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## INTERNATIONAL PATENT COOPERATION UNION (PCT UNION)

### WORKING GROUP ON REFORM OF THE PATENT COOPERATION TREATY (PCT)

**Sixth Session**  
**Geneva, May 3 to 7, 2004**

#### “MISSING PART” REQUIREMENTS

*Document prepared by the International Bureau*

#### INTRODUCTION

1. At its first session, the Working Group on Reform of the Patent Cooperation Treaty (PCT) discussed proposals designed to align the PCT with the requirements of the Patent Law Treaty (PLT), based on document PCT/R/WG/1/5.<sup>1</sup>
2. Among the PLT-related proposals contained in document PCT/R/WG/1/5 were proposals to conform the PCT “missing part” requirements to those of the PLT (see document PCT/R/WG/1/5, Annex I). However, due to time constraints, a number of the proposals contained in document PCT/R/WG/1/5, including those related to “missing part” requirements, could not be discussed during the first session of the Working Group. Rather, the Working Group desired to give priority to those matters “which would result in the greatest and most immediate practical benefits for users, having regard also to the degree of

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<sup>1</sup> References in this document to “Articles” and “Rules” are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT (“the Regulations”), or to such provisions as proposed to be amended or added, as the case may be. References to “national laws,” “national applications,” “the national phase,” etc., include reference to regional laws, regional applications, the regional phase, etc. References to “PLT Articles” and “PLT Rules” are to those of the Patent Law Treaty (PLT) and the Regulations under the PLT.

complexity involved and to workload implications for Offices and Authorities,” in particular, proposals concerning restoration of the right of priority and relief when time limits were missed, especially the time limit for entering the national phase (see the first session summary by the Chair, document PCT/R/WG/1/9, paragraph 21(v)).

3. For the second session of the Working Group, the International Bureau prepared a document outlining possible further PLT-related changes to the PCT, suggesting, in general, that those PLT-related proposals contained in document PCT/R/WG/1/5 which had not been discussed during the first session of the Working Group would not need to be addressed as matters of high priority. With regard to the proposal to conform the PCT “missing part” requirements to those of the PLT, as contained in Annex I to document PCT/R/WG/1/5, it was suggested that “[i]n light of the discussions at the first session of the Working Group, this proposal is considered to have a relatively low priority and will not be resubmitted for consideration by the Working Group until a later date” (see document PCT/R/WG/2/6, paragraph 9; the Working Group at its second session was unable in the time available to consider document PCT/R/WG/2/6 – see document PCT/R/WG/2/12, paragraph 59).

4. At its third session, the Working Group reviewed proposals for reform which had already been submitted to the Committee on Reform of the PCT or the Working Group but not yet considered in detail and agreed on the priority of those proposals, with a view to their inclusion in the work program of the Working Group. Among the proposals reviewed by the Working Group was the proposal to conform the PCT “missing part” requirements to those of the PLT, as originally submitted to the Working Group in document PCT/R/WG/1/5. The Working Group agreed that the International Bureau should resubmit the proposals for further consideration by the Working Group (see the summary of the session by the Chair, document PCT/R/WG/3/5, paragraphs 35 to 40, in particular, paragraph 38).

5. Further revised proposals relating to “missing part” requirements prepared by the International Bureau were considered by the Working Group at its fourth and fifth session. The summaries by the Chair of the sessions of the Working Group set out the status of the matters discussed by the Committee and the Working Group, respectively, noting the range of views expressed and areas where agreement had been reached, and identifying what future work needed to be undertaken (see documents PCT/R/WG/4/14, paragraphs 45 to 71; PCT/R/WG/5/13, paragraphs 28 to 62).

6. The Working Group’s discussions at its last (fifth) session (see document PCT/R/WG/5/13, paragraphs 83 to 104) are outlined in the following paragraphs:

“83. Discussions were based on document PCT/R/WG/5/8.

“84. The Working Group was generally in favor of the proposals contained in the document, and invited the Secretariat to prepare revised proposals, for consideration at the next session, taking into account the comments and suggestions set out in the following paragraphs, noting particularly that certain delegations considered that it would be necessary to include a reservation provision in respect of the effect in the national phase for their countries (see paragraph 91, below).

*“Rule 4*

“85. One representative of users expressed concern about possible unintended consequences of the proposed inclusion in the request under Rule 4.18 of a pre-printed statement that the contents of the earlier application(s) the priority of which was claimed were incorporated by reference. The representative suggested that the applicant be given the opportunity to omit the statement, noting that the applicant, in certain cases, may have good reasons not to have the whole contents of the earlier applications automatically incorporated by reference into the later filed application.

“86. Suggestions as to how to address that concern included the possibility of limiting the incorporation by reference to drawings contained in the earlier application so as to avoid a possible conflict with Article 14(2) and the possibility of requiring the applicant to check a box in the request to take advantage of the incorporation by reference of the earlier application.

“87. The Working Group, noting that the concern would only be relevant in very few cases, agreed that it would be preferable to retain a provision providing for the automatic incorporation by reference of the earlier application, but somehow limited to the purpose of possible subsequent inclusion of missing parts into the later filed application, including the case where the missing part included matter which was new in the application in question but which was completely contained in the earlier application.

“88. Several delegations and representatives of users questioned the need for formal confirmation of the “incorporation by reference” statement under Rule 4.18 and suggested that it may be sufficient to further amend that Rule so as to clarify that the “incorporation by reference” (rather than the statement) was for the purposes of Rule 20.5(e); the expiration of the time limit under Rule 20.5(e) for the furnishing of missing parts would thus automatically result in the incorporation by reference ceasing to have effect.

“89. One representative of users suggested replacement of the specific reference in Rule 4.18 to Rule 20.5(e) with a more general reference as to the purpose of making such statement (such as, for the purposes of incorporation by reference of missing parts completely contained in the earlier application) so as to ensure that the statement would also be effective in the national phase before designated Offices.

“90. One delegation expressed its concern that the proposed incorporation by reference could be considered to conflict with the disclosure requirements under Article 5 and suggested that an amendment of the Treaty may be required. Another delegation expressed its general concern about the introduction into the PCT, by way of amendments to the Regulations, of the concept of incorporation by reference, since, in its view, the concept would not be supported by any of the provisions of the Treaty and could thus be introduced only by revision of the Treaty itself.

“91. Some delegations suggested that a transitional reservation provision be added so as to allow Contracting States whose national law was not compatible with the envisaged amendments of the PCT Regulations not to apply those amendments for as long as such incompatibility existed.

“92. Following a suggestion by the Secretariat, the Working Group agreed that possibilities should be explored as to whether the proposed incorporation by reference could be extended to cover the contents of such earlier application for the purposes of overcoming Article 11(1) defects (such as missing claims or a missing description).

