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INTERNATIONAL PATENT COOPERATION UNION
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MEETING OF INTERNATIONAL AUTHORITIES
UNDER THE PCT

Ninth Session
Geneva, July 21 to 25, 2003

DRAFT PCT INTERNATIONAL SEARCH AND
PRELIMINARY EXAMINATION GUIDELINES:

FORMALITIES AND ADMINISTRATIVE MATTERS

Document prepared by the International Bureau

1. At the eighth session of the Meeting of International Authorities under the PCT (“the Meeting”) the European Patent Office proposed that in the draft Guidelines for International Search and Preliminary Examination under the PCT, formalities and administrative matters should be presented separately from the parts concerning substantive issues (see paragraph 12 of document PCT/MIA/8/6).
2. The Annex to this document contains a draft by the European Patent Office of two chapters covering formalities and administrative matters for consideration in conjunction with document PCT/MIA/9/2, which in turn contains a revised draft of the Guidelines submitted by the United States Patent and Trademark Office. A number of revisions were made by the International Bureau, with the permission of the European Patent Office, renumbering the paragraphs and for consistency of the text with certain of the amendments agreed at the eighth session of the Meeting.
3. For ease of reference, the proposals are presented as chapters 25 and 26 within a new Part 5, following on from the draft in document PCT/MIA/9/2. However it should be noted that these proposals would, in effect, replace Chapter 24 of the draft in that document and might more properly appear at a different position within the text.

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4. The Meeting is invited to consider the content of the draft formalities and administrative sections of the PCT International Search and Preliminary Examination Guidelines contained in the Annex, and how these should be presented in relation to the rest of the Guidelines.

[Annex follows]

ANNEX

PART 5 – ADMINISTRATIVE AND FORMAL MATTERS RELATING TO THE
INTERNATIONAL PRELIMINARY EXAMINATIONCHAPTER 25
PRELIMINARY PROCEDURE ON RECEIPT OF THE DEMAND*Receipt of the demand**Article 31(6)(a)*

~~25.01~~ ~~9.01~~—The International Preliminary Examining Authority receives the demand for international preliminary examination normally directly from the applicant. Alternatively the International Preliminary Examining Authority may receive the demand from the International Bureau, a Receiving Office, an International Searching Authority or a non-competent International Preliminary Examining Authority under Rule 59.3.

*Determination of competent International Preliminary Examining Authority and marking of the demand**Article 31(6)(a), 32, Rule 59.3*

~~25.02~~ ~~9.02~~—Where the demand is filed with an International Preliminary Examining Authority, it checks the demand to establish whether or not it is a competent Authority to receive the demand according to the agreement established between the Authority and the International Bureau. If the determination is positive, the International Preliminary Examining Authority proceeds with the review of the demand as set forth in paragraph [XR] *et seq.* If the determination is negative, the non-competent International Preliminary Examining Authority indelibly marks the date of actual receipt of the demand in the space provided on the last sheet of the demand and transmits the demand, together with any accompanying documents or items, to the International Bureau for further handling and notifies the applicant of that fact. Form PCT/IPEA/436 is used for this purpose. Where the demand is filed with a receiving Office or an International Searching Authority, the Office or Authority follows the same procedure. Where the demand form or a computer print-out used by the applicant does not comply with Section 102(h) or (i), the procedure for correcting defects under paragraphs [XR] *et seq.* applies. ~~Where the demand is filed with a receiving Office or an International Searching Authority, the Office or Authority follows the same procedure.~~

Rule 59.3(a), (c) and (f)

~~25.03~~ ~~9.03~~—The non-competent International Preliminary Examining Authority may, instead, choose to transmit the demand directly to the competent International Preliminary Examining Authority. In such a case, if only one International Preliminary Examining Authority is competent, it transmits the demand to that Authority and notifies the applicant accordingly, using Form PCT/IPEA/436. If two or more International Preliminary Examining Authorities are competent, it must first invite the applicant to indicate, within the time limit applicable under Rule 54bis.1(a), that is, 3 months from the date of transmittal of the international search report and the written opinion under Rule 43bis.1(a), or the declaration referred to in Article 17(2)(a), or 22 months from the priority date, or 15 days from the date of the invitation, whichever is later, to which one of those Authorities the demand should be transmitted (using Form PCT/IPEA/442). If the applicant responds to the invitation, the non-competent International Preliminary Examining Authority promptly transmits the demand to the competent Authority specified by the applicant and notifies the applicant accordingly. If the applicant does not respond, or responds after the expiration of the time limit, the non-

competent International Preliminary Examining Authority declares that the demand is considered as if it had not been submitted and notifies the applicant accordingly, using Form PCT/IPEA/407. If the demand is filed directly with the International Bureau, it follows the same procedure specified above for the non-competent International Preliminary Examining Authority.

