

Patent Cooperation Treaty (PCT) Working Group

Fourteenth Session
Geneva, June 14 to 17, 2021

MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PCT: REPORT OF THE
TWENTY-EIGHTH SESSION

Document prepared by the International Bureau

1. The Annex to this document sets out the Summary by the Chair of the twenty-eighth session of the Meeting of International Authorities under the Patent Cooperation Treaty (PCT/MIA), held in Geneva as a virtual meeting from March 24 to 26, 2021. Annex II to this Summary by the Chair contains the Summary by the Chair of the eleventh informal meeting of the PCT/MIA Quality Subgroup, which was held immediately prior to the Meeting of International Authorities in Geneva on March 22 and 23, 2021.

2. *The Working Group is invited to note the Summary by the Chair of the twenty-eighth session of the Meeting of International Authorities under the PCT (document PCT/MIA/28/9), reproduced in the Annex to this document.*

[Annex follows]

MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PATENT COOPERATION TREATY (PCT)

TWENTY-EIGHTH SESSION, GENEVA, MARCH 24 TO 26, 2021

SUMMARY BY THE CHAIR

(noted by the Meeting; reproduced from document PCT/MIA/28/9)

INTRODUCTION

1. The Meeting of International Authorities under the PCT (“the Meeting”) held its twenty-eighth session in Geneva as a virtual meeting from March 24 to 26, 2021.
2. The following International Searching and Preliminary Examining Authorities participated remotely in the session: the Austrian Patent Office, the Brazilian National Institute of Industrial Property, the Canadian Intellectual Property Office, the China National Intellectual Property Administration, the Egyptian Patent Office, the European Patent Office, the Federal Service for Intellectual Property of the Russian Federation, the Finnish Patent and Registration Office, the Indian Patent Office, the Intellectual Property Office of the Philippines, the Intellectual Property Office of Singapore, IP Australia, the Israel Patent Office, the Japan Patent Office, the Korean Intellectual Property Office, the National Institute of Industrial Property of Chile, the Nordic Patent Institute, the Spanish Patent and Trademark Office, the Swedish Intellectual Property Office, the Turkish Patent and Trademark Office, the Ukrainian Intellectual Property Institute, the United States Patent and Trademark Office and the Visegrad Patent Institute.
3. The list of participants is contained in Annex I to this document.

OPENING OF THE SESSION

4. Ms. Lisa Jorgenson, Deputy Director General of WIPO welcomed the participants on behalf of the Director General of WIPO.

ELECTION OF A CHAIR

5. The session was chaired by Ms. Lisa Jorgenson, Deputy Director General, Patents and Technology Sector, WIPO.

ADOPTION OF THE AGENDA

6. The Meeting adopted the agenda as set out in document PCT/MIA/28/1 Prov. 2.

PCT STATISTICS

7. The Meeting noted the presentation by the International Bureau on the most recent PCT statistics¹.

MATTERS ARISING FROM THE QUALITY SUBGROUP

8. The Meeting noted with approval the Summary by the Chair of the Quality Subgroup set out in Annex II to this document, agreed with the recommendations contained in that Summary and approved the continuation of the Subgroup's mandate, including the convening of a meeting in 2022, with the format of this meeting to be determined at a future date.

¹ A copy of the presentation is available on the WIPO website at:
https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=533911.

XML SEARCH REPORTS AND WRITTEN OPINIONS

9. Discussions were based on document PCT/MIA/28/5.

10. The International Bureau recalled that nine Authorities delivered search reports and written opinions in XML format, and additional Authorities are expected to start doing so in 2021. XML reports provide a variety of advantages, some of which were demonstrated in the PATENTSCOPE functionality for viewing reports in any language of publication, including official translations where available or machine translation otherwise, and also providing links to cited documents. As discussed during the Quality Subgroup meeting, XML reports enable the possibility of a citation database to support improved services and analysis. The best results and practical development of arrangements to support WIPO Standard ST.96 effectively would require further work on the quality and consistency of the XML data.

11. Authorities acknowledged the advantages of XML reports and many Authorities stated that moving to XML international search reports and written opinions was a high-priority goal. Some Authorities mentioned their intention to begin the delivery of XML reports in 2021 or within the next few years. The European Patent Office, as one of the first Authorities to produce international search reports and written opinions in XML, informed the Meeting that further improvements were being considered to transmitting efficiently search and examination report data in XML to national Offices of the Contracting States of the European Patent Convention with which the EPO had a working agreement on search cooperation and improving examiners' drafting tools, thereby addressing outstanding quality issues with written opinions provided in XML.

12. Some Authorities indicated that they would need support from the International Bureau in order to adopt the XML format for search reports and written opinions. One Authority would like the International Bureau to share examples of best practice XML instances and provide an editing tool for supporting the generation of XML data. Another Authority indicated that it would be willing to collaborate with the International Bureau for training and technical support during its upcoming work on the implementation of reports in XML format.