“*Rule 20*

“93. One delegation noted that the proposals in respect of missing parts in Rule 20 were not consistent with its national law.

“94. One delegation suggested that the contents of Rule 20.4(b) should be moved to Rule 20.3.

“95. One delegation suggested that Rule 20.5(b) be split into two paragraphs, one dealing with the situation where the missing part was submitted before, and the other after, an international filing date had been accorded. Such a change would result in further simplification of the Rule and, in certain situations, would also afford more time to applicants to meet the requirements under the Rule.

“96. One delegation proposed that the applicant should be required to submit a certified copy instead of a simple copy of the earlier application within the same time limit within which the missing part must be furnished. A representative of users noted that in many cases it would not be possible to obtain such a copy within that time limit.

“97. The Working Group noted that, under the corresponding provisions in PLT Rule 2.4, a Contracting Party could require that a simple copy be filed within the same time limit as that for furnishing the missing part and, in addition, that a certified copy be filed within a time limit of not less than four months from the date of the invitation to furnish such copy.

“98. The Working Group invited the Secretariat to consider whether a similar option was needed in Rule 20.5, taking account of the fact that Rule 17 already required a certified copy of the priority document to be submitted within 16 months from the priority date.

“99. In this context, several delegations and representatives of users suggested that a certified copy of the earlier application should not be required under Rule 20.5 in the situations covered by Rule 17.1(b) and (b-bis).

“100. Two delegations suggested that the requirement under proposed Rule 20.5(e)(iii) that the missing part be completely contained in the earlier application should be deleted since, in some cases, such a check would be difficult for the receiving Office to perform, for example, where a translation of the earlier application was required or technical evaluation was necessary. This suggestion was opposed by two other delegations, noting that this matter had been fully discussed in the context of the corresponding provision in PLT Rule 2(4)(iv) and pointing to the fact that, under the PLT, the procedure might be applied by Offices as a purely clerical check (see PLT Note R2.04).

“101. One delegation suggested that the International Searching Authority rather than the receiving Office should be responsible for checking whether the missing part was completely contained in the earlier application, as this check would not necessarily be purely clerical, in particular where the earlier application was in a different language.

“102. In the course of the discussion, the Working Group noted that Note 5.21 on PLT Article 5(6)(b) expressly stated that, where it was subsequently determined, for example, in the course of substantive examination, that the missing part was not completely contained in the earlier application, the Office may rescind the filing date and re-date the application. However, no similar sanction appeared to exist under the PCT. One representative of users suggested that, in the case of an international application, non-compliance with the requirement that the missing part be completely contained in the earlier application could be dealt with in the national phase under national law provisions relating to added matter. Alternatively, the procedure under Rule 82*ter* could be extended to cover such cases. One delegation suggested that a review procedure analogous to that proposed in respect of restoration of priority (review only in case of reasonable doubts) could be considered.

“103. The Working Group invited the Secretariat to study the matter further. The Working Group agreed to defer further consideration of the appropriate time limits (one or two months) under Rules 20.3(d), 20.5(c) and 26.2.

“104. One representative of users suggested that the time limits under those Rules should all be two months for consistency with the PLT. One delegation stated that it could accept a two month time limit under Rule 20.3(d) since the international filing date had not yet been accorded at that time, but still favored a one month time limit under the other two provisions.”

7. Annex I to the present document contains revised texts of the proposals related to “missing part” requirements contained in the Annex to document PCT/R/WG/5/8. The proposals have been further revised so as to take into account the discussions and agreements reached at the fifth session of the Working Group as summarized in paragraph 6, above. For information and clarity, the proposals for amendment of Rule 20 are presented both in the form of a marked-up text of Rule 20 as proposed to be amended (contained in Annex I) and in the form of a “clean” text of Rule 20 as it would stand after amendment (contained in Annex II). The main features of the draft proposals are outlined in the following paragraphs.

## CONFORM PCT “MISSING PART” REQUIREMENTS TO THOSE OF THE PLT

### *Structure of Rule 20*

8. In the context of “missing part” requirements, it is proposed to revise Rule 20 so as to move to the Administrative Instructions matters of detail related to the stamping of dates, etc., and to leave the Rule to deal with the more significant question of the according of the international filing date under Article 11. The proposed amendments would also align the order of the provisions dealing with the according of the international filing date with the (logical) order in which a receiving Office determines whether and which date to accord as the international filing date: Rule 20.1 as amended would deal with general questions concerning the according of an international filing date; Rule 20.2 as amended would deal with the “positive determination” under Article 11(1), that is, the according of the international filing date; Rule 20.3 as amended would deal with the invitation to correct

Article 11 defects and subsequent compliance with Article 11(1) requirements; Rule 20.4 as amended would deal with the “negative determination” under Article 11, that is, the refusal to accord an international filing date; Rule 20.5 as amended would deal with the subsequent furnishing of “missing parts” and its effect on the international filing date; Rule 20.6 would deal with the case where a “missing element” (the description or the claims are missing from the international application) or a missing part is completely contained in an earlier application the priority of which is claimed (see paragraphs 10 to 12, below); Rule 20.7 would deal with the applicable time limits for the furnishing of a correction, or of a missing element or missing part; finally, Rule 20.8 would deal, as at present, with the question of errors by the receiving Office in issuing an invitation to correct defects under Article 11(1).

*International filing date where missing part is filed*

9. Under PLT Article 5(6)(a), later submission (within certain time limits) of a missing part of the description or a missing drawing results in according as the filing date the date on which the Office has received the missing part of the description or the missing drawing, or the date on which all the filing date requirements are complied with, whichever is later. The same principle is applied under the PCT where sheets (description, claims, drawings) pertaining to the same application are not received on the same day. However, while the Treaty (PCT Article 14(2)) expressly deals with the case of missing drawings, neither the Treaty nor the Regulations specifically deal with the according (or correction) of an international filing date where sheets other than missing drawings are received later than the date on which papers were first received. This matter is expressly dealt with only in the Administrative Instructions (see Section 309 of the Administrative Instructions) and in the Receiving Office Guidelines (see paragraphs 200 to 207 of the Receiving Office Guidelines). In order to clarify the procedure, it is proposed to deal with this important matter in the Regulations (rather than in the Administrative Instructions and the Receiving Office Guidelines) and to amend Rule 20 accordingly (see Rule 20.5 as proposed to be amended).

