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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION (PCT UNION)

ASSEMBLY

Twenty-First Session (9th Ordinary)* Geneva, September 20 to 29, 1993

MATTERS CONCERNING THE PCT UNION

Memorandum of the Director General

Introduction

1. The draft program and budget for the 1994-95 biennium has the following features particularly relevant to the finances of the PCT Union:

(i) The Fee-financed Unions (including the PCT Union) would have a higher share in the "common expenses" of the Organization; the increase of the share of the Fee-financed Unions would diminish the share of the Contribution-financed Unions; such diminution is of an order that would allow a reduction by 8.6% of the overall amount of the contributions payable in the 1994-95 biennium by the member States of the Contribution-financed Unions; such reduction would be of obvious benefit to each State member of the Paris, Berne and the other Contribution-financed Unions (see document AB/XXIV/2, paragraph 2.21);

(ii) The fees paid by applicants to the International Bureau for services rendered to them under the PCT system would be increased by 10% effective January 1, 1994 (see document AB/XXIV/2, paragraph 2.26(D); and

(iii) Any surpluses of the Fee-financed Unions (including the PCT Union) realized in the 1994-95 biennium would, as it has been the case since 1990, go into the special reserve fund for additional premises and computerization (see document AB/XXIV/2, paragraph 2.15).

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2. At its April 1993 meeting, the WIPO Budget Committee examined the above-mentioned matters and:

(i) "... decided to recommend to the Governing Bodies that the draft program and budget for the 1994-95 biennium be approved, including the reduction by 8.6% of the overall amount of the contributions payable in the 1994-95 biennium in respect of the Contribution-financed Unions, on the understanding that the proposed fee increases, the increased participation of the Fee-financed Unions in the financing of program activities of the Organization beyond the level of their participation in the 1992-93 biennium and the use of any surpluses generated during the 1994-95 biennium by those Unions would have to be decided upon by the Assemblies of the PCT, Madrid and Hague Unions, respectively" (document AB/XXIV/3, paragraph 50); and

(ii) "In this regard, the Budget Committee also decided to recommend that the International Bureau furnish additional information to the Assemblies of the PCT, Madrid and Hague Unions concerning the finances of those Unions involving, in particular, justification of the proposed fee increases, explanation of the proposed levels of participation of those Unions in the financing of program activities of the Organization, provision of information concerning their reserve funds, and explanation of the proposed use of the 1994-95 surpluses of those Unions" (document AB/XXIV/3, paragraph 51).

3. The present document provides the said additional documentation requested in respect of the PCT Union; documents MM/A/XXV/1 and H/A/XIII/1 (issued together with this document) provide the corresponding additional documentation in respect of the Madrid and Hague Unions, respectively. The following paragraphs provide, first, an explanation of the interest of the PCT Union in what the WIPO Budget Committee termed the "program activities" of the Organization, which justifies the proposed levels of participation of the PCT Union in the financing of those program activities (see paragraphs 4 to 12, below, and Annex I). Since the proposed PCT fee increase is needed in order to provide reserves needed for the necessary investments for additional premises for both the short term and the long term, and needed for extraordinary investments for further computerization and other advanced technologies to be used in the PCT system, a description is given of the needs of the International Bureau for additional premises and computerization, especially related to the rapid growth in the level of activity under the PCT system (see paragraphs 13 to 24, below). The situation of the reserve fund of the PCT Union and of the special reserve fund for additional premises and computerization, the expected surpluses of the PCT Union to be credited to that special reserve fund, and the amounts of PCT fees at present and with the proposed 10% fee increase are then given (see paragraphs 25 to 32, below, and Annex II).