~~25.049-04~~—In all the situations outlined in paragraphs [XR], the non-competent International Preliminary Examining Authority, receiving Office, International Searching Authority or International Bureau refunds to the applicant any fees paid to it.

Rule 59.3(e)

~~25.059-05~~—If the International Preliminary Examining Authority receives the demand transmitted to it, under Rule 59.3, by a receiving Office, an International Searching Authority, the International Bureau or another International Preliminary Examining Authority which is not competent for the international preliminary examination of the international application, the competent International Preliminary Examining Authority considers that the demand was received on its behalf by the Office, Bureau or Authority transmitting on the date marked as the “actual date of receipt” on the last sheet of the demand.

Identification of the International Application

Rule 53.6, 60.1(b)

~~25.069-06~~—The International Preliminary Examining Authority checks whether the international application to which the demand relates can be identified, e.g. by checking the name and address of the applicant, title of the invention, international filing date and international application number. If the determination is negative, the International Preliminary Examining Authority promptly invites the applicant to submit corrections using Form PCT/IPEA/404. If the corrections are submitted within the time limit fixed in the invitation, the date of receipt of the corrections shall be marked on the last sheet of the demand. The demand shall be considered as if it had been received on the date on which the International Preliminary Examining Authority receives the corrections. The Authority stamps the date of receipt of the correction on the first sheet of the demand.

Applicant's entitlement to file a demand

Article 31(2), Rule 54

~~25.079-07~~—The International Preliminary Examining Authority checks whether the applicant is entitled to file the demand. An applicant is entitled to file a demand if he is a resident or national of a Contracting State bound by Chapter II of the Treaty and if the international application was filed with a receiving Office of, or acting for, a Contracting State bound by Chapter II of the Treaty. Currently [specific date may be added] all Contracting States are bound by Chapter II.

Article 31(2), Rule 54.2, 54.4, Section 614

~~25.089-08~~—If there are two or more applicants, it is sufficient if at least one of the applicants making the demand is a national or resident of a Contracting State bound by Chapter II of the Treaty, irrespective of the elected States for which that applicant is indicated (see also paragraph 9.32 [XR]). If none of the applicants has the right to make a demand under Rule 54.2, the demand shall be considered by the International Preliminary Examining Authority as not having been submitted (Form PCT/IPEA/407). In addition, if there is little time remaining prior to the expiration of 19 months from the priority date, the applicant should be informed as quickly as possible so that the applicant can timely enter the national phase in any

designated State where the notification in respect of the modification to Article 22(1) is still in force.

~~25.09.09~~—The international application must have been filed with the receiving Office of a Contracting State bound by Chapter II, or acting for such a State. Where the receiving Office acts for two or more Contracting States, at least one of the applicants who filed the international application and the demand must be a resident or national of a Contracting State bound by Chapter II for which the receiving Office acts.

– *Change in person of the applicant*

~~25.10.10~~—Where the applicant named on the demand is not the same as the applicant indicated on the request, the International Preliminary Examining Authority must check that the new applicant is entitled to make that demand.

Election of States

Article 37; Rule 53.7

~~25.11.11~~—The filing of a demand constitutes the election of all Contracting States which are designated and are bound by Chapter II of the Treaty.

Check of particulars affecting the date of receipt

Rule 53.1(a), 60.1(a), 61.1(a), Section 102(h) and (i)

~~25.12.12~~—Where, after checking of particulars affecting the date of receipt under paragraphs [XR], a positive determination is made, the actual filing date is marked as date of receipt in the space provided on the first sheet of the demand. Where the demand form or a computer print-out ~~that does not comply~~ in compliance with Section 102(h) or (i) was not used by the applicant, the procedure for correcting defects under paragraphs [XR] *et seq* applies.

