

Patent Cooperation Treaty (PCT) Working Group

**Fourth Session
June 6 to 10, 2011, Geneva**

Report

adopted by the Working Group

INTRODUCTION

1. The Patent Cooperation Treaty Working Group held its fourth session in Geneva from June 6 to 10, 2011.
2. The following members of the Working Group were represented at the session: (i) the following Member States of the International Patent Cooperation Union (PCT Union): Algeria, Australia, Austria, Azerbaijan, Barbados, Brazil, Canada, Chile, China, Colombia, Congo, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, El Salvador, Finland, France, Germany, Guatemala, Hungary, India, Indonesia, Israel, Italy, Japan, Lithuania, Malaysia, Mexico, Netherlands, New Zealand, Nigeria, Norway, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Singapore, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Turkey, Ukraine, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Viet Nam, Zimbabwe (59); (ii) the following intergovernmental organizations: European Patent Office (EPO), the Nordic Patent Institute (NPI) (2).
3. The following Member States of the WIPO Convention participated in the session as observers: Brunei Darussalam, Haiti, Iraq, Pakistan, Saudi Arabia (5).

4. The following intergovernmental organizations were represented by observers: African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), African Union (AU), Economic Community of West African States (ECOWAS), Eurasian Patent Organization (EAPO), European Union (EU), South Centre (7).
5. The following international non-governmental organizations were represented by observers: Asian Patent Attorneys Association (APAA), Institute of Professional Representatives before the European Patent Office (EPI), International Association for the Protection of Intellectual Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), Third World Network (TWN) (5).
6. The following national non-governmental organizations were represented by observers: Brazilian Association of Intellectual Property (ABPI), German Association for Industrial Property and Copyright (GRUR), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Polish Chamber of Patent Attorneys (5).
7. The list of participants is contained in the Annex.

OPENING OF THE SESSION

8. Mr. James Pooley, Deputy Director General, Innovation and Technology Sector, WIPO, opened the session and welcomed the participants. Mr. Claus Matthes (WIPO) acted as Secretary to the Working Group.
9. The Deputy Director General informed the Working Group that Qatar and Rwanda had acceded to the PCT in May 2011. Both States would become bound by the PCT in August 2011.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

10. The Working Group requested the International Bureau to chair the session until nominations were received for a Chair and two Vice-chairs. In the absence of such nominations, the session was chaired by Mr. James Pooley (WIPO), except for the discussions on agenda items 7(b) and (c), which were chaired by Mr. Claus Matthes (WIPO).

ADOPTION OF THE AGENDA

11. The Delegation of India, speaking on behalf of the Development Agenda Group, proposed the addition of a new agenda item, to be added to the draft agenda set out in document PCT/WG/4/1 Rev., following agenda item 9, entitled: "*Contribution of the PCT Working Group to the implementation of the respective Development Agenda recommendations*". As was the practice in other WIPO bodies, under that new agenda item, delegations should be invited to present comments on this matter which should be transmitted to the WIPO General Assembly, as mandated by the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

12. The Delegation of India further referred to the Preamble of the Treaty, which stated the following: “Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology”. Moreover, Article 51 mandated the establishment of a Committee for Technical Assistance “to organize and supervise technical assistance for Contracting States which are developing countries in developing the patent systems...” and mentioned, in particular, “the training of specialists, the loaning of experts and the supply of equipment...” In addition, the “History of the Patent Cooperation Treaty” set out in the Records of the Washington Diplomatic Conference on the PCT in 1970 provided further details of technical assistance under Article 51, as follows: “... an existing industrial property office in a developing country could be assisted in becoming a channel for technical information to local industry by selecting for and forwarding to such industry all patent documents coming from abroad which are of possible interest to that industry in keeping abreast with technological developments throughout the world. Moreover a national or regional industry property office could be assisted in procuring the materials and training the manpower necessary for effecting a meaningful examination of the technical aspect of inventions”. The Delegation further stated that those details were additional to the Treaty provisions regarding the training of specialists, the loaning of experts and the like. Recognizing the integral relevance of development to the work of the PCT, the Working Group had been addressing those issues in its recent sessions; furthermore, items 6(a), (c) and (d) of the draft agenda for the present session further highlighted the development-orientated dimension of the PCT.
13. In concluding, the Delegation of India stated that, given the important developmental dimensions within the PCT, the Working Group was a relevant WIPO body to report on its contribution to the implementation of the respective Development Agenda recommendations. In its view, the addition of the proposed agenda item was not just necessary but imperative in light of the obligations under the PCT. Any reservation about inclusion of this new agenda item would, in its opinion, be tantamount to rejection of several provisions of the PCT, including its Preamble. The Delegation therefore looked forward to the agreement of all Contracting States and members of the Working Group to include the proposed new agenda item on the draft agenda for this session.
14. The Delegation of Pakistan, speaking on behalf of the Asian Group, stated that it supported the inclusion of the new agenda item proposed by the Delegation of India on behalf of the Development Agenda Group, noting the importance of development issues in context of the PCT.
15. The Delegation of South Africa, speaking on behalf of the African Group, stated that it, too, supported the inclusion of the new agenda item proposed by the Delegation of India on behalf of the Development Agenda Group, for the reasons explained by the Delegation of India.
16. The Delegation of Brazil stated that it also supported the inclusion of the new agenda item proposed by the Delegation of India on behalf of the Development Agenda Group. It further stated that the Working Group was a relevant WIPO body to report on its contribution to the implementation of the respective Development Agenda recommendations, noting, in particular, the discussions envisaged to take place at the present session on the implementation of Article 51.

17. The Delegation of Slovenia, speaking on behalf of the Group of Central European and Baltic States, expressed the view that the first and the foremost goal of the Working Group should be to focus discussion on substantive issues relating to the PCT. The Delegation considered that the agenda as set out in document PCT/WG/4/1 Rev. did fulfill the General Assembly's mandate to mainstream the Development Agenda recommendations. Nevertheless, the Delegation was prepared to accept the new agenda item as proposed by the Delegation of India, but wished to add the disclaimer, for the record, that this compromise did not in any way create a precedent for any other future meeting of WIPO bodies.
18. The Delegation of the United States of America, speaking on behalf of Group B, stated that it agreed with the position expressed by the Delegation of Slovenia, speaking on behalf of the Group of Central European and Baltic States, that the acceptance of this new agenda item proposed by the Delegation of India did not set any precedent for future meetings of WIPO bodies.
19. The Delegation of Germany stated that it, too, supported the views expressed by the Delegation of the United States of America, speaking on behalf of Group B, and of the Delegation of Slovenia, speaking on behalf of the Group of Central European and Baltic States, and wished to put on record that the inclusion of the new agenda item was not setting any precedents.
20. The Working Group adopted the revised draft agenda as set out in document PCT/WG/4/1 Rev., with the addition, as new agenda item 10 (and consequential renumbering of agenda items 10, 11 and 12), of the following new agenda item:
 - "10. Contribution of the Working Group to the implementation of the respective Development Agenda Recommendations."

PCT STATISTICS

21. The International Bureau gave a presentation on the PCT statistics in 2010, based on the recently-published *PCT Yearly Review*. An estimated 164,300 PCT applications had been filed in 2010, representing an increase of 5.7% compared to 2009 and exceeding the level in 2008. By country of origin, high percentage growth in PCT applications had occurred in China (+55.6%), India (+36.6%) and the Republic of Korea (+20.3%). European countries, such as Germany (+4.5%), Spain (+12.0%), France (-0.6%), United Kingdom (-2.7%) and the Netherlands (-8.6%), showed a mixture of growth and decline. Filings from the United States of America had experienced continued decline (-1.6%), though applicants from this country remained the largest group of users of the PCT system. The United States Patent and Trademark Office (USPTO) also remained the Office receiving the most PCT filings, but with a drop of -2.1% compared to 2009. In terms of method of filing, the share of fully electronic filings had continued to rise (78% of total filings in 2010), with falls in the percentage of both paper filings and PCT-EASY filings. An estimated 450,000 PCT applications had entered at least one national or regional phase in 2009, a decrease of 3.0% over 2008 (the only other decrease had taken place in 2003). Overall, PCT national phase applications had accounted for about 54% of patent applications filed abroad. The European Patent Office (EPO) had remained the most preferred destination for national phase entries, with about 79,000 in 2009.

22. Of the 17 national patent Offices or regional organizations which had been appointed to act as International Searching Authorities and International Preliminary Examining Authorities (three of which were not yet operating as such), the European Patent Office had issued the largest number of international search reports (ISRs) (42.0% of the total), despite a decrease (-1.4%) compared to 2009. In relation to timeliness, in 2010, 64.3% of ISRs had been transmitted to the International Bureau within 16 months (compared to 55.6% in 2009), but there had been significant variations between Authorities. Figures for supplementary international searches had remained very low. The general decline in requests for international preliminary examination under Chapter II experienced since the introduction of the Chapter I written opinion in 2004 had continued, but the USPTO had issued more reports under Chapter II in 2010 than in 2009. The proportion of reports transmitted under Chapter II within 28 months by International Preliminary Examining Authorities had improved in recent years, reaching 70.7% in 2010, but also with considerable variations between Authorities.

MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PCT

23. Discussions were based on document PCT/WG/4/2, containing the report on the eighteenth session of the Meeting of International Authorities under the PCT (MIA), held in Moscow, Russian Federation, from March 15 to 17, 2011.
24. In introducing document PCT/WG/4/2, the Secretariat noted that the Meeting of International Authorities (PCT/MIA) had discussed the quality framework under the PCT, in particular, a report from the quality subgroup, which had been set up to “review the quality reports submitted by International Authorities and prepare a report for the next session of the Meeting, covering: (i) effective processes and solutions for quality assurance; and (ii) effective quality improvement measures” (see paragraph 29(e) of document PCT/MIA/17/12). That mandate therefore covered improvements to processes regarding quality and quality management systems, including further revisions to the framework under Chapter 21 of the PCT International Search and Preliminary Examination Guidelines, as well as measures that could be taken by International Authorities to improve the quality of international work products. The quality subgroup had originally been envisaged to meet mainly by way of virtual meetings and discussions on an electronic forum which has been established to that effect. Nevertheless, it had held a first physical meeting in Stockholm, in December of 2010. Unfortunately, several delegations, including the International Bureau, had been unable to participate due to bad weather conditions. However, all Authorities present at the meeting had confirmed that the discussion had been very useful and concluded that a second physical meeting should be held early in 2012. The Meeting of International Authorities had reviewed the report submitted by the quality subgroup and had approved the continuation of its existing mandate. As in the past, it had been decided that the quality management reports should be made available on the website of WIPO. In addition, the International Bureau should submit a report to the PCT Assembly on the work undertaken in relation to the quality framework, including a reference to the annual reports and annexes comprising the report from the quality subgroup as set out in document PCT/MIA/18/2 and the relevant sections of the report of the PCT/MIA. While discussions in the quality subgroup and the PCT/MIA had so far focused on the question on quality management systems, the Meeting of International Authorities had emphasized that now the focus should turn to the question of effective quality improvement measures, notably the possible development of quality metrics.

25. The Secretariat further stated that, in the context quality of work products under the PCT, it wished to draw attention to a study prepared by the Japan Intellectual Property Association (JIPA), entitled "Evaluating the Usefulness of International Search Reports in Relation to Japanese/U.S./European PCT Applications", which was available as a non-paper. This study had selected international search reports established by the European Patent Office, the Japan Patent Office and the United States Patent and Trademark Office acting as International Authorities over a period of two or three years and had analyzed how these reports had been used in the national phase by the respective Offices in their capacities as national Offices. The study would provide a good first indication of the kind of work that could be pursued in the context of the quality subgroup under the part of its mandate on developing quality improvement measures. A similar study was also being carried out in the framework cooperation of the so-called "IP5" Offices.
26. The Secretariat further stated that it wished to draw attention to two other items which had been discussed by the Meeting of International Authorities but which were not also on the agenda of the present session of the Working Group.
27. First, the Canadian Intellectual Property Office (CIPO) had made a proposal to the Meeting of International Authorities to introduce standardized clauses in PCT international search and preliminary examination reports, noting the potential benefits of the use of these standardized clauses for the usefulness of the reports for designated and elected Offices, notably where these reports had been neither established nor translated into the official language(s) of the relevant designated or elected Office. In addition, standardized clauses could result in better explanations and more consistent compliance with the requirements of the Treaty with regard to the contents of the reports. Although all Authorities that had taken the floor at PCT/MIA expressed general sympathy for the proposal, there had been several concerns on its feasibility, noting that many clauses already used by Authorities had been aligned with national laws and practices and thus not easily standardized across all Authorities. It had been agreed that the International Bureau should take the issue forward by way of a Circular to gather relevant clauses currently used by International Authorities, so as to establish what could be done in moving forward with the proposal.
28. Secondly, the Canadian Intellectual Property Office (CIPO) had made a proposal to the Meeting of International Authorities to improve the information available concerning the scope of the international search. Although supportive of the general concept underlying the proposal, several Authorities had referred to practical barriers which would take a long time to solve, such as the amount of examiner time needed to record such strategies and the diversity of methods used for recording such strategies, which would greatly limit the extent to which the information could be understood or used by applicants and examiners from different Offices. Another major obstacle which had been referred to was the IT investment needed. PCT/MIA had concluded that CIPO should discuss the issues further with other Offices, noting that related work was going on in other fora which should be taken into account in presenting a revised proposal to address the concerns raised.
29. In concluding, the Secretariat informed the Working Group that the Meeting of International Authorities had agreed to accept an invitation by IP Australia to hold its next session in early 2012 in Australia.
30. The Working Group noted the report of the eighteenth session of the Meeting of International Authorities under the PCT contained in document PCT/MIA/18/16 and reproduced in the Annex to document PCT/WG/4/2.