Participation of the PCT Union in the Financing of Program Activities of the Organization

4. The draft budget for the 1994-95 biennium (see document AB/XXIV/2, paragraphs 2.20 to 2.23) proposes that the overall amount of the contributions payable in that biennium by the States members of the Contribution-financed Unions be 8.6% below the amount of their contributions in the current (1992-93) biennium. That result would be achieved through the increased shares of the PCT, Madrid and Hague Unions in the common expenses of the Organization. Those increased shares reflect, on the one

hand, the expected higher levels of registration activities and, on the other hand, the increased participation of those Unions in the financing of the program activities of the Organization.

5. As concerns the PCT Union, the said program activities comprise the following: development cooperation with developing countries; setting of norms and procedures for the protection and enforcement of intellectual property rights; exploration of intellectual property questions in possible need of norm setting; the collection of laws, and statistics; documentation and information activities of industrial property offices; and International Patent Classification activities, along with the associated staff units: the Development Cooperation and External Relations Units; and the Industrial Property Units (see document AB/XXIV/2, Items 02, 03, 04, 05, 06, 07, 17 and 18, respectively).

6. The table in Annex I indicates, for each of those items, the level of participation by the PCT Union in its financing for the 1992-93 biennium (as shown in document AB/XXII/2, Annex 3), the cost increase between that biennium and the 1994-95 biennium, the resulting equivalent level of participation at 1994-95 cost levels, the proposed level of participation by the PCT Union for the 1994-95 biennium (as shown in document AB/XXIV/2, Annex 3), and thus the increased level of participation by the PCT Union. (The increased participation of the PCT Union in these activities also leads to the PCT Union having a correspondingly greater share in the relevant common administrative expenses.)

7. The following paragraphs provide an explanation of the interest of the PCT Union--including the interest of the States members of that Union (whether industrialized or developing countries) and of the applicants using the PCT system--in participating to a very great extent in the activities corresponding to those items, which activities are directly relevant to the PCT Union, its member States and the PCT applicants, and thereby indicate that the increased level of PCT Union participation is fully justified.

8. As concerns activities in the field of development cooperation, it is to be noted that 25 of the present 58 members of the PCT Union are developing countries, and the number of developing country members of the PCT Union will undoubtedly increase considerably in the future (especially since most industrialized countries are already party to the PCT). Having patent-related development cooperation activities financed by the PCT Union is thus particularly important in order both to promote the accessions of many more developing countries to the PCT and to develop and strengthen the patent system within developing countries. The following patent-related activities in the field of development cooperation are of specific interest to the PCT Union: encouraging adherence to the Patent Cooperation Treaty (see document AB/XXIV/2, Item 02(3)); developing human resources; facilitating the creation or improvement of legislation; institution-building; encouraging local inventive activity and the commercial exploitation of inventions; developing the teaching of and research in intellectual property law; developing the profession of intellectual property lawyer and agent; promoting the exchange of experience and information among legislators and among members of the judiciary; facilitating the access to and use of technological information contained in patent documents; facilitating the acquisition of foreign, but locally protected technology; facilitating the management and exploitation by local enterprises of their intellectual property rights, and facilitating the participation of representatives of developing countries in certain patent-

related WIPO meetings (see document AB/XXIV/2, Item 02(1), (2), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (14)), along with the associated staff resources in the Development Cooperation and External Relations Units (see document AB/XXIV/2, Item 17).

9. As concerns normative activities--involving mainly the setting of norms and procedures for the protection and enforcement of intellectual property rights, and the exploration of intellectual property questions in possible need of norm setting--it is particularly important for the PCT Union to have patent systems throughout the world as harmonized as possible, and to have the protection and enforcement of patent rights as effective as possible. The following normative activities are of particular interest to the PCT Union: concluding a treaty on the settlement of disputes between States in the field of intellectual property; studying the status of certain intergovernmental organizations in the PCT; concluding (rather than preparing for the entry into force of) the Patent Law Treaty and revising the WIPO Model Law on Inventions; completing guiding principles for services for the voluntary resolution of intellectual property disputes between private parties; studying topical questions relating to biotechnological inventions, patents and technical standards, and counterfeiting; maintaining the collection of industrial property laws and treaties; and collecting and publishing patent statistics (see document AB/XXIV/2, Item 03(1), (6), (7) and (11); Item 04(1), (2) and (7), and Item 05(3) and (4)), along with the associated staff resources in the Industrial Property Units (see document AB/XXIV/2, Item 18).