~~25.13.13~~—The International Preliminary Examining Authority notifies the applicant of the receipt of the demand (PCT/IPEA/402).

Checking whether demand is timely filed

Rule 54bis

~~25.14.14~~—The International Preliminary Examining Authority checks to see that the demand is filed within three months from the date of transmittal of the international search report and the written opinion established under Rule 43bis.1, or of the declaration referred to in Article 17(2)(a); or 22 months from the priority date, whichever time limit expires later. If the finding is negative, the International Preliminary Examining Authority considers the demand as having not been submitted and issues a declaration to that effect by sending a copy of Form PCT/IPEA/407 to the applicant and the International Bureau. If the demand is timely filed, the International Preliminary Examining Authority notifies applicant accordingly (Form PCT/IPEA/402).

Article 39(1)(a), Section 601

~~25.15.15~~—In the event that the national law of any designated State continues to be incompatible with the modification of the time limit for national phase entry under Article 22(1) and such State is designated, the International Preliminary Examining Authority promptly checks whether the demand is received within 19 months from the priority date. In case the determination is negative, the International Preliminary Examining Authority promptly notifies the applicant of the date of actual receipt. When the demand is received after 19 months from the priority date, the International Preliminary Examining Authority

marks the appropriate check box on the last page of the demand and notifies the applicant and the International Bureau accordingly (Form PCT/IPEA/402) as quickly as possible so that the applicant can timely enter the national phase in any designated State where the notification in respect of the modification to Article 22(1) is still in force.

Establishing the International Preliminary Examining Authority file

| ~~25.169-16~~—The International Preliminary Examining Authority, promptly upon receipt of the demand, establishes the file.

Section 605

| ~~25.179-17~~—Where the International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the International Searching Authority, the same file shall serve the purposes of international search and international preliminary examination.

Rule 62

| ~~25.189-18~~—Where the International Preliminary Examining Authority is not part of the same national Office or intergovernmental organization as the International Searching Authority or receiving Office in which the application was filed, the International Bureau will provide a copy of the international application or, where already published, a copy of the pamphlet (of the published international application), together with a copy of the international search report, when available, to the International Preliminary Examining Authority upon request. This is necessary in order for that Authority to process the demand (see paragraphs [XR]). If the international search report is not yet available, the International Bureau will send a copy of it promptly upon receipt thereof. The documents cited in the international search report can be collected from the International Preliminary Examining Authority's own search files or ordered from the International Searching Authority. Upon receipt of the demand or a copy thereof, the International Bureau will promptly transmit to that Authority, a copy of the written opinion established by the International Searching Authority.

| ~~25.199-19~~—A copy of any amendments under Article 19 and of any accompanying statement will be supplied by the International Bureau to the International Preliminary Examining Authority unless a copy has been submitted with the demand by the applicant or the applicant has reversed them (see paragraphs [XR]).

Transmittal of the demand to the International Bureau

Rule 61.1, 90bis.4(a)

| ~~25.209-20~~—The International Preliminary Examining Authority either transmits the original demand and keeps a copy in its files or sends a copy to the International Bureau and keeps the demand in its files. Where the applicant did not respond to an invitation (Form PCT/IPEA/442) to indicate the competent Authority to which the demand was to be transmitted and where the demand has been withdrawn by the applicant or considered by the International Preliminary Examining Authority as not having been submitted the International Preliminary Examining Authority will likewise send either the demand or a copy of the demand to the International Bureau. Where a demand has been transmitted to the competent International Preliminary Examining Authority under Rule 59.3, it is the Authority which is competent to receive the demand which proceeds under this paragraph (see paragraphs [XR]).

Rule 61.1(a)

~~25.219-21~~—The transmittal must be effected promptly after receipt of the demand, generally not later than one month after receipt.

Rule 90.4, 90.5, Section 608

~~25.229-22~~—The International Preliminary Examining Authority sends to the International Bureau, together with the original demand, or copy thereof, any separate power of attorney in original or any copy of a general power of attorney received. The International Preliminary Examining Authority may waive the requirement for a power of attorney. Where a separate power of attorney or copy of a general power of attorney was submitted with the demand, the International Preliminary Examining Authority sends the original demand, or a copy thereof, to the International Bureau but does not send the separate power of attorney or copy of a general power of attorney to the International Bureau, because the International Bureau has waived the requirement under Rule 90.4(d).