FUTURE DEVELOPMENT OF THE PCT SYSTEM

Implementation of Recommendations to Improve the Functioning of the PCT System

31. Discussions were based on document PCT/WG/4/3, containing a report on the status of the implementation of each of the recommendations to improve the functioning of the PCT system endorsed by the Working Group at its third session in June 2010.
32. The Delegation of South Africa, speaking on behalf of the African Group, stated that it wished to deliver a general statement. While recognizing the importance of improving the functioning of the PCT system, the Delegation stressed that any initiative directed at improving the system had to take into account the interests of Contracting States, which varied according to their levels of development. Similarly, the initiatives for improving the PCT system had to support decision-makers in countries to understand how they could benefit from the PCT system, and how to build capacity in their countries to do so. The African Group had always supported the PCT system, but with the understanding that a balanced approach had to be at the core of implementing it and that it had to remain a procedural system, without prejudicing substantive national laws of Contracting States. The policy space of Contracting States had to always be safeguarded when improvements were proposed. The third session of the Working Group had been a resounding success, as demonstrated by the nature of the discussions and the outcomes, culminating in the recommendations clustered into six groups forming part of its future work, including recommendations related to technical assistance, PCT information and technology transfer, among others. In this context, the African Group had been quite disappointed, though understandably so, with the fact that, due to circumstances outside the control of the Secretariat, this session of the Working Group would not be able to consider the study by the Secretariat on how the PCT system has been functioning in terms of realizing its aims of disseminating technical information and facilitating access to technology as well as organizing technical assistance for developing countries, as reported in document PCT/WG/4/6. In light of this unfortunate situation, the African Group looked forward to it being finalized and presented at the fifth session of the PCT Working Group.
33. The Delegation added that Africa was a continent striving to identify development paths suited for its development aspirations through a variety of strategies. Innovation provided the continent with an opportunity to further its development aspirations. In this context, the African Group attached great importance and high priority to the issues of particular interest to Africa, especially technical assistance and capacity building as well as access to information and knowledge. Through technical assistance and capacity building, developing countries could derive benefits from the system. With regard to access to information, the African Group appreciated the initiative by the Secretariat of making information digitally available through the PATENTSCOPE system, which had proven a useful tool for accessing information on patents, but believed that more could be done to ensure access to relevant information by PCT Contracting States, especially developing countries. At the previous session of the Working Group, the African Group had mentioned that the Secretariat should continue facilitating the access to information systems by developing countries, especially least developed countries (LDCs), and also to conduct training for regional and national Offices as well as for small and medium-sized enterprises and universities. The training provided to national and regional Offices had to be targeted at examiners, as Africa had few search and substantive examiners. Thus, the African Group reiterated its call for the Secretariat to establish an examiner training program to be set up in the medium to long term, for the benefit of national and regional Offices in Africa, with the program activities to be included in the budget of the organization for the 2012-2013 biennium.

34. The Delegation of South Africa further stated that it was imperative for the Working Group to take stock of the benefits accrued by developing countries in utilizing the PCT system and pertinent to assess the extent to which the system was contributing to development in developing countries according to the Development Agenda recommendations. To facilitate the assessment of the contribution of the system to development, the African Group repeated the request from the Development Agenda Group for an item to be added to the agenda of the session entitled "*Contribution of the PCT Working Group to the implementation of the respective relevant Development Agenda recommendations*", referring to the monitoring, assessing, discussing and reporting mechanism commonly known as the "Coordination Mechanism" of the Development Agenda. The Delegation recalled that this mechanism had been approved by the WIPO General Assembly in 2010 with a view that all relevant WIPO bodies should implement this decision accordingly. The Delegation expressed the view that the PCT Working Group was a relevant body to report in this regard. This was augmented, over and above the current activities of the Working Group on development issues, by the PCT itself in making provision for technical assistance for developing countries in Article 51 and including details of its commitment to developing countries in its Preamble. The African Group expressed its desire to institute the Committee for Technical Assistance to fulfill the Treaty obligation stipulated in Article 51 and the necessity for this session of the Working Group to decide on the way forward for this Committee, both regarding its revival and its Rules of Procedure, which had not been amended since the Committee had been established in 1978. In conclusion, the Delegation of South Africa stated that the African Group would continue to play a constructive role in the discussions of the Working Group.
35. The Delegation of India, speaking on behalf of the Development Agenda Group, reiterated the interest of the PCT Contracting States in the Development Agenda Group to improve the functioning of the PCT system and its usefulness to all Contracting States, users and society as a whole. Therefore, the Delegation looked forward to discussions on the "*Future Development of the PCT System*" within the parameters agreed at the previous two sessions of the Working Group. In addition to these, the Delegation underlined the need to ensure that the future development of the PCT system was fully member-driven and did not entail harmonization of patent laws, either in substance or in practice, as stipulated under Article 27(5). In relation to the implementation of recommendations adopted in the last session to improve the functioning of the PCT system and "*Coordination of Technical Assistance and Financing of Technical Assistance Projects for Developing Countries under Article 51 of the PCT*", the Delegation expressed its hope for productive outcomes which not only improved the functioning of the PCT but also enhanced its contribution to socio-economic growth and well-being of people in all PCT Contracting States. The Delegation also looked forward to discussions on the new agenda item proposed by the Group, entitled "*Contribution of the PCT Working Group to the implementation of respective Development Agenda recommendations*", to enable a consideration of this important aspect of the PCT system, many elements of which had already been included in the agenda, in particular, in agenda items 6(a), 6(c) and 6(d).
36. The Delegation of the United States of America, speaking on behalf of Group B, stated that no-one could deny the incredible success and utility of the PCT system for WIPO Member States as well as for the Organization. The Delegation pointed to the number of PCT Contracting Parties and the growth of international patent applications that had been filed in the past 15 years as clearly showing the relevance of the system. In fact, a few months earlier, WIPO had celebrated the 2 millionth PCT application. Equally undeniable was the fact that revenue generated by the PCT system made up approximately 75 percent of the income of WIPO. Over the years, this had enabled the financing of a wide range of activities by WIPO, including those covering technical assistance. While these activities contributed to development, something that all WIPO Member States believed in, the

Delegation reiterated the importance of also paying close attention to the needs of the users of the system. Member States therefore needed to work together in a constructive manner to improve the system, and it was critical that the Working Group ensured that the PCT system continued to deliver benefits that met the needs of applicants, Offices and third parties. This would enable the PCT to remain effective and attractive in the future, and ensured the role of WIPO as the preeminent International Organization in intellectual property. As the Delegation had stated in previous sessions, Group B remained of the view that the PCT system could and should function more effectively, to the benefit of all stakeholders, within the existing legal framework, without limiting the freedom of Contracting States to control substantive patent law issues as well as national search and examination procedures. The Delegation highlighted the close compliance with the existing requirements of the Treaty by receiving Offices and International Authorities; any improvements foreseen should benefit all Contracting States without having to broach the idea of harmonization of substantive patent laws. It was therefore important that the work of the Working Group remained at a technical level within this framework. In conclusion, the Delegation stressed the strong commitment, constructive spirit and support of the members of Group B in order to advance the substantive work of the Working Group and to achieve tangible results in the improvement of the functioning of the PCT system.

37. The Delegation of the Republic of Korea, stated that individual internal dynamics and pressures of PCT Contracting States did not always make it easy to come up with a solution to dealing with backlog issues which fitted the needs of all States. Nevertheless, the Delegation agreed with the general idea that Offices in the national phase should use results of work resulting from the international phase of procedures. Noting that timeliness during the international phase was the obligation of International Authorities, if unable to comply with the timeliness requirements, Authorities should properly explain the reasons to applicants so as to raise customer satisfaction levels. In order to improve the quality of international searches and preliminary examinations, access to search databases and trying to improve the abilities of the examiners in this area was important. Bilateral or plurilateral cooperation between Offices could also enhance the quality of examination through work sharing. In concluding, the Delegation stated that, before offering financial or technical support to raise the efficiency of patent filings, it should be first confirmed whether this overlapped with activities of other WIPO bodies. Moreover, such assistance should be given in a balanced manner, in the interest of all WIPO Member States.
38. The Delegation of Canada stated that it hoped that the comments received during the International Bureau's consultations with Offices in the past year would serve to focus on issues of importance to Offices, applicants and third parties, leading to the end result of a PCT system being able to serve the needs of all parties involved. The Delegation appreciated the efforts of the International Bureau to provide the meeting documents in a timely manner, giving at least three weeks to review the documents prior to the meeting to enable officials to have complete and comprehensive instructions. The Delegation supported the continued effort of the International Bureau to improve the PCT system, noting the importance of having input from Offices of all sizes to work towards the following four desired goals against which work undertaken to improve the PCT should be assessed: a rapid and efficient resolution of rights; streamlining and simplification; confidence building; and the elimination of duplication through effective work sharing. The Delegation also noted the effort undertaken by all parties to avoid the duplication of work occurring in other WIPO bodies, especially with respect to quality.

39. The Delegation of the United States of America stated that the PCT continued to be a unique and vital important piece in the global intellectual property puzzle, offering advantages to applicants, third parties and national Offices from both developed and developing countries alike. In the last decade, significant improvements had been made to the PCT system. As a result of these improvements, the benefits to users of the system had increased dramatically and the quality of the international work product could now be relied upon in work sharing initiatives such as the Patent Prosecution Highway. However, as had been discussed in previous sessions of this Working Group, the Delegation believed that, by working together, PCT Contracting States could bring about further improvements to the entire PCT system.
40. The Representative of the European Patent Office (EPO) expressed its support for the efforts of the Working Group, citing the need to focus attention on improving the quality of international searches as the cornerstone of the PCT. In this regard, the Representative referred to the EPO's efforts in the procedure for obtaining a European patent, making it possible for users to avoid the need for further searches, which would benefit both applicants and national patent Offices in Europe. The Representative further stated that the EPO had introduced two new measures towards improving the quality of work products in the PCT. Firstly, with effect from April 1, 2011, the EPO had introduced a procedure to ask for informal clarification from the applicant where no meaningful search for all or part of the claims could be carried out, based on paragraphs 9.34 and 9.35 of the PCT International Search and Preliminary Examination Guidelines. Secondly, it had introduced a new possibility for a second written opinion during the Chapter II procedure under Article 34, as from October 1, 2011.

Recommendations Related to Backlogs; Improving Quality of Granted Patents

41. The Delegation of India, speaking on behalf of the Development Agenda Group, welcomed efforts made by the International Bureau to take forward the recommendations in this cluster, especially the issuance of Circular C.PCT 1295 dated 8 March 2011. Despite a limited number of 16 responses, the Delegation nevertheless welcomed the proposed improvements, such as mandatory inclusion of comments on the significant issues of clarity and sufficiency of disclosure. The Delegation also supported the need expressed by respondents for improving quality control and having greater consistency of approach and detail with regard to the scope of search in the international reports. It welcomed the fact that the International Authorities had begun consideration of possible improvements in this area and looked forward to the inclusion of these specific improvements in their report to the fifth session of the Working Group, especially that of the quality subgroup. In noting the proposed two models for sharing search and examination reports, namely, the "open model" such as PATENTSCOPE and the "closed model" such as the IP5's "One Portal Dossier" project, the Patent Prosecution Highway, and the Vancouver Group, the Delegation stated that decisions about participation in closed plurilateral modes of work sharing should be left to individual Contracting Parties and their patent Offices, to be made on a voluntary basis, in accordance with their specific needs and realities.
42. The Delegation of India further noted the increase in patent applications against a declining trend in research and development expenditures, in particular for second filings (as stated in the study on the surge in work-wide patent applications). In its view, this clearly showed a mismatch between the global level of invention and the number of patents, given the increase in patents without a corresponding increase in the quality of innovations. Therefore, in the view of the Delegation, the lowering of patentability standards in countries from where the majority of patent applications originated was the root cause behind the surge in patent applications and the resulting backlogs. Unless this root issue was addressed, promoting work sharing would only superficially address the symptomatic

effects engendered by the root cause of the surge in patent applications and the resulting backlogs. Even in the context of work sharing, the Delegation considered it necessary to ensure that the workload in the international phase was shared equitably among all International Authorities, including those from developing countries. For this purpose, all International Authorities should share their search databases, which had to be based on open models like PATENTSCOPE and not on closed models. However, there should be no change in the legally non-binding nature of international search or examination reports and no national Office should be expected to rely on such reports. Thus, even International Authorities could not be expected not to conduct a top-up search for an application in the national phase, even where the Office itself had processed it as an international application.

43. The Delegation of India concluded in saying that, in order to enhance the quality of work and reduce backlogs, priority should also be given to strengthening national search and examination capacities in patent Offices in developing and least developed countries. It stated that many Offices with inadequate or non-existent search and examination capacity were not in a position to offer meaningful quality feedback on the quality of international search and examination reports. Hence, while the quality feedback mechanism was a positive development, it needed to be complemented by a strengthening of search and examination capacity through technical assistance offered or coordinated by WIPO, in accordance with the WIPO Development Agenda recommendations and taking into account national legal contexts and development objectives. In this regard, the Delegation reiterated the necessity of rejuvenating the Committee for Technical Assistance mandated under Article 51.
44. The Delegation of the United States of America stated that it wished to comment on specific proposals set out in document PCT/WG/4/3. In relation to paragraph 12, the United States Patent and Trademark Office (USPTO) instructed its examiners to make observations on lack of clarity of claims, but if there were only positive indications on clarity, no remarks would be made. The inclusion of a "Yes/No" box for clarity was therefore not considered appropriate. The Delegation stated that it nevertheless supported an additional section for listing the numbers of claims with negative observations on clarity. Regarding the recommendation that national Offices make publicly available their national reports, the USPTO had implemented this recommendation through its Patent Application Information Retrieval (PAIR) system, and the USPTO provided national phase information to WIPO such that any corresponding US national phase application was identified by application number in the national phase tab for international applications in PATENTSCOPE. Finally, regarding the discussion in paragraph 15 concerning the establishment by the International Bureau of an automated process for retrieval of all other reports for a given applications or family of applications, the Delegation stated that the Trilateral Offices were in the process of developing a common citation document system which would serve this function once fully implemented.
45. The Delegation of Japan stated its commitment to improving the functioning of the PCT and expressed its support for the activities set out in the working documents aimed at achieving this goal. With regard to paragraphs 11 and 12 of document PCT/WG/4/3, in order to enhance the user value of the PCT system, the Delegation considered it preferable that International Authorities proactively post their observations on the quality of the claims, descriptions and drawings, and on whether the claims were fully supported by the description. In addition, the Delegation considered it important to analyze individual practices of International Authorities concerning the description requirement in order to encourage national Offices to utilize observations more effectively.

