japanese language may, when necessary, be written by hand or drawn.

(c) and (d) [No change]

(e) As far as the spacing of the typing and the size of the characters are concerned, paragraphs (c) and (d) shall not apply to texts in the Chinese or Japanese language.

11.10 to 11.14 [No change]

Rule 32 [New]
Extension of Effects of International Application to Certain Successor States

32.1 Request for Extension of International Application to Successor State

(a) The effects of any international application whose international filing date falls in the period defined in paragraph (b) may, subject to the performance by the applicant of the acts specified in paragraph (c), be extended to a State (“the successor State”) whose territory was, before the independence of that State, part of the territory of a Contracting State which subsequently ceased to exist (“the predecessor State”), provided that the successor State has become a Contracting State through the deposit, with the Director General, of a declaration of continuation the effect of which is that the Treaty is applied by the successor State.

(b) The period referred in paragraph (a) starts on the day following the last day of the existence of the predecessor State and ends two months after the date on which the declaration referred to in paragraph (a) was notified by the Director General to the Governments of the States party to the Paris Convention for the Protection of Industrial Property. However, where the date of independence of the successor State is earlier than the date of the day following the last day of the existence of their predecessor State, the successor State may declare that the said period starts on the date of its independence; such a declaration shall be made together with the declaration referred to in paragraph (a) and shall specify the date of independence.

(c) In respect of any international application whose filing date falls within the applicable period under paragraph (b), the International Bureau shall send the applicant a notification informing him that he may make a request for extension by performing, within three months from the date of that notification, the following acts:

(i) filing with the International Bureau the request for extension;

(ii) paying to the International Bureau an extension fee in Swiss francs, the amount of which shall be the same as the amount of the designation fee referred to in Rule 15.2(a).

(d) This Rule shall not apply to the Russian Federation.

32.2 Effects of Extension to Successor State

(a) Where a request for extension is made in accordance with Rule 32.1,

(i) the successor State shall be considered as having been designated in the international application, and

(ii) the applicable time limit under Article 22 or 39(1) in relation to that State shall be extended until the expiration of at least three months from the date of the request for extension.

(b) Where, in the case of a successor State which is bound by Chapter II of the Treaty, the request for extension was made after, but the demand was made before, the expiration of

the 19th month from the priority date, and a later election is made of the successor State within three months from the date of the request for extension, the applicable time limit under paragraph (a)(ii) shall be at least 30 months from the priority date.

(c) The successor State may fix time limits which expire later than those provided in paragraphs(a)(ii) and (b). The International Bureau shall publish information on such time limits in the Gazette.

Rule 37
Missing or Defective Title

37.1 [Amendment to the French text only]

37.2 Establishment of Title

If the international application does not contain a title 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 a title, or if the said Authority finds that the title does not comply with Rule 4.3, it shall itself establish a title. Such title shall be established in the language in which the international application is published or, if a translation was transmitted under Rule 12.1(c) and the international Searching Authority so wishes, in the language of that translation.

Rule 38
Missing or Defective Abstract

38.1 [Amendment to the French text only]

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 published or, if a translation was transmitted under Rule 12.1(c) and the International Searching Authority so wishes, in the language of that translation.

(b) [No change]

Rule 43
The International Search Report

43.1 to 43.3 [No change]

43.4 Language

Every international search report and any declaration made under Article 17(2)(a) shall be in the language in which the international application to which it relates is published or, if a translation was transmitted under Rule 12.1(c) and the International Searching Authority so wishes, in the language of that translation.

43.5 to 43.10 [No change]

Rule 48
International Publication

48.1 and 48.2 [No change]

48.3 Languages

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

(b) If the international application is filed in a language other than Chinese, English, French, German, Japanese, Russian or Spanish, that application shall be published in English translation. the translation shall be prepared under the responsibility of the International Searching Authority, which shall be obliged to have it ready in time to permit international publication by the prescribed date, or, where Article 64(3)(b) applies, to permit the communication under Article 20 by the end of the 19th month after the priority date. Notwithstanding Rule 16.1(a), the International Searching Authority may charge a fee for the translation to the applicant. The International Searching Authority shall give the applicant an opportunity to comment on the draft translation. The International Searching Authority shall fix a time limit reasonable under the circumstances of the case for such comments. If there is no time to take the comments of the applicant into account before the translation is communicated or if there is a difference of opinion between the applicant and the said Authority as to the correct translation, the applicant may send a copy of his comments, or what remains of them, to the International Bureau and each designated Office to which the translation was communicated. The International Bureau shall publish the essence of the comments together with the translation of the International Searching Authority or subsequently to the publication of such translation.

(c) [No change]

48.4 to 48.6 [No change]

Rule 55
Languages (International Preliminary Examination)

55.1 Language of Demand*

The demand shall be in the language of the international application or, if the international application has been filed in a language other than the language in which it is published, in the language of publication. However, if a translation of the international application is required under Rule 55.2, the demand shall be in the language of that translation.

55.2 Translation of International Application

(a) Where the international application is neither filed nor published in the language, or one of the languages, specified in the agreement concluded between the International Bureau and the International Preliminary Examining Authority competent for the international preliminary examination of that application, that Authority may require that, subject to paragraph (b), the applicant furnish with the demand a translation of the international application into the language, or one of the languages, specified in the said agreement.