Article 34

~~25.239-23~~—The International Preliminary Examining Authority does not transmit with the demand to the International Bureau any amendments to the application under Article 34 or copies of amendments under Article 19.

Certain defects in the demand

Article 31 (3), Rule 53, 55, 60

~~25.249-24~~—The International Preliminary Examining Authority checks the demand for the existence of any of the following defects (Form PCT/IPEA/404):

(the demand is not made on the prescribed form, Rule 53.1(a)?)

Article 31(3), Rule 53.2(b), 53.8, 60.1(a-ter)

(a) the demand is not signed as provided in the Regulations (see paragraph [XR]);

Article 31(3), Rule 4.4, 4.5, 4.16, 53.2(a)(ii), 53)4, 60.1(a-bis)

(b) the demand does not contain the prescribed indications concerning the applicant (see paragraph [XR]),

Article 31(3), Rule 53.2(a)(iii), 53.6

(d) the demand does not contain the prescribed indications concerning the international application (see paragraph [XR]),

Rule 4.4, 4.7, 4.16, 53.2(a)(ii), 53.5

(e) the demand does not contain the prescribed indications concerning the agent (see paragraph [XR]);

Rule 53.2(a)(i), 53.3

(f) the demand does not contain a petition to the effect that the applicant requests that the international application be the subject of international preliminary examination under the PCT; Rule 53.3 indicates preferred words, but these are not essential. The petition is part of the printed demand form (Form PCT/IPEA/401) and must also be contained in a demand presented as a computer printout;

Rule 55.1

(g) the demand is not in the language of publication of the international application or in the language accepted by the International Preliminary Examining Authority.

Language

Rule 23.1(b), 55.2

| 25.259-25—Where neither the language in which the international application is filed nor the language in which the international application is published is accepted by the International Preliminary Examining Authority, the applicant must furnish with the demand a translation of the international application into a language in which the international preliminary examination may be carried out, that is, a language which is both a language accepted by that Authority and a language of publication. Where a translation into such a language has already been furnished to the International Searching Authority under Rule 23.1(b) and the International Preliminary Examining Authority is part of the same national Office or intergovernmental organization as the International Searching Authority, the international preliminary examination is carried out on the basis of that translation, unless the applicant furnishes a translation to the International Preliminary Examining Authority as outlined above.

[Should request for translation under Rule 62bis be addressed here?]

| 25.269-26—For corrections of certain defects in the demand, *ex officio* or upon invitation, see paragraphs [XR] (ex-officio corrections), [XR] (indications concerning the applicant) and [XR] (invitation to correct defects).

| 25.279-27—Many kinds of errors in the demand can be corrected by the International Preliminary Examining Authority *ex officio*, which means that the applicant need not and is not formally invited to make the correction himself. Where a correction is made *ex officio*, the International Preliminary Examining Authority makes the correction and enters in the margin the letters “IPEA.” Where any matter is to be deleted, the International Preliminary Examining Authority encloses such matter within square brackets and draws a line between the square brackets, while still leaving the deleted matter legible. The International Preliminary Examining Authority informs the applicant of the correction made by sending him either a copy of the corrected sheet of the demand or by a separate notification (there is no special form, but Form PCT/IPEA/424, which is for use where no other form is applicable, could be used). Errors which may be corrected *ex officio* include, in particular, indications concerning the applicant and the agent designated in the demand. If the error is corrected by the International Preliminary Examining Authority after the original demand has been transmitted to the International Bureau, the International Preliminary Examining Authority notifies the International Bureau by sending it a copy of the corrected sheet of the demand.

Signature

Rule 53.2(b), 60.1(a-ter)

| 25.289-28—Except as set out in paragraph [XR], the applicant must either sign the demand or submit a separate power of attorney or copy of a signed general power of attorney, appointing an agent for the filing of the demand. If there are two or more applicants, it is sufficient that the demand be signed by one of them.