46. The Delegation of South Africa, speaking on behalf of the African Group, welcomed the findings collected through the Circular C.PCT 1295, in particular, the recommendation made by some Offices to make it mandatory to include comments on at least significant issues such as clarity and sufficiency of disclosure, pertinent to the smooth functioning of the patent system and for a balanced approach between users and public interests. The African Group applauded the PATENTSCOPE system as an open model for sharing of patent information and encouraged other countries to join and use the system which enabled access to patent information and made information readily available. While taking note of the usefulness of closed models, the Delegation was of the view that these should be used by Offices for specific needs, as stated in the document. The African Group welcomed the initiative to invite Offices wishing to emulate the WIPO CASE platform to do so, noting that Offices responding to C.PCT 1295 had stated that document sharing platforms such as WIPO CASE needed to ensure that they were readily accessible to Offices with significantly different levels of infrastructure and models for making file information available. Thus, the issue of different levels of development should be considered in closed models, which should not be used as platforms to overshadow the laws and practices of Member States. The African Group also welcomed the invitation by the Secretariat to Contracting States and their patent Offices to consult the International Bureau on ways to digitize documents in their national patent collections for the purposes of dissemination and inclusion in patent search databases.
47. The Delegation of Australia stated that, in relation to paragraph 12 of the document, it did not see the need for "Yes/No" boxes covering clarity issues. However, as agreed at the eighteenth session of MIA, the Delegation supported mandatory observations on clarity and support of the claims when this was identified as an issue by the International Authority. In this regard, IP Australia currently provided observations on significant issues affecting the clarity of claims, description and drawings and whether the claims were fully supported by the description. In relation to paragraph 15, the Delegation stated that it supported the sharing of information between Offices, which should improve the quality of search and examination of applications as well as increase efficiency through work sharing. With respect to the open and closed models, the Delegation agreed there was a place for both, citing the online national file inspection system at IP Australia (now part of the e-dossier for applications filed after 2005) as an example of the open model and its involvement in the Vancouver Group with the United Kingdom Intellectual Property Office and the Canadian Intellectual Property Office and its active role in developing the WIPO CASE platform as examples of the closed model.
48. The Delegation of India expressed its support for views expressed in relation to the importance of clarity and support and commented on sufficiency of disclosure. On the one side, sufficiency was closely linked with novelty and inventive step, and on the other side it added further requirements beyond clarity and support. Sufficiency of disclosure was therefore extremely important, particularly for pharmaceutical patents which could include Markush formulae, covering literally billions of compounds. The Delegation sincerely believed that the quality of the PCT databases would increase immensely if the reports providing opinions on novelty and inventive step also contained expert opinions on sufficiency of disclosure. The Delegation therefore considered that this should be introduced immediately, particularly as trivial pharmaceutical patents had become an extremely important issue affecting the availability of medicines in developing countries.

Recommendations Related to Timeliness in the International Phase

49. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that it had noted Circular C.PCT 1287 and the 28 responses received. Many of the suggestions from receiving Offices to improve timeliness, such as specialized training for staff, setting international targets, inclusion of PCT services in customer service charters of Offices, pre-filing consultations, over the counter and online filing software check of PCT applications for defects, etc. appeared to be interesting ideas for improving timely delivery of international search reports and international preliminary reports on patentability. However, the Delegation called for specific measures to be taken by individual patent Offices in the light of their particular needs and realities. For instance, setting internal targets on timelines for actions under the PCT or the provision of pre-filing checks and consultations might stretch limited examination capacities and add to the workload. Similarly, International Authorities with limited staff, resources and capacities might not be in a position to prioritize international work over national work. The Delegation stated that these realities would also need to be factored in to ensure meaningful improvements in timeliness. The best enabler for timely processing in the view of the Delegation was to ensure receipt of high quality applications and raising the costs for low quality applications.
50. The Delegation of South Africa, speaking on behalf of the African Group, requested further information concerning the statement in paragraph 36 that “a few receiving Offices expressed a desire for further specialized training under the PCT”, adding that many developing countries needed such training for their Offices.
51. With reference to the question raised by the Delegation of South Africa, the Delegation of the United States of America referred to the Global Intellectual Property Academy of the USPTO, which had held a one-week training session in January that had been attended by representatives from 13 current and future PCT receiving Offices. It expected to hold summer training sessions and training in searching and examination of international applications in mid-September this year. The Delegation invited Offices interested in receiving training from the Academy to contact the USPTO.
52. In response to the request from the Delegation of South Africa, the Secretariat clarified that the few requests for training in the responses received to Circular C.PCT 1295 did not imply a limitation on the number of receiving Offices desiring or requiring further training. Moreover, the Circular had not been intended to evaluate the level of support for technical assistance demanded or required by PCT Contracting States.

Recommendations Related to Quality of International Search and Examination

53. The Delegation of the United States of America stated that it had long been a proponent of making search strategies of international applications available to other Offices, as discussed in paragraph 55 of document PCT/WG/4/3, based on the belief that this would reduce duplication of work, increase confidence and reuse of international work products, and provide a transparency mechanism by including information about the search conducted. The USPTO had started making a search history document available along with the search report and written opinion where it had acted as the International Searching Authority, available after international publication via the USPTO's PAIR system. Moreover, the United States of America had supported the proposal of Canada at the recent Meeting of International Authorities (PCT/MIA) to establish a mechanism whereby all International Authorities would make their search strategies available and gave its continued support in this regard. The Delegation disagreed with the suggestion in paragraph 57 that the examiner should add a summary of the invention in the section

explaining the relevance of the documents since an abstract was available in the publication of the international application, so this would place an unnecessary burden on examiners.

54. The Delegation of Canada stated that it was in the process of drafting a revised proposal about sharing search strategies in an effort to increase quality while ensuring that search information was shared in a manner that was useful to applicants in other Offices and did not place undue burden on International Authorities.

Recommendations Related to the Issues of Incentives for Applicants to Use the System Efficiently; Skills and Manpower Shortages; Access to Effective Search Systems

55. The Delegation of the United States of America expressed the view that being able to rely upon the written opinion established by the International Search Authority during the international preliminary examination procedure was among the most significant accomplishments achieved through the PCT reform process. The Delegation therefore continued to be hesitant in undoing what it considered as an improvement to the PCT system by guaranteeing a further written opinion during the process of international preliminary examination, as discussed in paragraph 61 of document PCT/WG/4/3.
56. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that the idea of providing an opportunity for the applicant to have a dialogue with the examiner during international preliminary examination and providing for at least one written opinion before a negative report was issued would need to be carefully scrutinized, since this could unduly pressurize the examiner to grant a positive report and result in delay in publication of the international preliminary report on patentability. In its view, placing significant costs on applicants for any defect in the applications would be an effective deterrent against low quality patents and should be further followed up.
57. The Delegation of India, speaking on behalf of the Development Agenda Group, further noted that several important ideas pertaining to training were contained in document PCT/WG/4/3 and agreed on the need for better coordination in order to provide complementary training benefiting as wide a range of recipient Offices as possible. The Delegation also noted the willingness of the International Bureau to take on a more active role in facilitating and coordinating training activities, notably for examiners of Offices in developing and least developed countries. It hoped that these training activities would be conducted in accordance with the Development Agenda recommendations and be in consonance with national legal systems. The Delegation considered that the range and extent of training and technical assistance activities proposed by the International Bureau confirmed the need for reviving the Committee for Technical Assistance (PCT/CTA) as envisaged under Article 51, emphasizing that these issues needed a designated home, such as the PCT/CTA, where they could be deliberated and coordinated in a better way to ensure more “value for money”.
58. The Delegation of South Africa, speaking on behalf of the African Group, expressed its preference for WIPO to take the lead in providing training on search and substantive examination, and in this context asked for clarification on the meaning of the statement in paragraph 64 of document PCT/WG/4/3 “while the International Bureau assists with such training on request to the extent permitted by its capacity.”
59. Responding on behalf of the International Bureau, the Chair stated that a distinction had to be made between competence on the one hand and capacity on the other. In the view of the International Bureau, it was not particularly within its competence to provide training directly because of the lack of skilled staff of trainers to perform this work. However, the

International Bureau would, as in the past, continue to solicit this type of resources from Member States in a position to provide support, and to coordinate the provision of training so that needs could be met. The International Bureau took the performing of this task seriously, worked hard in this respect, and would always be open to further suggestions on how it could be of help.

60. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that it wished to urge caution in relation to the proposed new service titled WIPO-ICE (“International Cooperation of Examination”), designed to assist small and medium-sized Offices in substantive examination with particular focus on retrieving search and examination results from other Offices and applying them in the respective national contexts. It urged the International Bureau to ensure that this service did not lead to reliance by smaller patent Offices on the search and examination work done by larger patent Offices in developed countries. The members of the Development Agenda Group were concerned that this should not lead to *de facto* work sharing and consequent application of substantive patentability criteria adopted by developed countries.
61. The Delegation of India further noted the view conveyed by some Offices that accelerated processing mechanisms, such as the Patent Prosecution Highway, might be an appropriate way of incentivizing the applicant to file higher quality applications and eliminate any remaining defects in the international phase. In the view of the Delegation, the possibility of fewer objections resulting in quicker and cheaper processing of the application should be considered to be sufficient incentive for applicants to submit high quality applications. The Delegation considered it necessary to have a format for disclosure in applications to ensure a high quality of applications. In this context, while the third session of the Working Group had recommended that applicants should be encouraged to conduct their own prior art search before drafting applications and submitting applications well in time, the applicant was still free to draft an application without disclosing prior art information. In the view of the Delegation, it was important that the application should include a format for disclosure of the prior art by the applicant, as well as the disclosure of the invention in the best enabling mode.
62. The Delegation of Australia stated that, in relation to paragraphs 68 to 71 of document PCT/WG/4/3, it supported the model of a central depositary for patent documentation that was freely available to national Offices, for example, by further development of PATENTSCOPE to include information from a greater number of national Offices systems, thereby enhancing search and examining capabilities.
63. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that, with regard to access to search systems, it welcomed the initiatives taken through PATENTSCOPE and programs such as ASPI (Access to Specialized Patent Information), ARDI (Access to Research for Development and Innovation) and TISCs (Technology and Innovation Support Centers). It believed that expanding affordable and easy access to international patent and other databases to developing and least developed countries would significantly contribute to enhancing patent quality. The Delegation therefore urged the International Bureau to enlarge these programs further and to consider, in particular, how WIPO could facilitate access to commercial and other databases in the developed world, which were expensive and unaffordable for subscribers from many developing and least developed countries. It looked forward to more tangible action in this regard and expressed the hope that the renewed Committee for Technical Assistance would look into these issues.

Recommendations Related to Cost and Other Accessibility Issues; Consistency and Availability of Safeguards

64. The Delegation of Japan stated that, with regard to the issue of suitable eligibility criteria for fee reductions, it was of the view that the solution should be agreeable to all Member States. It considered it beneficial to consider this issue thoroughly, including whether there were excesses or deficiencies in actual cases with a view to finding alternative solutions which could be agreed upon by all Member States, as envisaged in paragraph 81 of document PCT/WG/4/3.
65. The Delegation of Barbados reiterated its view that the use of entirely income-based criteria, as mentioned in paragraph 80 of document PCT/WG/4/3, would not be an adequate basis to determine which countries, which companies, or which individuals should have access to fee reductions. The Delegation asked the International Bureau to take into account its previous interventions on this subject as it further studied the matter.
66. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that it looked forward to the evolution of an income and innovation-based criteria for revising the level of fees for different types of applicants.
67. The Delegation of India further stated that, in relation to paragraphs 91 and 92 on notifications of incompatibility, this should not be a mandatory requirement and that Offices should be allowed to choose to maintain their notifications in conformity with national laws. Further, this should not be taken as an obligation on Contracting Parties to report to the Working Group or to the International Bureau.

Recommendations Related to Technical Assistance; PCT Information and Technology Transfer

68. The Delegation of India, speaking on behalf of the Development Agenda Group commented on recommendation 207, discussed in paragraphs 97 to 99 of document of PCT/WG/4/3. In its opinion, the study on the availability of legal status information under the WIPO Development Agenda Project DA_16_20_01 did not specifically address this recommendation, which asked the International Bureau to work with Offices to deliver such information, but not to conduct an inquiry into the availability of legal status information as was performed under this project. Moreover, legal status information merely stated whether a patent had been granted in a particular jurisdiction; it did not necessarily provide information about oppositions, compulsory licenses, revocations, etc. Furthermore, the Delegation requested the International Bureau to update Member States on progress with regard to the pilot project to develop an integrated system of automatic updating of the status of the applications by linking it with national Offices and organizations mentioned in this recommendation.
69. The Delegation of India, speaking on behalf of the Development Agenda Group, further stated that, with regard to recommendation 211 of introducing a register that indicated the applicants' interest in licensing their potential patents, it looked forward to the creation of a new form to this end to become operational by July 2011. The Delegation stated that it was interesting to note that a similar proposal had been made in 1971 at the first session of the PCT Interim Committee for Technical Assistance, asking the International Bureau to carry out a feasibility study as to the possible creation of a periodical technical publication by WIPO containing classified abstracts of inventions or of know-how offered for licensing and to identify parties interested in offering or requesting licenses. The Delegation stated that, forty years later, developing countries seemed to be making the same demand and expressed the view that, hopefully, this time around, there would be progress.