13. Some Authorities supported the transition from ST.36 to ST.96 and stated that they were in the process of adopting WIPO Standard ST.96 for reports in XML format, or were considering this new Standard for future implementations of search reports and written opinions. One Authority noted the difficulties with finalizing high quality standards and systems for ST.96 reports and indicated that, while it intended to use ST.96 as soon as possible, it would work on ST.36 reports as an interim solution.

14. The Meeting noted the information and comments made by Authorities relating to the introduction and development of international search reports and written opinions in XML format.

CERTIFIED COPIES OF EARLIER INTERNATIONAL APPLICATIONS

15. Discussions were based on document PCT/MIA/28/6.

16. The Japan Patent Office explained the background to the subject, noting that the COVID-19 pandemic had created difficulties for both applicants and Offices. It was essential to establish effective systems that allowed applicants to meet priority documents in a timely and efficient fashion even in times of disruption. The WIPO Digital Access Service for Priority Documents (DAS) assisted greatly in this respect, but did not work for all applications. In particular, many Offices acting as depositing Offices for national applications had not enabled the service for international applications filed with them as receiving Office. The Japan Patent Office had invited the International Bureau to explore possible options and it considered that the third option presented in the document (use of record copies to create a certified copy that could be transferred to a later application through DAS) was the most appropriate.

17. Several Authorities expressed their support for the concept, though some Authorities questioned the value for money of taking action in this area, noting that only around 1.5 per cent of PCT applications claimed priority from an earlier international application.

18. All Authorities agreed that the third option in the document appeared the most promising of the options presented if work were to be undertaken. However, one Authority suggested that the second option should also be considered, noting that not all receiving Offices were able to accept the use of DAS.

19. Several Authorities also expressed their concern that copies provided in the manner described might not meet the requirements of Article 4D(3) of the Paris Convention to be recognized as valid priority documents under the laws relevant to some designated Offices. Particular concerns included whether the proposed arrangements could constitute certification by the receiving Office where the earlier international application had been filed that the record copy of that earlier international application was a true copy of that application. Under some of the options, a person asked to make a certification might not be in a position to verify whether documents that had been transmitted as the record copy were in fact a true copy. In the case of the first option, for example, an officer in the receiving Office might not be able to see what had been sent as a record copy to compare with the home copy and would only be able to act on assumptions of what had been sent. Issues might also arise as to the status of later filed sheets, such as corrections and rectifications. Furthermore, there were expectations of individual certification of documents being included as part of the certified copy, rather than collective certification being implied by rule.

20. The International Bureau agreed that it would be essential for any arrangement to be clear about which sheets were relevant to a certified copy. Furthermore, any Rules and associated procedures adopted must lead to the creation and distribution of documents that would reliably meet their purpose as priority documents. However, the PCT System relied on acceptance by designated Offices that record copies of international applications were a true copy of the home copies kept by the receiving Office. These record copies were equivalent to national patent applications in all Contracting States and acted on directly by designated Offices. With regard to the formalities of certification, the International Bureau recalled the Understanding of the Assemblies of the Paris Union and PCT Union on the Provision of Priority Documents under the Paris Convention and the PCT agreed in 2004, set out in paragraph 9 of document A/40/6. This Understanding had been adopted in order to enhance certainty with respect to the use of electronic means for the provision, storage and dissemination of priority document. Item (i) of the Understanding stated that "it is for the competent authority furnishing the priority document to determine what constitutes certification of a priority document and the date of filing, and how it will certify such a document." The non-exhaustive list of examples in item (iii) of the Understanding for forms of certification of priority documents agreed to be acceptable included "the collective certification of multiple priority documents transmitted by an Office to another Office or to the International Bureau." While the details would need to be scrutinized carefully and might require consideration by the Assembly of the Paris Union as well as the Assembly of the PCT Union, this appeared to provide a possibility for the latter Assembly to adopt a PCT Rule that would, in effect, be a common agreement by receiving Offices to regard the transmission of a record copy as being a certification of that copy for potential use as a priority document.

21. The Japan Patent Office indicated that it would consider the points made by other Authorities and how they could be addressed in a possible proposal to the PCT Working Group.

22. The Meeting noted the options set out in document PCT/MIA/28/6 and the comments made by International Authorities.

STRENGTHENING PCT SAFEGUARDS IN CASE OF GENERAL DISRUPTION

23. Discussions were based on document PCT/MIA/28/8.

24. The European Patent Office introduced the document and explained the revisions that it had made to the proposal in light of the comments made at the fourteenth session of the PCT Working Group in October 2020.