Rule 90.3

| 25.299-29—Where the agent signs the demand and a power of attorney has been filed earlier with the receiving Office, the International Searching Authority or the International Bureau or where the agent has been appointed in the request, no power of attorney need be submitted by the applicant to the International Preliminary Examining Authority. Where the agent signs the demand and the demand is filed with an International Preliminary Examining Authority

which has not waived the requirement that a separate power of attorney be submitted to it, if no power of attorney accompanies the demand or has already been filed with the receiving Office, the International Searching Authority, or the International Bureau, the International Preliminary Examining Authority must verify, by reference to the papers on file, or by communication with the applicant, that the agent is entitled to sign the demand. Where the International Preliminary Examining Authority is not the same Office as the receiving Office or the International Searching Authority, the International Preliminary Examining Authority may, until it is notified of or has reason to believe the contrary, assume that an agent who is indicated in the pamphlet of the international application and in the PCT Gazette has been duly appointed by the applicant. If the International Preliminary Examining Authority is the same office as the receiving Office or the International Searching Authority, its files will normally include information as to the appointment of the agent.

Rule 90.4(d), (e), Rule 90.5(c),(d)

[Amendment of Rule 90.5 still to be approved by Assembly]

25.29a ~~9.29bis~~—The International Preliminary Examining Authority may waive the requirement that a separate power of attorney or a copy of the general power of attorney be submitted to it. This waiver may not cover the submission of a notice of withdrawal by an agent or common representative. Where an International Preliminary Examining Authority has waived the requirement for a separate power of attorney, the agent named in a demand may sign the demand even though no separate power of attorney has been filed with the receiving Office, the International Searching Authority, the International Preliminary Examining Authority or the International Bureau, nor has the agent been appointed in the request.

Rule 90.1(c) and (d), 90.3(b), 90.4

25.309-30—The appointment of an additional or sub-agent for the procedure before the International Preliminary Examining Authority can be made in the demand or through a separate or general power of attorney. If the appointment is made in the demand which is signed by the applicant, no separate power of attorney need be submitted. If the demand is signed by an earlier appointed agent, no separate power of attorney from the applicant need be filed if the earlier appointed agent has the right to appoint sub-agents. If the demand is signed by the additional or sub-agent, a separate power of attorney need not be filed if the demand is filed with an International Preliminary Examining Authority which has waived the requirement for a separate power of attorney. Authorization to appoint may be assumed unless the power of attorney excludes appointing sub-agents. If a demand is signed by the additional agent, a separate power of attorney signed by the applicant, or his earlier appointed agent who has the right to appoint sub-agents, must be filed where the International Preliminary Examining Authority has not waived the requirement that a separate power of attorney be submitted. If a separate power of attorney accompanies the demand or is later filed, the International Preliminary Examining Authority promptly transmits the original to the International Bureau. For the manner of inviting the correction of a missing signature, see paragraph [XR].

Rule 90.2(a) and (b), 90.3(c)

25.319-31—A common representative is entitled to sign the demand with effect for all applicants. The agent of the common representative may also sign with effect for all applicants.

*Indications concerning the applicant**Rule 4.4, 4.5, 4.16, 53.2(a)(ii), 53.4, 60.1(a-bis), Section 115, 614*

25.329-32—The demand must contain the prescribed indications concerning the applicant. The address must contain an indication of the country; the indication of the country by a letter code as part of the postal code is sufficient (for example, CH-1211 Geneva). Nationality and residence must be indicated by the name or the two-letter country codes of the State of nationality and State of residence; in case of a dependent territory (which is not a State), the name of the State on which the territory depends must be given as the indication of the residence. For the manner of indicating names of States, see Section 115. If there are two or more applicants, it is sufficient that the address, nationality and residence are provided in respect of one of them who has the right to make a demand.

Section 614

25.339-33—For the decision whether the applicant has the right to make a demand it is decisive that the applicant had the right at the time the demand was filed. Where the demand does not contain the corresponding indications, or where the applicant made mistakes by giving indications which are not the indications required to support the right to file the demand, the omission or wrong indication may be corrected by the applicant if the International Preliminary Examining Authority is satisfied that the applicant had the right to file a demand at the time the demand was received. In such a case, the demand is considered as having met the requirements under Article 31(2)(a) as of the date when the demand with the mistakes in the indications was filed.

