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**INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)**

**MEETING OF INTERNATIONAL AUTHORITIES
UNDER THE PCT**

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REVISION OF THE INTERNATIONAL PRELIMINARY EXAMINATION GUIDELINES
CONSIDERATION OF AN ADDITIONAL CHAPTER CONCERNING
FORMALITIES EXAMINATION BY AN INTERNATIONAL
PRELIMINARY EXAMINING AUTHORITY

Memorandum prepared by the International Bureau

1. The Annex to this document contains the draft of a new Chapter VII for the International Preliminary Examination Guidelines, entitled "The Tasks of the International Preliminary Examining Authority (IPEA) in Relation to Formal Requirements." It is proposed to supplement the present text of those Guidelines by this new Chapter and thus to cover also the various formal aspects relating to the filing, receiving, processing and examining of demands which, so far, have not been dealt with at all by the Guidelines. Experience has shown that it would be useful to have guidelines for the formality examination similar to those for receiving Offices (PCT Receiving Office Guidelines) also for the IPEAs. The annexed draft has been prepared by the International Bureau.

2. The IPEAs are invited to comment
- (i) on the proposal to supplement the International Preliminary Examination Guidelines by an additional chapter relating to formalities examination;
 - (ii) on the draft annexed to this document .

[Annex follows]

ANNEX

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PCT PRELIMINARY EXAMINATION GUIDELINES

CHAPTER VII

THE TASKS OF THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY (IPEA)
IN RELATION TO FORMAL REQUIREMENTS

1. Receipt and Marking of the Demand

1.1 The IPEA receives the demand for international preliminary examination.

1.2 The IPEA indelibly marks the date of actual receipt in the space provided on the last sheet of the demand (Form PCT/IPEA/401).

2. Article 32 Check (Competent Authority)

2.1 The IPEA checks the demand to establish that it is the competent authority to receive the demand. If the determination is negative, the applicant is promptly notified and informed where to file the demand.

3. Article 31(2) Check

3.1 The IPEA checks whether the applicant is entitled to file the demand (Rule 54).

3.2 An applicant is entitled to file a demand if the application was filed at a receiving Office of, or acting for, a State bound by PCT Chapter II and the applicant filing the demand is a resident or national of a Contracting State bound by PCT Chapter II.

3.3 If the applicant does not have the right or, in case of several applicants, if none of them has the right to make a demand under Article 31(2), the demand shall be considered by the IPEA as not having been submitted. The applicant is promptly informed (Form PCT/IPEA/407).

3.4 If there are different applicants for different elected States, it is sufficient if at least one applicant for each elected State is a national or resident of a Contracting State bound by PCT Chapter II, provided at least one of all the applicants indicated in the demand complies with the requirements outlined above in paragraph 3.2 of this Chapter.

3.5 Where the requirements outlined in paragraph 3.4 of this Chapter are not complied with by at least one applicant, the election of the State or States for which no applicant qualifies shall be considered not to have been made. The applicant is promptly informed (Form PCT/IPEA/419).

4. Check of Particulars that Affect the Date of Receipt

4.1 The IPEA checks whether the international application to which the demand relates can be identified and whether the demand contains at least one election. If the determination is negative, the IPEA promptly invites the applicant to submit a corrected demand (Form PCT/IPEA/404).

5. Article 39 Check

5.1 The IPEA checks whether the demand is received within 19 months from the priority date. In case the determination is negative, the IPEA promptly notifies the applicant of the date of actual receipt and informs the applicant that the demand will not have the effect of postponing the entry into the national phase to 30 months from the priority date. Such information should, whenever possible, be given to the applicant by telephone or by telefax. To facilitate this check, the demand includes a box for the applicant in which to indicate the earliest priority date. (However, the indication of the priority date is not a mandatory requirement and no deficiency exists if the box is not filled in.)

5.2 The IPEA indicates in the margin of the demand how and when it informed the applicant as specified above in paragraph 5.1 of this Chapter.