25. International Authorities recognized the principle that the PCT legal framework should provide adequate mechanisms to safeguard against loss of rights of an application from failure of an applicant to meet a time limit fixed in the PCT Regulations due to the COVID-19 pandemic and similar situations such as those listed in Rule 82*quater*.1(a). International Authorities also noted that provisions similar to Rule 82*quater*.1 had recently been agreed for submission to the Hague Assembly for adoption in order to provide for excuse of delay in meeting time limits under the Hague System (see documents H/LD/WG/9/3 Rev., H/LD/WG/9/6, and paragraphs 14 and 15 of document H/LD/WG/9/7).

26. Several Authorities expressed support in principle for the proposal, though some raised drafting points to consider in preparing the proposal for submission to the PCT Working Group in June 2021. These included whether a statement was needed when the requirement for evidence was waived under proposed Rule 82*quater*.1(d), how the phrase “when the State in which it is located is experiencing a general disruption” in proposed Rule 82*quater*.3(a) would apply to disruptions in only part of the State that might not affect the Office, and how further extensions could apply in proposed Rule 82*quater*.3(b). On the final point, one Authority requested clarification, for example in the Administrative Instructions, on how Offices should act and monitor actions with regard to multiple extensions in the international phase, noting that multiple extensions could affect international publication and extend a time limit beyond the expected time for entry into the national phase.

27. One Authority highlighted several concerns of principle with the proposal in the document on how the proposed Rule 82*quater*.3 should function. This Authority emphasized that, in order to receive relief from not meeting a requirement, an applicant must have been affected by the event for which the relief was being given; if the applicant had not been affected by that event, they should be expected to continue to meet any obligations. This was a redline issue for this Authority. The provisions regarding excuse of delay to be submitted to the Hague Assembly referred to in paragraph 25, above, required the applicant to submit evidence that failure to meet a limit was due to situations of *force majeure*, or, if the requirement for evidence had been waived, an applicant needed to submit a statement that the failure to meet the time limit was due to the reason for which the requirement regarding submission of evidence had been waived. In order to maintain consistency between the different WIPO global registration systems, it was important that the same principle should hold in the PCT System. Moreover, the administrative burden from requiring the applicant to assert that a delay had been caused by the event for which the applicant was seeking relief had been found to be negligible for this Authority and was believed to be insignificant for the applicant. Furthermore, the provisions restricting the application of the proposed Rule to the case where disruptions occurred in the State where the Office was located were unnecessary and unfair to applicants from other States, where disruptions might occur without triggering such relief due to the disruption not extending to the State where the Office was located. This appeared particularly problematic for regional Offices and the International Bureau. The Authority also noted the fact that a disruption could apparently trigger the relief if it occurred in the country where the Office was located, but did not affect the region of the Office itself, as well as the fact that any extension would be a general one, applying to all applicants irrespective of place of residence. The Authority also had additional concerns on points of detail that it indicated it would transmit to the European Patent Office.

28. Another Authority also had concerns regarding the proposed Rule 82*quater*.3. This Authority had applied the *Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID 19 Pandemic* (“the Interpretative Statement”) that the International Bureau had issued on April 9, 2020, and it noted that there was no significant burden to applicants in requesting an excuse of delay or to Offices in administering the requests when the requirement of evidence under Rule 82*quater*.1 had been waived. The Authority therefore supported the proposed modifications to Rule 82*quater*.1 to give the effect to the Interpretative Statement in the PCT Regulations, and mentioned that the outcome of the assessment on the implementation of the Interpretative Statement might also be considered to decide the changes to the Regulations. Noting that the existing Rules were sufficient to provide remedy to affected parties, the Authority did not find the need for a new Rule 82*quater*.3 for the same purpose. The Authority further noted that the existing Rules encouraged all parties to adhere to the timelines to the extent possible and that minimizing the number of events that crossed the timelines helped the PCT System to function predictably. The Authority was of the view that under the proposed new Rule, the parties who were not affected by a disruption might also be encouraged to avail the extended time limits. This Authority also had some concerns with the application of the proposed Rule 82*quater*.3 where different actions had the same time limit but took place before different Offices (the receiving Office, the International Bureau or the International Searching Authority) where the limits might or might not be extended. It was noted that in the event of a worldwide disruption, there was likely to be a large number of notifications and extensions of notifications from different Offices, covering different date ranges, which could cause a very confusing range of different time limits for the applicant to identify and understand. Furthermore, the period notified by an Office under the proposed new Rule might be prejudicial to an applicant seeking excuse of delay under Rule 82*quater*.1 for the same reason but falling outside of the notified period. There could also be difficulties in the relationship with the overall time limits under the PCT as the proposed Rule permitted multiple notifications, as well as difficulties for applicants in meeting many time limits expiring on the day after the end of the period of extension under the proposed Rule 82*quater*.3(a).