*International filing date where description or claims are missing but contained in earlier application; or where missing part is completely contained in earlier application*

10. The two main differences between the filing date requirements of the PLT and those of the PCT are:

(a) under the PLT, the applicant can, for the purposes of the filing date of the application, replace the description and any drawings by a reference to a previously filed application (see PLT Article 5(7) and PLT Rule 2(5)) (“missing elements”); there is no equivalent provision in the PCT;

(b) under the PLT, the applicant can rectify the omission, at the time of filing, of a part of the description or of a drawing without loss of the filing date if the application claims the priority of an earlier application and the missing part of the description or the missing drawing is completely contained in that earlier application (see PLT Article 5(6) and PLT Rule 2(3) and (4)) (“missing parts”); there is no equivalent provision in the PCT.

11. While, in previous sessions, the Working Group had agreed, as was suggested in document PCT/R/WG/2/6, not to proceed, until a future session of the Working Group, with proposals to align the PCT filing date requirements in respect of “missing elements” to those of the PLT but to focus the discussions on the filing date requirements in respect of “missing parts,” the Working Group, at its fifth session, agreed that that possibilities should be

explored as to whether the proposed incorporation by reference discussed in the context of “missing parts” could be extended to cover the contents of such earlier application for the purposes of overcoming Article 11(1) defects (“missing elements,” such as missing claims or a missing description) (see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 92).

12. Upon consideration, it is proposed to amend the PCT Regulations by adding a new Rule 20.6 so as to allow the applicant, by way a reference to an earlier application, not only to rectify the omission, at the time of filing, of certain parts of the international application (incorporation by reference of “missing parts,” similar to the provision under PLT Article 5(6)) without loss of the filing date, but also to allow the applicant to replace the part which on the face of it appears to be a description or the part which on the face of it appears to be a claim or claims for the purposes of the international filing date (incorporation by reference of “missing elements,” similar to the provision under PLT Article 5(7) in respect of the description and any drawings).

*Alignment of certain related requirements under the PCT with those under the PLT*

13. In the context of “missing part” requirements, it is also proposed to align certain related requirements under the PCT with those under the PLT, in particular time limits for compliance with non-filing date related requirements (see Rule 26 as proposed to be amended).

*14. The Working Group is invited to consider the proposals contained in the Annexes to this document.*

[Annex I follows]

## ANNEX I

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:<sup>2</sup>

## “MISSING PART” REQUIREMENTS

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<sup>2</sup> Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. Certain provisions that are not proposed to be amended may be included for ease of reference.



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**Rule 4**

**The Request (Contents)**

4.1 *Mandatory and Optional Contents; Signature*

(a) and (b) [No change]

(c) The request may contain:

(i) and (ii) [No change]

(iii) declarations as provided in Rule 4.17.

(iv) a statement as provided in Rule 4.18.

[COMMENT: The proposed addition of item (iv) reflects the proposed addition of new Rule 4.18, below. See also the Comment on proposed new Rule 20.6, below.]

(d) [No change]

4.2 to 4.17 [No change]

4.18 Statement for the Purposes of Incorporation by Reference

The request may contain a statement that, if an element referred to in Article 11(1)(iii)(d) or (e) or a part of the application referred to in Rule 20.6(b)(i) to (iii) is missing from the international application, the same element or part contained in an earlier application the priority of which is claimed in the international application is, subject to compliance with the requirements of Rule 20.6, incorporated by reference in the international application.

[COMMENT: See proposed new Rule 20.6, below. See also paragraphs 10 to 12 in the Introduction to this document, and the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 85 to 89 and 92. It is proposed to include the statement under Rule 4.18 as a pre-printed text in the request form, resulting in the automatic incorporation by reference of the earlier application, limited to the purpose of possible subsequent inclusion of a missing element or missing part into the later filed international application. In order to avoid possible unintended consequences, the statement expressly states that a missing element or part shall only be incorporated by reference in the international application if the requirements of Rule 20.6 are complied with (including the requirement that, within the applicable time limit, the applicant furnishes the missing element or part under Rule 20.6 and submits a request under Rule 20.6). It is also proposed that the statement should not be restricted to the purposes of Rule 20.6 but should, instead, be in general terms so as to ensure that it would also be effective in the national phase before designated Offices.]

4.19 ~~4.18~~ *Additional Matter*

(a) The request shall contain no matter other than that specified in Rules 4.1 to 4.18 ~~4.17~~, provided that the Administrative Instructions may permit, but cannot make mandatory, the inclusion in the request of any additional matter specified in the Administrative Instructions.

*[Rule 4.18, continued]*

(b) If the request contains matter other than that specified in Rules 4.1 to [4.18](#) ~~4.17~~ or permitted under paragraph (a) by the Administrative Instructions, the receiving Office shall *ex officio* delete the additional matter.

[COMMENT: The renumbering is consequential on the proposed addition of new Rule 4.18 (see above).]

## Rule 12

### **Language of the International Application and Translation for the Purposes of International Search and International Publication**

12.1 [No change]

12.2 *Language of Changes in the International Application*

(a) to (c) [No change]

(d) Any missing part furnished by the applicant under Rule 20.5(b) or 20.6(b) and any missing element furnished by the applicant under Rule 20.6(b) shall be in the language in which the international application is filed or, where a translation of the international application is required under Rule 12.3(a), 12.4(a) or 55.2(a), in both the language of the application and the language of that translation.

12.3 *Translation for the Purposes of International Search*

(a) and (b) [No change]

(c) Where, by the time the receiving Office sends to the applicant the notification under Rule 20.2(c) ~~20.5(e)~~, the applicant has not furnished a translation required under paragraph (a), the receiving Office shall, preferably together with that notification, invite the applicant:

[COMMENT: The renumbering is consequential on the proposed renumbering of present Rule 20.5, below.]

(i) and (ii) [No change]

(d) and (e) [No change]

12.4 [No change]

**Rule 20 [“marked-up” copy]<sup>3</sup>**

**International Filing Date Receipt of the International Application**

[COMMENT: See paragraph 8 in the Introduction to this document.]

*20.1—Date and Number*

~~(a) Upon receipt of papers purporting to be an international application, the receiving Office shall indelibly mark the date of actual receipt on the request of each copy received and the international application number on each sheet of each copy received.~~

~~(b) The place on each sheet where the date or number shall be marked, and other details, shall be specified in the Administrative Instructions.~~

*20.2—Receipt on Different Days*

~~(a) In cases where all the sheets pertaining to the same purported international application are not received on the same day by the receiving Office, that Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the papers completing the international application were received, provided~~

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<sup>3</sup> A “clean” copy of the text of Rule 20 as it would stand after amendment is contained in Annex II.

