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DISCUSSION OF CERTAIN PROVISIONS OF THE PCT REGULATIONS CONCERNING CHAPTER II OF THE PCT

Memorandum prepared by the International Bureau

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Introduction

1. The present document identifies some aspects of the procedure under Chapter II of the PCT and considers possible improvements by amending Part C (Rules Concerning Chapter II of the Treaty) of the Regulations under the PCT. It is submitted to the International Preliminary Examining Authorities for their consideration and comments.

I. CHANGING THE CONDITIONS GOVERNING THE START OF INTERNATIONAL PRELIMINARY EXAMINATION AND THE PROCEDURE OF AMENDING THE INTERNATIONAL APPLICATION

2. Present situation. At present, Rule 69.1(b)* lists four different events and stipulates that international preliminary examination shall start if any of these events occurs. The text of that Rule is the following:

> "International preliminary examination shall start upon receipt, by the International Preliminary Examining Authority:
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> (i) under Rule 62.2 (a), of the claims as amended under Article 19, or
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> (ii) under Rule 62.2(b), of a notice from the International Bureau that no amendments under Article 19 have been filed within the prescribed time limit or that the applicant has declared that he does not wish to make such amendments, or
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> (iii) of a notice, after the international search report is in the possession of the International Preliminary Examining Authority, from the applicant expressing the wish that the international preliminary examination should start and be directed to the claims as specified in such notice, or
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> (iv) of a notice of the declaration by the International Searching Authority that no international search report will be established (Article 17(2)(a))."

3. Leaving aside the fourth case envisaged by Rule 69.1(b), which is dealt with in paragraph 6, below, the effect of Rule 69.1(b) is that international preliminary examination may start only once it is clear whether such examination will be based on the claims as originally filed or as amended under Article 19.

4. The increasing use of Chapter II during the last years has made it evident that the present system could be improved to avoid unnecessary delays of the commencement of the international preliminary examination. If the applicant receives, for example, the international search report within nine months from the priority date, he usually files a demand soon thereafter. International preliminary examination, however, may, under the present rules, only start if the time limit under Rule 46.1 for filing amendments of the claims before the International Bureau has expired, unless the applicant has declared that he does not wish to file amended claims under Article 19 and such declaration has been notified by the International Bureau to the

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* In this document, any reference to an "Article" is a reference to an Article of the PCT, and any reference to a "Rule" is a reference to a Rule of the Regulations under the PCT.

International Preliminary Examining Authority. In the given case, where the international search report is established within nine months from the priority date, the time limit under Rule 46.1 expires 16 months from the priority date and, even if an amendment to the claims is received after that time limit but prior to the completion of the technical preparations for international publication, it is still considered to have been received by the International Bureau on the last day of the 16-month time limit. Since the applicant has the right to file amendments under Article 19 until the completion of technical preparations for international publication, the International Bureau must wait until that date to see whether applicants file such amendments and can therefore inform the International Preliminary Examining Authority of the fact that no amendments have been filed only after that date. Unless the applicant has declared that he does not wish to file amendments, international preliminary examination may start only at such a late date and valuable time is lost which could have been used for international preliminary examination.

5. Possible solution. It should be considered to establish a more streamlined procedure. Such streamlining would require amending not only Rule 69.1 but also Rules 53, 62.2 and 66.1. The procedure would provide for the commencement of international preliminary examination, as a general rule, at the occurrence of one single event, namely, the receipt of the international search report by the International Preliminary Examining Authority. If that report already exists at the time of filing the demand, or if it is received only after the filing of the demand, international preliminary examination should start immediately. Such a solution would guarantee that a maximum of time is available for international preliminary examination and would avoid the present waiting time until the receipt of copies of amendments under Article 19 or of a notice from the International Bureau.

