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**PATENT COOPERATION TREATY**

**INTERIM ADVISORY COMMITTEE FOR ADMINISTRATIVE QUESTIONS**

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MODEL AGREEMENT

BETWEEN AN INTERNATIONAL SEARCHING AUTHORITY

AND THE INTERNATIONAL BUREAU

Draft

prepared by the International Bureau

Introduction

1. The PCT Interim Advisory Committee for Administrative Questions (hereinafter referred to as the Interim Committee), at its fifth session in Geneva in November 1974, requested the International Bureau to prepare for consideration at its next session a draft of a model agreement between the International Bureau and an International Searching Authority (see document PCT/AAQ/V/6), paragraph 67(ii)).

2. The Annex to this document contains a first attempt at such a draft model agreement. The agreement has been drafted in such a manner as to avoid, wherever possible, the restating of the detailed requirements concerning International Searching Authorities, International Search and the International Search Report as set forth in the Patent Cooperation Treaty, as well as in the PCT Regulations and Administrative Instructions.

3. In view of the fact that many options are available to an International Searching Authority under the PCT and the PCT Regulations, any agreement between an International Searching Authority and the International Bureau under the PCT will probably be separately negotiated. Accordingly, the draft model agreement contained in the Annex to this document may necessitate modification tailored to the desires and needs of the individual International Searching Authorities. Notes in respect of some of the options available to an International Searching Authority have been included in the Annex under the relevant provision of the draft model agreement, so that the Interim Committee may comment and make recommendations for further modifications of the said agreement.

4. The Appendix to this document lists the provisions of the Patent Cooperation Treaty pertinent to the draft model agreement.

5. The Interim Committee is invited to study the draft model agreement and comment thereon.

[Annex follows]

DRAFT MODEL AGREEMENT BETWEEN AN INTERNATIONAL  
SEARCHING AUTHORITY AND THE INTERNATIONAL BUREAU

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Agreement between .....(\*) and the  
International Bureau of the World  
Intellectual Property Organization  
in respect of the functioning of  
.....(\*) as an International Searching  
Authority under the Patent Cooperation  
Treaty.

Preamble

WHEREAS subject to the approval of the Assembly in accordance with Article 16(3)(b) of the Patent Cooperation Treaty, this Agreement and any amendments thereto as may be executed hereunder from time to time together constitute an Agreement by and between the .....(\*), as represented by the ..... hereinafter called the "Authority", and the International Bureau of the World Intellectual Property Organization, as represented by its Director General, hereinafter called the "International Bureau";

WHEREAS the States party to the Patent Cooperation Treaty constitute a Union for cooperation in the filing, searching, and examination of applications for the protection of inventions, and for rendering special technical services, the said Union being known as the International Patent Cooperation Union; and

WHEREAS it is recognized that the participation of the .....(\*) as an International Searching Authority in matters affecting international search will contribute to the successful implementation of the Patent Cooperation Treaty.

Now, therefore, in consideration of the mutual covenants herein set forth, the parties hereto intending to be bound hereby agree as follows :

Article 1

Terminology Used in Agreement

(1) For the purpose of this Agreement, the term "Treaty" means the Patent Cooperation Treaty done at Washington on June 19, 1970, and the Regulations and Administrative Instructions thereunder.

(2) All other terms and expressions used in this Agreement are to be understood in the sense in which they are used in the Treaty.

Article 2

Basic Obligation

With respect to the subject matter covered by this Agreement, the Authority agrees to comply with the requirements set forth in the Treaty, in the Regulations and Administrative Instructions thereunder and, subject to the said requirements, in this Agreement.

(\*) Reference will be made to a national Office or intergovernmental organization.

Article 3

Competence of International Searching Authority<sup>1</sup>

The Authority agrees to act as an International Searching Authority for international applications filed during the term of the Agreement :

- (i) with the receiving Offices of the States, and
- (ii) in the languages, and
- (iii) for the kinds of international applications

specified in Annex A to this Agreement<sup>2</sup>. Annex A may be amended by mutual agreement at any time during the duration of the Agreement, in particular by adding further States, languages or certain kinds of international applications.

Article 4

Minimum Personnel Requirements

The Authority shall maintain during the term of its appointment a minimum requirement of at least ..... full-time employees with sufficient technical qualifications to carry out searches in the required technical fields and who have the language facilities to understand the following languages : .....<sup>3</sup>, .....<sup>3</sup>.