~~(i) where no invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within 30 days from the date on which sheets were first received;~~

~~(ii) where an invitation under Article 11(2)(a) to correct was sent to the applicant, the said papers are received within the applicable time limit under Rule 20.6;~~

~~(iii) in the case of Article 14(2), the missing drawings are received within 30 days from the date on which the incomplete papers were filed;~~

~~(iv) the absence or later receipt of any sheet containing the abstract or part thereof shall not, in itself, require any correction of the date marked on the request.~~

~~(b) Any sheet received on a date later than the date on which sheets were first received shall be marked by the receiving Office with the date on which it was received.~~

### ~~20.3 *Corrected International Application*~~

~~In the case referred to in Article 11(2)(b), the receiving Office shall correct the date marked on the request (still leaving legible, however, the earlier date or dates already marked) so that it indicates the day on which the last required correction was received.~~



20.1 ~~20.4~~ *Determination Under Article 11(1)*

(a) [No change] Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers comply with the requirements of Article 11(1).

(b) For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows ~~the his~~ identity of the applicant to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.

[COMMENT: Drafting change only.]

(c) [No change] For the purposes of Article 11(1)(ii), it shall be sufficient that the part which appears to be a description (other than any sequence listing part thereof) and the part which appears to be a claim or claims be in a language accepted by the receiving Office under Rule 12.1(a).

(d) [No change] If, on October 1, 1997, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997. The information received shall be promptly published by the International Bureau in the Gazette.

[COMMENT: A decision by the Assembly may be necessary to ensure that transitional reservations that were made under existing Rule 20.4(d) continue to be effective under that provision as renumbered Rule 20.1(d).]

20.2 ~~20.5~~ *Positive Determination* [Under Article 11\(1\)](#)

[COMMENT: Renumbering and clarification only.]

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp ~~on~~ the request as prescribed by the Administrative Instructions. ~~the name of the receiving Office and the words “PCT International Application,” or “Demande internationale PCT.”~~ ~~If the official language of the receiving Office is neither English nor French, the words “International Application” or “Demande internationale” may be accompanied by a translation of these words in the official language of the receiving Office.~~

[COMMENT: See paragraph 8 in the Introduction to this document.]

(b) [No change] The copy whose request has been so stamped shall be the record copy of the international application.

(c) [No change] The receiving Office shall promptly notify the applicant of the international application number and the international filing date. At the same time, it shall send to the International Bureau a copy of the notification sent to the applicant, except where it has already sent, or is sending at the same time, the record copy to the International Bureau under Rule 22.1(a).

20.3 ~~20.6~~ Correction Under Article 11(2) ~~Invitation to Correct~~

(a) The invitation to correct under Article 11(2)(a) shall specify the requirement provided for under Article 11(1) which, in the opinion of the receiving Office, has not been fulfilled.

[COMMENT: Renumbering and clarification only.]

(b) The receiving Office shall send the invitation promptly. In the invitation, the receiving Office shall invite ~~mail the invitation to~~ the applicant, at his option:

(i) to furnish the required correction; or

(ii) where applicable, to make a request in accordance with Rule 20.6(b);

and to make observations, if any, within the applicable time limit under Rule 20.7. ~~and shall fix a time limit, reasonable under the circumstances of the case, for filing the correction. The time limit shall not be less than 10 days, and shall not exceed one month, from the date of the invitation.~~ If that ~~such~~ time limit expires after the expiration of 12 months ~~one year~~ from the filing date of any application whose priority is claimed, the receiving Office shall ~~may~~ call this circumstance to the attention of the applicant.

*[Rule 20.3(b), continued]*

[COMMENT: It is proposed to amend paragraph (b) so that the invitation would refer to the possibility of making a request under proposed new Rule 20.6(b) for the incorporation by reference of the missing element as well as that of furnishing a correction (by way of furnishing the missing element). It is also proposed to change the term “one year” to “12 months” for consistency with Rule 4.10(a)(i) and Article 4C(1) of the Paris Convention.]

(c) Where one or more of the requirements under Article 11(1) are not complied with on the date of receipt of the purported international application but are complied with on a later date falling within the applicable time limit under Rule 20.7, the international filing date shall, subject to Rule 20.6, be that later date and the receiving Office shall proceed as provided in Rule 20.2.

[COMMENT: See PLT Article 5(4). It is proposed to add new paragraph (c) so as to clarify the procedure with regard to the according of the international filing date in case of subsequent compliance with Article 11(1) requirements, in particular in view of proposed new Rule 20.6 (according of the international filing date in the case that the description or the claims are missing from the international application but are contained in an earlier application the priority of which is claimed; see proposed new Rule 20.6, below).]

(d) Any correction under Article 11(2) or any request in accordance with Rule 20.6(b) received by the receiving Office after the expiration of the applicable time limit under Rule 20.7 but before that Office sends a notification to the applicant under Rule 20.4(i) shall be taken into account in determining whether the papers purporting to be an international application comply with the requirements under Article 11(1).

*[Rule 20.3(d), continued]*

[COMMENT: Transferred from previously proposed Rule 20.4(b) (as suggested in at the fifth session of the Working Group; see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 94) and further amended so as to also refer to the receipt by the receiving Office of a request under Rule 20.6(b) for the incorporation by reference of a missing element (missing description or missing claim or claims). In the case of a correction being furnished, the date of receipt of the correction would be accorded as the international filing date even if the required correction was received after the expiration of the applicable time limit under Rule 20.7.]

20.4 ~~20.7~~ *Negative Determination* Under Article 11(1)

~~(a)~~ If the receiving Office does not, receive, within the applicable time limit under Rule 20.7, a correction under Article 11(2) or a request in accordance with Rule 20.6(b), within the prescribed time limit, receive a reply to its invitation to correct, or if a the correction or a request has been received ~~offered by the applicant but the application~~ still does not fulfill the requirements provided for under Article 11(1), the receiving Office ~~it~~ shall:

[COMMENT: Rule 20.4 as proposed to be amended now also refers to the request under Rule 20.6(b) for the incorporation by reference of a missing element (missing description or missing claim or claims). At the fourth session of the Working Group, one delegation suggested that this provision should also cover cases in which no observations from the applicant were received by the receiving Office within the applicable time limit (see the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 55). However, it is not proposed to follow this suggestion since Article 11(2) refers only to the filing and the receipt of the “required correction.” Rule 20.8 (see below) would apply should the receiving Office, on the basis of the applicant’s “observations,” realize that it has erred in issuing an invitation to correct since the requirements under Article 11(1) were fulfilled when the papers were first received.]

(i) promptly notify the applicant that the ~~his~~ application is not and will not be treated as an international application and shall indicate the reasons therefor;~~;~~

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 55. Upon further consideration, it is not any longer proposed to amend item (i) so as to align the terminology with that used in PLT Article 5(4)(b).]

