

## **Patent Cooperation Treaty (PCT) Committee for Technical Cooperation**

**Thirtieth Session**  
**Geneva, May 8 to 12, 2017**

### **PROCESS AND REQUIREMENTS OF APPOINTMENT AND EXTENSION OF APPOINTMENT**

*Memorandum of the Secretariat*

#### **SUMMARY**

1. The PCT Committee for Technical Cooperation (“the Committee”) is expected to be requested to give advice to the PCT Assembly on the appointment of one new Office as International Searching and Preliminary Examining Authority under the PCT, and on the extension of the appointment of all of the existing Authorities. This memorandum sets out the role of the Committee in this process and notes the need for efficient procedures.

#### **ROLE OF THE COMMITTEE**

2. The role of the Committee is to give advice to the PCT Assembly concerning the applications for appointment.

3. According to PCT Articles 56(3)(i) and (ii), the aims of the Committee are, *inter alia*, “to contribute, by advice and recommendations: (i) to the constant improvement of the services provided for under this Treaty, [and] (ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports.”

4. Consequently, the Committee’s advice to the Assembly should be based on a technical assessment of whether the Office would be able, if appointed or its appointment extended, to make a positive contribution to the services provided under the Treaty, having particular regard to whether the Office appears to meet (or continues to meet) the minimum requirements for appointment set out in PCT Rules 36 and 63.

5. The decision whether to appoint or extend the appointment of an Office is subsequently taken by the PCT Assembly, taking the Committee's advice into account. The Assembly will also be requested to approve agreements between the International Bureau and each International Authority, which will be drafted on the basis of a model agreement reviewed by the Meeting of International Authorities under the PCT (see the Annex to document PCT/MIA/24/2). The Committee is not required to consider these agreements.

6. The relevant provisions of the Treaty and Regulations and an Understanding adopted by the Assembly concerning this process are set out in the Annex to this memorandum for reference.

## **PROCEDURAL RECOMMENDATIONS**

7. The Committee is expected to be invited to consider one application for appointment and 22 applications for extension of appointment in the course of five days, during which the PCT Working Group must also complete its work. While it is important that the Committee conduct its work thoroughly, there will not be a large period of time available to devote to each application and it is essential that efficient procedures are adopted.

8. The following recommendations were made to Offices seeking extension of their appointment as an International Searching and Preliminary Examining Authority (paragraph 10 of document PCT/MIA/24/2):

“(a) International Authorities are encouraged to send draft copies of applications to the International Bureau at an early stage (preferably before this session of the PCT/MIA) for an informal review of whether all required issues appear to have been covered.

“(b) Each application should indicate an official who can be contacted by other members of the PCT/CTC with questions in advance of the session, with a view to providing any further information requested. If an Authority does not wish to name an official in the documentation, an alternative would be to indicate that such a name has been given to the Secretariat, which will pass it on to other members of the PCT/CTC on request.

“(c) Authorities should seek to assist one another by reviewing the other applications as soon as they are published and providing early feedback on any areas which might cause concern during the session. The International Bureau will publish “Add” documents if an Authority discovers that the information on a significant issue is unclear or insufficient and the Authority wishes to provide useful clarifications in advance of the session.

“(d) Authorities should assume that delegations at the PCT/CTC have reviewed the documentation in advance of the meeting. Introductions by Authorities during the session should therefore seek to be brief (five minutes at the most) and focus primarily on the overall benefit which the extension of appointment of the Office will bring to the PCT System, together with any further information which may be useful to bring to the Committee's attention in view of discussions with other Offices.”

9. Since the time allocated to delegations to introduce the applications during the session will be very limited, it is recommended that members of the Committee review the applications carefully in advance of the session.

10. Furthermore, it is recommended that, where possible, any concerns about the applications be notified in advance of the session to the relevant official indicated by the Office concerned, in a similar manner to that described in item (c) under paragraph 8, above, so that Offices are able to address those concerns either by providing “Add” documents or by providing additional information in the introduction, rather than needing to raise the issue for the first time during the session.

[Annex follows]

ANNEX  
RELEVANT LEGAL PROVISIONS AND PROCEDURAL DECISIONS

**LEGAL PROVISIONS CONCERNING APPOINTMENT**

1. The process of appointment of an Office as International Searching Authority is regulated by PCT Article 16(3). Article 32(3) provides that the same provisions apply, *mutatis mutandis*, to the appointment of International Preliminary Examining Authorities.

**Article 16**  
**The International Searching Authority**

...

(3)(a) International Searching Authorities shall be appointed by the Assembly. Any national Office and any intergovernmental organization satisfying the requirements referred to in subparagraph (c) may be appointed as International Searching Authority.

