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## **PATENT LAW TREATY (PLT)**

### **ASSEMBLY**

#### **Second (1<sup>st</sup> Extraordinary) Session Geneva, September 25 to October 3, 2006**

APPLICABILITY OF CERTAIN AMENDMENTS AND MODIFICATIONS OF THE  
PATENT COOPERATION TREATY (PCT) TO THE PATENT LAW TREATY (PLT)

*Document prepared by the International Bureau*

#### **I. INTRODUCTION**

1. A number of provisions under the Patent Law Treaty (PLT) and the Regulations under the PLT incorporate by reference certain requirements provided for under the Patent Cooperation Treaty (PCT). Those PLT provisions are:

- (i) Article 3(1)(a)(i) [Applications];
- (ii) Article 6(1) [Form or Contents of Application];
- (iii) Article 6(2) [Request Form] and Rule 3(2) [Request Form Under Article 6(2)(b)];
- (iv) Article 6(4) [Fees] and Rule 6(3) [Time Limits Under Article 6(7) and (8) Relating to Payment of Application Fee in Accordance with the Patent Cooperation Treaty];
- (v) Rule 8(1)(c) [Communications Filed on Paper];

(vi) Rule 8(2)(a) [Communications Filed in Electronic Form or by Electronic Means of Transmittal];

(vii) Rule 8(3)(a) [Copies, Filed in Electronic Form or by Electronic Means of Transmittal, of Communications Filed on Paper];

(viii) Rule 9(5)(b) [Signature of Communications Filed in Electronic Form Not Resulting in Graphic Representation of Signature];

(ix) Rule 14(3) [Time Limit Under Article 13(1)(ii)].

2. A number of amendments and modifications to the PCT, the PCT Regulations and the Administrative Instructions Under the PCT, which have been made since the adoption of the PLT on June 1, 2000, relate to the above PLT provisions that incorporate by reference or refer to certain PCT requirements. Pursuant to PLT Article 16 and the PLT Agreed Statements, the PLT Assembly has to decide on whether those (or part of those) amendments and modifications shall apply for the purposes of the PLT and provide any transitional provisions, if necessary. At its first session, the PLT Assembly in 2005 decided that certain amendments and modifications of the PCT, the Regulations under the PCT and the Administrative Instructions Under the PCT, which were made between June 2, 2000 to May 27, 2005, applied for the purposes of the PLT and its Regulations (documents PTL/A/1/2 and 4).

3. The present document provides information regarding the amendments and modifications made under the PCT, between May 28, 2005 to June 15, 2006, and highlights those amendments and modifications which, in the view of the Secretariat, relate to the above PLT provisions. It further indicates the consequences of those PCT modifications and amendments for the PLT. The document also contains information regarding proposed amendments of the Regulations under the PCT which are proposed for adoption at the thirty-fifth (20<sup>th</sup> extraordinary) session of the PCT Assembly to be held in September-October 2006. The PLT Assembly is also invited to consider the applicability of those amendments to the PLT and its Regulations, subject to their adoption by the PCT Assembly.

## II. AMENDMENTS OF THE PCT REGULATIONS

### PCT Assembly, Thirty-Fourth (15<sup>th</sup> Ordinary) Session, September 26 to October 5, 2005

4. The Assembly of the PCT Union at its thirty-fourth (15<sup>th</sup> Ordinary) session, which was held in Geneva from September 26 to October 5, 2005, unanimously adopted a number of amendments to the PCT Regulations relating to matters concerning: (i) international publication and the PCT Gazette in electronic form; (ii) addition of Arabic as a language of publication; (iii) exceptions to the all-inclusive designation system; (iv) missing elements and parts of the international application; (v) restoration of the right of priority; (vi) rectification of obvious mistakes; and (vii) PCT minimum documentation: addition of patent documents of the Republic of Korea.<sup>1</sup>

5. Among those changes, the amendments of PCT Rules 4.1(c), 4.10(a), 4.18 and 26*bis*.1(a) are relevant to the PLT provisions incorporating the PCT requirements.