(ii) notify the International Bureau that the number it has marked on the papers will not be used as an international application number;~~;~~

*[Rule 20.4, continued]*

(iii) keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1~~;~~ and

(iv) [No change] send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

20.5 Missing Part of Description, Claims or Drawings

(a) Where, in determining whether the papers purporting to be an international application comply with the requirements under Article 11(1), the receiving Office finds that any of the parts of the application referred to in paragraph (b) appears to be missing from the international application, it shall promptly invite the applicant, at his option:

(i) to furnish the missing part; or

(ii) where applicable, to make a request in accordance with Rule 20.6(b);

and to make observations, if any, within the time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call this circumstance to the attention of the applicant.

[COMMENT: Under paragraph (a) as proposed to be amended, the receiving Office would be required, where applicable (that is, where the international application claims the priority of an earlier application), to also invite the applicant to make a request under proposed new Rule 20.6(b) for the incorporation by reference of the missing part.]

(b) Paragraph (a) shall apply where any of the following parts of the application appears to be missing from the international application:

(i) a part, but not all, of the description;

(ii) one or more, but not all, of the claims, or a part thereof;



*[Rule 20.5(b), continued]*

(iii) one or more, or all, of the drawings, or a part thereof.

[COMMENT: Items (i) to (iii) have been further amended to simplify the drafting, while still putting it beyond doubt as to the cases in which it applied, that is, in the case of a missing part of the description, a missing part of a claim or of the claims (including the case where an entire claim was missing), and a missing part of a drawing or of the drawings (including the case where an entire drawing was missing, or where all drawings were missing).]

(c) Where the applicant furnishes to the receiving Office a missing part referred to in paragraph (b)(i) to (iii), whether in response to an invitation under paragraph (a) or otherwise, on or before the date on which all of the requirements of Article 11(1) are complied with, that part shall be included in the international application.

[COMMENT: See the Comment on paragraph (d), below.]

(d) Where the applicant furnishes to the receiving Office a missing part referred to in paragraph (b)(i) to (iii), whether in response to an invitation under paragraph (a) or otherwise, after the date on which all of the requirements of Article 11(1) are complied with but within the applicable time limit under Rule 20.7, that part shall be included in the international application and, subject to Rule 20.6, the international filing date shall be corrected to the date on which the receiving Office received that missing part; the receiving Office shall promptly notify the applicant and the International Bureau accordingly.

*[Rule 20.5(c), continued]*

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 56 and the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 95. As suggested by one delegation (see the summary of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 95), in order to further simplify proposed new Rule 20.5, previously proposed paragraph (b) has been split into two paragraphs (now proposed new paragraphs (c) and (d)).]

(e) The applicant may, in a notice submitted to the receiving Office within one month from the date of the notification under paragraph (d), request that the missing part concerned be disregarded, in which case the missing part shall be considered not to have been furnished and the correction of the international filing date under that paragraph shall be considered not to have been made. The receiving Office shall promptly notify the applicant and the International Bureau accordingly.

[COMMENT: See PLT Article 5(6)(c). The proposed wording (“request to disregard”) differs from that used in the PLT (“withdraw”) so as to avoid confusion with withdrawals under Rule 90*bis*. This paragraph is now restricted to the case in which the receiving Office has, in accordance with paragraph (d), corrected the international filing date, consequential on the proposed division of previously proposed paragraph (b) into proposed new paragraphs (c) and (d) (see above).]

20.6 Incorporation by Reference of Missing Elements or Parts

(a) Where:

(i) on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the international application claims the priority of an earlier application and contains a statement for the purposes of incorporation by reference under Rule 4.18; and

(ii) an element of that earlier application is the same as, respectively, an element referred to in Article 11(1)(iii)(d) or (e) or a part referred to in Rule 20.5(b)(i) to (iii) that is missing from the international application;

that element or part shall, on the request of the applicant in accordance with paragraph (b), be considered to have been contained in the international application on that date and the receiving Office shall so declare and shall promptly notify the applicant and the International Bureau accordingly.

[COMMENT: See the summary of the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 85 to 92, and paragraphs 10 to 12 in the Introduction to this document. See also Rule 4.18 as proposed to be amended, above. The purpose of the provisions that the missing element or missing part shall be considered to be contained in the international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office is to provide a legal basis for according as the international filing date the date on which all the requirements of Article 11(1) are complied. In the case of any missing drawing, the fact that any drawing is considered to be included in the international application on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office provides a legal basis for according that date, and not the date on which the missing drawing is received by the receiving Office, as the international filing date, since provisions of Article 14(2) would then not be applicable to that drawing.]

*[Rule 20.6, continued]*

(b) A request under paragraph (a) shall be submitted to the receiving Office within the applicable time limit under Rule 20.7 and shall be accompanied by:

(i) sheets embodying the missing element or missing part;

(ii) a copy of the earlier application, unless that earlier application was filed with the receiving Office in its capacity as a national Office or is available to the receiving Office in the form of a priority document in accordance with Rule 17.1;

[COMMENT: See PLT Rule 2(4)(i). See also the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 96 to 99.]

(iii) where the earlier application is not in the same language accepted by the receiving Office under Rule 12.1(a) for the international application, a translation of the earlier application into that language;

[COMMENT: See PLT Rule 2(4)(iii).]

(iv) in the case of a missing part, an indication as to where the missing part is contained in the earlier application.

[COMMENT: See PLT Rule 2(4)(vi).]

*[Rule 20.6, continued]*

(c) In respect of any request under paragraph (a), the applicant shall furnish to the receiving Office, within the time limit under Rule 17.1(a), the priority document relating to the earlier application, unless that priority document has already been filed with, or is available to, the receiving Office in accordance with Rule 17.1. *[To be added: Consequences of non-compliance with this paragraph.]*

[COMMENT: See PLT Rules 2(4)(ii) and 2(5)(b)(ii). See also the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 96 to 99. In view of the practical difficulties experienced by applicants in obtaining certified copies of earlier applications from certain Offices, it does not appear realistic to prescribe a time limit which is shorter than the time limit under Rule 17.1(a) for submitting such certified copies in respect of a priority claim (the time limit under Rule 17.1(a) is, in effect, the date of international publication of the international application concerned). The Working Group may wish to consider what the consequences of non-compliance with the requirements under paragraph (c) should be: correction (“missing part”) or cancellation (missing element”) of the international filing date after the expiration of the time limit under Rule 17.1(a), that is, in effect, after international publication? Or should the decision as to correction or cancellation of the international filing date be left to the designated Offices, to be taken in the national phase, noting that the applicant may, in accordance with Rule 17.1(c), validly furnish the priority document to any designated Office even after national phase entry? Under PLT Rules 2(4)(ii), non-compliance with the requirement to furnish a priority document within a certain time limit would have the consequence that the filing date would be corrected to be the date on which the missing part is received by the Office, and not the date on which all filing date requirements were fulfilled. Under PLT Rule 2(5)(b)(ii) (“missing element”), non-compliance with that requirement would have the consequence that the applicant could not, for the purposes of the filing date, replace the missing element with a reference to an earlier application the priority of which is claimed.]