*Indications concerning the agent**Rule 4.4, 4.7, 4.16, 53.5, 90.1*

25.349-34—If an agent is named or appointed, the International Preliminary Examining Authority checks whether the indications correspond to those that contained in the file. If the International Preliminary Examining Authority does not have information about the appointment, it checks whether the agent has been indicated in the publication of the international application, on the pamphlet or in the PCT Gazette. In case of an appointment or naming of a new agent or an additional agent in the demand, the International Preliminary Examining Authority also checks whether the indications as to such an agent comply with Rules 4.4 and 4.16; Rule 4.7 applies *mutatis mutandis*. The International Preliminary Examining Authority may waive the requirement for a power of attorney.

Rule 90.1(c) and (d)

25.359-35—The International Preliminary Examining Authority may request the receiving Office, if necessary, to confirm that the agent has the right to practice before that Office (Form PCT/IPEA/410) if the agent does not have the right to practice before the International Preliminary Examining Authority.

*Invitation to correct defects in the demand**Rule 53, 55, 60.1(a), (a-ter) and (b)*

25.369-36—If the International Preliminary Examining Authority finds one or more defects referred to in Rule 60.1(a) and (b), it invites the applicant to correct the defects within one month from the date of the invitation (Form PCT/IPEA/404). The International Preliminary Examining Authority notifies the International Bureau by sending it a copy of the invitation. Where the defect consists of the lack of the signature of at least one applicant (see paragraph [XR]), the International Preliminary Examining Authority may include with the invitation to correct, a copy of the last sheet of the demand which the applicant returns after affixing

thereto the prescribed signature. Where the defect consists of the lack of the signature on the demand and the demand is filed with an International Preliminary Examining Authority which has waived the requirement for a separate power of attorney, the International Preliminary Examining Authority may include with the invitation to correct, a copy of the last sheet of the demand which the agent returns after signing.

Rule 60.1(c) and (d), Section 602(a)

25.379-37—Upon receipt of a letter containing a correction or accompanying a replacement sheet of the demand the International Preliminary Examining Authority marks on that letter and any accompanying sheets the date on which they were received. It verifies the identity of the contents of any replacement sheet of the demand with that of the replaced sheet. If the applicant complies with the invitation within the time limit, the demand is considered as if it had been received on the actual filing date provided that the demand as submitted permitted the international application to be identified. The International Preliminary Examining Authority marks, in the upper right-hand corner of the replacement sheet, the international application number and the date on which the replacement sheet was received and, in the middle of the bottom margin, the words “AMENDED SHEET.” It keeps in its files a copy of any letter and any replacement sheet. It transmits any replacement sheet of the demand and a copy of any letter to the International Bureau. The International Preliminary Examining Authority undertakes the actions referred to in this paragraph not only where the corrections submitted by the applicant are timely received and satisfactory, but also where they are not and, consequently, the demand is considered as if it had not been submitted.

25.389-38—If the International Preliminary Examining Authority receives a replacement sheet of a sheet of the demand embodying a correction of a defect referred to in Rule 60.1(a), which was submitted by the applicant on his own volition without having been invited to correct a defect, the International Preliminary Examining Authority proceeds as outlined in the preceding paragraph.

Rule 60.1(a)

25.399-39—The International Preliminary Examining Authority checks whether the defects referred to in Rule 60.1(a) have or have not been timely corrected. The one-month time limit for correction may be extended. If a correction of a defect is received after the expiration of the time limit for correction but before a decision is taken, the time limit for correction should be extended ex officio so that the said correction is considered as having been timely received.

Rule 60.1(b) and (c)

25.409-40—If the International Preliminary Examining Authority finds that any of the defects referred to in Rule 60.1(a), with the exception of those also referred to in Rule 60.1(d), have not been corrected or have not been timely corrected (see the preceding paragraph), it declares that the demand is considered as if it had not been submitted and notifies the applicant and the International Bureau (Form PCT/IPEA/407). If the date of receipt of the demand is changed, the International Preliminary Examining Authority notifies the applicant and the International Bureau (Form PCT/IPEA/402).

Rule 60.1(d)

25.419-41—If the International Preliminary Examining Authority finds that any of the defects referred to in Rule 60.1(d) have not been corrected or have not been timely corrected, it notifies the applicant and the International Bureau (PCT/IPEA/439).

