

# WIPO



PCT/AAQ/VIII/8

ORIGINAL: English

DATE: August 12, 1977

## WORLD INTELLECTUAL PROPERTY ORGANIZATION GENEVA

### PATENT COOPERATION TREATY

#### INTERIM ADVISORY COMMITTEE FOR ADMINISTRATIVE QUESTIONS

Eighth Session

Geneva, October 10 to 18, 1977

#### HANDLING OF FEES UNDER THE PCT

Study prepared by the International Bureau

#### BACKGROUND

1. At its seventh session (November 1976), the Interim Advisory Committee for Administrative Questions (hereinafter referred to as "the Interim Committee") adopted as part of its program for the year 1977 a study relating to a review of the level of fees fixed under the PCT and the handling of the fees under the PCT (see the report of the said session, document PCT/AAQ/VII/19, paragraph 170(viii)).

#### THE PRESENT DOCUMENT

2. This document deals with questions concerning the handling of certain fees under the PCT; the level of fees fixed in the Regulations is dealt with in document PCT/AAQ/VIII/7. The present document is concerned with the handling of those fees which are collected from the applicant by one authority for the benefit of another authority, particularly where the two authorities are located in different countries; in these situations, currency fluctuations will cause certain problems requiring solutions. The present document is not concerned with the handling of fees which are payable by the applicant to an authority for the benefit of that authority; the handling of such fees is a matter which is solely within the jurisdiction of the authority concerned, within the limits prescribed in the PCT and the Regulations.

#### FEES COLLECTED BY RECEIVING OFFICES FOR THE BENEFIT OF OTHERS

3. It is the receiving Office that collects from the applicant the international fee (basic and designation fees) and the search fee (see Rules 15.3(a) and 16.1(b)). The international fee is for the benefit of the International Bureau (see Rule 15.1); the search fee is for the benefit of the competent International Searching Authority (hereinafter referred to as "the Searching Authority") (see Rule 16.1(a)).

4. (a) The amount of the international fee is expressed in Swiss francs in the Regulations (see Rule 15.2(a)).

(b) The Regulations are silent on the question of the currency in which the Searching Authority has to express the amount of any search fee; in all probability, it will be expressed in the currency of the country in which the Searching Authority is located (in US dollars where the Searching Authority is the US Patent and Trademark Office, etc.); it could probably be expressed in another currency if the Searching Authority so desires; however, the latter is a remote possibility and, for the purposes of this document, will be disregarded. The currency of the country in which the Authority is located is hereinafter referred to as "the currency of the searching Authority."

5. The currency in which the said fees will be collected by the receiving Office is determined by the receiving Office (see Rules 15.3(b) and 16.1(b)). It is assumed in this document that it will be the currency of the country of the receiving Office (hereinafter referred to as "the currency of the receiving Office") since it is unlikely that any receiving Office would be able or, if it were, would wish to receive amounts in another (foreign) currency.\*

6. The Regulations provide that, when transferred by the receiving Office, (i) the international fee must be "freely convertible" into Swiss currency (see Rule 15.3(b)), and (ii) the search fee must be "freely convertible" into the currency of the Searching Authority (see Rule 16.1(b)). Naturally, if the receiving Office is the Swiss Office, there is no problem of free convertibility as far as the international fee is concerned; and if the Searching Authority is the same as the receiving Office, there is no problem of free convertibility as far as the search fee is concerned.

7. However, whenever the international fee is collected in a currency other than the Swiss currency, and whenever the search fee is collected in a currency other than the currency of the Searching Authority, that is, on the assumption stated above, is collected in both cases in the currency of the receiving Office, some practical problems will arise whenever there is a change in the exchange rate between the currency of the receiving Office, on the one hand, and the Swiss currency and/or the currency of the Searching Authority, on the other hand.

8. The following paragraphs try to identify such practical problems and suggest solutions to them.

9. Assuming, as stated above, that both the international fee and the search fee will be collected in the currency of the receiving Office, it is proposed

- (i) that, using the exchange rates prevailing on the date on which they are expressed, it should be the International Bureau that expresses the amounts of both fees in the currency of the receiving Office,
- (ii) that the International Bureau should have the right to modify that amount whenever the applicable exchange rate changes (in either direction) by more than 2% (two percent), and
- (iii) that the receiving Office should be required to charge the modified fee within two working days after the receipt of the notification of the International Bureau of the modified amount.

Any losses or gains resulting from the fact that the exchange rate used by the International Bureau for fixing the amounts of the fees in the currency of the receiving Office and the actual exchange rate applied to the amounts transferred are different would be borne by or for the benefit of the International Bureau; in other words:

- (a) if the International Bureau receives in any given case, as international fees, an amount of Swiss francs that is less than that fixed in the Regulations, it will have to accept the resulting "loss," and if it receives, as international fees, an amount of Swiss francs that is more than that fixed in the Regulations, it will keep the resulting "gain," and

---

\* If the receiving Office is able and willing to receive the fees in a foreign currency, that currency will presumably be the Swiss currency as far as the international fee is concerned, and the currency of the Searching Authority as far as the search fee is concerned; in such a case, the problems caused by variations in the exchange rates of currencies, discussed below, will not arise.