(b) Appointment shall be conditional on the consent of the national Office or intergovernmental organization to be appointed and the conclusion of an agreement, subject to approval by the Assembly, between such Office or organization and the International Bureau. The agreement shall specify the rights and obligations of the parties, in particular, the formal undertaking by the said Office or organization to apply and observe all the common rules of international search.

(c) The Regulations prescribe the minimum requirements, particularly as to manpower and documentation, which any Office or organization must satisfy before it can be appointed and must continue to satisfy while it remains appointed.

(d) Appointment shall be for a fixed period of time and may be extended for further periods.

(e) Before the Assembly makes a decision on the appointment of any national Office or intergovernmental organization, or on the extension of its appointment, or before it allows any such appointment to lapse, the Assembly shall hear the interested Office or organization and seek the advice of the Committee for Technical Cooperation referred to in Article 56 once that Committee has been established.

2. The minimum requirements for appointment as an International Searching Authority, referred to in Article 16(3)(c), are set out in PCT Rule 36.1 as follows (and in equivalent terms in Rule 63.1 for International Preliminary Examining Authorities):

**Rule 36**  
**Minimum Requirements for International Searching Authorities**

**36.1** *Definition of Minimum Requirements*

The minimum requirements referred to in Article 16(3)(c) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out searches;

(ii) that Office or organization must have in its possession, or have access to, at least the minimum documentation referred to in Rule 34, properly arranged for search purposes, on paper, in microform or stored on electronic media;

(iii) that Office or organization must have a staff which is capable of searching the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated;

(iv) that Office or organization must have in place a quality management system and internal review arrangements in accordance with the common rules of international search;

(v) that Office or organization must hold an appointment as an International Preliminary Examining Authority.

## **LEGAL PROVISIONS CONCERNING THE AIMS OF THE CTC**

3. The aims of the Committee for Technical Cooperation are set out in PCT Article 56(3):

### **Article 56 Committee for Technical Cooperation**

...

(3) The aim of the Committee shall be to contribute, by advice and recommendations:

(i) to the constant improvement of the services provided for under this Treaty,

(ii) to the securing, so long as there are several International Searching Authorities and several International Preliminary Examining Authorities, of the maximum degree of uniformity in their documentation and working methods and the maximum degree of uniformly high quality in their reports, and

(iii) on the initiative of the Assembly or the Executive Committee, to the solution of the technical problems specifically involved in the establishment of a single International Searching Authority.

...

## **UNDERSTANDING CONCERNING PROCEDURES FOR APPOINTMENT**

4. The following Understanding was adopted by the PCT Assembly at its forty-sixth session concerning the procedures for appointment of new International Authorities. The PCT Working Group agreed at its ninth session that similar procedures should be applied to extensions of appointment, particularly with regard to the need to inform the PCT/CTC of the extent to which the Authority met the minimum requirements for appointment, save that in relation to documentation of the Authority's quality management system it should be sufficient that the Authority simply refers to its most recent report submitted in accordance with Chapter 21 of the PCT International Search and Preliminary Examination Guidelines (paragraphs 9 and 10 of document PCT/WG/9/14).

(a) A national Office or an intergovernmental organization ("Office") seeking appointment is strongly recommended to obtain the assistance of one or more existing International Authorities to help in the assessment of the extent to which it meets the criteria, prior to making the application.

(b) Any application for appointment of an Office as an International Authority is to be made well in advance of its consideration by the PCT Assembly so as to allow time for an adequate review by the Committee for Technical Cooperation (PCT/CTC). The PCT/CTC

should meet as a true expert body at least three months in advance of the PCT Assembly, if possible back-to-back with a session of the PCT Working Group (usually convened around May/June of any given year), with a view to giving its expert advice on the application to the PCT Assembly.

(c) Consequently, a written request to the Director General to convene the PCT/CTC is to be sent by the Office preferably by March 1 of the year in which the application is to be considered by the PCT Assembly and in any case in time to allow the Director General to send out letters of convocation of the PCT/CTC not less than two months prior to the opening of the session.

(d) Any such application should be made on the understanding that the Office seeking appointment must meet all substantive criteria for appointment at the time of the appointment by the Assembly and is prepared to start operation as an International Authority as soon as reasonably possible following appointment, at the latest around 18 months following the appointment. With regard to the requirement that the Office seeking appointment must have in place a quality management system and internal review arrangements in accordance with the common rules of international search, where such system is not yet in place at the time of the appointment by the Assembly, it shall be sufficient that such system is fully planned and, preferably, that similar systems are already operational in respect of national search and examination work to demonstrate the appropriate experience.

(e) Any document by the Office in support of its application for consideration by the PCT/CTC should be submitted to the Director General at the latest two months prior to the opening of the session of the PCT/CTC.

(f) Any such application is then to be submitted to the PCT Assembly (usually convened around September/October of any given year), together with any advice given by the PCT/CTC, with a view to deciding on the application.”

[End of Annex and of memorandum]