70. The Secretariat informed the Working Group that the study on the availability of legal status information under WIPO Development Agenda Project DA_16_20_01 had now been published as document CDIP/4/3 Rev./Study/Inf/3. The study, entitled “Feasibility Study on the Establishment of National Patent Register Databases and Linkage to PATENTSCOPE”, had been performed under the auspices of the Committee for Development and Intellectual Property (CDIP) and it was envisaged that the CDIP would take up discussions on the study at its next session. The Secretariat further stated that this study was to be seen as a first step towards implementing recommendation 207 with a view to making information on technology in the public domain more easily accessible.

71. The Working Group noted the contents of document PCT/WG/4/3.

The Surge in Worldwide Patent Applications

72. Discussions were based on document PCT/WG/4/4, containing a study by the International Bureau entitled “The Surge in Worldwide Patent Applications”.

73. The Delegation of Australia stated that it considered the study to be informative and observed that subsequent filing accounted for more than 50% of the total growth during the second surge period compared to less than 30% during the first surge period. In the view of the Delegation, this indicated that innovators were seeking patent protection in a broader range of jurisdictions, demonstrating that the PCT was effective in its aim of disseminating technical information. The growth in subsequent filing also emphasized the importance of minimizing duplication and promoting high quality examination in the international phase. The Delegation also commented on the two main areas of further research identified in paragraph 72 of the document. In its opinion, it would be difficult to propose changes to the PCT system as a result of further work to develop indicators of R&D productivity broken down by economic sectors or fields of technology. On the other hand, investigating pendency performance would be useful since this could allow Offices to review and share their strategies in dealing with pending applications.

74. The Delegation of the United States of America stated that it considered the study to be informative. With regard to paragraphs 56 to 62 of document PCT/WG/4/4, concerning the implications for patent Offices in dealing with the increasing pendency of applications, the Delegation stated that it believed that the Patent Prosecution Highway was a good first step in addressing the problem, making the examination process before national Offices more efficient, with fewer office actions on average prior to final disposal. This type of work sharing arrangement could therefore be very beneficial, and the Delegation wished to encourage applicants to make use of the Patent Prosecution Highway when appropriate.

75. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that the study provided a useful starting point for an empirical consideration of the realities behind the unprecedented global surge in patent applications. However, it focused on a limited range of three pre-selected factors to explain the surge: (i) multiple filings of the same invention; (ii) changes in R&D productivity; and (iii) patenting in specific fields of technology. By being restricted to these factors, the study therefore did not address key issues in relation to the surge at the heart of the ongoing debate outside WIPO about lowering of standards of patentability, enterprise practices and intellectual property rights strategies of companies, and the implementation of the TRIPS Agreement. This would seem to be particularly important, considering the finding of the present study that more than half of the second and more recent surge from 1995 to 2007 was not innovation-driven, and was simply owing to filing of the same application in multiple jurisdictions. The fact that more than half of the surge in patent applications in this period was due to second filings in foreign jurisdictions, in the view of the Delegation validated the fact that patenting

had evolved into a sophisticated corporate business tool to maximize profits, rather than a richly-deserved monopoly right that rewarded substantial innovation as a contribution to improving human welfare. This should have led the study to delve into the root causes behind the surge in filings. Instead of analyzing the root causes behind the surge, as mandated, the study proceeded to recommend work sharing arrangements among Offices to minimize duplication of work and promote high quality examination without any empirical justification. More importantly, while the study fell short in addressing its mandate, that is, an in-depth analysis of the root causes for the surge, the Delegation considered that it went beyond its mandate by recommending a course of action, namely work sharing, to the Working Group. The Delegation recalled that the purpose of the request of the Working Group in its third session was to undertake an academic and empirical study to help the Working Group better understand the causes of the surge, so that the Working Group could come up with sustainable and problem-solving solutions.

76. The Delegation of India further pointed to other significant lacunae in the study. Firstly, the study drew an inference based on first filings that the growth in the first surge period between 1983 and 1990 was mainly due to inventions. However, the Delegation considered that it was not clear how such a conclusion could be drawn when the study itself admitted that R&D productivity had been on a downward trend. Secondly, the study did not clearly bring out the role of the PCT system behind the surge in patent applications, given that it did not delve into whether there were any systemic issues within the PCT system that needed to be addressed. Instead of such an analysis, the study proceeded directly to recommend work sharing. Thirdly, the study stated that the surge in applications was only one factor affecting backlogs in Offices and identified other factors, such as examination capacity, size of patent applications etc. However, as per the mandate given, the question that the study should have addressed was not what factors were affecting pendency but what root causes were behind the surge in applications.
77. The Delegation of India further stated that it considered it a positive feature that the study acknowledged a number of questions that could not be fully answered, mainly because of data limitations and therefore rightly concluded that more research was needed to understand the phenomenon better. The Delegation therefore requested the study to be developed further to analyze dispassionately the root causes behind the surge of patent applications in a holistic and in-depth manner, as a subject such as this deserved. The Delegation believed this follow up study should take into account a wider body of existing literature and data on the subject and urged greater involvement from the Chief Economist of WIPO, as the Delegation found the extent of his involvement in this study unclear. A fact-based appreciation of the causes behind the surge would help the Working Group identify the right solutions.
78. The Delegation of South Africa, speaking on behalf of the African Group, questioned what factors or indicators had led to the conclusion in paragraphs 4 and 68 of document PCT/WG74/4 that “the strong growth in filings abroad points to the importance of work sharing arrangements among Offices in minimizing duplication of work and promoting high quality examination”, since the study was inconclusive on many aspects, especially on the causes of strong growth in filings abroad. In raising this question, the Delegation also referred to paragraph 40 which admitted that “while a detailed analysis of what has driven increased filings abroad is beyond the scope of this study, rapidly growing international commerce – or more colloquially ‘globalization’ – is likely to be a key explanatory factor”. The African Group agreed with the conclusion in paragraphs 7 and 70 of the study that “more research is necessary to better understand how R&D investments and changes in company filing strategies have affected filing growth for specific technologies and how this has affected the worldwide patent surge” and urged a further study to be carried out on this issue. Since paragraph 72 raised a number of questions that could not be successfully

answered, mainly because of data limitations, the Delegation advised the Secretariat to undertake a more nuanced and focused research on the surge in worldwide patent filings, beginning with identifying further literature that suggested different reasons for the surge in order to reflect diverse views from a variety of sources, which the current study fell short of doing. This would therefore enable more informed solutions to be found to the issue. The Delegation concluded that it believed the three factors outlined in the study to explain the surge in worldwide patent applications (namely, (i) multiple filing of the same invention; (ii) changes in R&D productivity; and (iii) patenting in specific fields of technology) were insufficient to outline the problem and should be expanded to include the patent filing trends of the multinational companies, thus complementing the recommendation made in paragraph 70.

79. In response to the question raised by the Delegation of South Africa on the issue of work sharing, the Representative of the Office of the Chief Economist of the International Bureau explained that work sharing could be a means to minimize duplication of work resulting from subsequent patent filings. However, this had not been intended as a recommendation, noting that collaboration through exchange of information between patent Offices might also be beneficial. The study clearly showed the existence of duplication and provided ideas that could be explored further to address this consequence of the surge in patent applications. However, it had not been the intention to make a concrete recommendation to the Working Group on a particular course of action to minimize duplication in the international patent system.
80. The Delegation of Canada stated that it considered the study to be thorough and informative. It informed the Working Group that, in contrast to some other Offices mentioned in the document, the Canadian Intellectual Property Office had a decreasing inventory of pending patent applications. In recent years, the combination of hiring additional examiners and exploiting the work of other Offices, yet maintaining sovereignty over whether any given application should be granted, had provided a useful mechanism to help in decreasing its backlog while maintaining a high quality of granted patents.
81. The Delegation of the Republic of Korea stated that it supported the comments made on the study by the Delegation of the United States of America. It considered that the document clarified the main cause in the surge in patent filings. Where filings of the same invention had caused the increase in the number of patent filings, the duplication of examinations for the same invention had contributed to backlogs. These might be reduced if Offices exchanged information among each other and reused the work of other Offices. In this regard, the Delegation believed that the Patent Prosecution Highway and other work sharing programs should be effectively utilized and promoted in dealing with the backlog issue.
82. The Delegation of Brazil recalled that one of the Development Agenda recommendations for immediate implementation was “to request WIPO to undertake, upon request of Member States, new studies to assess the economic, social and cultural impact of the use of intellectual property systems in these States”. It therefore attested to the relevance of the work of the Economics and Statistical Division of WIPO. Studies providing reflection on the impact of intellectual property on the diverse social and economic realities might offer an important contribution to addressing the issue of increasing backlogs affecting developing and developed countries alike. The Delegation noted the reduced aggregate R&D productivity in relation to the number of patent applications and the fact that there was no single technological field responsible for the surge. Nevertheless, the Delegation considered that the study did not analyze the strategic use of patents by companies, including the so-called patent thickets and the patent portfolio race. Since the study itself identified this as an area where further research was needed, the Delegation proposed that

the study be updated with research into these issues and called for this session of the Working Group to commit to this task. In order to perform this work, the Delegation stated that the Economics and Statistics Division of WIPO needed to be adequately provided with resources to deepen the knowledge available on this and other subjects. The Delegation also reported that Brazil considered the evidence provided by the Division in its studies as one of the achievements of the Development Agenda, underlining its usefulness to all Member States. As mentioned by the Delegation of India in its statement on behalf of the Development Agenda Group, the Delegation of Brazil believed that the study should have concentrated on the causes of the surge and should not have provided advice on how to reduce backlogs. Moreover, the Delegation believed that the sharing of the search and examination reports was only one tool that might help solve the problem of backlogs but many other options were available to industrial property Offices. For example, fees could be a useful tool if these functioned so that applicants themselves screened patent applications for frivolous or redundant applications.

83. The Delegation of the United States of America stated that it acknowledged that significant resources had already been dedicated to the present study and, in view of the current budgetary situation, questioned whether further studies, including the research identified in paragraph 9 of the document, would be the best allocation of the limited resources of WIPO. The Delegation therefore expressed its concerns about the scope of any further study on the surge in patent applications.
84. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that it agreed that further study was needed to analyze the rapid growth in patent filings. It therefore supported the request of Brazil for a follow-up study which should address the strategic use of patents by companies. The Delegation also considered that the proposal on work sharing in the study was not well-founded, adding that using the work of other Offices was a matter for the individual Offices concerned. Nevertheless, examiners at the Indian Patent Office did frequently take the work of other International Authorities into account.
85. The Delegation of Denmark stated that it had the same view as that expressed by the Delegation of Australia, namely, that the increase of multiple applications reflected companies becoming more global. This highlighted the importance of the PCT system. The Delegation further stated that it associated itself with the comments made by the Delegations of Canada, the Republic of Korea and the United States of America on work sharing schemes being one way of dealing with backlogs and lowering pendency times. The Danish Patent and Trademark Office had positive results from its participation in work sharing exercises, while retaining the discretion of each Office to make use of the work of others. The Delegation suggested that the surge in worldwide patent applications could be caused by the greater amount of technology in the world compared to 30 or 40 years ago, noting the “snowball effect” of technological advances in turn bringing about further new technology being protected by patents, thereby increasing the numbers of patent applications.
86. The Delegation of Switzerland stated that it supported the comments raised by the Delegation of the United States of America regarding the budget for a further study.
87. The Delegation of the United Kingdom stated that it agreed with the findings in the study that work sharing between Offices could be a useful tool in helping reduce backlogs, and recognized that national and regional patent Offices should decide on appropriate work sharing arrangements for their needs. As the study was already extensive, the Delegation believed that careful consideration should be given to how further resources were spent in this respect.

88. The Representative of the International Association for the Protection of Intellectual Property (AIPPI) stated that AIPPI believed that backlogs were not always bad and questioned whether reducing the number of patent applications was the best way to reduce backlogs. AIPPI believed that this approach was wrong and that industry should instead be encouraged to file patent applications because this would enable investment and the creation of jobs, with benefit to the whole economy in a particular country. The Representative emphasized that means of reducing backlogs needed to be found and that work sharing provided a solution in this regard. Although recognizing that there were issues of sovereignty at stake, it made no sense that patent Offices of different countries repeated work that another patent Office had already done. On the other hand, reducing the number of patent applications would reduce investment and jobs in many countries. Therefore, in the view of AIPPI, influencing industries to file fewer patent applications was definitely the wrong way to reduce backlogs.
89. The Delegation of Mexico stated that it agreed with comments of the Representative from AIPPI with regard to tackling backlogs and shared its experiences in using the results of searches from other patent Offices. The Mexican Institute of Intellectual Property had recently concluded Patent Prosecution Highway agreements with the United States Patent and Trademark Office and with the Japan Patent Office. These agreements did not impact on sovereignty since examiners, while considering results of work in other patent Offices, still took decisions in accordance with their national legislation. The Delegation expressed interest in knowing the reasons for the increase in the number of applications in China and the Republic of Korea and wondered whether previous low patenting activity has led these countries to increase their number of patent applications.
90. The Chair summarized the discussions in the Working Group by stating that some Member States were satisfied with the study while others had expressed clear dissatisfaction, particularly with regard to the observed failure to treat certain issues that had been identified in the discussion in the Working Group that led to the request for study. Moreover, some Member States had expressed concerns of a budgetary nature about the International Bureau performing further studies, whereas others had favored the Office of the Chief Economist to continue work on the areas not covered by the study.
91. Speaking on behalf of the International Bureau, the Chair clarified that the study was the independent work of the Office of the Chief Economist who had received this request exactly as reflected in the report of the third session of the Working Group (see recommendation 149*bis* in paragraph 92 of document PCT/WG/3/14 Rev.). While acknowledging the budgetary concerns and the impact on the resources of the Office of the Chief Economist, the Chair considered that it would be within the appropriate scope of the responsibility of the Chief Economist to take on board the reactions and the statements made, including suggestions for further analysis based on references that might have been missed, and to report further either in a supplement to the study or in a modification of the study, as the Chief Economist deemed appropriate. The International Bureau was therefore willing to pursue this further work if so agreed by the Working Group.
92. The Delegation of Brazil stated that it wished to remind the Working Group of the mandate of recommendation 149*bis* that "it is recommended that a follow-up study be conducted by the IB which should involve WIPO's Chief Economist, to analyze the root causes behind the surge of patent applications and the consequent heavy load on the international patent system". While the study was impressive, the Delegation reiterated that it did not look into the root causes of the surge. The Delegation therefore supported the proposal that the Office of the Chief Economist should continue its work, as suggested by the Chair.

