

# WIPO



PCT/R/1/13

ORIGINAL: French

DATE: April 9, 2001

**WORLD INTELLECTUAL PROPERTY ORGANIZATION**

GENEVA

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

**COMMITTEE ON REFORM  
OF THE PATENT COOPERATION TREATY (PCT)**

**First Session  
Geneva, May 21 to 25, 2001**

**REFORM OF THE PCT:  
PROPOSALS BY SWITZERLAND**

*Document prepared by the International Bureau*

1. The proposals appearing on the following page were made by Switzerland in a submission to the International Bureau received on April 5, 2001. Background information appears in document PCT/R/1/2.<sup>1</sup>

2. *The Committee is invited to consider the proposals contained in this document.*

---

<sup>1</sup> The working documents for the Committee's session are available on WIPO's web site at the following address: [http://www.wipo.int/pct/en/reform/index\\_1.htm](http://www.wipo.int/pct/en/reform/index_1.htm)

## PROPOSALS BY SWITZERLAND

With reference to the decision taken by the Assembly of the PCT Union (paragraphs 51 to 56 of document PCT/A/29/4) and to the letter of January 10, 2001, from the Director General of the World Intellectual Property Organization, Switzerland submits herewith its thoughts on the first stage of the project for the reform of the PCT. It wishes to see the main reform effort concentrated on the restructuring of the procedures under PCT Chapters I and II.

At present the vast majority of international applications undergo international preliminary examination. However, the experience of the European Patent Office indicates that a considerable number of demands for international preliminary examination under PCT Article 31 are filed solely with a view to gaining additional time for reflection. Consequently two solutions for the restructuring of the procedures under PCT Chapters I and II should be considered in the first stage of the reform of the PCT:

- (a) The 20-month time limit under Article 22 could be adapted to the time limit under Article 39. The user of the PCT system would then be free to embark on international preliminary examination on the strength of the international search, or to waive it. In both cases the entry into the national stage would occur within the 30-month period. That solution would have the advantage of reducing the burden on International Preliminary Examining Authorities (IPEAs). A large percentage of applicants may be expected to decide against having international preliminary examination. In view of the fact that the reports drawn up by IPEAs (and by International Searching Authorities (ISAs)) often serve as a basis for countries that do not themselves have a sufficient search or examination capability, there should nevertheless be close cooperation between the authorities (ISAs and IPEAs) and countries that do not have the requisite infrastructure. Convergence between PCT Chapters I and II would still not be complete, but it would be possible to streamline procedures.
- (b) A possible alternative – which moreover has been proposed by the United States of America – would consist in deleting Article 22, and also the related articles and procedures, in parallel with the abolition of the obligation under Article 31 to file a demand for international preliminary examination. All international applications would therefore be subjected automatically to international preliminary examination after the international search. That solution would have the advantage of making the procedures under PCT Chapters I and II converge more simply and effectively, but the lessening of the burden on ISAs and IPEAs would then probably be less significant. It would be necessary in any event to ensure that such changes do not cause a general increase in costs for users of the PCT system.

With regard to the proposals for the reform of the PCT contained in the Annex to document PCT/A/29/3, Switzerland welcomes the efforts to simplify the procedures for the international filing of patent applications. In view of the fact that the first phase of the reform of the PCT has been rightly confined to the proposals whose objectives would be the same as those identified under the title of “First Stage of Reform” in the Annex to document PCT/A/29/3 (see document PCT/R/1/2), Switzerland is content to comment on the corresponding passages of the latter, confining itself to the most important aspects. Indeed, the proposals under the heading: “Second Stage of Reform” presuppose a substantial harmonization of patent law.

(1) *Elimination of the concept of designation*

Switzerland generally welcomes proposals aimed at eliminating the concept of designation. Care should however be taken to avoid the risk of such changes being matched by a considerable increase in the number of paper documents to be communicated to national offices by the International Bureau.

(2) *Elimination of all residency and nationality requirements*

Switzerland supports the proposal to open the PCT system to persons domiciled in countries that are not party to the PCT and to the nationals of those countries, even if the effect of the proposal might be to lessen the attractiveness of PCT to non-member countries. However, the provisions determining the competent receiving Office (Article 10 and Rule 19) should remain unchanged, in order to deter applicants from trying to secure a more favorable filing date through their choice of receiving Office, which is more probable in the case of the electronic filing of applications. Moreover, the competence of the ISA and IPEAs should not be called into question.

(3) *Conform filing date requirements to those in the PLT*

Switzerland is generally in favor of the proposal to align filing date requirements with those of the PLT. However, the deletion of paragraph (1)(i) would be at variance with the provisions determining the competent receiving Office, and would carry the risk of manipulation of the filing date.

(4) *Conform "missing part"- type requirements to PLT procedures*

Switzerland supports these proposals.

(5) *Availability of multiple searches and examinations*

The proposal to give the applicant the option of asking to have searches and examinations done by various authorities seems problematic to us. First, far from simplifying existing procedures, it would complicate them. Secondly, there is reason to fear that the existence of such an option might induce applicants to file not just one but several reports on the examination of the application to receiving Offices, with a view to making the national procedure easier. The quality of a search or examination does not improve through duplication, however.

(6) and (7) *Elimination of the 20-month deadline for entry into the national stage, and elimination of the concept of demands*

Switzerland welcomes the proposals for the restructuring of the procedures under PCT Chapters I and II. It cannot however subscribe to the considerations on the convergence of the international and national stages, as they seem to be still too vague, and to presuppose substantial harmonization of patent law.

(8) *Accommodate further deferment of national stage entry*

The possibility of deferring entry into the national stage longer would have an adverse effect on legal security: during the period of deferment of entry into the national stage, it would not be clear to third parties in what country a demand would be relied upon. The insecurity would be all the greater if the concept of designation were eliminated. The publication of search or examination results, and the possibility of having access to them, would not be sufficient to dispel all fears in that connection.

(9) *Combination of search and examination*

In the framework of the restructuring of the procedures under PCT Chapters I and II according to proposals 6 and 7, the combination of search and examination could be supported. Care should be taken to ensure that the search finding is published by the 30-month time limit, however, in order to allow a third party to assess the patentability of the invention.

[End of document]