6. Election of States

6.1 The IPEA deletes ex officio the election of any State which is not bound by Chapter II of the PCT.

6.2 The IPEA deletes the election of any State which is not designated in the international application.

6.3 The IPEA checks that for each elected State at least one applicant is entitled, see above, paragraph 3.4 of this chapter. The IPEA deletes ex officio the election where no applicant is entitled.

6.4 The IPEA shall enclose the above-specified election within square brackets, draw a line between the square brackets while still leaving the election legible, and enter, in the margin, the words "CANCELLED EX OFFICIO BY IPEA" or their equivalent in the language of publication of the international application (Section 606). The IPEA promptly notifies the applicant and the International Bureau (Form PCT/IPEA/425).

7. Establishing the IPEA File

7.1 The IPEA, promptly upon receipt of the demand, starts establishing the file.

7.2 Where the IPEA 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 (c.f. Section 605).

7.3 Where the IPEA is not part of the same national Office or intergovernmental organization as the International Searching Authority, a copy of the international application or, where already published, a copy of the pamphlet (of the published international application), together with the international search report, when available, will be supplied by the International Bureau promptly upon receipt of the demand from the IPEA. If, at the time of such request, the international search report is not yet available, the International Bureau will transmit the international search report promptly upon receipt. The documents cited in the international search report can be collected from the IPEA's own search files or ordered from the International Searching Authority.

8. Transmittal of the Demand

8.1 The IPEA transmits the demand to the International Bureau in all cases including demands for which it is not the competent authority and demands which have been withdrawn by the applicant or considered as not having been submitted by the IPEA (Form PCT/IPEA/415(a)).

8.2 The transmittal must be effected promptly after receipt of the demand, generally not later than two weeks after receipt.

8.3 The IPEA sends to the International Bureau, together with the demand, any separate power of attorney in original or any copy of a general power of attorney and any fee calculation sheet.

8.4 The IPEA does not transmit with the demand to the International Bureau any amendments to the application filed with the demand. These documents are, where applicable, to be attached to the international preliminary examination report.

9. Article 31(3) Check (Certain Defects in the Demand)

9.1 The IPEA checks the demand for the existence of one or more of the following defects under Rules 53 and 55:

(i) it is not signed as provided in the Regulations (Rule 53.2 (b) and 53.8) (see below, paragraph 11 of this Chapter).

(ii) it does not contain the prescribed indications concerning the applicant (Rules 53.2(a)(ii) and 53.4 as well as Rules 4.4 and 4.16, Rule 4.5 applies mutatis mutandis) (see below, paragraph 12 of this Chapter).

(iii) it does not contain the prescribed indications concerning the application (the name of the receiving Office with which the international application was filed, the name and address of the applicant, the title of the invention and where known to the applicant the date and number of the international application (Rules 53.2(a)(iii) and 53.6) (see below, paragraph 13 of this Chapter).

(iv) it does not contain the prescribed indications concerning the agent (Rules 4.4, 4.7 and 4.16, Rule 4.8 applies mutatis mutandis);

(v) it does not contain the election of States as prescribed (Rules 53.2(a)(iv) and 53.7) (see above, paragraph 6 of this Chapter);

(vi) it does not contain a petition (Rules 53.2 (a) and 53.3); the petition is printed in the demand (Form PCT/IPEA/401).

(vii) it is not in the language of the international application or, if the international application has been filed in a language other than the language in which it is published, in the language of publication (Rule 55.1).

9.2 For corrections of certain defects in the demand, ex officio or upon invitation, see paragraphs 10 and 15, respectively, of this Chapter.

10. Correction Ex Officio in the Demand

10.1 Many kinds of errors or mistakes in the demand referred to in the preceding paragraph can be corrected by the IPEA ex officio, which means that the applicant is not formally invited to make the correction but the IPEA merely informs the applicant of the correction by sending him either a photocopy of the corrected sheet of the demand or a notification (there is no special form). Such kinds of errors include, in particular, indications concerning the applicant and the agent. If the error is corrected after the demand has been transmitted to the International Bureau, the IPEA notifies the International Bureau by sending it a photocopy of the corrected sheet of the demand. There is no special form for it. Where a correction is made ex officio the IPEA enters in the margin the letters "IPEA." Where any matter is to be deleted, the IPEA shall enclose such matter within square brackets and shall draw a line between the square brackets while still leaving the deleted matter legible.