6. It is furthermore proposed to consider a new Rule relating to the situation covered under the present Rule 69.1(b)(iv) that the International Searching Authority declares, under Article 17(2)(a), that no international search report will be established. If the International Searching Authority made such a declaration, international preliminary examination could not start under the procedure as proposed in paragraph 5, above. However, international preliminary examination is not at present generally excluded if the International Preliminary Examining Authority is not in possession of an international search report. It is therefore necessary to provide when it should start if, instead of an international search report, a declaration is made under Article 17(2)(a): it is proposed that it should start upon receipt by the International Preliminary Examining Authority of such a declaration. In such cases, international preliminary examination will lead frequently to a declaration under Article 34(4)(a) — which is the provision under Chapter II which corresponds to Article 17(2)(a) — but it may also be possible, in the case referred to in Article 34(4)(a)(ii) , to help the applicant to amend the application to make it meaningful. It would then be possible to issue an international preliminary examination report which could help the applicant in the procedure before the elected Offices.

7. The proposed new procedure would also clarify the basis for international preliminary examination. That basis would be a declaration by the applicant stating whether the international preliminary examination should initially be directed to the international application as filed or as amended. Where the applicant wishes that the international preliminary examination be directed to the application as amended, he would have to so declare in the demand and attach the amended parts. Such amendments could be amendments under Article 34(2)(b), or amendments under Article 19 where, at the time of filing the demand, the claims had already been amended under Article 19 and the applicant wishes that the international preliminary examination be directed to the claims so amended. In all cases, it would be the applicant who has to provide the amendments (under Article 34(2)(b)) or copies thereof (in the case of amendments made under Article 19) to the International Preliminary Examining Authority.

8. The proposed procedure, which is outlined in more detail below, would have the advantage that the International Preliminary Examining Authority would be immediately in possession of the claims to which the international preliminary examination must be directed. It would eliminate the present uncertainty about the basis for international preliminary examination. Such examination could start promptly because the International Preliminary Examining Authority would not have to wait before starting the preliminary examination for a copy of amended claims from the International Bureau nor for a notification from that Bureau that the applicant does not wish to file amendments or that no amendments had been received within the applicable time limit.

9. Furthermore, the International Bureau would be relieved from monitoring, when a demand is sent to it by the International Preliminary Examining Authority, the time limit for filing amendments to the claims under Article 19 and, where such amendments are filed, from making and submitting copies of amendments to the International Preliminary Examining Authority. The International Bureau would also be relieved from the need to notify the International Preliminary Examining Authority of any declaration by the applicant that he does not wish to make amendments under Article 19. Rule 62.2 could be deleted under the proposed procedure.

10. Mandatory declaration concerning amendments in the demand. It is proposed that the mandatory contents of the Demand Form include a declaration of the applicant in which he makes a determination of the basis on which the international preliminary examination should be carried out. The present Demand Form, in Box IV, already provides for a declaration concerning amendments of the claims but this has no express basis in Rule 53. Such a basis in Rule 53, however, would be important and should make the declaration mandatory. If the declaration is mandatory, failure to make it would be a defect in the demand and the applicant would be invited, under Rule 60.1, to correct the defect. The basis for the start of the international preliminary examination would thus be clearer.

11. Details of the declaration. The declaration by the applicant in the demand would consist, in practice, in the marking, on the printed Demand Form, of check-boxes relating to a preprinted text spelling out the various possibilities such as the wish that the international preliminary examination be directed to the international application as filed or as amended.

12. Submitting amendments with the demand. Furthermore, it should be provided that any amendment which should be taken into account for international preliminary examination must be submitted together with, or at the same time as, the demand. It would thus be readily available for the international preliminary examination at the International Preliminary Examining Authority and not depend on a transmittal by the International Bureau.

13. Binding character for the applicant of the declaration concerning amendments. The declaration in the demand should be binding for the applicant. If it were not binding, the declaration would not sufficiently identify the basis for international preliminary examination. If, exceptionally, the applicant files amendments after the filing of the demand or files amendments which are not referred to in the declaration or not submitted with the demand, the International Preliminary Examining Authority should have discretion whether to take those amendments into account or not. The examiner could disregard them, but he could take them into account and, normally, should do so if they are received before he has begun to draw up the first written opinion. Taking them into account is not only in the interest of the applicant but it may also be in the interest of the International Preliminary Examining Authority in so far as these amendments may anticipate amendments which would otherwise have to be required by the Authority in its first written opinion in accordance with Rule 66.2(c). Naturally, this does not limit the applicant's right, once a written opinion has been issued by the examiner, to make, in response to that opinion, any amendment he considers to be necessary, including those which have not been taken into account by the examiner because they were received too late.