Article 5

Documentation Facilities

(1) The Authority agrees to maintain and use for search purposes during the term of its appointment, in addition to the minimum documentation facilities properly arranged for search purposes specified in the Regulations (Rule 34), the following documentation facilities : (cite groups of documents outside Rule 34 as to time or as to country coverage) ....., .....

(2) Where a patent document is republished once or more than once, as such or as granted patent, the Authority agrees to keep, in accordance with Rule 34.1(d), the following versions of such patent documents in its minimum documentation : ..... (Examples : Offenlegungsschrift of the Federal Republic of Germany, Tokkyo Kokaikoho of Japan (as far as English language abstracts are generally available) and the Première Publication of France)).

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<sup>1</sup> A Contracting State has the option to consider only one International Searching Authority or several such Authorities as competent to search international applications filed with its national Office and must inform the International Bureau of its choice. Where it considers several Authorities as competent, it must identify in its communication to the International Bureau each such Authority. In the latter situation, the identification may indicate that either all such Authorities are competent for the same kinds of international applications leaving the choice to the applicant or that certain of such Authorities are competent for one kind of international application and certain others competent for other kinds of international applications (Article 16(2) and PCT Rules 35.1 and 35.2).

<sup>2</sup> Unless otherwise expressed in Annex A, it is assumed that the language or languages of the Forms generally will be the same as the language or languages of the international application to be searched.

<sup>3</sup> Both the language facilities required under Rule 36.1(iii) and any further language facilities should be referred to here.

Article 6

Number or Kinds of International  
Applications Processed

For a transitional period of ..... years, the Authority will apply the following limitation on the number or kinds<sup>4</sup> of international applications which it will accept for searching under Article 65 of the Treaty : .....

Article 7

Subject Matter not Required to be Searched

Annex B attached hereto defines the subject matter<sup>5</sup> which the Authority does not desire to search under Article 17(2)(a)(i) as specified in Rule 39.1.

Article 8

Fees<sup>6</sup>

(1) A schedule of all fees of the Authority which are related to its function as an International Searching Authority is attached to this Agreement as Annex C. That schedule may be modified by the Authority, but not more frequently than once a year. Such modification will take effect only one month after its publication by the International Bureau.

(2) The Authority shall, to the extent and under the conditions set forth in Annex C to this Agreement, refund the whole or part of the search fee paid where a search report can be wholly or partially based upon the results of an earlier international or "international-type" search.

(3) The Authority shall charge a fee, as prescribed in Annex C to this Agreement, for the translation of the international application whenever such application is filed in a language other than the prescribed language required by the Treaty, and such application need be published.

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<sup>4</sup> The Authority may provide in its agreement with the International Bureau, transitionally, for limitations on the number and kind of international applications that such Authority will undertake to process. In such cases, the Assembly of Contracting States shall adopt the procedures necessary for the gradual application of the Treaty in respect to the number or kind of international applications to be processed. Alternatively, another International Searching Authority may undertake to perform the remaining searches for the Contracting State(s) concerned. This provision also applies to the preparation of international-type searches under Article 15(5) of the PCT (Article 65(1)).

<sup>5</sup> The Treaty gives the faculty to the Authority not to exclude certain subject matter (e.g. plant varieties, computer programs, etc.) from international search (Article 17(2)(a)(i) and Rule 39). Such subject matter should be listed in the Annex.

<sup>6</sup> In the interest of administrative efficiency, the search fee should be collected with the transmittal fee and basic fee part of the international fee at the time of the filing of the international application, although Rule 16.1(b) in conjunction with Rule 15.4(a) provides in certain cases for a possibility of later payment.

Article 9

Review Board

The Authority agrees to establish, in accordance with Rule 40.2(c) and (d), a ..... [three-member board or special instance or competent higher authority] to examine protests in respect of additional fees where the international application is found not to comply with the requirement of unity of invention.

Article 10

Time Limit for Preparation of International  
Search Reports or Declarations

The Authority agrees to establish international search reports or the declaration referred to in Article 17(2)(a) within the time limits<sup>7</sup> specified in the first two sentences of PCT Rule 42.1.

Article 11

Classification

Annex D to this Agreement shall indicate any other classification of the subject matter in addition to the International Patent Classification which the Authority will apply.

Article 12

International-Type Search<sup>8</sup>

(1) The Authority shall provide an "international-type" search report on all national applications filed in the States listed in Annex E, as far as such search is requested by such State.