*[Rule 20.6, continued]*

(d) If, on [date of adoption of these modifications by the PCT Assembly], paragraphs (a) to (d) are not compatible with the national law applied by the receiving Office, paragraphs (a) to (d) shall not apply to that receiving Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [three months from the date of adoption of these modifications by the PCT Assembly]. The information received shall be promptly published by the International Bureau in the Gazette.

[COMMENT: See the summary of the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraph 91). It is proposed to add transitional reservation provision which would allow Contracting States whose national law, as applied by the receiving Office, was not compatible with the envisaged amendments of the PCT Regulations not to apply those amendments for as long as such incompatibility existed. Note, however, that a Contracting State could only take advantage of such transitional reservation provision if its national law contained provisions addressed to its national Office in its capacity as a PCT receiving Office (and not only in its capacity as a national Office) which were not compatible with the proposed amendments of the PCT Regulations.]

20.7 Time Limit for Correcting Defects or Adding Missing Elements or Missing Parts

The applicable time limit for the purposes of Rule 20.3(b) or (c), 20.5(a) or (c), or 20.6(b) shall be:

(i) where an invitation under Rule 20.3(b) or 20.5(a) in relation to the defect, missing element or missing part concerned was sent to the applicant, [one month] [two months] from the date of the invitation;

(ii) where no such invitation was sent to the applicant, [one month] [two months] from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

[COMMENT: See PLT Article 5(3) and PLT Rule 2(1) (notification in case of non-compliance with a filing date requirement); PLT Article 5(4) and PLT Rule 2(2) (subsequent compliance with a filing date requirement); PLT Article 5(6) and PLT Rule 2(3)(i) and (ii) (filing date where missing part of description or drawing is filed). While the PLT provides for the time limit under item (ii) only in cases where no invitation was sent to the applicant “because indications allowing the applicant to be contacted by the Office have not been filed”, it is proposed to apply that time limit to all cases where no invitation has been sent to the applicant. It is proposed that the starting point for the time limit under item (ii) should, in all cases (irrespective of whether no invitation was sent to the applicant in relation to a defect, a missing element or a missing part), remain the date on which one or more elements referred to in Article 11(1) were first received by the receiving Office, and not be changed, in relation to the correction of a defect, to the date on which all of the requirements of Article 11(1) are complied with, as was suggested during the fifth session of the Working Group (Paper No. 3). Alternative time limits have been retained in square brackets for further consideration by the Working Group (see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 103 and 104).]

## 20.8 *Error by the Receiving Office*

If the receiving Office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation to correct since the requirements provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule ~~20.2~~ 20.5.

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraphs 46 and 71. Since the provisions under proposed Rule 20.5 concerning the time limits for furnishing a missing part and concerning the according of the international filing date are the same in both situations (that is, the situation where the receiving Office realized itself that it had made an error and the situation where the error had been pointed out to the receiving Office by the applicant), a split into two separate provisions, as suggested by one delegation at the fourth session of the Working Group, would appear to provide no benefit.]

## ~~20.9 *Certified Copy for the Applicant*~~

~~Against payment of a fee, the receiving Office shall furnish to the applicant, on request, certified copies of the international application as filed and of any corrections thereto.~~

[COMMENT: It is proposed to move the content of present Rule 20.9 to proposed new Rule 21.2 (see below) so as to leave Rule 20 to deal only with questions of according of the international filing date.]



**Rule 21**

**Preparation of Copies**

21.1 [No change]

21.2 *Certified Copy for the Applicant*

Against payment of a fee, the receiving Office shall furnish to the applicant, on request, certified copies of the international application as filed and of any corrections thereto.

[COMMENT: See the Comment on Rule 20.9 as proposed to be deleted, above. It is proposed delete present Rule 20.9 (see above) and to move its contents to proposed new Rule 21.2.]

**Rule 22**

**Transmittal of the Record Copy and Translation**

22.1 *Procedure*

(a) [No change]

(b) If the International Bureau has received a copy of the notification under Rule [20.2\(c\)](#) ~~20.5(e)~~ but is not, by the expiration of 13 months from the priority date, in possession of the record copy, it shall remind the receiving Office that it should transmit the record copy to the International Bureau promptly.

(c) If the International Bureau has received a copy of the notification under Rule [20.2\(c\)](#) ~~20.5(e)~~ but is not, by the expiration of 14 months from the priority date, in possession of the record copy, it shall notify the applicant and the receiving Office accordingly.

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 20.5 above.]

(d) to (h) [No change]

22.2 and 22.3 [No change]

## Rule 26

### Checking by, and Correcting Before, the Receiving Office of Certain Elements of the International Application

#### 26.1 Invitation Under Article 14(1)(b) to Correct ~~Time limit for Check~~

(a) The receiving Office shall, ~~issue the invitation to correct provided for in Article 14(1)(b)~~ as soon as possible, preferably within one month from the receipt of the international application, invite the applicant, under Article 14(1)(b), to furnish the required correction, and give the applicant the opportunity to make observations, within the time limit under Rule 26.2.

[COMMENT: The title is proposed to be amended so as to correctly cover the subject matter of paragraph (a). See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 69; see also PLT Article 6(7).]

(b) ~~[Deleted] If the receiving Office issues an invitation to correct the defect referred to in Article 14(1)(a)(iii) or (iv) (missing title or missing abstract), it shall notify the International Searching Authority accordingly.~~

[COMMENT: It is proposed to move the content of present paragraph (b) to the Administrative Instructions.]

## 26.2 *Time Limit for Correction*

The time limit referred to in [Rule 26.1](#) ~~Article 14(1)(b) shall be reasonable under the circumstances and~~ shall be [\[one month\]](#) [\[two months\]](#) ~~fixed in each case by the receiving Office. It shall not be less than one month~~ from the date of the invitation to correct. It may be extended by the receiving Office at any time before a decision is taken.

[COMMENT: See PLT Article 6(7) and PLT Rule 6(1). The time limits have been retained in square brackets for further consideration by the Working Group (see the summary by the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 103 and 104).]

26.2*bis* to 26.3*bis* [No change]

## 26.3*ter* *Invitation to Correct Defects Under Article 3(4)(i)*

(a) Where the abstract or any text matter of the drawings is filed in a language which is different from the language of the description and the claims, the receiving Office shall, unless

(i) and (ii) [No change]

invite the applicant to furnish a translation of the abstract or the text matter of the drawings into the language in which the international application is to be published. Rules 26.1(a), 26.2, 26.3, 26.3*bis*, 26.5 and 29.1 shall apply *mutatis mutandis*.