14. Separate treatment of amendments under Chapter I and Chapter II. Under the proposed procedure, amendments under Chapter II should be treated separately from amendments to the claims under Article 19. There would be a clear division between proceedings under Chapter I and under Chapter II. If the applicant wishes that amendments to the claims under Article 19 be taken into account by the International Preliminary Examining Authority, he would have to state so in the demand and make copies available to the International Preliminary Examining Authority. Should the applicant forget to make copies of Article 19 amendments available to the International Preliminary Examining Authority, he would receive an invitation to submit copies within a time limit of one month; should he fail to do so, the amendments would be disregarded.

15. Once a demand has been filed, amendments to the claims which have to be taken into account during international preliminary examination would be governed exclusively by Article 34(2)(b). Naturally, the filing of amendments to the claims under Article 19 before the International Bureau within the time limits provided for in Rule 46.1 would remain possible also after the submission of the demand. However, claims amended pursuant to Article 19 before the International Bureau which the applicant wants to be examined by the International Preliminary Examining Authority would then have to be submitted to that Authority separately as amendments under Article 34(2)(b).

16. The demand is usually only submitted after the applicant has evaluated the international search report. Amendments resulting from that evaluation could, therefore, be made before or when submitting a demand. Should, exceptionally, such search report be late and the demand for this or for any other reason be filed before the transmittal of the international search

report, the declaration concerning the basis of international preliminary examination could naturally not refer to the claims as amended under Article 19, because such amendments can only be made after the receipt of the international search report. If the applicant wishes, later, as a result of the international search, to amend the claims under Article 19, naturally he could do so. If the applicant wishes such amended claims to be examined by the International Preliminary Examining Authority, he would have to furnish a copy of such amendments to that Authority. The International Preliminary Examining Authority could take the amendments into account if they are received before the drawing up of the first written opinion; otherwise, it could disregard them; however, such amendments could be refiled in response to the written opinion, this time under Article 34(2)(b) and with the International Preliminary Examining Authority, to the extent the applicant deems it still to be necessary (see paragraph 13, above).

17. Time limit for "telescope procedure". Present Rule 69.1(c) provides, in case of the so-called "telescope procedure" under which international preliminary examination is carried out at the same time as the international search, for the establishment of an international preliminary examination report within six months after the expiration of the time limit under Rule 46 for amending claims under Article 19 before the International Bureau. Under the proposed procedure, amendments under Article 19, unless they have been filed before the demand and copies of them are attached to the demand, would normally not be relevant for international preliminary examination.

18. Therefore, it is proposed to no longer link the duration of the international preliminary examination procedure to the end of the period during which the applicant is entitled to make amendments to the claims before the International Bureau. The second sentence of Rule 69.1(c) would thus be deleted. Moreover, there is no need for a special time limit for the so-called "telescope procedure" under Rule 69.1(c), first sentence. The time limit under Rule 69.1(a)(i) for the establishment of the international preliminary examination report would fit perfectly in cases where the preliminary examination starts already together with the international search.

II. TRANSLATION OF INTERNATIONAL PRELIMINARY EXAMINATION REPORTS

19. Present situation. Under the present Rule 72, any elected State has the right to require from the International Bureau the translation of an international preliminary examination report established in a language other than the official language or one of the official languages of the national Office into English, French, German, Japanese, Russian or Spanish. Each required translation is a burden for the applicant, because a further handling fee has to be paid for each language into which a translation is required. It is also a burden for the International Preliminary Examining Authority, which has to check whether the handling fees corresponding to the required translations have been paid by the applicant; finally, it is a burden for the International Bureau, which has to prepare all of these translations.

20. The International Bureau has, therefore, a few years ago, proposed to all national Offices that translations should be required only if the international preliminary examination report is not in the English language, and then the translation should be only into English and into no other language. This proposal has been accepted by all Offices that can be elected.

21. Possible solution. It should be considered to amend Rule 72.1(a) in order to reflect the present, de facto, situation. Thus, the present situation would become binding for all present PCT Contracting States bound by Chapter II and would ensure for the future that new PCT Contracting States or States becoming bound by Chapter II could require a translation into English only. The amendment of the Rule would be a condition for the amendments to Rule 57 relating to the handling fee which are discussed in paragraphs 22 to 27, below. The amendment would simplify the procedure because it would permit the charging of one single handling fee irrespective of whether or not the translation into English has to be made by the International Bureau (see paragraph 27, below). It would also simplify the work of the International Preliminary Examining Authority in checking the correct payment of the prescribed handling fee.