10. As concerns international classification and standardization activities--involving documentation and information activities of industrial property offices, and the International Patent Classification--the PCT Union has a specific interest in having closer cooperation among patent Offices (which is promoted through the patent-related activities of the WIPO Permanent Committee on Industrial Property Information) and in the continuous improvement and development of the International Patent Classification, as well as in the publications of the Organization related to patent information (see document AB/XXIV/2, Items 06 and 07), along with the associated staff resources in the Industrial Property Units (see document AB/XXIV/2, Item 18).

11. It follows from what is stated above that the increased level of participation of the PCT Union in the financing of program activities of the Organization is fully justified. Furthermore, it is in the interest of all States members of the Unions administered by WIPO--including the States members of the PCT Union--since, along with the increased participation in such financing by the Madrid and Hague Unions, it would make possible the 8.6% reduction of the overall level of contributions to the Contribution-financed Unions which, in turn, would facilitate the introduction of the unitary contribution system with every State member of the Contribution-financed Unions paying less contributions in each of the years 1994 and 1995 than for the year 1993.

12. It is proposed that the participation of the PCT Union in the financing of program activities of the Organization be increased as described in paragraphs 4 to 11, above.

Additional Premises and Computerization

13. In their 1989, 1990, 1991 and 1992 sessions, the Governing Bodies examined the needs of the International Bureau for additional premises--needed especially for the additional staff and equipment required to handle

the expected, continuing and substantial growth in the activities under the PCT, Madrid and Hague systems--and means of accommodating those needs both for the short term and for the longer term (see documents AB/XX/11 and AB/XX/20, paragraphs 93 to 101; AB/XXI/4, AB/XXI/5 and AB/XXI/7, paragraphs 81 to 84; AB/XXII/10 and AB/XXII/22, paragraphs 98 to 103; and WO/CC/XXX/3 and WO/CC/XXX/6, paragraphs 5 to 8).

14. As had been forecast four years ago, the International Bureau has already outgrown the space available in the WIPO and BIRPI Buildings, and now has 54 staff working in rented premises in two nearby buildings: the Procter and Gamble Building and the International Business Machines (IBM) Building. With the continuing growth of use of the PCT system, in particular, it is reasonable to expect that, by the end of the present year (1993), there will be about another seven staff. Furthermore, the draft program and budget for the 1994-95 biennium provides for an increase of 56.5 posts for 1995 as compared with the 1993 approved level; of those additional posts, about 39 posts are directly related to the increased use of the PCT system. It follows that the overall level of the staff of the International Bureau is likely, by the end of the year 1995, to be about $(54 + 7 + 56.5 =) 117.5$ staff more than can be accommodated in the space available in the WIPO and BIRPI Buildings.

15. Those extra numbers of staff will be accommodated in the "Centre administratif de Morillon" (CAM) Building, which is now under construction and is expected to be completed later this year. As the CAM Building will provide office space for about 145 work places, there would be about $(145 - 117.5 =) 27.5$ work places still available. However, with the expected continuing growth in the use of the PCT and Hague systems, further staff posts will be needed. Furthermore, while it cannot yet be forecast when the Madrid Protocol will enter into force, it is expected that that would also result in a considerable increase in the staff. In the light of those factors, it is reasonable to assume that the CAM Building--as well as the WIPO and BIRPI Buildings--would be fully occupied some time during the subsequent (1996-97) biennium.