29. The European Patent Office indicated that it would consider any drafting suggestions received from Authorities in revising the proposal to be submitted to the PCT Working Group. In terms of providing evidence that the applicant had been affected by an event, the European Patent Office suggested including a provision in Rule 82*quater*.3 to allow the option for an Office to require a statement that the applicant had been affected by the event that had resulted in the Office extending the time limit if this could help achieve a consensus on the proposal.

30. The Meeting noted that the discussions on the proposal would continue at the fourteenth session of the PCT Working Group in June 2021, and at that session, the International Bureau would report on the experiences of IP Offices in the implementation of the *Interpretative statement and Recommended Patent Cooperation Treaty (PCT) Practice Changes in light of the COVID-19 Pandemic* that it issued on April 9, 2020.

QUESTIONNAIRE ON THE INTERNATIONAL SEARCH REPORT AND WRITTEN OPINION

31. Discussions were based on document PCT/MIA/28/7.

32. The China National Intellectual Property Administration (CNIPA), in introducing the document, informed the Meeting that the International Bureau had issued two Circulars with questionnaires in October 2020. One Circular was sent to Authorities and the other to designated Offices and PCT users, in order to collect suggestions regarding improvements to the international search report and written opinion. By the end of January 2021, 20 Authorities had replied to the survey while 33 responses were received from PCT users. CNIPA further indicated that preliminary statistics of the survey results had been summarized in paragraph 5 of the document.

33. In relation to the schedule presented in paragraph 7 of the document, one Authority proposed to allow the International Searching Authorities to submit feedback on the draft report until October 31, 2021, and to postpone the deadline for submitting comments and suggestions on the revised report to mid-January 2022. Another Authority indicated that it replied to the questionnaire and submitted suggestions for improvements regarding both the layout and the content of international search reports and written opinions, which it had posted on the Quality Subgroup wiki.

34. The International Bureau acknowledged that the schedule should lead to completion in time for the next session of the Meeting in early 2022. However, the deadlines for International Searching Authorities to comment on the draft report should depend on when CNIPA made this report available, and similarly for submitting comments on the revised report. These deadlines should therefore be determined when the reports were available to allow for adequate time for Authorities to comment within the overall timeframe leading to the next session of the Meeting.

35. The Meeting noted the contents of document PCT/MIA/28/7 and the work ahead until the next session of the PCT/MIA.

PCT COLLABORATIVE SEARCH AND EXAMINATION PILOT: STATUS REPORT

36. Discussions were based on document PCT/MIA/28/3.

37. The European Patent Office (EPO) introduced the document and informed the Meeting that the pilot had entered the evaluation phase in 2020, during which the IP5 Offices would assess the entry of international applications treated during the operational phase of the pilot into their respective national or regional phases. The evaluation phase, which included the International Bureau surveying pilot participants, would finish in June 2022.

38. The Meeting noted the contents of document PCT/MIA/28/3.

PCT MINIMUM DOCUMENTATION TASK FORCE: STATUS REPORT

39. Discussions were based on document PCT/MIA/28/4.

40. The European Patent Office as Task Force leader and the United States Patent and Trademark Office, as leader of Objective D of the Task Force, outlined the significant progress in revising the patent and non-patent literature parts of the PCT minimum documentation, respectively. A Task Force meeting would be convened from May 17 to 21, 2021, where further progress was sought towards bringing recommendations for amendment of the PCT Regulations and agreements concerning the non-patent literature at the relevant bodies in the course of 2022. The relevant changes would then be brought into force before the next re-appointments of International Authorities, the process for which would begin in 2026.

41. The Meeting noted the contents of document PCT/MIA/28/4.

SEQUENCE LISTINGS TASK FORCE: STATUS REPORT

42. Discussions were based on document PCT/MIA/28/2.

43. The European Patent Office, as leader of the Task Force on Sequence Listings, created by the Committee on WIPO Standards, introduced the progress that had been made in relation to the development of software tools to support use of WIPO Standard ST.26 by applicants and Offices, and to revisions to the PCT legal framework. Draft amendments to the PCT Regulations had been approved by the PCT Working Group and needed to be adopted by the PCT Assembly in time to come into force with effect from January 1, 2022. Significant progress had been made on draft modifications to the PCT Administrative Instructions, but this work needed to be completed and a formal PCT consultation procedure undertaken.

44. International Authorities expressed their continuing support for the implementation of WIPO Standard ST.26. Several Authorities noted their contributions towards the specification and testing of the *WIPO Sequence* software, as well as progress towards implementation of the ST.26 in their IT systems and national laws in time for the “big bang” implementation on January 1, 2022.

45. One Authority suggested that Member States should consider a sequence listing deposit system, which could work in a manner similar to the WIPO Digital Access Service for Priority Documents.

46. The International Bureau noted the concern of several Authorities that it was important to adopt the amendments to the PCT Regulations at an extraordinary session of the PCT Assembly that the WIPO Assemblies had requested the Director General to convene during the first half of 2021, and not to leave this until the ordinary session that would be held in October 2021. This matter remained under discussion between the regional coordinators and the Chair of the WIPO General Assembly.