93. The Delegation of South Africa, speaking on behalf of the African Group, also supported the Office of the Chief Economist continuing its work, stating that the updated study should look into the patent filing trends of companies.
94. The Delegation of India also welcomed the offer of the International Bureau to revise the current study taking on board the comments made, for presentation at the fifth session of the Working Group. The Delegation commented that the present study had made recommendations to deal with some aspects behind the surge in patent applications, but not others. For example, the study had recommended work sharing to minimize duplication of work from subsequent patent filings, yet it failed to make any recommendations on the strategic and defensive patenting practices by companies which contributed to the surge. The Delegation therefore considered the study to be incomplete since it only focused on three factors behind the surge and did not address other factors that could explain this complex phenomenon. Moreover, the Delegation commented that the study did not offer a complete analysis of the three factors discussed, citing paragraph 70 of the document that “more research is necessary to better understand how R&D investments and changes in company filing strategies have affected filing growth for specific technologies and how this has affected the worldwide patent surge”. Furthermore, the Delegation pointed out a phrase in paragraph 72, which stated that “the study has raised a number of questions that could not be fully answered, mainly because of data limitations”. The Delegation called for these issues to be investigated further in order to have a more informed and holistic understanding of them before proceeding to identifying and adopting solutions.
95. The Working Group agreed to request the Office of the Chief Economist to prepare a supplement to, or revision of, the study, for consideration by the Working Group at its next session, taking on board the comments made during the session and any further literature references subsequently submitted by delegations.

Coordination of Technical Assistance and Financing of Technical Assistance Projects for Developing Countries Under Article 51 of the PCT

96. Discussions were based on document PCT/WG/4/5.
97. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that it appreciated the detailed historical background to the setting up and functioning of the Committee for Technical Assistance mandated by Article 51 of the PCT. The efforts in tracing the genealogy of the Committee provided background information useful for better understanding its evolution. As might be recalled, Article 51 mandated the establishment of a Committee for Technical Assistance, whose members should be elected among PCT Contracting States, with due regard to the representation of developing countries. Article 51(3)(a) stated that the task of the Committee “shall be to organize and supervise technical assistance technical assistance for Contracting States which are developing countries in developing their patent systems individually or on a regional basis”. Article 51(3)(b) stated that “the technical assistance shall comprise, among other things, the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes”.
98. The Delegation of India further stated that it was understood that the Interim Committee established in 1970 to prepare the establishment of the PCT Committee for Technical Assistance (PCT/CTA) had met seven times between 1971 and 1977. Thereafter, the PCT Committee for Technical Assistance (PCT/CTA) had been established by the PCT Assembly in 1978, but had not met even once since its establishment in 1978. Rule 4 of the Rules of Procedure of this Committee stated that “The meetings of the Committee shall

be joint with those of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property (the PC/IP), it being understood that the activities of the two Committees shall be coordinated and that where decisions are made by the Committee, only the members of the Committee shall vote". However, a meeting of the PCT/CTA had never been convened jointly with the PC/IP or its successor bodies, the PCIPD or the CDIP. In short, the Committee was still-born; although it was set up in legal terms on paper, it had never existed in reality. The reason given for this was that there was never a need felt for the Committee to meet. Perhaps the reason was that the PC/IP dealt in substantial measure with technical assistance in the field of industrial property, including patents. For example, the objectives of this Committee were to promote in favor of developing countries, innovative activity in developing countries with a view to strengthening their technological capacities, and the acquisition by developing countries, under fair and reasonable terms and conditions, of technology related to industrial property through inter alia providing advice, information, assistance and training, carrying out studies, making recommendations and preparing and publishing model laws and guidelines. The biennial program of the PC/IP in 1982-83 had similarly been aimed at assisting "developing countries in the establishment and modernization of their industrial property systems" in seven ways, namely: training specialists, modernizing domestic legislation and government institutions, stimulating domestic inventive activity and acquisition of foreign patented technology, exploiting technological information contained in patent documents and creating a corps of practitioners. Further, even the Program and Budget of 1994-95 of the PC/IP continued to define as its objective "to assist developing countries in the establishment or modernization of IP systems" and included 14 specific forms of technical assistance for the PC/IP. Perhaps since the PC/IP dealt directly with concrete aspects of technical assistance, it never had expressly called on the PCT/CTA for its guidance on any "aspects of technical assistance to developing countries which have a direct bearing on the use of the PCT by such countries". Consequently, there had perhaps never been the need to convene the PCT/CTA, which thus had never met during the years in which the PC/IP existed. However, even after the PC/IP and its sister body, the Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (PC/CR), had been merged in 1998 into a single body, namely, the WIPO Permanent Committee on Intellectual Property Development (PCIPD), with a different and much enlarged mandate, the PCT/CTA had never been activated to pursue its specific PCT-related mandate. Neither had its Rules of Procedure been amended to mandate convening of its meetings jointly with the PCIPD. Thus, while the PCT/CTA had not existed in reality, it had ceased to exist even legally after the establishment of the PCIPD, leading to the absence of a home where PCT-related technical assistance could be coordinated, as mandated by the Treaty.

99. The Delegation of India further stated that the PCIPD had been replaced by the current Committee for Development and Intellectual Property (CDIP) in 2007, once again with no corresponding change in the Rules of Procedure of the PCT/CTA to activate it. The three-point mandate of the CDIP did not include technical assistance activities and Cluster A of the Development Agenda recommendations that the CDIP was tasked to implement contained only two specific recommendations (recommendations 8 and 10) which only partially addressed PCT-related technical assistance. Secondly, noting that there were several PCT-related technical assistance activities being undertaken currently by the International Bureau, the Delegation asked whether these were all covered in the work program of the CDIP, and if not, where the activities were being considered inter-governmentally by Member States for their approval and to ensure coordination and non-duplication. In the view of the Delegation, an integrated consideration of all PCT-related technical assistance activities under the PCT/CTA would ensure smooth and effective implementation and outcomes that benefitted all parties, the International Bureau, the beneficiary States, WIPO as an organization and donors, if any. Thirdly, the membership

of CDIP, which included all WIPO Member States, varied from the membership of the PCT, which consisted only of PCT Contracting States, which was more limited in number. It was also not clear if the same Rules of Procedure applied to the CDIP and the PCT/CTA.

100. The Delegation of India further stated that it believed that this Committee should be convened at the earliest possible moment to facilitate coordinated and member-owned implementation of technical assistance activities as related to the PCT. All technical assistance initiatives related to the PCT should be within the ambit of the PCT/CTA and such technical assistance had to be in accordance with the Development Agenda and in coordination with the CDIP to avoid duplication of work. In this regard, the Delegation proposed that the Rules of Procedure of the PCT/CTA be amended to indicate that the Committee would convene immediately preceding each session of the PCT Working Group and report to the PCT Assembly. This would help ensure that the deliberations of the Committee were also considered in the PCT Working Group, as an input to its discussions. In this context, the Delegation recalled that the “History of the PCT” in the records of the Washington Diplomatic Conference on the PCT, as provided in paragraph 15 of document PCT/WG/4/5, provided further details of technical assistance envisaged under Article 51. It foresaw assisting industrial property offices in developing countries in becoming a “channel for technical information to local industry by selecting for and forwarding to such industry all patent documents coming from abroad which are of possible interest to that industry in keeping abreast with technological developments throughout the world. Moreover, a national or regional industrial property office could be assisted in procuring the materials and training the manpower necessary for effecting a meaningful examination of the technical aspects of inventions”. This was in addition to the Treaty provisions regarding training of specialists, loaning of experts and the supply of equipment. The International Bureau was therefore requested by the Delegation to clarify if these activities were being undertaken, and if so, where these were being considered inter-governmentally. In addition to these, the Delegation noted the willingness of the International Bureau to take on a more active role in facilitating and coordinating training activities, notably for examiners of Offices in developing and least developed countries, as stated in document PCT/WG/4/3. The range and extent of training and technical assistance activities proposed by the International Bureau, including the functioning of WIPO–ICE services, confirmed the need for reviving the PCT/CTA. In the view of the Delegation, these issues needed a designated home, such as the PCT/CTA, where they could be deliberated and coordinated in a better way to ensure more “value for money”.
101. As regards financing of technical assistance activities mandated under Article 51, the Delegation of India, speaking on behalf of the Development Agenda Group, reminded the Working Group that the study was asked to identify and assess existing agreements with relevant international financing organizations and inter-governmental organizations for financing of technical assistance projects and to make recommendations regarding the possibility of seeking further such agreements. Moreover, neither Article 51 nor any other provision in the PCT referred to extra-budgetary funding. Similarly, the third session of the Working Group also did not ask the study to explore mobilizing extra-budgetary funding from donors. The Delegation therefore considered it surprising to see that the sole focus of the section of the study on “financing of technical assistance to developing countries under PCT Article 51” was on raising extra budgetary resources, referring to the “Conference on Mobilizing Resources for Development” in 2009 as the primary output in this regard. The Delegation believed that this gave the unfortunate impression that the WIPO Secretariat was reluctant to execute its Treaty obligation through its regular budget and was looking for external funding sources. While extra budgetary resources from

voluntary donors and funds-in-trust could be an additional source of funding, technical assistance activities that constituted a Treaty obligation towards developing and least developed countries should be funded through the regular budget of WIPO.

102. The Delegation of South Africa, speaking on behalf of the African Group, recalled that paragraph 129 of the document PCT/WG/3/14 Rev. made reference to recommendation 204*bis* endorsed by the third session of the Working Group with the following three components: (i) "It is recommended that a study be conducted by the IB to look into the issue of coordination of technical assistance for developing countries as envisaged in Article 51 of the PCT, in a focused manner and guided by the Development Agenda recommendations, and for the study"; (ii) "to make recommendations on 'terms of reference' for the possible establishment of the Technical Assistance Committee. This study will be presented for decision to the 4th session of the Working Group"; and (iii) "The study should also identify and assess existing agreements with relevant international financing organizations and inter-governmental organizations for financing of technical assistance projects (see PCT Article 51(4)), and make recommendations regarding the possibility of seeking further such agreements." With regard to the first component, the African Group thanked the Secretariat for the elaborate section dealing with chronological events on the issue of technical assistance. The Delegation recalled that the study mentioned that the PCT Committee for Technical Assistance (PCT/CTA) had been established in 1978 by the PCT Assembly but had never met and stated that this revelation addressed the desire of the African Group, expressed at the previous session of the Working Group, for the establishment of the PCT/CTA in accordance with Article 51. The Delegation further noted that the study had revealed that the Rules of Procedure of the PCT/CTA had been adopted in 1978 and had not been amended since then. The Rules of Procedure stated that "The meetings of the Committee shall be joint with those of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property (PC/IP)". None of the documents establishing the PC/IP or the subsequent committees that replaced it, notably the WIPO Committee on Cooperation for Development Related Intellectual Property (PCIPD) and the Committee for Development and Intellectual Property (CDIP), contained any reference to the need to amend the Rules of Procedure of the PCT/CTA which continued, in its rule 4, to expressly refer to the PC/IP as the body with which the meetings of the PCT/CTA should be joint. Furthermore, paragraph 46 of the document stated that, during the years the PC/IP existed, it "never expressly called on the PCT/CTA for its guidance on any 'aspects of technical assistance to developing countries which have a direct bearing on the use of the PCT by such countries'", noting that the tasks of the PCT/CTA were re-orientated as such. Nor did the PCIPD or the CDIP expressly call on the guidance of the PCT/CTA. Consequently, there had never been a need to convene the PCT/CTA, which thus had never met since it had been established. In the understanding of the African Group, there were supposed to be joint meetings, not one Committee consulting the other for guidance, yet there seemed to be a contradiction on this aspect since the PCT/CTA was supposed to be called on for guidance. In response to the second component of the decision of the third session of the Working Group, paragraph 63 noted that the PCT/CTA had already been established and thus the Secretariat would not advise on establishing the PCT/CTA. The African Group was of the view that the PCT Assembly needed to revive the PCT/CTA for it to undertake its tasks as envisaged in PCT Article 51. The Rules of Procedure needed to be amended accordingly to facilitate this revival. Once revived, the PCT/CTA should meet independently prior to the PCT Working Group. The PCT/CTA should generate a report which should be discussed in the Working Group as well as in the PCT Assembly.