11. Signature

11.1 The applicant (s) must either sign the demand or submit a separate power of attorney appointing an agent for the filing of the demand. Where the agent signs the demand and where such a power of attorney has been filed earlier with the RO or the International Bureau or where the agent has been appointed in the Request, no power of attorney needs to be submitted by the applicant to the IPEA. The IPEA must therefore check, when the demand is signed by the agent, whether he is entitled to sign. Where the IPEA is not the same Office as the RO or the ISA, the IPEA may, until it is notified of the contrary, assume that an agent who is indicated in the PCT pamphlet has been duly appointed by the applicant. If the IPEA is the same Office as the RO or the ISA, its files will normally include information as to the agent.

11.2 The appointment of an additional agent for the procedure before the IPEA can be made in the demand form or through a separate power of attorney. If in such a case the demand is signed by the applicant, no separate power of attorney needs to be submitted. If the demand is signed by the earlier appointed agent, no separate power of attorney needs to be filed if the earlier appointed agent has the right to give sub-authorizations. The latter may be assumed unless the power of attorney excludes sub-authorizations. 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 give sub-authorizations, must be filed. Such power of attorney must be filed at either the receiving Office or directly with the International Bureau (Rule 90.3(b)). However, if it accompanies the demand or is later filed with the IPEA, the IPEA promptly transmits the original to the International Bureau (regarding general powers of attorney, see paragraph 8.3). For the manner of inviting the correction of a missing signature, see below, paragraph 15 of this Chapter.

11.3 A common representative, either under Rule 4.8 (a) or (b), is entitled to sign the demand with effect for all applicants (Rule 90.2(b)).

12. Indication concerning the applicant

12.1 The demand must contain the prescribed indications concerning the applicant (Rules 4.4, 4.16 and Rule 4.5 mutatis mutandis). 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 (e.g., D-8000 Munich). Nationality and residence must be indicated by the name of the State of nationality and residence; in case of a dependant 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 201.

13. Indications concerning the application

13.1 The demand must contain the prescribed indications concerning the international application (Rule 53.6). The international application shall be identified by an indication of the name of the receiving Office with which the international application was filed. For this purpose, it is sufficient that the international application number is given because the two-letter country code contained in it allows the identification of the receiving Office. The demand must also contain the international filing date and international application number when known to the applicant. If, however, not all indications concerning the international application are present in the demand, but the indications given in the demand are sufficient for the IPEA to identify the international application to which the demand relates, the IPEA can ex officio correct the errors or missing indications, see above paragraph 10 of this Chapter.

14. Indications concerning the Agent

14.1 The IPEA, if an agent is designated, checks whether it corresponds to the indications contained in the file. If the IPEA does not have a file, it checks whether the agent has been indicated in the publication of the international application, on the PCT pamphlet or in the PCT Gazette. In case of an appointment of a new agent or an additional agent in the demand, the IPEA also checks whether the indications comply with Rules 4.4 and 4.7, and Rule 4.8 mutatis mutandis.

14.2 The IPEA requests the receiving Office, if necessary, to confirm that the agent has the right to practice before that Office (Form PCT/IPEA/410).

15. Invitation to Correct

15.1 If the IPEA finds one or more defects under Rules 53 and 55, it invites (Form PCT/IPEA/404) the applicant to correct the defects within one month from the date of the invitation (Rule 60.1(a)). The IPEA notifies the International Bureau by sending a copy of the invitation. Where the defect consists of the lack of the signature (see above, paragraph 11 of this Chapter), the IPEA sends to the applicant, together with the invitation to correct, a copy of the last sheet of the demand which the applicant will return after affixing thereto the prescribed signature.