16. It is recalled that the Governing Bodies agreed in 1992 (see document WO/CC/XXX/6, paragraph 6) that the World Meteorological Organization (WMO) Building be acquired, and the sale of that building to WIPO has now been negotiated. However, since WMO cannot vacate that building until its new premises will be completed (now expected to be in June 1997), and since major transformations would then have to be undertaken to modernize the premises and adapt those to WIPO's needs, it is unlikely that WIPO will be able to begin using those premises until about the end of the century. There will therefore be a need for renting further premises from some time during the 1996-97 biennium until about the year 2000, which will involve additional costs.

17. The agreed purchase price of the WMO Building is 30,000,000 francs (plus a price escalation factor of 3% per year), to be paid from the special reserve fund for additional premises and computerization. Furthermore, the cost of transforming and equipping that building would probably amount to more than twice the expected purchase price (see document WO/CC/XXX/6, paragraph 8).

18. When transformed, the WMO Building should be able to accommodate the staff that will be in the CAM Building and in the additional premises that will have to be rented until the year 2000, but the WMO Building will probably then have only a little office space still available. With the

continued growth of the Organization—resulting, in particular, from the increased use of the PCT, Madrid and Hague systems—provision of further office space will then be called for, with associated very significant cost implications.

19. While the previous paragraphs have referred to the needs for additional office space, it is recalled that the Organization continues to suffer from important insufficiencies in conference facilities and parking spaces. As concerns conference facilities, it was noted in 1989 that three more conference rooms (having capacities of about 600, 150 and 100 seats, respectively, and equipped for simultaneous interpretation in seven languages) were needed, along with the associated meeting areas for delegates, cloakrooms and washrooms, office space for officials of various bodies, document storage space, reproduction equipment and other related office requirements, and restaurant facilities. As concerns parking spaces, which are now clearly insufficient for delegates and for the staff and other personnel working at WIPO, it was noted in 1989 that an increase of 450 parking spaces would be required (see document AB/XX/11, paragraphs 19 to 25). If anything, the requirements for conference facilities and for parking spaces will be even greater, and will involve significant construction costs.

20. It is difficult to provide an overall cost estimate for the above requirements for additional premises, but it is recalled that two years ago a cost estimate of the order of 200 million francs for a new building was given (see paragraph 13 of documents PCT/A/XIX/1, MM/A/XXIII/1 and H/A/XII/1). It seems entirely reasonable to continue to assume that the investments for additional premises would be of that order of magnitude.

21. As was noted two years ago (see paragraphs 14 to 16 of documents PCT/A/XIX/1, MM/A/XXIII/1 and H/A/XII/1), since WIPO's need for new premises results essentially from the growth in the activities of the Fee-financed Unions (rather than being for the Contribution-financed Unions), it is considered that WIPO should ask for a construction loan from the "Fondation des immeubles pour les organisations internationales" (FIPOI) only to the extent (if any) that the earnings of the Fee-financed Unions are insufficient to finance the costs of construction and transformation. Such earnings should attain a level that would allow the putting aside from the surpluses for each biennium of those Unions, by the year 2000, of a substantial amount of the above-mentioned costs so that, out of correctness vis-à-vis the Swiss Government (which provides the generous FIPOI loan financing, with a yearly interest rate of only 3% or 3.5%), the FIPOI loan should be of the smallest possible amount.

22. What will in reality be possible depends on how much the surplus of the Fee-financed Unions will be, which in turn depends upon the amount of the fees: higher fees will mean higher surpluses. It should, therefore, be a deliberate policy to try to obtain surpluses in order to finance at least a major part of the costs of the additional premises.

23. In addition to the costs of purchasing, transforming and constructing the additional premises, a certain initial investment will be required for equipping those premises with furniture and office equipment such as computer terminals and word-processing stations. The share of the PCT, Madrid and Hague Unions in that investment was estimated two years ago to be about 15 million francs.

24. Furthermore, in order to handle, in the most cost-effective manner, the expected growth in numbers of international patent applications, significant investments will undoubtedly be needed after the 1994-95 biennium for

computerization. Those investments will probably be of such magnitude as to require recourse to the above-mentioned special reserve fund for additional premises and computerization. This, too, is a reason for putting aside all that is possible.