Payment and refund of fees

Rule 57, 58

~~25.429.42~~—The International Preliminary Examining Authority calculates the amounts of the prescribed preliminary examination fee and handling fee. It also determines whether the fees have been paid and it notifies the applicant of any underpayment or overpayment (Form PCT/IPEA/403).

Rule 57.2(a), 58.1(b)

~~25.439.43~~—The amount of the handling fee, which is collected for the benefit of the International Bureau, is as set out in the Schedule of Fees. The amount of the preliminary examination fee, if any, is fixed by the International Preliminary Examining Authority.

Rule 57.3, 58.1(b)

~~25.449.44~~—The handling fee and the preliminary examination fee are payable within one month from the date on which the demand was submitted or 22 months from the priority date, whichever time limit expires later. Where the demand was transmitted to the International Preliminary Examining Authority under Rule 59.3, these fees are payable within one month from the date of actual receipt of the demand by that Authority or 22 months from the priority date, whichever time limit expires later. Where the International Preliminary Examining Authority decides to start the international preliminary examination at the same time as the international search, that Authority will invite the applicant to pay the handling fee and the preliminary examination fee within one month from the date of the invitation. The amount payable is the amount applicable on that date of payment. If, before the date on which those fees are due, the International Preliminary Examining Authority finds that no fees have been paid to it or that the amount paid to it is insufficient to cover them, it may invite the applicant to pay to it any missing amount (using Form PCT/IPEA/403).

Rule 58bis.1(a) and (c), 58bis.2

~~25.459.45~~—Where, by the time the handling and preliminary examination fees are due, the International Preliminary Examining Authority finds that no fees were paid to it, or that the amount paid to it is insufficient to cover them, it invites the applicant to pay to it any missing amount, together with, where applicable, a late payment fee, as provided under Rule 58bis.2, within a time limit of one month from the date of the invitation (using Form PCT/IPEA/440). A copy of that invitation is sent to the International Bureau. However, if any payment is received by the International Preliminary Examining Authority before such invitation has been sent, that payment is considered to have been received before the expiration of the time limit referred to in paragraph [XR].

Rule 58bis.2

~~25.469.46~~—If a late payment fee is charged, its maximum amount is 50% of the amount of unpaid fees which is specified in the invitation, or, if the amount so calculated is less than the handling fee, an amount equal to the handling fee may be charged. The amount of the late payment fee must in no case exceed double the amount of the handling fee.

Rule 58bis.1(b) and (d)

~~25.479.47~~—Where the International Preliminary Examining Authority has sent an invitation under Rule 58bis.1(a) and the applicant has not, within the time limit of one month from the date of the invitation, paid in full the amount due, including, where applicable, the late payment fee, the International Preliminary Examining Authority declares that the demand is considered as if it had not been submitted, using Form PCT/IPEA/407. If the amount due is received before the demand is declared not to have been submitted, payment is considered to have been received before the expiration of the time limit referred to above and the

International Preliminary Examining Authority does not declare that the demand is considered as if it had not been submitted.

Rule 54.4, 57.6

~~25.489-48~~—The International Preliminary Examining Authority refunds the handling fee to the applicant if the demand is either withdrawn before it has been sent to the International Bureau or considered not to have been submitted because none of the applicants has the right to make a demand.

Transfer of handling fees to the International Bureau

Rule 57

~~25.499-49~~—The International Preliminary Examining Authority should, each month, transfer the handling fees collected during the preceding month to the International Bureau. When making the transfer, the International Preliminary Examining Authority indicates the exact amounts transferred, broken down according to the international application numbers of the international applications concerned, as well as the names of the applicants.

Use of facsimile machine, telegraph, teleprinter, etc.

Rule 92.1(a), 92.4(d), (g) and (h)

~~25.509-50~~—The International Preliminary Examining Authority may agree to receive a document by facsimile machine, telegraph, teleprinter or other like means of communication resulting in the filing of a printed or written document. If required under Rule 92.4(d), it checks whether the original document is timely furnished in a form complying with the requirements of Rule 92.1(a) within 14 days after the document was transmitted. If the original document is timely received, or not required, the International Preliminary Examining Authority considers that the document was validly submitted on the date on which it was received by the means mentioned above. If a document is considered not to have been submitted, the International Preliminary Examining Authority notifies the applicant accordingly (Form PCT/IPEA/423).

