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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 THE INTER-AMERICAN ASSOCIATION
OF INDUSTRIAL PROPERTY (ASIPI)

Document prepared by the International Bureau

1. The proposals appearing on the following pages were made by the Inter-American Association of Industrial Property (ASIPI) in a submission to the International Bureau received on May 4, 2001. Background information appears in document PCT/R/1/2.¹

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

¹ 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. The Spanish text of the proposals appearing in document PCT/R/1/19, as submitted by ASIPI, is also available at that address.

ASIPI DOCUMENT REGARDING THE REFORM OF THE
PATENT COOPERATION SYSTEM (PCT)

1. The Inter-American Association of Industrial Property, ASIPI, groups a number of professional and persons related to industrial property belonging to countries of very different development levels and understands that progress and respect to institutions on the matter, depends of the ability to interpret different nations as well as different active and passive subjects on the rights granted, namely, applicants and owners of such rights, industries and the community in general. For such a reason, its Executive Committee has determined to participate actively and progressively in all international forums, giving thanks for character of observant recognized by WIPO to ASIPI in connection with the matter this conference deals with.
2. It is necessary to take into consideration that in all International Treaties among countries of different development degree, what can be convenient for some of them, is susceptible to become contrary to the other countries' interests. Also, what can be an advantage for some of the subjects involved in this system, can be susceptible to be harmful for the rest of them. As a consequence, the more flexible an International Treaty of such a kind is, possibilities of success in a higher number of States and among the different sectors involved, are better.
3. This is particularly true in a Treaty like the PCT which deals with inventions, coming about 97% of them from only two countries worldwide, and from those conforming the Patent European Convention, and only a 3% from the rest of the countries.
4. In accordance with which has been mentioned above, ASIPI, entity in where are grouped associates of countries that are Members for PCT as well as other that are not members, consider that the interests among all the countries must be balanced and not only to guard those of the countries that originate inventions. Further, ASIPI thinks that it must be taken into consideration its positive or negative impact on the different involved sectors.
5. PCT contains provisions that can be favorable for more developed countries but that are perceived as prejudicial to underdeveloped or developing countries and to their people, since it allows the existence and prolongation in the time of patent applications that are beyond the regulations established by Paris Convention, which can be an obstacle to internal investigation, industrialization and investment of said under developed or developing countries. In Latin America, only about a 15% of these applications where Latin-American countries are designated enter into the national phase in such countries, with higher population, being such percentage less or even insignificant in those nations of lower population, not existing reasons for occurring the same in other regions of the world. In connection with PCT patent applications, originated from less favored referred countries, this percentage is practically depreciable, reaching only 1.97% from the total number of applications during the first 2000 semester, very little proportion of which, about a 50%, comes from South Korea, which demonstrates the almost null incidence of the remaining States of this kind.
6. ASIPI considers that which has already been mentioned makes necessary to establish a PCT procedure that can be applied progressively, as the different countries enter into different development stages.

7. Within which has been previously named, the Inter American Association of Industrial Property, looks with special interest the part of the proposal of the United States of America that allows to use PCT to the inventors that are neither nationals nor resident of the Countries that form part of this Treaty, possibility which additionally is contemplated on Article 9(2) of the Treaty. This would constitute an important step to promote that developing and underdeveloped countries, start to use the system in an stage where they can not assume its obligations for being them susceptible of jeopardizing its economical or technological development.

8. In the measure that underdeveloped or developing countries' inventors can use the PCT system without need of their countries being members of PCT, some kind of proportionality could be reached between the national inventions of a country and the foreign inventions that are protected by said country, and reaching such an stage, the non member countries will examine necessarily, the convenience to go ahead with the next step, that is, to plenty join PCT.

9. ASIPI's opinion regarding the remaining amendments, is that it is necessary to distinguish among those that mean a simplification of the proceedings in order to make the Treaty more friendly, from those that implies withdrawal of National Offices' proceedings, from those that make even delay more the entrance to the national phase and those that reach a global or unique international patent system.

10. ASIPI considers as hi y convenient those amendments that intends to make the system more amicable diminishing the punishment for not complying with some kind of requirements and granting the opportunity to correct omissions well as the suppression of merely procesal requirements that are totally irrelevant.

11. Nevertheless, ASIPI has severe objections in connection with the elimination of formalities or requirements that can be unexplained from the point of view of some important juridical systems of those that are universally accepted, since it can result into a loss of PCT flexibility and into a conflict with institutionally of the countries which General Law is inspired on the systems at have been left aside. Likewise, ASIPI looks with apprehension to diminish or deteriorate the participation of National Offices or Professionals in the system, since it can seriously damage culture or development in the matter, in the countries that receive a lower number of patent applications than those that they file in the foreign countries. Also, it considers that is not advisable for the respect of patent rights in general, that the less developed countries subsidize, at the cost of their participation in the prosecution and protection on industrial property rights to the most developed potencies and their inventors. Additionally, and as a consequence of previously named effects, ASIPI looks as inconvenient any delay in order the PCT applications enter into the national phase.

12. Also, ASIPI disagrees with the change of PCT system, as to become a first step for an universal patent system, by means of a Patentability Certificate, a Unique Patent System or any other steps for those purposes, since it requires a worldwide political integration or unit which is far from having being achieved yet. If there are countries that for having achieving a higher political integration degree want to grant an extraterritorial effect to substantial decisions adopted abroad or preparatory decisions for them, they can do so but not in a system requiring flexibility to be applied for in countries of different cultural, economical or political development degree. The act of forcing a universal patent system by PCT would make impossible to many countries to join the Treaty itself, due to juridical, politic and economical

reasons. These circumstances could even cause that under developed and developing countries having ratified it, could be obliged to be leave it aside or to file a formal notice of termination.

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