(b) Where a translation of the international application into a language referred to in paragraph (a) was transmitted to the International Searching Authority under Rule 12.1(c) and the International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the International Searching Authority, the applicant need not furnish a translation under paragraph (a). In such a case, unless the applicant furnishes a translation under paragraph (a), the international preliminary examination shall be carried out on the basis of the translation transmitted under Rule 12.1(c).

(c) If the 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 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.

(e) Paragraphs (a) to (d) shall apply only where the International Preliminary Examining Authority has declared, in a notification addressed to the International Bureau, that it accepts to carry out international preliminary examination on the basis of the translation referred to in those paragraphs.

* The title has been amended to read “Language of Demand” instead of “The Demand”.

55.3 Translation of Amendments

(a) Where a translation of the international application is required under Rule 55.2, any amendments which are referred to in the statement concerning amendments under Rule 53.9 and which the applicant wishes to be taken into account for the purposes of the international preliminary examination, and any amendments under Article 19 which are to be taken into account under Rule 66.1(c), shall be in the language of that translation. Where such amendments have been or are filed in another language, a translation shall also be furnished.

(b) Where the required translation of an amendment referred to in paragraph (a) is not furnished, the International Preliminary Examining Authority shall invite the applicant to furnish the missing 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.

(c) If the applicant fails to comply with the invitation within the time limit under paragraph (b), the amendment shall not be taken into account for the purposes of the international preliminary examination.

Rule 60
Certain Defects in the Demand or Elections

60.1 Defects in the Demand

(a) If the demand does not comply with the requirements specified in Rules 53.1, 53.2(a)(i) to (iv), 53.2(b), 53.3 to 53.8 and 55.1, the International Preliminary Examining Authority shall invite the applicant to correct the defects 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.

(b) to (g) [No change]

60.2 [No change]

Rule 61
Notification of the Demand and Elections

61.1 Notification to the International Bureau and the Applicant

(a) [No change]

(b) The International Preliminary Examining Authority shall promptly inform the applicant in writing of the date of receipt of the demand. Where the demand has been considered under Rules 54.4(a), 55.2(d), 57.4(c), 58.2(c) or 60.1(c) as if it had not been submitted or where an election has been considered under Rule 60.1(d) as if it had not been made, the International Preliminary Examining Authority shall notify the applicant and the International Bureau accordingly.

(c) [No change]

61.2 to 61.4 [No change]

Rule 66
Procedure before the International Preliminary Examining Authority

66.1 to 66.8 [No change]

66.9 Language of Amendments

(a) Subject to paragraphs (b) and (c), if the international application has been filed in a language other than the language in which it is published, any amendment, as well as any letter referred to in Rule 66.8(a), shall be submitted in the language of publication.

(b) If the international preliminary examination is carried out, pursuant to Rule 55.2, on the basis of a translation of the international application, any amendment, as well as any letter referred to in paragraph (a) shall be submitted in the language of that translation.

(c) Subject to Rule 55.3, if an amendment or letter is not submitted in a language as required under paragraph (a) or (b), the International Preliminary Examining Authority shall, if practicable having regard to the time limit for establishing the international preliminary examination report, invite the applicant to furnish the amendment or letter in the required language within a time limit which shall be reasonable under the circumstances.

(d) If the applicant fails to comply, within the time limit under paragraph (c), with the invitation to furnish an amendment in the required language, the amendment shall not be taken into account for the purposes of the international preliminary examination. If the applicant fails to comply, within the time limit under paragraph (c), with the invitation to furnish a letter referred to in paragraph (a) in the required language, the amendment concerned need not be taken into account for the purposes of the international preliminary examination.

Rule 70
The International Preliminary Examination Report

70.1 to 70.16 [No change]

70.17 Languages of the Report and the Annexes

(a) The report and any annex shall be in the language in which the international application to which they relate is published, or, if the international preliminary examination is carried out, pursuant to Rule 55.2, on the basis of a translation of the international application, in the language of that translation.

(b) [Remains deleted]

Rule 74
**Translations of Annexes of the International Preliminary
Examination Report and Transmittal Thereof**

74.1 Contents of Translation and Time Limit for Transmittal Thereof

(a) Where the furnishing of a translation of the international application is required by the elected Office under Article 39(1), the applicant shall, within the time limit applicable under Article 39(1), transmit a translation of any replacement sheet referred to in Rule 70.16 which is annexed to the international preliminary examination report, unless such sheet is in the language of the required translation of the international application. The same time limit shall apply where the furnishing of a translation of the international application to the elected Office must, because of a declaration made under Article 64(2)(a)(i), be effected within the time limit applicable under Article 22.

(b) Where the furnishing under Article 39(1) of a translation of the international application is not required by the elected Office, that Office may require the applicant to furnish, within the time limit applicable under that Article, a translation into the language in which the international application was published of any replacement sheet referred to in Rule 70.16 which is annexed to the international preliminary examination report and is not in that language.

Rule 92

Correspondence

92.1 [No change]

92.2 Languages

(a) Subject to Rules 55.1 and 66.9 and to paragraph (b) of this Rule, any letter or document submitted by the applicant to the International Searching Authority or the International Preliminary Examining Authority shall be in the same language as the international application to which. However, where a translation of the international application has been transmitted under Rule 12.1(c) or furnished under Rule 55.2(a) or (c), the language of such translation shall be used.

(b) to (e) [No change]

92.3 and 92.4 [No change]

[End of Annex II and of document]