47. In relation to the development of the PCT Administrative Instructions, the International Bureau noted that the Task Force on Sequence Listings appeared to be reaching consensus on the draft for the main body of the Administrative Instructions. It was hoped to provide a draft of the Forms that required modifications to the Task Force for consideration in April, with a view to being able to send a PCT consultation Circular in May.

48. With regard to software development, the International Bureau noted that version 1.0 of *WIPO Sequence* and *WIPO Sequence Validator* tools had been released in November 2020. Updated versions, reflecting the modifications to WIPO Standard ST.26 adopted in December 2020, as well as bug-fixes and additional agreed requirements were under development and testing. The next official release of the tools was expected in August 2021. In response to concerns expressed by one Authority, the International Bureau emphasized that support would not cease at the end of the “warranty period” of the software development, which was planned by the end of July 2021. Further improvements had already been identified and development would continue into 2022 to address further bugs found, to meet requirements essential to the “big bang” implementation and to implement other agreed improvements. Support would also be provided, both for Offices and for users.

49. In relation to training, the International Bureau had proposed a tentative schedule with webinars and workshops at national and regional levels for different interested parties beginning in April 2021. To the extent practical, the supporting materials for these presentations would be provided in all 10 PCT languages of publication.

50. The International Bureau also reminded International Authorities that it would welcome submission of ST.26 Implementation Plans from any Offices that had not yet submitted them or wished to notify updates.

51. The Meeting noted the contents of document PCT/MIA/28/2.

FUTURE WORK

52. The Meeting noted the offers to host a future session of the Meeting that the China National Intellectual Property Administration (CNIPA) and the Federal Service of Intellectual Property (Rospatent) had made at its twenty-seventh session in February 2020. The Meeting agreed that the International Bureau should discuss possible options for these Offices to host a future session, noting the order that these offers were received. The next session of the Meeting was expected to take place in the first quarter of 2022. The venue and means of participation for International Authorities would need to take into account the evolution of the COVID-19 pandemic and the travel conditions that may apply at that time.

CLOSING OF THE SESSION

53. The Chair closed the session on March 26, 2021.

[Annex I to document PCT/MIA/28/9, containing a list of participants is not reproduced here]

[Annex II (to document PCT/MIA/28/9)
follows]

ANNEX II (to document PCT/MIA/28/9)

PCT/MIA QUALITY SUBGROUP, ELEVENTH INFORMAL MEETING
GENEVA, MARCH 22 AND 23, 2021

SUMMARY BY THE CHAIR

1. Mr. Michael Richardson, Director, PCT Business Development Division, World Intellectual Property Organization (WIPO) welcomed participants to the session on behalf of the Director General of WIPO, Mr. Daren Tang.

1. QUALITY MANAGEMENT SYSTEMS

(A) REPORTS ON QUALITY MANAGEMENT SYSTEMS UNDER CHAPTER 21 OF THE PCT INTERNATIONAL SEARCH AND PRELIMINARY EXAMINATION GUIDELINES

2. Authorities agreed that the system of reporting on the quality management systems (QMS) was useful, and appreciated the summary provided by the International Bureau.

3. The Israel Patent Office stated that, as part of measures to respond to the COVID-19 pandemic, it prioritized the examination of patent applications intended for diagnosis, treatment, prevention or eradication of the coronavirus without additional fees, in a similar way to applications for “green” patents.

4. One Authority provided information on its artificial intelligence (AI)-based search tool to complement searching by the patent examiner. The tool was based on searching the full text of the application to allocate it to the examiner and retrieve examples of potentially relevant prior art for the examiner to consider for the search. This Authority had also prepared standardized clauses for formalities examination in the international and national phases.

5. One Authority updated the Subgroup on its IT modernization work with reference to three different projects. This Authority would soon allow clients to retrieve documents related to an international application and citations electronically through a digital delivery platform that facilitates sending and receiving confidential messages and documents with one or multiple recipients. The Authority will also launch electronic issuance (e-issuance) whereby issued patents and associated documents in pdf format would be retrievable via a repository. Instead of receiving paper patent documents by mail, clients would receive instructions on how to download their documents. Finally, this Authority will launch a new e-service allowing applicants to request national entry of their PCT applications online. Clients were involved in the design of the new e-service, which makes use of application programming interfaces (APIs). Clients were also involved in usability testing and will be involved in user acceptance testing before roll-out.