103. In relation to the third component of recommendation 204bis, the Delegation of South Africa, speaking on behalf of the African Group, stated that it acknowledged the background information provided on the interface between WIPO and UNDP, as well as other international financing organizations such as the World Bank, on financing technical assistance activities. The African Group, however, expressed concern that this section focused, to a large extent, on extra-budgetary resources which went beyond the mandate of the decision of the third session of the Working Group. The African Group interpreted Article 51(4) as advocating for increased collaboration between WIPO and other international financing organizations and intergovernmental organizations, particularly UN organizations, not emphasizing extra-budgetary resources as outlined in the document. Since the study touched on the CDIP, the African Group stressed that the activities overseen by the CDIP or any other WIPO activities on development should not be mixed with the Treaty obligation in Article 51. The Delegation further stated that one key issue on funding in the Program and Budget Committee that was raised by developing countries, particularly by the African Group, was the need for the Secretariat to distinguish clearly between spending on Development Agenda recommendations and spending on other WIPO technical assistance activities. In the view of the African Group, this illustrated that there was a distinction between CDIP activities and other WIPO technical assistance and development activities. In conclusion, the African Group demanded that development activities be funded from the regular budget of WIPO, but was amenable to extra-budgetary funds being only an additional resource to the regular budget, bearing in mind that the Development Agenda recommendations were now incorporated into the general WIPO program and activities, and that Development Agenda projects would be integrated into the normal budgetary process of WIPO, beginning in the 2012-13 biennium.
104. The Delegation of Algeria stated that it subscribed to the statements made by the Delegation of India on behalf of the Development Agenda Group and by the Delegation of South Africa on behalf of the African Group. Since its establishment in 1978, the PCT Committee for Technical Assistance (PCT/CTA) under Article 51 had never met. The Delegation requested that the Committee should be brought to life and its Rules of Procedure be revised in order to take into account the changes that had taken place since it had been set up. The Delegation suggested that the PCT/CTA should meet independently of the PCT Working Group and should also report to the PCT Assembly. In this way, the reactivated PCT/CTA would contribute to the proper integration of the development element within the PCT. In relation to the second part of the study on financing of technical assistance to developing countries under Article 51, the Delegation considered that the study had moved away from its original mandate by placing focus on extra-budgetary resources. While recognizing additional funding, the study should have dealt with financing of development activities under the regular budget of WIPO.
105. The Delegation of Brazil stated that the implementation of Article 51 of the PCT was a key issue to the Working Group. When developing countries adhered to the PCT, they were promised technical assistance not only to be able to process applications under the PCT but also to benefit from the information made available through patent applications. In addition to the provisions in Article 51 requiring the establishment of the Committee for Technical Assistance (PCT/CTA), the Delegation recalled the aims set out in the Preamble to the PCT: “desiring to make a contribution to the progress of science and technology”, and “desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology”. Despite these further obligations, the Committee for Technical Assistance had never been convened. The Delegation of Brazil therefore urged the

Members of the PCT Union to address urgently these issues as a matter of implementation of the letter of the Treaty. With regard to financing of the activities of the PCT/CTA, the Delegation of Brazil understood Article 57 to mean that the budget of the Union should finance all the expenses of the activities under it, including technical assistance.

106. The Delegation of the United States of America, speaking on behalf of Group B, stated that it acknowledged the calls from previous interventions, firstly, for a meeting of the PCT Committee for Technical Assistance (PCT/CTA), secondly, to address financing of future activities of the PCT/CTA and thirdly, to amend the Rules of Procedure of the PCT/CTA. Although agreeing to the principle of delivering meaningful technical assistance to enable WIPO Member States to more fully utilize and reap the benefits of the PCT system, Group B believed the issues raised by the Delegations of India, South Africa and Brazil needed to be studied further before any decisions or recommendations should be presented to the PCT Union Assembly or any other WIPO body. At the opportune time, Member States and the International Bureau had to determine the proper venue for the PCT/CTA. Group B therefore suggested further discussions on this issue to be undertaken at the fifth session of the Working Group.
107. The Delegation of Slovenia, speaking on behalf of the Group of Central European and Baltic States, stated that it considered that some legal, technical and financial restrictions remained relating to the issues regulated in Article 51 of the PCT dealing with the established Committee for Technical Assistance (PCT/CTA). The Delegation suggested seeking reasons as to why the PCT/CTA had never been made operational, including as to why no Member State in the past 30 years had requested this body to begin its work. To the knowledge of the Delegation, the technical assistance provided by WIPO was considered to be well-established and properly functioning. Therefore, the Delegation suggested that all the existing mechanisms for technical assistance could be identified in order to determine the added value, if any, of the PCT/CTA. With the aim of avoiding duplication, there was a need to identify the context of the PCT/CTA and its specific and concrete aims in relation to existing WIPO structures, which should include finding ways of merging overlapping objectives. The Delegation concluded that more time was needed to investigate these issues.
108. The Delegation of the Russian Federation stated that it considered the study to be comprehensive and informative, reviewing the historical background on the issue of technical assistance for the benefit of developing countries. It also provided a clear picture of how the development program was coordinated and the work of specialized bodies existing to manage different aspects of technical assistance. The Delegation further stated that the study made clear that some important issues of technical assistance from the point of view of the PCT, for example, training, access to technology, databases etc., were well accommodated in respect of development programs and taken care of by specialized bodies. On the question of whether to collect all PCT-related issues of technical assistance under the umbrella of the PCT system, the Delegation expressed its hesitancy to follow this approach without any further study of the issue, for two reasons. Firstly, there already existed a well-functioning and well-coordinated mechanism of rendering technical assistance which should not be harmed or substituted. Secondly, many questions of technical assistance were complex, consisting of sub-items and components which did not have a direct relation to the PCT system. There were different rules and criteria of classifying many of them as being specific to the PCT or being distinctly related; for example, assistance in training might include both a general character on issues of industrial property or specific training in using the PCT system. Another example was technology transfer, which might consist of providing access to patent documents, dissemination of patent information, providing sufficiency of disclosure etc. but might also cover questions on establishing national and regional innovation centers or licensing

agreements, which did not have a direct relation to the PCT system. Therefore, the Delegation concluded that there would be a risk of duplication of efforts and scattering of financial resources if some particular questions of technical assistance were dealt with by several bodies in parallel. In order to avoid such a situation, the Delegation proposed that a survey could be prepared by the International Bureau, supplemented by a list of major projects, actions and services provided for the benefit of developing countries in the area of technical assistance. Projects identified that were specific to the PCT system could be separated and taken under the auspices of the PCT. However, in the opinion of the Delegation, a final decision on the feasibility of reinstatement of meetings of the PCT Committee for Technical Assistance could only be taken after a further analysis of possible projects.

109. The Delegation of El Salvador stated that it favored the reinstatement of the PCT Committee for Technical Assistance (PCT/CTA) and aligned itself with the statements made by the Delegations of South Africa, Algeria, India and Brazil. The Delegation of El Salvador stated further that it believed that reinstating the PCT/CTA would provide members of the PCT who are developing countries with particular support to strengthen the capacity of their national intellectual property Offices. The Delegation made reference to a recent ambassador-level meeting where the Director General had expressed his ideas for strengthening development cooperation, and stated that this type of support would be a clear example. The Delegation did not believe that this would result in duplication of work, rather it would amount to timely assistance to strengthen capacity building in supporting patent Offices adapt to new technologies.
110. The Delegation of Japan stated that it supported the statements made by the Delegation of the United States of America on behalf of Group B and the Delegation of Slovenia made on behalf of the Group of Central European and Baltic States. In relation to convening a meeting of the PCT Committee for Technical Assistance (PCT/CTA), the Delegation expressed the view that many critical issues required further deliberation, such as how the PCT/CTA had been established, what its Rules of Procedure stated, why meetings of the PCT/CTA had never been held, the form of financing agreements related to technical assistance under the PCT/CTA, and which organization should be selected as a financing body. In addition, the Delegation mentioned that it had to be borne in mind to utilize an existing forum or its projects in order to avoid duplication of tasks. The Delegation stressed that it would not be appropriate to prejudge at this stage where to go, what to do or which recommendations to make without any thorough discussion on these fundamental problems. First, a proper assessment of the results of the study should be conducted. Based on that, the Working Group would be in a position to consider the future direction.
111. The Delegation of Switzerland stated that it supported the statements made by the Delegation of Japan as well as the statements made by the Delegation of the United States of America on behalf of Group B and by the Delegation of Slovenia on behalf of the Group of Central European and Baltic States.

112. The Secretariat stated that it wished to respond to the comments made by some Delegations on the scope of the second part of the study concerning the seeking and entering into agreements with financing organizations such as the United Nations for the financing of technical assistance projects, in particular, the criticism that the study focused on the effort to mobilize extra-budgetary resources, such as the United Nations Development Programme (UNDP), rather than agreements with relevant international financing organizations for the financing of technical assistance projects. Article 51 expressly stated that the International Bureau should seek to enter into agreements with international financing organizations and intergovernmental organizations for the financing of technical assistance projects; in this context, it referred, in particular, to the United Nations and Specialized Agencies connected with the United Nations concerned with technical assistance. In the view of the Secretariat, the fact that WIPO had in the past and continues today to seek to enter into agreements with the UNDP to secure funds for the financing of technical assistance projects would be covered by the activities mandated by Article 51(4). The Secretariat further stated that there appeared to be a different perception as to what constituted extra-budgetary resources in this context. In the understanding of the International Bureau, everything which was not covered by the WIPO regular budget was extra-budgetary, that is, everything which was not covered by any of the three main pillars of the WIPO budget, these pillars being the following: (i) income from registration services, such as the PCT (by far the largest component); (ii) contributions from WIPO Member States; and (iii) miscellaneous sources, such as sales of publications and interest from bank accounts. With this in mind, contributions within the scope of Article 51(4), such as funds made available by UNDP, would be considered to be an extra-budgetary resource.
113. The Secretariat further stated that Article 51 in general, and in particular, the provision of Article 51(4), needed to be seen in its historical context. When the Article had been drafted in the late 1960s/early 1970s, the PCT had not yet been in operation, so there had been no PCT fee income and no budget specific to the PCT. Furthermore, the overall WIPO budget to fund envisaged technical assistance projects had been much lower than it was today. Because of the shortage of funding from the WIPO regular budget at the time, the mandate had been given to the International Bureau to seek agreements with extra-budgetary financing authorities. What the study showed was that, when the Interim Committee for Technical Assistance took up its work, nearly all of development activities and specific technical assistance projects were financed out of extra-budgetary resources, and financing from the regular budget of WIPO was very limited. Over the years, this relationship changed. UNDP funding and funding from other extra-budgetary resources decreased, while a greater proportion of technical assistance projects was funded from the regular budget of WIPO. Today, a large majority of technical assistance activities are financed from the WIPO regular budget. While the study intended to demonstrate that the International Bureau was making efforts to increase extra-budgetary funding, there was certainly no intention to shift the funding of technical assistance from the WIPO regular budget towards greater reliance on extra-budgetary resources. On the contrary, the draft WIPO Program and Budget for 2012-13 showed that a large proportion of the WIPO regular budget (financed to a great extent from PCT income) is devoted to development-related activities, while extra-budgetary resources (mainly coming from funds-in-trust set up by national governments and other donor contributions) make up only a fraction of spending on development-related activities.
114. The Delegation of India stated that it welcomed the clarification from the Secretariat on the funding sources for technical assistance activities and the historical context of Article 51(4). Although the Delegation had wanted the PCT Committee for Technical Assistance to be brought into operation urgently, meeting prior to sessions of the PCT Working Group to optimize coordination and feed discussions into the deliberations of the Working Group,

the Delegation took note of the comments by the Delegations of the United States of America, Slovenia, Japan and Switzerland that further examination of the technical assistance under the PCT was necessary for a more focused discussion on technical assistance under Article 51. The Delegation of India therefore proposed that the questions raised by the Development Agenda Group should be answered by the International Bureau for discussion at the next session of the Working Group, providing further information on existing technical assistance projects relating to the PCT, along with details of all funding sources for this technical assistance.

115. The Delegation of South Africa thanked the Secretariat for the clarification on the second part of the study and supported the proposal made by the Delegation of India for the Secretariat to present information for the next session of the Working Group of all technical assistance activities in the area of the PCT with details of funding, whether from the WIPO regular budget or extra-budgetary funding.
116. The Delegation of Brazil also thanked the Secretariat for its clarification and expressed support for the proposal made by the Delegation of India and supported by the Delegation of South Africa.
117. The Working Group agreed that the International Bureau should provide more detailed information on the existing technical assistance projects relating to the PCT and their sources of funding, for discussion at the next session of the Working Group, in order to allow a more informed discussion on the question of the future of the Committee for Technical Assistance and related issues of the funding of technical assistance projects.

The PCT's Aims of Disseminating Technical Information, Facilitating Access to Technology and Organizing Technical Assistance for Developing Countries

118. Discussions were based on document PCT/WG/4/6.
119. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that it wished to remind the Working Group of the request to the International Bureau to prepare a study on how well the PCT system had been functioning in terms of realizing its aim of disseminating technical information and facilitating access to technology, as well as organizing technical assistance to developing countries. In particular, the third session of the Working Group had specifically mandated that "[t]he study should also propose recommendations and suggestions on how to improve the realization of that aim, including on sufficiency of disclosure, for consideration by Contracting States at the 4th session of the PCT Working Group". However, document PCT/WG/4/6 simply stated that this recommendation was being implemented through the review of technical assistance in the Results Based Management Project under the CDIP and that, since that review had not been completed, the study could not be presented to this session of the Working Group. The Delegation stated that it wished to point out that sufficiency of disclosure was not within the scope of review of technical assistance under the CDIP project. Hence, this critical issue, which was mandated to be discussed in the present session, had been sidestepped in the document. The Delegation therefore requested the Secretariat to address this important aspect in its report on this recommendation to the next session of the Working Group. It also requested the International Bureau to propose recommendations and suggestions on how to improve the realization of that aim, for consideration by Contracting States at the next session of the Working Group, as stated in the recommendation endorsed by the third session.