III. SIMPLIFYING THE HANDLING FEE SYSTEM

22. Present situation. Present Rule 57 requires the payment of further handling fees for each language into which the international preliminary examination report must be translated by the International Bureau. Mistakes are often made by applicants when paying the handling fee because they do not correctly count the number of languages into which a translation is required.

23. The situation for applicants has improved recently because, since 1987, all Offices that may be elected are prepared to receive international preliminary examination reports established either in English or translated into English. As a consequence, applicants who receive a preliminary examination report established in the English language pay only one handling fee, and applicants receiving the international preliminary examination report established in another language pay two handling fees.

24. Possible solution. For the case that Rule 72.1 would be amended as discussed in paragraphs 19 to 21, above, it would be useful to further simplify the handling fee system and to do away with the multiplication of the handling fee if a translation is required, by providing for one single amount of the handling fee. This single amount would be payable by all applicants independent of the language in which the international preliminary examination report is established. The single amount of the handling fee could be somewhat higher than the present amount in order to compensate for the loss of income deriving from the introduction of the single amount system.

25. This solution would have the advantage that applicants would no longer have to check whether any of the elected Offices requires a translation and that they would in future be required to pay, in all cases, only one handling fee. It would facilitate the procedure for the International Preliminary Examining Authorities when checking the correctness of the amount of the fees paid. It would also avoid that a demand is considered as if it had not been submitted if a handling fee for a translation required by one of the elected States is not paid. Such a sanction appears to be excessive if the handling fee required for all other elected States has been paid.

26. What has been said with respect to the handling fee applies also to the payment of a supplement to the handling fee provided under Rule 57.1(b) and Rule 57.5. The burden resulting from the need for a translation of the international preliminary examination report due to a later election filed with the International Bureau would be removed. The proposed single amount of the handling fee would render the so-called "supplement to the handling fee" superfluous. This would also solve the problems which resulted from the fact that the supplement to the handling fee was payable to the International Bureau, whereas the handling fee itself was payable to the International Preliminary Examining Authority.

27. In conclusion, it would appear to be useful to amend Rule 57 and to provide for the payment of a single handling fee to the International Preliminary Examining Authority independently from the need for translation of the international preliminary examination report. Furthermore, the provisions on the supplement to the handling fee and the payment of such supplement to the International Bureau could be deleted.

IV. REFUND OF THE HANDLING FEE IN CERTAIN CASES

28. Present situation. Under the present Rule 57.6, the handling fee is in no case refunded. It appears not to be quite justified for the International Bureau to keep a handling fee paid by an applicant who withdraws the demand promptly after filing (e.g., because he has realized that the demand was received by the International Preliminary Examining Authority only after the expiration of 19 months from the priority date and therefore does not have the effect of postponing the national phase). Likewise, it appears not to be quite justified not to refund the handling fee to an applicant who is not entitled to make a demand because he is not a national or resident of a Contracting State bound by Chapter II of the PCT. In both cases, there is, in fact, not much "handling" of the demand by the International Bureau. Therefore, it would appear to be justified to refund the handling fee paid by such an applicant.

29. Possible solution. It is proposed to amend Rule 57.6 by allowing the refund of the handling fee in cases where the demand is considered, under Rule 54.4, not to have been submitted or when the demand is withdrawn before the handling fee is transferred by the International Preliminary Examining Authority to the International Bureau. The refund would be effected by the International Preliminary Examining Authority since the handling fee would, at this early time, not yet have been transferred to the International Bureau. No refund would be made where the handling fee has already been transferred by the International Preliminary Examining Authority to the International Bureau.