15.2 Upon receipt of a correction of the demand, the IPEA marks on the letter containing the correction or accompanying a replacement sheet of the demand, the date on which that letter was received and verifies the identity of the contents of any replacement sheet of the demand with that of the replaced sheet. The IPEA marks (black ink should be used), in the upper right-hand corner of the replacement sheet, the date on which the replacement sheet was received and, in the middle of the bottom margin, the words "SUBSTITUTE SHEET". It keeps in its files a copy of any letter and any replacement sheet. The IPEA transmits (Form PCT/IPEA/415(a)) a copy of any letter and any replacement sheet of the demand to the International Bureau. The IPEA undertakes the actions referred to in this paragraph not only where the corrections submitted by the applicant are timely and satisfactory, but also where they are not and, consequently, the demand is considered as if it had not been submitted (cf. Section 602).

15.3 If the IPEA receives a replacement sheet of the demand embodying a correction of a defect under Rules 53 and 55, which was submitted by the applicant on his own volition without having been invited to correct a defect, the IPEA proceeds as outlined in the preceding paragraph.

15.4 The IPEA checks whether the defects under Rules 53 and 55 have or have not been timely corrected. The PCT Regulations do not expressly provide for an extension of the one-month time limit for correction under Rule 60.1(a). However, 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 normally be extended ex officio so that the said corrections can be considered as having been timely received.

15.5 If the IPEA finds that Rules 53 and 55 defects have not been corrected or have not been timely corrected (see the preceding paragraph), it notifies the applicant (Form PCT/IPEA/407) and the International Bureau. If a new date of receipt of the demand is established, the IPEA notifies the applicant and the International Bureau (Form PCT/IPEA/402) .

16. Rules 57.4 and 5 and 58.2 Check (Lack of Payment of Fees)

16.1 The IPEA calculates the amounts of the prescribed fees, i.e., the preliminary examination fee and the handling fee. It determines whether the fees have been paid.

16.2 If the IPEA finds that the preliminary examination fee or the handling fee are lacking, in whole or in part, it promptly invites (Form PCT/IPEA/403(a) and (b)), the applicant to pay the missing amounts within one month from the date of the invitation.

16.3 If the IPEA finds that the handling fee was not paid within the time limit, the IPEA declares that the demand is considered as if it had not been submitted (Form PCT/IPEA/407). If only one handling fee was paid in a case where the demand contains the election of States requiring a translation of the international preliminary examination report, the IPEA declares the election of such State (s) as not having been made. The other elections and the demand as such will, however, not be affected.

16.4 If the IPEA finds that the preliminary examination fee was not paid within the time limit, the IPEA declares the demand considered as if it had not been submitted (Form PCT/IPEA/407) .

16.5 If the IPEA makes the findings of non-payment of fees referred to above in paragraphs 16.2 and 16.4 of this Chapter, it notifies (Form PCT/IPEA/407) the applicant and the International Bureau accordingly.

17. Transfer of fees

17.1 The IPEA should, each month, transfer the handling fees collected during the preceding month to the International Bureau. When making the transfer, the IPEA should indicate, by telex or by letter, 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.

18. Use of Telegraph, Teleprinter, Etc.

18.1 The IPEA receives a document by telegraph, teleprinter, telecopier or other like means of communication producing a printed or written document. It checks whether, within 14 days after the document was so communicated, its contents are furnished in a form complying with the requirements of Rule 92.1(a). In the affirmative, the IPEA considers that the document has been validly submitted on the date on which it was received by the means mentioned above. Otherwise, it notifies (there is no special form) the applicant that the communication is considered not to have been made (Rule 92.4(a)).

18.2 If the IPEA has not received, within 14 days, the original of a demand signed by the applicant or his agent, an invitation is sent to the applicant under Rule 60.1(a) inviting him to comply with the requirement within a time limit of one month (see above, paragraph 11 of this Chapter).

18.3 If the applicant does not comply with the invitation within the time limit the IPEA notifies (there is no special form) the applicant that the demand is considered not to have been submitted (Rule 60.1(c)).

19. Irregularities in the Mail Service

19.1 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.

20. Computation of Time Limits

20.1 For details regarding the computation of time limits and dates of documents, reference is made to Rule 80.

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and of document]