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<sup>1</sup> See documents PCT/A/34/2 and PCT/A/34/6.

Those amendments will enter into force on April 1, 2007. The consequences of those amendments for the PLT are set out in Chapter IV, below.

PCT Assembly, Thirty-Fifth (20<sup>th</sup> Extraordinary) Session, September 25 to October 3, 2006

6. The Assembly of the PCT Union, at its thirty-fifth (20<sup>th</sup> Extraordinary) session, which will be held in Geneva from September 25 to October 3, 2006, will discuss amendments to the PCT Regulations relating to matters concerning: (i) minimum requirements for International Searching and Preliminary Examining Authorities; (ii) physical requirements of the international application: text size requirements; (iii) language related requirements of the international application; (iv) clarifications and consequential amendments with respect to the amendments previously adopted by the PCT Assembly.<sup>2</sup>

7. Among those changes, the amendments of PCT Rule 11.9(d) (proposed date of entry into force: April 1, 2007) are relevant to the PLT provisions incorporating the PCT requirements. The consequences of those amendments for the PLT are set out in Chapter IV, below.

### III. MODIFICATIONS TO THE ADMINISTRATIVE INSTRUCTIONS UNDER THE PCT

8. The texts of the modifications of the Administrative Instructions Under the PCT, which have been promulgated pursuant to PCT Rule 89.2(a) between May 28, 2005 to June 15, 2006, are contained in the following documents:

- PCT/AI/2 Rev.4 [with effect from October 2005];
- PCT/AI/ANF/1 Rev.3 [with effect from October 2005];
- PCT/AI/DTD/2 Rev.1 [with effect from November 1, 2005];
- PCT/AI/4 [consolidated text of the Administrative Instructions Under the PCT, with effect from April 1, 2006].

9. Among those changes made to the Administrative Instructions Under the PCT, the following modifications are relevant to the PLT provisions incorporating certain PCT requirements:

- (i) modifications of Sections 211, 212, 213 and 215<sup>3</sup>;
- (ii) modification of Section 214(a)<sup>4</sup>;
- (iii) modifications of Part 7 and Annex F<sup>5</sup>;

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<sup>2</sup> See document PCT/A/35/2.

<sup>3</sup> See document PCT/AI/4

<sup>4</sup> See document PCT/AI/2 Rev.4.

<sup>5</sup> See documents PCT/AI/2 Rev.4, PCT/AI/ANF/1 Rev.3 and PCT/AI/DTD/2 Rev.1.

(iv) modification of Section 804<sup>6</sup>.

10. The consequences of those amendments for the PLT are set out in Chapter IV, below.

#### IV. CONSEQUENCES OF THE AMENDMENTS AND MODIFICATIONS OF THE PCT FOR THE PLT

11. As indicated above, a number of amendments and modifications to the PCT Regulations and the Administrative Instructions Under the PCT are relevant to the PLT provisions that incorporate certain PCT requirements. This Chapter sets out the consequences of the amendments and modifications of the PCT provisions for the PLT.

(1) *Amendments of PCT Rule 4.1(c) and 4.18*

12. PCT Rule 4.1(c) was amended so as to provide the possibility of including a statement of incorporation by reference as provided in PCT Rule 4.18 or a request for restoration of the right of priority in a Request. Consequently, in accordance with PLT Article 6(2)(a), a PLT Contracting Party may require that the statement of incorporation by reference or the request for restoration of the right of priority be presented on a Request Form prescribed by that Contracting Party.

(2) *Amendments of PCT Rules 4.10(a) and 26bis.1(a)*

13. PCT Rules 4.10(a) and 26bis.1(a) were amended so as to clarify that any addition of a priority claim would be made “to the request”. Since this change aims at the clarification of the text, it does not affect the PLT Contracting Parties in substance.