120. The Secretariat stated that it wished to apologize for the lack of information required to prepare the study across the full scope of the recommendation. However, in the view of the Secretariat, although the extent of the CDIP project was not as broad as the study to be performed to address the recommendation from the third session of the Working Group, the issues were related. The output of the CDIP project would therefore be very helpful and informative to the Secretariat in reporting on all the issues in the recommendation. The Secretariat believed that the final study would be more useful and more comprehensive and would include all of the related parts, benefiting from the output of the CDIP project. It was hoped that the study would be available in advance of the next session of the Working Group.
121. The Working Group noted the contents of document PCT/WG/4/6 and requested the International Bureau to present the study as recommended by the Working Group in its third session and contained in paragraph 211*bis* of the Annex to document PCT/WG/4/3.

Third Party Observations System; Quality Feedback System

122. Discussions were based on document PCT/WG/4/7.
123. The Delegation of the United States of America stated that it continued to support the efforts of the International Bureau to implement this aspect of the PCT Roadmap. The Delegation had consistently supported the idea of providing a mechanism for third parties to submit relevant art and felt that it served to improve the overall quality of the PCT work product. While having some concerns and observations with respect to the system, the Delegation considered that it should be strongly supported. The Delegation noted that applicants themselves were often aware of the most prominent prior art and consequently welcomed the modification of the proposal to provide a mechanism for applicants to submit prior art for consideration by the International Authorities. As the Delegation had indicated at the Meeting of International Authorities in March, a primary source of concern was the possibility of third parties using the system as a means to harass applicants and the effect of the system on International Authorities and national Offices. While appreciating the safeguards proposed by the International Bureau, some concern regarding these issues remained. The Delegation also disagreed with paragraph 10 of document PCT/WG/4/7, describing the system for specifying a relevant international application. It considered that the previously suggested need to provide the international filing date as well as the application number would probably be a better practice. In the Delegation's experience, a surprisingly large number of files were submitted containing a typographical error in the application number. Providing the international filing date would therefore be a good safeguard. Concerning anonymous observations, the Delegation fully supported the requirement that the submitting party identified both themselves and any party on whose behalf the observations were made as safeguards against third parties using the system as a means of harassment. However, the Delegation noted that the operation as set forth in paragraph 12 of the document, that is, the acceptance of anonymous submission as well as those submitted with a clear false name, reinforced the need for safeguards. As the system progressed, the Delegation expressed the desire for the system to be monitored to see whether anonymous submissions were a problem. Concerning furnishing copies of documents, the Delegation had concerns regarding the fact that, in the system as proposed, it was optional for third parties whether to provide copies of the references they were citing. Based on the experience of the United States Patent and Trademark Office (USPTO) with its own system for third party submissions, the Delegation urged that the submission of copies of cited references should be made mandatory, at least for non-patent literature. The Delegation, however, noted the need to honor copyright. Obtaining copies of non patent literature could often be difficult and without a requirement

to provide copies of the references, a third party could use the system to harass applicants by merely citing multiple references that may or may not be relevant to the issues on hand. Finally, in relation to paragraph 26 of the document, the Delegation had significant concerns regarding the proposal that the system would allow submissions by means other than the established mechanism, such as by email. The Delegation considered that allowing third parties to make submissions part of the application file outside of the established mechanism for doing so bypassed safeguards and invited misuse of the system. In its national system, the USPTO would not allow third parties to submit indiscriminately papers concerning an application and have them entered into the file. The Delegation welcomed the assurance of the International Bureau that the system would be closely monitored and that changes would be made, if necessary, when problems were encountered and requested further detail on progress in implementation.

124. The Secretariat indicated that development was already under way and that it was hoped that an initial version of the front end of the system in the English language would be available for internal testing in around six weeks. The system was designed to use the existing infrastructure for delivery of the information to national Offices so that all that would be required on that side would be agreement of the detailed standards for the format in which the information would be delivered, particularly for the XML format which would permit Offices to import the information automatically into their systems, but also for a visual layout permitting easy use by human readers. Proposals on these matters, as well as the Administrative Instructions would most likely be sent out in September or October 2011, with the aim of delivering an actual working system in the early parts of 2012.
125. The Delegation of India, speaking on behalf of the Development Agenda Group, stated that it was happy to note that the International Bureau had begun work on the implementation of a third party observation system, broadly in line with the proposals set out in the Annex to Circular C.PCT 1288 and taking into account comments received in response to the Circular, as well as the fact that the service was expected to start in early 2012. The Delegation believed that the third party observation system should be further strengthened to allow submissions on clarity and sufficiency of disclosure. The system should be user-friendly and the process of submitting observations must not be burdensome to the third party. If the third party was not allowed to upload non-patent literature to be made available through PATENTSCOPE because of copyright issues, in the Delegation's view, a list containing references to such literature and the sources from which they could be accessed needed to be made available. The Delegation also wondered how a third party could reasonably be expected to identify any other party on whose behalf it might be making the observation, even if the third party did not specifically represent that other party, who might be making similar observations.
126. The Delegation of France stated that it supported the proposed system of third party observations. It believed that it should help to improve the quality of patents delivered and allow applicants to assess more effectively the value of entering the national or regional phase. Two matters were considered vital to the smooth running of the system. First, the third party observations should be accessible to the public. Secondly, the applicant should be able to respond through comments, and if necessary, amendments without further extension to the international phase. With regard to the risk of harassment to applicants, the Delegation considered this unlikely, given current statistics on the use of the third party observations in national procedures. However, the Delegation welcomed the fact that the problem had been identified and that it would be monitored so that, if necessary, the Working Group could consider necessary steps to resolve the problem. The Delegation also welcomed the information that the launch of this service was foreseen for early 2012.

127. The Delegation of Japan stated that it recognized the value of information from third parties in the examination of patent applications. Japan's patent system included a third party observation system. The Japan Patent Office considered information from third parties regarding novelty and inventive step as appropriate because it would contribute to achieving accurate and prompt patent examination. The Delegation therefore agreed with the proposal in principle. However, it was important to ensure that neither International Authorities nor national Offices would be under any obligation to take into account any of the observations submitted by third parties, as described in paragraph 24 of document PCT/WG/4/7. With that condition, the Delegation would be able to go along with the third party observation system. The Delegation noted from paragraphs 19 and 20 of the document that the highest linguistic priority would be to ensure that the interface was available in all of the languages of publication. But, at the same time, it considered that a system which covered all publication languages should include machine translation as soon as possible in order to facilitate use of the system.
128. The Delegation of Brazil expressed its support for the pilot project on third party observations. It believed that the system might represent a positive step in helping to improve the work done by patent Offices during the international as well as the national phases. Offices acting as International Authorities would be provided with additional information when analyzing an international application under the PCT. While it would facilitate the national phase, the role of opposition would not be diminished in eliminating applications which did not meet the requirements for granting a patent. Therefore, the quality of patents eventually granted and the quality of the international reports would benefit from the system. The Delegation understood that the use of the system and information provided by it was unofficial, both for the International Authorities and the national Offices. Any change to that status should be left for later stages, after the benefits and challenges had been properly analyzed.
129. The Delegation of Denmark reiterated its position from earlier sessions of the Working Group and strongly supported the introduction of a third party observation system. It supported the proposals outlined in the document and made a few comments. For information, the Danish Patent and Trademark Office had no experience of abuse of its third party observation system. There might be cases where the documentation submitted was not relevant for examination of the patentability criteria, but that was a different issue. In relation to supply of documents, it might be beneficial to make it mandatory for third parties to supply at least non-patent literature which otherwise might be difficult to obtain. Nonetheless, the Delegation supported the International Bureau's efforts.
130. The Delegation of Canada stated that it supported any mechanisms that allowed examiners to be made aware of additional prior art and as such agreed with the proposal of the International Bureau on the third party observation system. Notably, the Delegation agreed with the technical proposals put in place to prevent abuse of the system, the time limit for observations, the inclusion of translations of documents in order to maximize the usefulness of the documents submitted and that the system should be monitored and reviewed at various stages to properly assess the efficiency and usefulness of the system.
131. The Delegation of Australia stated that it supported an international system for third party observations and believed that the proposed system would ensure the most relevant prior art was made available to national Offices. With regard to the possibility of harassment, like the Delegation of the United States of America, the Delegation of Australia saw an inconsistency in the proposals, both requiring the identification of a principal and saying that anonymous comments could be supplied. The Delegation believed that it was important that anonymous comments could be allowed so as not to discourage third parties from making observations that potentially provided valuable prior art. The

Delegation considered that identifying a principal appeared to be unnecessary, given that the International Bureau had stated that it would, at least initially, moderate comments which were made. With respect to the time period for comments, in the view of the Delegation of Australia, the third party observation system aimed to help national or regional Offices grant the strongest patents possible. Previously, the Delegation had suggested expanding the pilot to allow submissions during the national phase and it believed that this would allow the Offices to gain access to the relevant prior art. However, the Delegation agreed that for the third party observations to be useful to the largest number of Offices possible, they needed to be submitted as early as possible. Therefore, the Delegation could agree to the suggested 28 months time limit. On the alternative routes for observations, possibly because of Australia's experience with its own third party observation systems, the Delegation was willing to accept observations quite easily. In paragraph 26 of document PCT/WG/4/7, the International Bureau stated that observations made in another form, such as e-mail correspondence, would be accepted and added to the file of the international application, but the International Bureau would not automatically notify applicants or Offices of such submissions. The Delegation, suggested that, in order that applicants could remain up to date, an automated e-mail facility should be provided allowing applicants and third parties to sign up to particular applications. This facility would e-mail interested parties whenever a new document appeared on PATENTSCOPE relating to the case. Such new documents could include new third party observations as well as further documents such as recently-published international reports and national phase examination reports. On the quality feedback system, in relation to paragraphs 29 to 33 of the document, the Delegation believed that high quality international search and examination reports were the cornerstone of the PCT system. Consequently, the Delegation supported the implementation of the quality review system and the mechanism proposed in paragraphs 31 and 32 of document PCT/WG/4/7. Such feedback might include discussion of any X citations found or any other issue. The data collected could be structured so as to allow Authorities to identify issues which it raised with examination practices and quality management systems. It appeared that the system proposed for quality feedback would allow observations to be made during the national phase. The Delegation agreed with this approach, as it was important that quality feedback not be subjected to the proposed 28 months limit for the third party observations.

132. The Delegation of India stated that it wished to raise a concern with regard to the monitoring system and that too overarching an approach might damage the central theme of this system. As measures were introduced, the utmost care needed to be taken to work out a policy to ensure that third parties would not be discouraged from putting forward their observations. Anonymous comments should not be discouraged, though the Delegation agreed that deliberate comments might be a burden not only to applicants but also to designated Offices. Despite that, in view of the price paid by the public in cases where a bad patent was issued, the extra burden on the designated Office might be justified. Therefore, before implementing any form of moderation, a proper assessment needed to be made to ensure that appropriate flexibility remained in the system to deal with matters properly on a case-by-case basis, keeping in view the public interests as well as the development issues of the developing and the least developed countries.
133. The Delegation of Israel stated that it fully supported the proposed third party observation system and considered that it would improve the entire PCT system. At the same time, it was important that the International Authorities and designated Offices should not be required to take into account submitted observations and any comments submitted by the applicant in response. With regard to the quality feedback system, it would be necessary to ensure that the information provided could be accessed in a manner allowing quality managers to extract information and analyze it effectively.

134. The Representative of the European Patent Office (EPO) stated that the EPO supported the introduction of a third party observation system in the PCT framework generally, as described in document PCT/WG/4/7, and broadly agreed with the statements made by previous speakers. However, contrary to what was indicated in paragraph 6 of the document, the applicant should submit all details of prior art known directly to the competent International Searching and Preliminary Examining Authority in order not to create confusion. In relation to paragraph 10, the EPO supported the proposal by the Delegation of the United States of America to add an element of security, ensuring that the application was correctly identified, for example, by requiring the international filing date to be entered. In relation to paragraph 15, the EPO believed third parties should be required to provide copies of non-patent literature referred to in their observations, because otherwise there was a risk that the observations would not be taken into consideration by the competent authorities. The third party observations system in the EPO currently worked very well and prevented any abuse of the system by third parties who were truly interested and were able to provide copies of non-patent literature to which they referred. In relation to paragraph 26, the EPO supported the proposal to limit the service to observations submitted online through the system and not to accept observations sent by e-mail. Finally, the Representative noted that the launch of this new service by early 2012 was optimistic in view of the many amendments and modifications needed to IT systems in participating Offices such as the EPO. It would, in particular, be essential to be notified of the full details of the new service, including formats at least 3 months in advance to ensure that the systems would be ready to receive and process the information.
135. The Delegation of Turkey stated that it welcomed the proposal to establish a third party observation system under the PCT. Such a basis for third party observations would contribute to the legal certainty of international applications and would also prevent any adverse consequences. The applicants would be able to comment on third party observations during the international phase and third parties would make observations using web forms in addition to paper-based observations. Thus the proposed system would be useful for both applicants and third parties. In Turkey's domestic patent legislation, third parties were permitted to submit observations to the Patent Institute on the content of search reports and oppositions on the grant of the patents could be filed within six months from the date of publication of the relevant search report. However, in practice, third parties could not submit observations relating to international applications, and especially in relation to those with Chapter II reports, since the time limit foreseen in the national legislation had already expired by the start of the national phase. Consequently, this system would certainly contribute to granting high quality patents.
136. The Delegation of Spain stated that it generally supported the proposal. The Delegation agreed with the period for the submission of observations mentioned in paragraph 24 of document PCT/WG/4/7 because this was a fair compromise. Other time periods were possible, but this was reasonable. With regard to the question of the language of observations, the Delegation considered that it was useful that these should be made in any language and thanked the International Bureau for its efforts to provide a platform in all of the languages of publication. The Delegation did not support the possibility of submitting comments by means other than the online forms provided. Third parties should submit their observations through the platform established specifically for the purpose.
137. The Delegation of the Republic of Korea stated that it understood that it could be difficult to force third parties to upload a copy of a non-patent literature document in view of copyright difficulties. The time limit for observations needed to be around 28 months from the priority date to promote use but still permit applicants to respond. To ensure that the third party observation system was useful, high quality information should be provided to examiner. In this respect, the Delegation noted the proposals aimed at preventing the observation

system from being abused. In order to improve efficiency and prevent abuse, the length of observations needed to be limited. However, it would be difficult for the third party to estimate what the length of an observation would be were it to be translated into another language. Therefore, specific criteria needed to be established for the length of permitted observations in different languages.