Rule 92.4(e)

~~25.519-51~~—Where the furnishing of the original of a document is required as confirmation by the International Preliminary Examining Authority of the document that was transmitted by facsimile, telegraph, teleprinter or other like means of communication, but the original of a ~~demand document~~ signed by the applicant or his agent is not received within 14 days, an invitation is sent to the applicant inviting him to comply with the requirement within a time limit which must be reasonable (Form PCT/IPEA/434) (see paragraph [XR]). The original document should not be submitted as confirmation unless the original is required by the International Preliminary Examining Authority.

Rule 92.1(b), 92.4(g)(ii)

~~25.529-52~~—If the applicant does not comply with the invitation within the time limit, the International Preliminary Examining Authority notifies the applicant that the ~~demand document~~ is considered not to have been submitted (Form PCT/IPEA/438).

Irregularities in the mail service

Rule 82

~~25.539-53~~—For the applicable procedure in case of delay or loss in the mail or in case of interruption in the mail service, reference is made to Rule 82. Rule 82 applies also if a delivery service is used to the extent that the International Preliminary Examining Authority accepts evidence of the mailing of a document by a delivery service other than the postal authorities.

Computation of time limits

Rule 80

| ~~25.549.54~~—For details regarding the computation of time limits and dates of documents, reference is made to Rule 80.

CHAPTER 26
TRANSMITTAL OF THE INTERNATIONAL PRELIMINARY
EXAMINATION REPORT;
WITHDRAWAL OF THE DEMAND OR ALL ELECTIONS;
ACCESS TO INFORMATION AND DOCUMENTS RELATING TO THE
INTERNATIONAL PRELIMINARY EXAMINATION

Transmittal of the international preliminary examination report

Rule 71.1

~~26.01~~ ~~40.62~~ The International Preliminary Examining Authority must on the same day:

(i) transmit one copy of the international preliminary examination report (Form PCT/IPEA/409) and its annexes, if any, to the International Bureau and one copy of the report under cover of original notification (Form PCT/IPEA/416) to the applicant;

(ii) place a copy of the notification, report and amendment/rectifications in the ~~examination~~ file; and

(iii) where belated filing of Article 34 amendments means that such amendments have not been taken into account by the IPEA, dispatch the form PCT/IPEA/432 (second check box action).

Withdrawal of the demand or all elections

Rule 90bis.4

~~26.02~~ ~~40.65~~ In the particular case where the applicant, by a signed notice sent to the International Bureau, withdraws the demand or all elections, the International Preliminary Examining Authority would be notified of the withdrawal by the International Bureau, and the processing of the international application by the International Preliminary Examining Authority shall be discontinued. A notice of withdrawal must be signed by all the applicants of record in the international application or the agent, provided a power of attorney signed by all the applicants has been filed. The requirement for an agent to have a power of attorney cannot be waived for the purpose of withdrawal of the international application. Where two or more applicants filed a demand which elects the United States of America and where an applicant for the United States of America who is an inventor could not be found or reached after diligent effort, a notice of withdrawal need not be signed by that applicant (“the applicant concerned”) if it is signed by at least one applicant and either:

(i) a statement is furnished explaining, to the satisfaction of the receiving Office, the International Bureau or the International Preliminary Examining Authority, the lack of signature of the applicant concerned; or

(ii) in the case of a notice or withdrawal of the demand, the applicant concerned did not sign the demand but request but the requirements of Rule 53.8(b) were complied with.

If the notice of withdrawal is submitted by the applicant to the International Preliminary Examining Authority, the International Preliminary Examining Authority must mark the date of receipt on the notice and transmit it promptly to the International Bureau. The notice shall be considered to have been submitted to the International Bureau on the date marked.

Access to information and documents relation to the international preliminary examination

[The status of the written opinion under Rule 43bis.1 should be clarified here:

- it will be part of the IPEA file (cf. Rule 62.1)
- it is to be kept confidential by the IB and the ISA until expiry of 30 months (Rule 44 ter)
- is it nevertheless accessible to EO's once the IPER has been established?
- may EO's give access to third parties once the IPER has been established?]

[End of Annex and of document]