(3) *Amendments of PCT Rule 11.9(d)*

14. It is suggested that PCT Rule 11.9(d) be amended so as to increase the minimum font size to be used by applicants for text matters in an international application (other than the request) (document PCT/A/35/2). Consequently, subject to the adoption of such an amendment by the PCT Assembly in September-October 2006, according to PLT Article 6(1), a Contracting Party of the PLT shall comply with that requirement regarding the minimum font size with respect to its national or regional applications.

(4) *Modification of Section 211, 212, 213 and 215 of the Administrative Instructions Under the PCT*

15. Modifications of Section 211, 212, 213 and 215 are consequential to the amendment of PCT Rule 48.2(a)(x) adopted by the PCT Assembly in September-October 2005. Since the declarations referred to in Sections 211 to 215 are included in the published international application, the indication of designations is no longer needed in those declarations. In accordance with PLT Article 6(1) and (2), a Contracting Party may require such a declaration in an application or in a Request Form.

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<sup>6</sup> See document PCT/AI/2 Rev.4.

(5) *Modification of Section 214(a) of the Administrative Instructions Under the PCT*

16. As regards the declaration of inventorship referred to in PCT Rule 4.17(iv), Section 214(a) of the Administrative Instructions Under the PCT was modified so as to require the inventors to always sign the declaration of inventorship itself for the purposes of the designation of the United States of America. In accordance with PLT Article 6(1) and (2), a Contracting Party may require such a declaration in an application or in a Request Form.

(6) *Modification of Part 7 and Annex F of the Administrative Instructions Under the PCT*

17. Part 7 and Annex F of the Administrative Instructions Under the PCT contain, respectively, the legal framework and the technical standard for electronic filing and processing of PCT international applications. In accordance with PLT Rules 8(2)(a) and 9(5)(b), where there are any requirements under Part 7 and Annex F of the Administrative Instructions Under the PCT which are applicable to a PLT Contracting Party with respect to PCT international applications in a particular language, that PLT Contracting Party shall permit the filing of national/regional applications and communications under the applicable law, in the said language, which comply with those requirements.

(7) *Modification of Section 804 of the Administrative Instructions Under the PCT*

18. Part 8 of the Administrative Instructions Under the PCT, which consists of Sections 801 to 806, contains instructions relating to international applications containing large nucleotide and/or amino acid sequence listings and/or tables relating thereto. Such sequence listings and tables are typically filed in electronic form. Consequently, in accordance with PLT Rules 8(2)(a) and 8(3)(a), where there are any requirements under Part 8 of the Administrative Instructions Under the PCT which are applicable to a PLT Contracting Party in relation to the sequence listings and tables contained in PCT international applications in electronic form or by electronic means of transmittal in a particular language under the PCT system, that PLT Contracting Party shall permit the filing of such sequence listings and tables in that language in accordance with those requirements under the applicable law.

V. APPLICABLE DATE OF AMENDMENTS AND MODIFICATIONS OF THE PCT TO THE PLT

19. In respect of the amendments of PCT Rules 4.1(c), 4.10(a), 4.18, 11.9(d) and 26bis.1(a), since those amendments will enter into force on April 1, 2007, it is suggested that the applicability to the PLT of those amended PCT provisions take effect on the same date, namely, April 1, 2007, provided that, with respect to PCT Rule 11.9(d), the PCT Assembly adopts the amendment at the September-October 2006 session. With respect to the modifications of Sections 211 to 215, Part 7, Section 804 and Annex F of the Administrative Instructions Under the PCT, it is suggested that those modifications apply to the PLT with immediate effect.

*20. The Assembly of the PLT is invited to decide that the amendments and modifications of the Regulations under the PCT and the Administrative Instructions Under the PCT indicated in the present document as applicable, apply for the purposes of the PLT and its Regulations, as set out in paragraph 19 above.*

[End of document]