V. WITHDRAWAL OF INTERNATIONAL APPLICATION WHERE CHAPTER II APPLIES

30. Present situation. Rule 32.1(a) provides that the international application as such or a designation may be withdrawn prior to the expiration of 20 months from the priority date. A withdrawal after the expiration of 20 months from the priority date of the international application as such or of a designation is not expressly provided for in the Regulations. Article 37

and Rule 75.1 provide for the withdrawal of the demand or of any or all elections. However, the withdrawal of the demand has the effect that the international application, as far as the elected States are concerned, is considered withdrawn, and the withdrawal of the election of a Contracting State has the same effect as far as that State is concerned (see Article 37(4)(a)). Applicants not wishing to pursue the international application further usually notify a withdrawal of the international application (or a designation) without realizing that, instead, they would have to withdraw the demand (or an election) whenever the withdrawal is notified after the expiration of 20 months from the priority date.

31. Possible solution. To remedy the situation, it could be clarified in Rule 75 that the withdrawal of the international application after the expiration of 20 months from the priority date is to be considered to be a withdrawal of the demand and that the withdrawal of a designation after the expiration of the same time limit is to be considered to be a withdrawal of the corresponding election.

VI. EFFECT OF THE WITHDRAWAL OF THE DEMAND IN CERTAIN CASES

32. Present situation. Under present Rule 75.1(a), withdrawal of the demand may be made prior to the expiration of 30 months from the priority date "except as to any elected State in which national processing or examination has already started" (emphasis added).

33. The view has been expressed by some that in case of a withdrawal of the demand prior to the establishment of the international preliminary examination report, the international preliminary examination procedure should continue if, in at least one elected State, national processing or examination has already started (upon express request by the applicant), because the withdrawal of the demand would have no effect in respect of such a State. Although the national phase had already started, the withdrawal of the demand would thus, due to the provision of Rule 75.1(a), exceptionally not lead to an end of the international phase. International preliminary examination would have to be completed in such a case, the international preliminary examination report would have to be established and transmitted to the International Bureau and to the applicant, as provided for in Rule 71.1, and to be communicated, pursuant to Article 36(3)(a), to any elected Office where the national processing or examination has already started. The applicant should not be allowed, on the one hand, to benefit from the extension of the time limit for entering the national phase and, on the other hand, to forego the international preliminary examination report by requesting an early start of the national phase and withdrawing subsequently the demand.

34. Others, including the International Bureau, interpret Rule 75.1(a) in another way. In their view, the words "except as to any elected State in which the national processing or examination has already started" mean that the fact that the withdrawal of the demand or of an election prior to the completion of international preliminary examination is without effect for the elected State in which the national phase has already begun, entails the end of the international phase with respect to that State. Once the national phase has started in a given State, a withdrawal under Rule 75, which belongs

to the international phase, can no longer be made and any withdrawal in respect of that State must be sent by the applicant to the national Office of, or acting for, such State. The general rule applies that the international phase is over where the national processing or examination has already started. After the beginning of the national phase, it is the national law and no longer the PCT which applies in respect of a withdrawal, and it is for this reason that Rule 75.1(a) contains the said exception. There is no evidence that the said exception could mean that the international phase continues in respect of the State in which the national processing or examination has already started and that international preliminary examination would have to continue for the purposes of just that State. Moreover, Section 419 of the Administrative Instructions provides for a notification of the International Preliminary Examining Authority, by the International Bureau, of the withdrawal of the demand. Upon receipt of such a notification, the international preliminary examination is stopped. The PCT does not provide for the notification of the International Preliminary Examining Authority, by the International Bureau, of the fact that the withdrawal of the demand or of an election is without effect with respect to a certain State because the national phase has already started in the State. Such notification could not be made because there is no obligation for the elected Office to notify the International Bureau of an early beginning of the national phase and, consequently, the International Bureau is not informed of that fact.

35. The same exception as in Rule 75.1(a) is also contained in Rule 32.1(a) concerning the withdrawal of the international application. The International Searching Authority is notified by the International Bureau of the withdrawal under Section 415 of the Administrative Instructions and discontinues the international search upon receipt of such notification. Rule 32.1(a) has, to the knowledge of the International Bureau, never been interpreted in the sense that the international search must continue, in spite of a withdrawal of the international application, simply because the national phase has already started in a designated State. Such continuation of the international phase would mean that international publication (of the international application and of the international search report) would take place despite the withdrawal, which has never been done in such circumstances. There does not seem to be any reason to interpret the same words differently in Chapter II than in Chapter I.