Reserve Funds, Fee Increase and Expected Surpluses

25. The need for reserves to provide for the above-mentioned investments--which shows why a fee increase is needed--is expected to continue for the next few bienniums, but would not continue indefinitely. In particular, the situation will change once the additional premises have been constructed and equipped, and once significant investments have been made in computerization and other advanced technologies.

26. As of December 31, 1991 (that is, at the end of the last (1990-91) biennium), the reserve fund of the PCT Union amounted to 17,019,000 francs.

27. Also as of December 31, 1991, the special reserve fund for additional premises and computerization amounted to 33,366,000 francs. (It is recalled that the constitution of that special reserve fund was decided in 1989 by the Governing Bodies (see documents AB/XX/2, paragraph 29, and AB/XX/20, paragraph 199) for covering part of the costs of the additional premises needed to accommodate the increased number of staff and additional equipment required to handle the ever-increasing activity of the PCT, Madrid and Hague systems, and for covering part of the investments needed in connection with a fuller computerization of those systems.) The amount of that special reserve fund is now effectively 20,066,000 francs, that is, lower by 13,300,000 francs, due to the loan of 10,000,000 francs made by WIPO to the "Fondation du Centre international de Geneve" to cover part of the costs of construction of the premises at the CAM Building (see document AB/XXII/22, paragraph 103) and due to 3,300,000 francs being the provision contained in the 1990-91 biennium for funding part of the PCT Document Imaging and Computer-Assisted Publishing System (DICAPS), which amount was credited to the special reserve fund at the end of the 1990-91 biennium and is being drawn from that special reserve fund during the course of the 1992-93 biennium for covering costs of the implementation of that system (see Financial Management Report 1990-91, page 156).

28. The surplus for the PCT Union for the current (1992-93) biennium will go into the above-mentioned special reserve fund (see documents AB/XXII/2, paragraph 2.14, and AB/XXII/22, paragraph 197). The budgeted amount of that surplus (see document AB/XXII/2, paragraph 2.17, amended according to document PCT/A/XIX/3, paragraphs 29 and 39) is 15,405,000 francs, based on the assumptions that there would be 26,100 international applications received by the International Bureau in 1992 and 29,100 international applications in 1993, and that there would be 13,100 Chapter II demands for international preliminary examinations in 1992 and 15,100 Chapter II demands in 1993 (see document AB/XXII/2, paragraph 2.33(D)). The actual results for 1992 were 25,917 international applications (i.e., slightly lower) and 15,015 Chapter II demands (i.e., considerably higher); for 1993, the latest forecasts (see document AB/XXIV/2, paragraph 2.26(D)) are for 28,000 international applications (i.e., somewhat lower) and for 16,500 Chapter II demands (i.e., somewhat higher). Those lower numbers of international applications reflect, in particular, the continuing difficult economic situation in a number of countries. Taken together, and noting that from the point of view of fee income the numbers of international applications are much more significant than the numbers of Chapter II demands, it seems reasonable to assume--at the time of writing the present

document, when about one-third of the 1992-93 biennium remains--that the surplus that will result for the PCT Union for the 1992-93 biennium, and which will go into the said special reserve fund, will be approximately the same as the budgeted amount of 15,405,000 francs.

29. The 10% increase of PCT fees as of January 1, 1994, would result in an estimated total PCT income of 146,388,000 francs for the 1994-95 biennium and a surplus of 23,509,000 francs (see document AB/XXIV/2, paragraph 2.18 and table on page 71). If, alternatively, the increase of PCT fees were to be 5%, instead of 10%, the total PCT income for the 1994-95 biennium would become 140,187,000 francs and the surplus would become 17,308,000 francs (both figures being therefore 6,201,000 francs lower). If, furthermore, there were to be no increase of fees, the total PCT income for the 1994-95 biennium would become 133,986,000 francs and the surplus would become 11,107,000 francs (both figures being therefore 12,402,000 francs lower than in the case of a 10% fee increase).