(2) The Authority shall provide upon the request of an applicant an "international-type" search report on a national application filed in the States listed in Annex F.

(3) The "international-type" search shall be carried out on a translated national application when such application is not in a language prescribed for international applications.

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<sup>7</sup> In negotiating the agreement, the Authority may avail itself of the opportunity to negotiate slightly longer time limits for the preparation of international search reports or declarations for the first three years after entry into force of the Treaty (see Rule 42.1, last sentence).

<sup>8</sup> International-type search is obligatory, to the extent to which the national law of the State concerned so provides, and the national Office of that State subjects applications filed with it to such search (Article 15(5)(b)). It is optional for the applicant to the extent to which the national law of the State concerned so provides and no obligatory search of the kind referred to above is prescribed (Article 15(5)(a)). The obligatory international-type search assists national Offices in particular of developing countries to establish an effective filter for national applications not using the PCT route. The optional international-type search assists prospective PCT applicants in determining, at an early date, whether or not to seek protection for their domestic origin inventions in one or more foreign countries via the PCT route.

Article 13

Information Service and Technical Assistance<sup>9</sup>

The Authority shall negotiate with the International Bureau the furnishing of such information services to the International Bureau and of other contributions to the technical assistance program under Chapter IV of the Treaty as are practicable within the existing facilities of the Authority.

Article 14

Entry into Force of the Agreement

This Agreement shall enter into force after signature and approval by the Assembly.

Article 15

Duration and Renewability of the Agreement

This initial Agreement is concluded for ..... years. It shall be renewable for a period of ..... years subject to the approval of the Assembly. Should the Assembly fail to render a decision prior to ..... months before the termination of this Agreement, the Agreement shall be considered renewed for a period of ..... years.

Article 16

Amendment

This Agreement may be amended at any time by consent of the parties.

Article 17

Denunciation of the Agreement

Either party may terminate this Agreement by denouncing it. The denunciation shall be by written notice addressed to the other party. The Agreement shall terminate one year after the date of the notice.

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<sup>9</sup> This Article provides the basis for negotiating with the Authority its participation in patent information services to be established and technical assistance to developing countries to be provided under Chapter IV of the PCT.



Article 18

Signature

This Agreement shall be signed in ..... copies, each in the ..... language,  
each text being equally authentic.

For the Authority by :

Name : .....

Title : .....

For the International Bureau by :

Name : .....

Title : .....

[Appendix follows]

LISTING OF PCT PROVISIONS RELEVANT TO ARTICLES OF THE  
AGREEMENT

General	The Agreement	PCT Article 16(3)(b), PCT Article 17(1) (Procedural Matters) Rules 12, 42, 89.1(b)
Article 1	Terminology Used in Agreement	PCT Article 2
Article 2	Basic Obligation	—
Article 3	Competence of International Searching Authority	PCT Articles 16(2), 16(3)(b) Rules 12, 35.1 and 35.2
Article 4	Minimum Personnel Requirements	PCT Rule 36.1(i)(iii)
Article 5	Documentation Facilities	
	(1) Minimum Documentation	PCT Article 16(3)(c), Rule 34, Rule 36.1(ii)
	(2) Expansion of Minimum Documentation	PCT Rule 34
Article 6	Number or Kinds of Inter- national Applications Processed	PCT Article 65(1)
Article 7	Subject Matter Not Required to be Searched	PCT Article 17(2)(a)(i) Rule 39.1(i) to (vi), Rule 15.4(a)
Article 8	Fees	
	(1) Search Fee	PCT Article 3(4)(iv), Rules 16.1 and 86.1(ii)
	(2) Fee Refund	PCT Rules 16.3 and 41.1
	(3) Fee for Translation	PCT Rule 48.3
Article 9	Review Board	PCT Rule 40.2(c) and (d)
Article 10	Time Limit for Preparation of International Search Reports or Declarations	PCT Rule 42.1
Article 11	Classification	PCT Article 18, Rule 43
Article 12	International-Type Search	PCT Article 15(5)(a) to (c), Rule 41
Article 13	Information Service and Technical Assistance	PCT Articles 50 and 51
Article 14	Entry into Force of the Agreement	PCT Article 16(3)(e)
Article 15	Duration and Renewability of the Agreement	PCT Article 16(3)(e)
Article 16	Amendment	—
Article 17	Denunciation of the Agreement	PCT Article 16(3)(e)
Article 18	Signature	