36. Proposed solution. It is proposed to clarify the meaning of Rule 75.1(a), through an amendment to the Regulations, along the lines of the explanations given in paragraph 34, above. The same clarification should also be made in respect of Rule 32.1(a).

VII. VARIOUS AMENDMENTS RELATING TO THE DEMAND

37. First, it should be considered to amend Rule 53.1(a) and to allow the filing of a demand in the form of a computer print -out. This would prepare the ground for a future filing of demands with the help of data processing equipment as is also envisaged in future for the request.

38. Second, it should be considered to amend Rule 53.1(b) and to spell out what is already the general practice, namely, that applicants may obtain free of charge copies of the printed Demand Form not only from the receiving Office but also from the International Preliminary Examining Authority.

39. Third, the items which, at present, under Rule 53.6, must be indicated in the demand in order to identify the international application include the name of the receiving Office with which the international application was filed, but that item should be deleted. This requirement is superfluous since the international application number permits the identification of the office with which the application was filed.

VIII. ALLOWING THE FILING OF LATER ELECTIONS WITH THE INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

40. Present situation. According to Article 31(6)(b), later elections must be submitted to the International Bureau. Since the demand must be filed with the International Preliminary Examining Authority and, during the procedure under Chapter II of the PCT, applicants are dealing with that Authority, it happens that some applicants overlook the requirement under Article 31(6)(b) and submit later elections to the International Preliminary Examining Authority instead of to the International Bureau. Although that Authority will usually forward the later election to the International Bureau, such later election may reach the International Bureau only after the expiration of 19 months and therefore not have the effect desired by the applicant, namely, to postpone the beginning of the national phase from 20 to 30 months after the priority date for the State in question.

41. Possible solution. It is proposed to consider a new rule which would provide that any later election which is erroneously submitted by the applicant to the International Preliminary Examining Authority must be transmitted by that Authority promptly to the International Bureau and then the later election is considered by the International Bureau as if it had been submitted to it on the date on which it has been received by the International Preliminary Examining Authority. By recognizing the date of submission with the International Preliminary Examining Authority as the date of submission with the International Bureau, it would be guaranteed that applicants, through the error made in submitting the later election to the wrong addressee, would not lose the effect under Article 39(1)(a) of an election made before the expiration of 19 months from the priority date, i.e., the postponing of the beginning of the national phase from 20 to 30 months.

IX CLARIFICATION OF THE ENTITLEMENT TO MAKE A DEMAND AND TO ELECT STATES

42. Present situation. Under Rule 19.2, several applicants of different nationality or residence may file an international application with a given receiving Office if at least one of them is a national or resident of a Contracting State for which that Office acts as competent receiving Office. That Rule applies both if the applicants are the same for all designated States and if they are different for different designated States. This means that an applicant who, as a sole applicant, cannot file an international application with a given receiving Office because that Office is not competent with respect to him can, nevertheless, do so if he files the application together with at least one other applicant for whom the said Office is competent. However, if the same applicant, supposing he is a national or

resident of a Contracting State bound by Chapter II, wants to file a demand for international preliminary examination, he may encounter difficulties because of the wording of Article 31(2)(a). That Article reads as follows:

> "Any applicant who is a resident or national, as defined in the Regulations, of a Contracting State bound by Chapter II, and whose international application has been filed with the receiving Office of or acting for such State, may make a demand for international preliminary examination" (emphasis added).

It appears to exclude the said applicant from the possibility of filing a demand because he did not file the application at the receiving Office acting for the State of which he is a resident or national. Furthermore, it seems also to exclude him from electing States under Rule 54.3(a)(i), which reads as follows:

> "(a) For the purposes of different elected States, different applicants may be indicated, provided that, in respect of each elected State, at least one of the applicants indicated for the purposes of that State is
>
> (i) a resident or national of a Contracting State bound by Chapter II and the international application has been filed as provided in Article 31(2)(a) . . ." (emphasis added).