*[Rule 26.3ter(a), continued]*

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 26.1(a), above.]

(b) [No change]

(c) Where the request does not comply with Rule 12.1(c), the receiving Office shall invite the applicant to file a translation so as to comply with that Rule. Rules 3, 26.1~~(a)~~, 26.2, 26.5 and 29.1 shall apply *mutatis mutandis*.

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 26.1(a) above.]

(d) [No change]

26.4 [No change]

#### 26.5 *Decision of the Receiving Office*

The receiving Office shall decide whether the applicant has submitted the correction within the time limit [applicable](#) under Rule 26.2, and, if the correction has been submitted within that time limit, whether the international application so corrected is or is not to be considered withdrawn, provided that no international application shall be considered

*[Rule 26.5, continued]*

withdrawn for lack of compliance with the physical requirements referred to in Rule 11 if it complies with those requirements to the extent necessary for the purpose of reasonably uniform international publication.

[COMMENT: See the summary by the Chair of the fourth session of the Working Group, document PCT/R/WG/4/14, paragraph 70.]

~~26.6 *Missing Drawings*~~

~~(a) If, as provided in Article 14(2), the international application refers to drawings which in fact are not included in that application, the receiving Office shall so indicate in the said application.~~

[COMMENT: It is proposed to move the content of paragraph (a) to the Administrative Instructions.]

~~(b) The date on which the applicant receives the notification provided for in Article 14(2) shall have no effect on the time limit fixed under Rule 20.2(a)(iii).~~

[COMMENT: The proposed deletion of present paragraph (b) is consequential on the proposed amendment of Rule 20 (see above).]

## Rule 51

### Review by Designated Offices

#### 51.1 *Time Limit for Presenting the Request to Send Copies*

The time limit referred to in Article 25(1)(c) shall be two months computed from the date of the notification sent to the applicant under Rule [20.4\(i\)](#) ~~20.7(i)~~, 24.2(c) or 29.1(ii).

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 20.7 above.]

#### 51.2 *Copy of the Notice*

Where the applicant, after having received a negative determination under Article 11(1), requests the International Bureau, under Article 25(1), to send copies of the file of the purported international application to any of the named Offices he has attempted to designate, he shall attach to his request a copy of the notice referred to in Rule [20.4\(i\)](#) ~~20.7(i)~~.

[COMMENT: The proposed renumbering is consequential on the proposed renumbering of present Rule 20.7 above.]

#### 51.3 [No change]

**Rule 82ter**

**Rectification of Errors Made**

**by the Receiving Office or by the International Bureau**

*82ter.1 Errors Concerning the International Filing Date and the Priority Claim*

(a) If the applicant proves to the satisfaction of any designated or elected Office that the international filing date is incorrect due to an error made by the receiving Office or that the priority claim has been erroneously considered by the receiving Office or the International Bureau not to have been made, and if the error is an error such that, had it been made by the designated or elected Office itself, that Office would rectify it under the national law or national practice, the said Office shall rectify the error and shall treat the international application as if it had been accorded the rectified international filing date or as if the priority claim had not been considered not to have been made.

(b) Where the applicant has furnished a missing part to the receiving Office under Rule 20.5(b)(i) and the receiving Office has accorded, in accordance with Rule 20.6, the date on which all the requirements of Article 11(1) are complied with as the international filing date, a designated Office shall not review the decision of the receiving Office to accord that date as the international filing date, unless it may reasonably doubt that the missing part is completely contained in the earlier application as required under Rule 20.6. In the latter case, the designated Office shall notify the applicant accordingly, indicating the reasons for those doubts and giving the applicant an opportunity to make observations within a reasonable time limit. If, after considering any such observations, the receiving office finds that the missing



*[Rule 82ter.1(b), continued]*

part was not completely contained in the earlier application, it may treat the international application as if the international filing date was the date on which the receiving Office received that missing part in accordance with Rule 20.5(b)(i).]

[COMMENT: See the summary of the Chair of the fifth session of the Working Group, document PCT/R/WG/5/13, paragraphs 102 and 103). See also Note 5.21 of the Explanatory Notes on PLT Article 5(6)(b) which states that, where it is subsequently determined, for example in the course of substantive examination, that the missing part of the description or missing drawing was not completely contained in the earlier application as required under PLT Rule 2(4)(ii), the Office may rescind the filing date accorded under that Rule and re-accord it under PLT Article 5(6)(a).]

[Annex II follows]

ANNEX II

PROPOSED AMENDMENTS OF THE PCT REGULATIONS:

“MISSING PART” REQUIREMENTS

RULE 20 “CLEAN” COPY<sup>4</sup>

<u>Rule 20 [“clean” copy] International Filing Date</u> .....	2
<u>20.1 Determination Under Article 11(1)</u> .....	2
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<u>20.7 Time Limit for Correcting Defects or Adding Missing Elements or Missing Parts</u> .....	10
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<sup>4</sup> Comments on particular provisions appear only in the “marked-up” copy contained in Annex I.

**Rule 20 [“clean” copy]**

**International Filing Date**

20.1 Determination Under Article 11(1)

(a) Promptly after receipt of the papers purporting to be an international application, the receiving Office shall determine whether the papers comply with the requirements of Article 11(1).

(b) For the purposes of Article 11(1)(iii)(c), it shall be sufficient to indicate the name of the applicant in a way which allows the identity of the applicant to be established even if the name is misspelled, the given names are not fully indicated, or, in the case of legal entities, the indication of the name is abbreviated or incomplete.

(c) For the purposes of Article 11(1)(ii), it shall be sufficient that the part which appears to be a description (other than any sequence listing part thereof) and the part which appears to be a claim or claims be in a language accepted by the receiving Office under Rule 12.1(a).

(d) If, on October 1, 1997, paragraph (c) is not compatible with the national law applied by the receiving Office, paragraph (c) shall not apply to that receiving Office for as long as it continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by December 31, 1997. The information received shall be promptly published by the International Bureau in the Gazette.

20.2 Positive Determination Under Article 11(1)

(a) If the determination under Article 11(1) is positive, the receiving Office shall stamp the request as prescribed by the Administrative Instructions.

(b) The copy whose request has been so stamped shall be the record copy of the international application.

(c) The receiving Office shall promptly notify the applicant of the international application number and the international filing date. At the same time, it shall send to the International Bureau a copy of the notification sent to the applicant, except where it has already sent, or is sending at the same time, the record copy to the International Bureau under Rule 22.1(a).