6. The European Patent Office explained that it was extending its ISO 9001 certification to a wider range of procedures and had created a new Principal Directorate to administer the arrangements. It had also adopted a federated approach to risk management and was currently preparing its annual quality report that it would publish on the EPO website. In terms of business continuity, the EPO reported that the option to use videoconferencing for oral proceedings on cases had been available since 1998, but up until last year, this possibility had rarely been used. Videoconferencing now took place on all oral proceedings on applications. The EPO was also testing videoconferencing for opposition proceedings, where it was possible to use interpretation through Zoom.

7. One Authority agreed to share the PCT improvement plan referred to in its report on the Quality Subgroup wiki.

8. In response to a question from one Authority on the parts of the international search report and written opinion that were analyzed as part of the Harmonization Files Project between the European Patent Office (EPO) and certain other International Authorities in Europe, the EPO explained that the project took place within the framework of activities under the Protocol on Centralisation under the European Patent Convention. The exercise aimed to harmonize search across Europe with two activities. First, there was a general exercise where three other IP Offices in Europe compared the search they had performed with a counterpart examiner at the EPO on up to 50 cases per year. This activity centered on comparing practices; it was not about defining a quality standard as such. Second, IP Offices studied particular cases where there were discrepancies on determining issues such as unity of invention. The Nordic Patent Institute (NPI) explained that the benchmarking exercise took place as a “blind” exercise without knowing which examiner had completed the search. The comparison of the files made in the Permanent Committee on the Harmonisation of Search Activities (PCHSA) included metrics on classification and search, and discussed interpretation of the claims and specific citations, noting various difficulties in the interpretation of results, such as that different citations between two examiners may lead to the same outcome.

9. The Subgroup recommended:

- (i) to continue reporting on existing QMS using the present reporting mechanism, indicating changes from the previous report and including these changes in a summary along with other matters of likely interest as part of the introduction to the report; and
- (ii) that interested Authorities should present overviews or particular aspects of their QMS to future meetings of the Subgroup.

(B) FEEDBACK FROM PAIRED REVIEW OF QUALITY MANAGEMENT SYSTEMS OF INTERNATIONAL AUTHORITIES

10. The International Bureau recalled that paired reviews were held for the fifth time this year. In 2017, four Authorities participated in the paired review sessions while in 2021, the number of participating Authorities grew to nine. Because of the virtual meeting format, this year, the pairing had been done according to time zones, with two main groups, the West Group and the East Group, in order to cope with the time differences. This had offered an opportunity for more experts to join the discussions.

11. All nine Authorities that had participated considered that the experience had been positive. This had allowed the participating Authorities to gain greater insight into details of other Authorities' quality management systems that might provide useful possibilities for their own systems. The Offices being reviewed had found the questions about their reports useful both in terms of their clarity and for reviewing the reasons for particular arrangements. The participating Authorities encouraged other Authorities to participate in future sessions.

12. Save for one minor problem with sound quality, the technical arrangements had worked well. The timing of one hour for each session with 15-minute breaks between sessions and a longer break between the paired reviews and the main session had been appropriate. Although two Authorities would have liked to have slightly longer, the format allowed a small amount of flexibility and it remained possible to follow issues up later by email.

13. The Authorities recognized the merits of the remote meeting format in reducing costs and allowing wider participation of experts, but also highlighted the value of face-to-face meetings. The International Bureau noted that a hybrid format appeared desirable in principle, but the feasibility of such an arrangement would depend on the facilities available at the host's premises.

14. The Subgroup noted the feedback from the paired review sessions and recommended that interested International Authorities should again perform paired reviews of reports of Quality Management Systems at the next meeting. The International Bureau would invite Authorities to participate through the Circular requesting reports on the Quality Management Systems.

2. BETTER UNDERSTANDING THE WORK OF OTHER OFFICES

(A) SURVEY ON SEARCH STRATEGIES

15. The United States Patent and Trademark Office introduced a revised draft of the proposed survey, taking into account comments from the previous session and from the wiki. These had been split into two distinct parts: one for Offices to be further developed with the International Bureau, and one survey in the form of a template that could be used by interested Offices as the basis of a survey of their users. The questions had been simplified and reformulated, to be more focused and language neutral. Offices could use it as a template, and add further questions that would be relevant for them.

16. Authorities agreed that the main concerns previously expressed appeared to have been addressed and thanked the United States Patent and Trademark Office for its work. However, several Authorities required more time to review the proposals in detail. Moreover, one Authority proposed several specific amendments to the texts of both surveys.

17. The Subgroup recommended that the United States Patent and Trademark Office review the specific drafting suggestions received and post any revised draft texts on the wiki for continuing review within two weeks, with the aim of finalizing survey texts by mid-May, beginning the survey by July and receiving responses in time for a detailed analysis to be made by the end of the year.

(B) STANDARDIZED CLAUSES

18. The International Bureau outlined the scope of the clauses available and recalled that they had been formally promulgated in English, French and Spanish and that versions were also available in Chinese and Arabic (the latter based on the previous version of the clauses). A Russian version of the clauses had been prepared and was being updated by Rospatent. The International Bureau restated its offer to prepare the clauses in additional PCT languages of publication if relevant Authorities were ready to use them. In addition, improvements were intended to the interface for the benefit of examiners using the clauses as part of written opinions authored using ePCT.