- (b) if the Searching Authority receives, in any given case, as search fee, a smaller amount, in its currency, than that prescribed by it, the International Bureau will transfer the difference to it, and if it receives a higher amount, in its currency, than that prescribed by it, it will transfer the difference to the International Bureau.

The said transfers would not be effected separately in each case but would be effected whenever their total amount reaches (the equivalent of) 5,000 Swiss francs, or, where their total amount remains below (the equivalent of) 5,000 Swiss francs in any given calendar year, the said transfers would be effected within 30 days from the end of the calendar year.

10. Since in the proposed system, all possible "losses" would be borne or covered by the International Bureau (and not by the receiving Office, nor by the Searching Authority nor by the applicant), and since the longer it takes for the receiving Office to transfer the fees collected by it to the International Bureau and the Searching Authority the higher the risk of such losses becomes, it is proposed that the receiving Office effect the transfer of such fees whenever the total amount of the international fees collected, or of the search fees collected, reaches the equivalent of 10,000 Swiss francs; however, if any receiving Office, in any given calendar year, collects amounts which remain below the said figure, then, it is suggested that such amounts be transferred only once a year, namely, within 30 days from the end of the calendar year.

11. Finally, it is proposed that, if any receiving Office effects the transfers after the said time limits, it should be obliged to cover any loss which may result from a change in the exchange rates occurring after the date on which it should have effected the transfer and to pay interest of 0.5% for each complete month of delay. The date on which the receiving Office gave the transfer order to its bank--and not the date on which the transferred amounts actually reach the International Bureau or the Searching Authority--would be regarded as the date of the transfer; consequently, delays occurring in the bank's transfer and the receipt of the transferred amounts would not be held against the receiving Office and the consequences of such delays would be borne by the International Bureau and the International Bureau alone.

#### FEE COLLECTED BY THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY FOR THE INTERNATIONAL BUREAU

12. It is the International Preliminary Examining Authority (hereinafter referred to as "the Examining Authority") that collects from the applicant the handling fee (see Rule 57.3(a)). The handling fee is for the benefit of the International Bureau (see Rule 57.1).

13. The amount of the handling fee is expressed in Swiss francs in the Regulations (see Rule 57.2(a)). The Regulations leave it to the Examining Authority to decide in which currency the handling fee must be paid by the applicant (see Rule 57.3(c)); as above, it is assumed that the Examining Authority will require that the handling fee be paid in the currency of the country in which that Authority is located.

14. The Regulations provide that, when transferred by the Examining Authority to the International Bureau, the handling fee must be "freely convertible" into Swiss currency (see Rule 57.3(c)).

15. It is proposed that, mutatis mutandis, the solutions suggested in paragraphs 9 to 11 be applied also to the handling fees. As far as Examining Authorities are concerned, the most important consequence of the application of such solutions would be the fact that if the amounts actually received by the International Bureau produce--on account of changes in the exchange rates and/or delays in the bank's effecting the transfer--an amount of Swiss francs that is less than what they should have produced, the resulting "loss" would be borne by the International Bureau and not by the Examining Authority nor by the applicant.

## IMPLEMENTATION OF THE PROPOSALS

16. It is proposed that the solutions suggested in paragraphs 9 to 11 and 15 be implemented,

(i) as far as the international fee is concerned, by incorporating the applicable solutions in the Administrative Instructions, on the understanding that such solutions may be modified, in the relations between any given receiving Office and the International Bureau, through an agreement (exchange of letters) between such receiving Office and the International Bureau if the receiving Office should wish, for reasons of its own, to deviate from some of the solutions incorporated in the Administrative Instructions,

(ii) as far as the search fee is concerned, by incorporating the applicable solutions in the Administrative Instructions, on the understanding that such solutions may be modified, in the relations between any given receiving Office, the Searching Authority or Authorities specified by that Office under Article 16(2) and the International Bureau, through an agreement (exchange of letters) between the said Office, the said Authority or Authorities and the said Bureau if such Office or Authority or Authorities should wish, for reasons of its/their own, to deviate from some of the solutions incorporated in the Administrative Instructions\*,

(iii) as far as the handling fee is concerned, by incorporating the applicable solutions in the agreement referred to in Article 32(2) of the PCT between the International Bureau and the Examining Authority.

17. The Interim Committee is invited to express its views on the proposals contained in this document.

[End of document]

---

\* Where the receiving Office and the Searching Authority are one and the same, all questions concerning the handling of the search fee will be decided without the International Bureau.