20.3 Correction Under Article 11(2)

(a) The invitation to correct under Article 11(2)(a) shall specify the requirement provided for under Article 11(1) which, in the opinion of the receiving Office, has not been fulfilled.

(b) The receiving Office shall send the invitation promptly. In the invitation, the receiving Office shall invite the applicant, at his option:

(i) to furnish the required correction; or

*[Rule 20.3(b) ["clean" copy], continued]*

(ii) where applicable, to make a request in accordance with Rule 20.6(b);

and to make observations, if any, within the applicable time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call this circumstance to the attention of the applicant.

(c) Where one or more of the requirements under Article 11(1) are not complied with on the date of receipt of the purported international application but are complied with on a later date falling within the applicable time limit under Rule 20.7, the international filing date shall, subject to Rule 20.6, be that later date and the receiving Office shall proceed as provided in Rule 20.2.

(d) Any correction under Article 11(2) or any request in accordance with Rule 20.6(b) received by the receiving Office after the expiration of the applicable time limit under Rule 20.7 but before that Office sends a notification to the applicant under Rule 20.4(i) shall be taken into account in determining whether the papers purporting to be an international application comply with the requirements under Article 11(1).

20.4 Negative Determination Under Article 11(1)

If the receiving Office does not receive, within the applicable time limit under Rule 20.7, a correction under Article 11(2) or a request in accordance with Rule 20.6(b), or if a correction or a request has been received but the application still does not fulfill the requirements provided for under Article 11(1), the receiving Office shall:

(i) promptly notify the applicant that the application is not and will not be treated as an international application and shall indicate the reasons therefor;

(ii) notify the International Bureau that the number it has marked on the papers will not be used as an international application number;

(iii) keep the papers constituting the purported international application and any correspondence relating thereto as provided in Rule 93.1; and

(iv) send a copy of the said papers to the International Bureau where, pursuant to a request by the applicant under Article 25(1), the International Bureau needs such a copy and specially asks for it.

20.5 Missing Part of Description, Claims or Drawings

(a) Where, in determining whether the papers purporting to be an international application comply with the requirements under Article 11(1), the receiving Office finds that any of the parts of the application referred to in paragraph (b) appears to be missing from the international application, it shall promptly invite the applicant, at his option:

(i) to furnish the missing part; or

(ii) where applicable, to make a request in accordance with Rule 20.6(b);

and to make observations, if any, within the time limit under Rule 20.7. If that time limit expires after the expiration of 12 months from the filing date of any application whose priority is claimed, the receiving Office shall call this circumstance to the attention of the applicant.

(b) Paragraph (a) shall apply where any of the following parts of the application appears to be missing from the international application:

(i) a part, but not all, of the description;

(ii) one or more, but not all, of the claims, or a part thereof;

(iii) one or more, or all, of the drawings, or a part thereof.

*[Rule 20.5 [“clean” copy], continued]*

(c) Where the applicant furnishes to the receiving Office a missing part referred to in paragraph (b)(i) to (iii), whether in response to an invitation under paragraph (a) or otherwise, on or before the date on which all of the requirements of Article 11(1) are complied with, that part shall be included in the international application.

(d) Where the applicant furnishes to the receiving Office a missing part referred to in paragraph (b)(i) to (iii), whether in response to an invitation under paragraph (a) or otherwise, after the date on which all of the requirements of Article 11(1) are complied with but within the applicable time limit under Rule 20.7, that part shall be included in the international application and, subject to Rule 20.6, the international filing date shall be corrected to the date on which the receiving Office received that missing part; the receiving Office shall promptly notify the applicant and the International Bureau accordingly.

(e) The applicant may, in a notice submitted to the receiving Office within one month from the date of the notification under paragraph (d), request that the missing part concerned be disregarded, in which case the missing part shall be considered not to have been furnished and the correction of the international filing date under that paragraph shall be considered not to have been made. The receiving Office shall promptly notify the applicant and the International Bureau accordingly.



20.6 Incorporation by Reference of Missing Elements or Parts

(a) Where:

(i) on the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office, the international application claims the priority of an earlier application and contains a statement for the purposes of incorporation by reference under Rule 4.18; and

(ii) an element of that earlier application is the same as, respectively, an element referred to in Article 11(1)(iii)(d) or (e) or a part referred to in Rule 20.5(b)(i) to (iii) that is missing from the international application;

that element or part shall, on the request of the applicant in accordance with paragraph (b), be considered to have been contained in the international application on that date and the receiving Office shall so declare and shall promptly notify the applicant and the International Bureau accordingly.

(b) A request under paragraph (a) shall be submitted to the receiving Office within the applicable time limit under Rule 20.7 and shall be accompanied by:

(i) sheets embodying the missing element or missing part;

(ii) a copy of the earlier application, unless that earlier application was filed with the receiving Office in its capacity as a national Office or is available to the receiving Office in the form of a priority document in accordance with Rule 17.1;

*[Rule 20.6(b) [“clean” copy], continued]*

(iii) where the earlier application is not in the same language accepted by the receiving Office under Rule 12.1(a) for the international application, a translation of the earlier application into that language;

(iv) in the case of a missing part, an indication as to where the missing part is contained in the earlier application.

(c) In respect of any request under paragraph (a), the applicant shall furnish to the receiving Office, within the time limit under Rule 17.1(a), the priority document relating to the earlier application, unless that priority document has already been filed with, or is available to, the receiving Office in accordance with Rule 17.1. *[To be added: Consequences of non-compliance with this paragraph.]*

(d) If, on *[date of adoption of these modifications by the PCT Assembly]*, paragraphs (a) to (d) are not compatible with the national law applied by the receiving Office, paragraphs (a) to (d) shall not apply to that receiving Office for as long as they continue not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by *[three months from the date of adoption of these modifications by the PCT Assembly]*. The information received shall be promptly published by the International Bureau in the Gazette.

20.7 Time Limit for Correcting Defects or Adding Missing Elements or Missing Parts

The applicable time limit for the purposes of Rule 20.3(b) or (c), 20.5(a) or (c), or 20.6(b) shall be:

(i) where an invitation under Rule 20.3(b) or 20.5(a) in relation to the defect, missing element or missing part concerned was sent to the applicant, [one month] [two months] from the date of the invitation;

(ii) where no such invitation was sent to the applicant, [one month] [two months] from the date on which one or more elements referred to in Article 11(1)(iii) were first received by the receiving Office.

20.8 Error by the Receiving Office

If the receiving Office later discovers, or on the basis of the applicant's reply realizes, that it has erred in issuing an invitation to correct since the requirements provided for under Article 11(1) were fulfilled when the papers were received, it shall proceed as provided in Rule 20.2.

[End of Annex II and of document]