19. Authorities expressed their thanks to the Canadian Intellectual Property Office for their work in leading the development of standardized clauses. Authorities expressed their interest in sharing existing or newly drafted clauses in relation to:

(a) unity of invention, based on the "minimum reasoning" in Chapter 10 of the PCT International Search and Preliminary Examination Guidelines;

(b) formalities examination; and

(c) explanation of patent-related concepts to inexperienced applicants.

20. The Subgroup recommended that Authorities post proposals or other relevant material on the wiki as soon as possible relating to the development of clauses for the above subjects.

3. CHARACTERISTICS OF INTERNATIONAL SEARCH REPORTS

21. The International Bureau recalled that a variety of suggestions had been noted over the past years concerning new or improved characteristics that would be desirable to measure if the relevant information were available in a timely and accurate way. The International Bureau was evaluating the requirements for extracting data from XML search reports with a view to allowing near real-time feedback on some of the relevant characteristics in the international phase in the course of the next few years. The issues related to characteristics from the national phase would take longer to address.

22. The Canadian Intellectual Property Office presented a spreadsheet offering custom views of characteristics from the data provided as .CSV files. While this was still work in progress, it was beneficial for allowing comparison between Offices selected as being of interest for any particular purpose under review. The Office offered to provide further information to interested Authorities through the wiki, noting that the initial preparation of the spreadsheet had taken a large amount of effort, particularly with regard to validation, but that additional work would become easier with experience and the validated template.

23. Authorities indicated that they continued to find the characteristics reports useful, subject to the ongoing desire to modify the metric concerning language of patent citations (potentially change to "patent citations not in the language of publication of the international application") and that the report on applications with category O, T or L citations was of little benefit. In general, the existing reports gave a clear overview of the characteristics and provided a common dataset for analysis of trends and differences. However, an interactive tool would ease access to and use of the information.

24. One Authority noted that the WIPO IP Statistics Database no longer offered breakdowns of data by quarter and asked whether this facility could be reinstated.

25. Several Authorities expressed their interest in the possibilities that could be offered by a PCT citations database, both in relation to more timely and detailed characteristics reports, and enabling other functionality associated with the processing of individual international applications. Authorities requested the International Bureau to keep them informed and consulted on developments in this area. The International Bureau observed that this might happen in the PCT Working Group, through PCT Circulars, through the Subgroup's wiki or at future sessions of the Subgroup, depending on progress and the issues concerned.

26. With regard to future discussions of this subject, it was acknowledged that there was little progress on the development of the metrics. However, some Authorities indicated that they would wish to keep the item on the agenda. The International Bureau noted that, while it was unlikely that new systems for delivery of characteristics reports would be developed in the following 12 months, progress was expected on related systems, such as a citations database. The International Bureau suggested that it would probably be desirable to include an agenda item related to this topic at the next session, but that its scope would depend on developments in the meantime.

27. The Subgroup recommended that:

- (a) the International Bureau should continue to prepare annual reports on characteristics of international search reports; and
- (b) the International Bureau should inform and consult with Offices, International Authorities and Contracting States on issues relating to the possible development of a PCT citations database and its potential uses for future characteristics reports and other purposes.

4. PCT METRICS

28. Authorities welcomed the extension of the range of reports available to receiving Offices and International Authorities through ePCT and especially the provision of “push” reports. The push reports both made access to the relevant information easier and increased awareness of the reports and their value in management of PCT services by Offices. Several Offices confirmed their support for more information being available directly in the email notifications. In response to a question, the International Bureau indicated that it did not currently have a specific timeframe in mind for this development. At present, the primary focus was on improving the quality of the data.

29. Authorities outlined how they used the reports. Most Authorities had their own systems to generate key metrics relating, in particular, to timeliness of work and outstanding reports that needed to be completed. However, the reports available in ePCT offered a useful cross-check that services were working as expected and that there were no significant errors introduced in the transcription of data from image-based forms received by the International Bureau. Under this hybrid arrangement, some ePCT notifications were not used for normal processing purposes and one Authority observed that this meant that there was a risk of important notifications being “lost” among less relevant material that was not necessarily thoroughly or regularly checked. One Authority noted its increasing use of ePCT and had found the training provided by the International Bureau helpful on both metrics and other functions in ePCT.

30. In relation to the issue of using ePCT reports to help identify cases where processing had gone wrong, the International Bureau emphasized that this should focus on identifying the causes of the problems and improving the underlying processes as well as fixing the individual applications. The International Bureau welcomed feedback at any time that would allow such needs to be addressed.