30. In the light of the above-mentioned requirements for investments for additional premises and for further computerization and other advanced technologies, needed because of the growth in the use of the PCT system, it is proposed that, until new decisions are made, any surplus of the PCT Union beyond 1993 continue to go into the special reserve fund for additional premises and computerization (as was the case for the past biennium and as is the case for the current biennium).

31. For the reasons given in the preceding paragraphs, it is proposed that the PCT fees due to the International Bureau be increased by 10% effective January 1, 1994, and that the Schedule of Fees annexed to the PCT Regulations be amended accordingly. The amended Schedule of Fees, resulting from the said 10% increase, is reproduced in Annex II.

32. A table of equivalent amounts in other currencies ("prescribed currencies") of the fees for 1994 will be submitted to the Assembly on September 20, 1993, on the basis of the then-prevailing exchange rates and in order to accomplish the consultation with each interested receiving Office and International Preliminary Examining Authority which is provided for in Rules 15.2(b) and 57.2(c) of the PCT Regulations.

33. The Assembly of the PCT Union is invited to note the information contained in this document and to approve the proposals contained in paragraphs 12, 30 and 31, above.

[Annex I follows]

PCT/A/XXI/1

ANNEX I

LEVELS OF PARTICIPATION OF THE PCT UNION IN THE FINANCING OF "PROGRAM ACTIVITIES" OF THE ORGANIZATION

(in thousands of francs)

	<u>1992-93 Biennium</u>	<u>Cost Increase</u>	<u>1994-95 Equivalent</u>	<u>Proposed for 1994-95 Biennium</u>	<u>Increased Participation</u>
Item 02 Development Cooperation with Developing Countries	874	72	946	2,624	1,978
Item 03 Setting of Norms	149	10	159	333	174
Item 04 Exploration	49	3	52	64	12
Item 05 Collection of Laws, Statistics	227	2	229	449	220
Item 06 Documentation and Information Activities	74	5	79	108	29
Item 07 IPC Activities	30	3	33	170	137
Item 17 Development Cooperation and External Relations Units	2,516	330	2,846	6,006	3,220
Item 18 Industrial Property Units	813	110	923	3,973	3,050

[Annex II follows]

ANNEX II

PROPOSED SCHEDULE OF PCT FEES APPLICABLE FROM JANUARY 1, 1994

	<u>Current Amounts</u>	<u>Proposed Amounts</u>	<u>Percentage Increase</u>
1. Basic Fee: (Rule 15.2(a))			
(a) if the international application contains not more than 30 sheets	762 Swiss francs	838 Swiss francs	10.0%
(b) if the international application contains more than 30 sheets	762 Swiss francs plus 15 Swiss francs for each sheet in excess of 30 sheets	838 Swiss francs plus 16 Swiss francs for each sheet in excess of 30 sheets	10.0%
2. Designation Fee: (Rule 15.2(a))			
(a) for designations made under Rule 4.9(a)	185 Swiss francs per designation, provided that any designation made under Rule 4.9(a) in excess of 10 shall not require the payment of a designation fee	203 Swiss francs per designation, provided that any designation made under Rule 4.9(a) in excess of 10 shall not require the payment of a designation fee	9.7%
(b) for designations made under Rule 4.9(b) and confirmed under Rule 4.9(c)	185 Swiss francs per designation	203 Swiss francs per designation	9.7%
3. Confirmation Fee: (Rule 15.5(a))	50% of the sum of the designation fees payable under Item 2(b)	50% of the sum of the designation fees payable under item 2(b)	9.7%
4. Handling Fee: (Rule 57.2(a))	233 Swiss francs	256 Swiss francs	9.9%

[End of Annex II and of document]