43. The following example may illustrate the problem: two applicants, A and B, file an international application with the receiving Office of the United States of America. Applicant A is a national and resident of the United States of America, a Contracting State bound by Chapter II, Applicant B is a national and resident of France, a Contracting State also bound by Chapter II. A is applicant for State X and B is applicant for State Y. Article 31(2)(a) may be understood to require that A and B, in order for both of them to be entitled to make a demand, have filed the application with the receiving Office of the country of which each of them is a national or resident. This, however, is impossible because the international application in question can only be filed with one receiving Office. In the example under consideration, that Office was the receiving Office of the country of which Applicant A is a national and resident (the United States of America). Therefore, such an interpretation of Article 31(2)(a) leads to the absurd result that a demand could only be filed by Applicant A, because, as far as Applicant B is concerned, the international application was not filed as provided in Article 31(2)(a), i.e., it was not filed with the receiving Office of the country of which Applicant B is a national and resident (France). The result is absurd because an applicant who is a national and resident of a State bound by Chapter II and who has the right under Rule 19.2 to file an international application with a receiving Office which is not the receiving Office of the State of which he is a national or resident should not be deprived of the right to use Chapter II.

44. Similarly, such an interpretation of Article 31(2)(a) leads to the absurd result that an election of State Y by Applicant B could not be made under Rule 54.3(a)(i) even if the demand was filed by Applicant A, because, as far as Applicant B is concerned, the international application was not filed with the receiving Office of the country of which he is a national or resident (France) .

45. The provisions of Article 31(2)(a) were certainly not intended to exclude from making a demand or from electing States, in some cases, such nationals and residents of Contracting States bound by Chapter II who had jointly filed the international application with the receiving Office of any such State. The reference to the receiving Office with which the international application has been filed was certainly not intended to lead to such result. It rather appears that such reference is intended to exclude all international applications which have been filed with a receiving Office of or acting for a Contracting State not bound by Chapter II from any proceedings under Chapter II. This applies even in the case where an applicant is a national or resident of a Contracting State bound by Chapter II, if the international application has been filed with the receiving Office of a Contracting State not bound by Chapter II (for example, the applicant is a national of the Federal Republic of Germany — a Contracting State bound by Chapter II — and a resident of Switzerland — a Contracting State not bound by Chapter II — and has filed his international application with the national Office of Switzerland). Moreover, in such a case no International Preliminary Examining Authority would be competent (see Rule 59.1).

46. Proposed solution. To avoid the absurd result referred to above, and with due regard to the general principle expressed in Rule 19.2, Article 31(2)(a) should be interpreted in such a way that it permits each applicant who is a national or resident of a Contracting State bound by Chapter II and whose international application was filed with the receiving Office of or acting for a Contracting State bound by Chapter II, to file a demand and to make elections under Rule 54.3(a)(i). Certainly, the demand must be filed with the International Preliminary Examining Authority which is competent for the preliminary examination of international applications filed with a given receiving Office. But as long as those conditions (filing of the international application with the receiving Office of or acting for a Contracting State bound by Chapter II, and filing of the demand with the competent International Preliminary Examining Authority) are complied with in respect of one applicant, it should be sufficient, for the right to file a demand, if the other applicant is a national or resident of a Contracting State bound by Chapter II.

47. The interpretation given in the preceding paragraph is confirmed by the provisions of Rule 54.2(i) for the case where all applicants are applicants for the purposes of all elected States. Here it is sufficient if one applicant complies with the conditions of Article 31(2)(a) in order for the other applicant to have the right to file a demand. The same interpretation of Article 31(2)(a) should be applied to the case dealt with by Rule 54.3(a)(i), where there are different applicants for different elected States, it being understood that, with respect to each elected State, at least one applicant indicated for the purposes of that State must be a national or resident of a Contracting State bound by Chapter II.

48. The interpretation of Article 31(2)(a) according to which the right to file a demand exists if one applicant is a national or resident of a Contracting State bound by Chapter II and has filed the international application with a receiving Office of a State bound by Chapter II, should also be applied in cases where the international application has been assigned after filing and another person has been recorded as applicant. If both the original and the new applicant are nationals or residents of States bound by Chapter II, the new applicant should be entitled to file a demand even if the

international application has been filed with the receiving Office of, or acting for, a State bound by Chapter II which is different from the receiving Office of, or acting for, the State of which he (the new applicant) is a national or resident (for example, the international application was filed with the receiving Office of country A — bound by Chapter II — because the original applicant is a national and a resident of country A and is subsequently assigned to a person who is a national and a resident of country B — also bound by Chapter II).

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