31. A number of proposals were made to improve the reports, including allowing the generation of all the reports as a single document, eliminating references to irrelevant data, such as duplicate applications, and highlighting “new” items in push reports by identifying cases that had changed since the previous report. One Authority suggested that it might be easier to access reports through the wiki, rather than through ePCT.

32. Authorities noted the difficulties in obtaining timely and accurate data in some areas, including with regard to Chapter II processing and encouraged the International Bureau to work with International Authorities to improve the data flows.

33. The Subgroup recommended that the International Bureau continue to develop the metrics reports in the directions proposed.

5. UNITY OF INVENTION

34. IP Australia thanked Authorities for their contributions to the discussions on the wiki that had led to the International Bureau issuing Circular C. PCT 1610 to consult on proposed modifications to Chapter 10 of the PCT International Search and Preliminary Examination Guidelines. IP Australia proposed that the International Bureau should promulgate the modifications where there was consensus among IP Offices, and that further discussions should continue on other items over 2021 as part of Phase III. IP Australia also welcomed the more holistic approach proposed by the International Bureau to consider using more gender-neutral language across its publications related to the PCT System, rather than including it only for the parts of the Guidelines modified in this phase.

35. All Authorities that took the floor supported the proposed approach to promulgating the modifications to incorporate examples showing the “minimum reasoning” methodology. Authorities also agreed to make a further modification in the first sentence of paragraph 10.04A of the Guidelines to replace the word “contains” with “claims”. The opening of this paragraph would therefore read “In order to assess whether an application claims non-unitary

subject-matter, the Authority may apply the ‘minimum reasoning’ methodology by ascertaining the common or corresponding matter...” Authorities also supported continuing the discussions through the wiki on other issues that the Subgroup had previously discussed without consensus, along with the points that had been raised in response to Circular C. PCT 1610.

36. The Subgroup recommended that:

- (i) the International Bureau incorporate the proposed modifications into the next version of the Guidelines with the additional change described in paragraph 35, above, which was expected to enter into force from July 1, 2021; and
- (ii) Authorities should continue discussions on other items over 2021, including those from the feedback to Circular C. PCT 1610.

6. OTHER IDEAS FOR QUALITY IMPROVEMENT

PROMOTING LINKAGE BETWEEN THE INTERNATIONAL PHASE AND THE NATIONAL PHASE

37. The Japan Patent Office reminded the Subgroup that it had posted a proposed draft modification to paragraph 15.09 of the International Search and Preliminary Examination Guidelines that it had revised following the comments in the responses to Circular C. PCT 1610. The Japan Patent Office invited other Authorities to post comments on this proposal by April 16, 2021.

38. The International Bureau informed the Subgroup that if Authorities agreed with the proposed modification to paragraph 15.09 on the wiki, it would be promulgated with the modifications to Chapter 10 of the Guidelines.

PCT CITATIONS DATABASE

39. Two Authorities requested the International Bureau to consult Authorities on planned developments for a proposed PCT citations database, such as the tools to provide real-time data, and access in the database to non-patent literature. The International Bureau indicated that it would bring this matter to the Subgroup wiki and, depending on further progress in the meantime, to the next session of the PCT Working Group, scheduled to take place from June 14 to 17, 2021.

MODIFICATIONS TO THE INTERNATIONAL SEARCH AND PRELIMINARY EXAMINATION GUIDELINES

40. One Authority requested that, when the International Bureau published a new version of the Guidelines, there should also be a published mark-up version showing the modifications from the previous version of the Guidelines.

FUTURE MEETINGS OF THE QUALITY SUBGROUP

41. Authorities appreciated the Webex format that had allowed the Subgroup to meet during the COVID-19 pandemic. The technical aspects of the meeting this year had run smoothly, and videoconferencing had allowed more people to participate than a physical meeting requiring travel to a particular location.

42. Authorities expressed various advantages and disadvantages of remote meetings compared to in-person meetings, noting that the latter provided opportunities for Authorities to hold face-to-face discussions outside of the plenary sessions, which offered valuable networking opportunities with counterparts at other IP Offices. Some Authorities considered that holding the Quality Subgroup as a hybrid meeting with both physical presence and remote participation could provide a compromise solution. One Authority suggested that the Subgroup could alternate between physical and virtual meetings.

43. The International Bureau acknowledged that a hybrid meeting could have the benefits of both physical and virtual meetings, but the possibility to add remote participants would depend on the venue of the meeting for physical participants. Varying the format of Quality Subgroup meetings could also allow the Subgroup to meet both physically during the same week as the Meeting of International Authorities, and through videoconferencing between sessions of the PCT/MIA. Since it was not possible to know what travel possibilities there would be over the coming year, the International Bureau proposed to discuss the format of the next meeting of the Subgroup closer to the time of the meeting, which would normally take place in first quarter of 2022.

[End of Annex and of document]