138. The Delegation of Mexico stated that it firmly supported the introduction of a third party observation system and believed that it should be an obligation for third parties to submit the documents which they referred to since it was difficult for the Mexican Office to obtain many such documents. A period of 28 months to submit observations was acceptable, as was the possibility for the applicant to respond to these observations to make the system more transparent and provide more information to Offices.
139. The Representative of the Japan Intellectual Property Association (JIPA) stated the concern of applicants that many irrelevant documents might be submitted. It was necessary for applicants to consider all such documents, even if they were not relevant. Consequently, it was important that the system had safeguards to avoid abuse. Secondly, with regard to the language of the observation, it was very important that machine translation be introduced as soon as possible to avoid a heavy burden being placed on applicants and designated Offices.
140. The Representative of the International Federation of Industrial Property Attorneys (FICPI) stated that FICPI generally supported a system giving third parties the right to submit observations during the international phase. FICPI had consistently supported measures aimed at providing as much relevant prior art at the earliest possible stage of patent prosecution. The proposed system would facilitate this aim. FICPI was, however, concerned about the timing and the interrelation with the international preliminary examination under Chapter II. Where a PCT applicant had received a positive written opinion from the International Searching Authority with no relevant prior art found, but a third party observation was submitted at 23 months from the priority date, that is, slightly after the date to file a demand under Chapter II, it was hoped that it would somehow be made possible for the applicant to demand international preliminary examination and to have the International Preliminary Examining Authority take the additional prior art into account. Also, and very importantly, it should be made possible for the applicant to file amended claims to distinguish the invention from this additional prior art during the international phase. Thus, the Representative requested the International Bureau and the Working Group to consider the interrelation between the third party observation system and international preliminary examination under Chapter II of the PCT.
141. In response to one comment by the Delegation of India, the Secretariat clarified that, while the system would offer the opportunity to identify a principal who was responsible for the comments, it would not be required to fill this in and agreed that it would frequently be impossible for a third party to be aware of others who might be making equivalent comments. The Secretariat also observed that it had been agreed at the previous session that the initial system should be limited to comments on novelty and inventive step. However, the system would be implemented in such a way that it could easily be extended to accepting observations on any other subject if the Member States wished to do this following a review of the results of the pilot system. In relation to one comment by the Delegation of Australia, the Secretariat reported that a system to automatically notify applicants of new documents appearing on the file at the International Bureau would become available soon, independently of the third party observation system.
142. The Working Group noted the contents of document PCT/WG/4/7.

UK Experiences of Encouraging More Effective Use of the International Phase: PCT (UK) Fast Track

143. Discussions were based on document PCT/WG/4/14, containing a report by the United Kingdom (UK) Intellectual Property Office (IPO) on the UK experiences with its PCT (UK) Fast Track service.
144. The Delegation of the United Kingdom, in introducing document PCT/WG/4/14, stated that it would like to take this opportunity to share the UK's experiences in relation to introducing incentives for applicants to use the PCT system efficiently. In that regard, the UK IPO had introduced, one year ago, a fast-track for PCT applications entering the UK national phase. PCT/WG/4/14 set out some of the background to this service, and the Delegation wished to give details of how it was operating in practice. The PCT (UK) Fast Track service had been introduced to act as an incentive to encourage applicants to file higher quality applications under the PCT and to eliminate any remaining defects by taking action to amend the application during the international phase. By encouraging such amendment actions, the UK IPO wished to encourage applicants to use the PCT system to its full potential, allowing all designated and elected Offices to benefit from the completed amendment actions and helping to reduce the duplication of work conducted by national and regional Offices in the national phase. That incentive of accelerated treatment was in addition to the incentive that the examination itself would be quicker and cheaper for such applications because Offices would raise fewer objections and fewer amendment rounds would be required. To be eligible for the Fast Track service, the application had to have received a positive international report on patentability, either under Chapter I or Chapter II of the PCT or, alternatively, a positive written opinion from the International Searching Authority. If the international preliminary report on patentability or the written opinion raised any objections to novelty, inventive step or industrial applicability of any of the claims, then those claims had to be deleted or amended in the international phase in order for the application to be eligible for the Fast Track procedure. This was to be seen in light of the overarching objective to encourage applicants to make such amendments during the international phase. It was therefore not possible for an applicant to delete or amend any offending claims upon entry into the national phase or during national phase procedures if the applicant wanted to be eligible for the Fast Track service. A major benefit of the service was its simplicity for both applicants and the UK IPO. The applicant simply needed to make a request either at the time of entry into the UK national phase or at a later date. If the application was eligible for the Fast Track procedure, a first examination report could be expected to issue within two months. The examiner performed the examination in exactly the same way as a national examination. It was therefore up to the examiner to decide the extent to which he wished to rely on the international report in preparing the national examination report. To date, applications granted acceleration under this service had been granted in an average time of six months from request for acceleration. The Delegation stated that, while so far there had been only a small number of applications which had requested acceleration, it was nevertheless pleased with the way in which the service had been operating. Looking at the accelerated applications, it was interesting to note that there was an even spread between those applications where applicants "got it right the first time" and received a positive report under Chapter I and those applications where applicants had requested Chapter II processing so as to be able to make amendments during the international phase. Applicants who had used the service had also used a wide range of International Authorities. Feedback received from users of the service suggested that users found the service to be very useful where a quick grant was sought in the UK. However, users also expressed the view that the incentive of acceleration in the UK only was inadequate to encourage many applicants to make claim amendments during the international phase. These users suggested that it would be a greater incentive if more national and regional Offices were to provide similar types of

acceleration services. The Delegation stated that it would therefore like to take this opportunity to encourage other national and regional Offices to consider introducing further incentives for applicants, whether in the form of accelerated processing, such as the PCT (UK) Fast Track service or the Patent Prosecution Highway, or other incentives, such as fee reductions.

145. The Delegation of Canada thanked the United Kingdom for its interesting report on the PCT (UK) Fast Track system. The Delegation further stated that it would like to encourage other Offices to set up processes that supported efficient patent examination procedures and that it looked forward to future updates on the experience of the United Kingdom with its Fast Track program.
146. The Delegation of the United States of America thanked the Delegation of the United Kingdom for its informative report on its Fast Track system. It had been the experience of the United States Patent and Trademark Office (USPTO) that implementation of systems such as the UK Fast Track system and the Patent Prosecution Highway had been an encouraging first step in addressing problems of pendency and backlogs. Such programs made the examination processes before national Offices more efficient and, while they could certainly not be seen as “full faith and credit” systems, the USPTO had observed an increase in efficiency, noting that the number of office actions and thus the costs for applicants had gone down. The Delegation further stated that it would certainly encourage both applicants and other Offices to consider use of such systems.
147. The Delegation of El Salvador indicated that a more reliable and complete preliminary search would be a great support for patent Offices worldwide and save time and expense for users entering the national phase if objections had been overcome during the international phase. In addition, overcoming objections in the international phase would be a contribution to standardizing requirements for granting patents achieved by the PCT and would certainly speed up the patent granting process. With regard to the issue of incentives for users to file better quality international applications and make more use of the international phase by correcting applications and overcoming objections, the Delegation of El Salvador stated that options were limited and could not relate to fee reductions, which it believed were too low at present. However, one possibility could be the acceleration of the patent granting procedure within its national intellectual property Office.
148. The Working Group noted the contents of document PCT/WG/4/14.

Collaborative Search and Examination Pilot Project: Status Report

149. Discussions were based on document PCT/WG/4/15, containing a report by the European Patent Office on a pilot project carried out by the United States Patent and Trademark Office, the Korean Intellectual Property Office and the EPO to test the concept of collaborative search and examination.
150. The Representative from the European Patent Office, in introducing document PCT/WG/4/15, noted that the French version of document PCT/WG/4/15 had been exceptionally prepared by the European Patent Office as this was not mentioned in the document itself. The collaborative search and examination pilot project had been launched at the request of the user community and was referred to in one of the recommendations endorsed by the Working Group in the context of the PCT roadmap of the WIPO Director General. The objective of the project was to allow examiners from different International Authorities in different regions and with different language specialties to work together to produce one common high-quality international search report and written opinion. In 2010,

a first pilot had been successfully conducted by the three Offices involved in this project. Delegations from these Offices had already reported at the third session of the Working Group on the launch of the first pilot, which had a very small scale, as its main objective was to test the basic assumptions related to the collaborative working model. This first pilot had been concluded with a workshop in September last year, led by the United States Patent and Trademark Office and involving all examiners who had taken part in the pilot. The results of the pilot had been very positive and to some extent even more promising than what originally had been expected. The main conclusion from the first pilot had been that collaborative search and examination was a realistic concept. Results showed that it was possible for the examiners to achieve a common search report and a common written opinion. This type of collaboration between examiners brought a clear added value in terms of quality and increased the legal certainty provided by the system. In this context, it was interesting to note that examiners of all three participating Offices had reported that no major additional time investment would be required when a PCT application which had been processed in this collaborative mode entered the national or regional phases in the participating Offices. In light of this successful experiment of a collaborative model, the three participating Offices had decided to conduct a second pilot project, whose the main goal was to gather data to allow the Office to make a more qualitative and quantitative evaluation of the benefits that collaborative search and examination could bring. It would also allow the Offices to gain a better idea of the cost of such a working model. The second pilot project would also be used to improve further the project methodology. To achieve these aims, additional examiners would join the pilot team and more applications would be processed under the pilot to ensure that the assessment of quality and efficiency is more representative. The second pilot project would be split into two parts. The first part was due to start in mid-June 2011, with an intermediary report becoming available before the end of the year. The second part would be conducted during the first half of 2012, and it was hoped that the participating Offices would be able to share more information about the results achieved at the fifth session of the Working Group in 2012.

151. The Delegation of the United States of America stated that, as a partner Office in this project, it wished to thank the European Patent Office for preparing and delivering the report and Korean Intellectual Property Office for the participation in the project. It had been a pleasure dealing with the staff from these two Offices. The Delegation stated further that it too was encouraged by the results of the first phase of the pilot and the potential benefit that this type of collaborative search and examination might hold with regard to increasing the quality of the international work products. It was also encouraged by the potential time saving that collaboration during the international phase could bring to national phase processing by participating Offices. It looked forward to participating in the second pilot project.
152. The Delegation from the Republic of Korea stated that it, too, wished to thank the European Patent Office for the preparation of document PCT/WG/4/15. It appreciated the good cooperation on this pilot project on collaborative search and examination and expressed the view that, through the pilot project, significant results could be achieved. Firstly, the pilot had been designed to confirm the feasibility of collaborative search and examination, with several Offices collaborating on the establishment of an international report and a written opinion on one international application. Secondly, it was important to ensure that collaborative search and examination not only contributed to the improvement of the quality of the examination in the PCT international phase, but also resulted in reduced examination time during the national phase procedures, thereby impacting on the backlogs faced by many Offices. It also believed that high quality examination would certainly be helpful for applicants. The Delegation further stated that it acknowledged the need for the second pilot project to be expanded in scale in order to analyze properly the feasibility and concept of collaborative search and examination and expressed the hope

that, in the second pilot project, with more examiners taking part and more applications being treated, more representative results would be achieved.

153. The Delegation of India stated that participation in any collaborative search and examination project should be left to the choice of the Office of any Member State. Furthermore, noting that its national law mandated that the national Office had to carry out national search and examination, it was up to each examiner during national phase procedures to decide whether or not, and to which extent, to rely on an international search and/or preliminary examination report established during the international phase.
154. The Delegation of Brazil stated that it wished to thank the Representative of the European Patent Office for the report on the collaborative search and examination pilot project. Such a pilot was to be seen as a first step towards providing preliminary information regarding feasibility and cost. The Delegation saw the pilot as an experiment to explore ways to address backlogs in Offices but also wished to recall that raising the confidence of users and Offices in the quality of the international search reports and written opinions was fundamental. In this context, the Delegation reiterated that it was mandatory that any project in this area maintain the autonomy of all Offices to examine patent applications on the basis of the patentability criteria as defined in the respective national legislation. Furthermore, international search reports and written opinions established under such collaborative projects should not enjoy a different status compared to such reports established by other individual International Authorities.
155. The Delegation of Japan stated that it wished to thank the European Patent Office for the very useful information provided in the report on the ongoing pilot project. At this stage, the Japan Patent Office was not in a position to join this collaborative search and examination pilot project. It appreciated, however, the intention of the participating Offices to continue to share information about the project in the future.
156. The Delegation of France stated that it would have liked the Secretariat to provide the document in the French language in a timelier manner so as to enable the Delegation to more fully study the matter. Nevertheless, the Delegation had taken note of the document and wished to thank the European Patent Office for its presentation and for the information that had been provided regarding the implementation of this pilot.
157. The Delegation of China stated that it had taken note of the collaborative search and examination pilot project and expressed its interest in having more information on the ongoing work.
158. The Working Group noted the contents of document PCT/WG/4/15.

PROPOSED CHANGES TO THE PCT PROCEDURAL AND LEGAL FRAMEWORK

PCT Minimum Documentation: Addition of Patent Documents of the People's Republic of China

159. Discussions were based on document PCT/WG/4/8, containing a proposal by the Delegation of China to amend PCT Rule 34 so as to incorporate patent documents from the People's Republic of China into the PCT minimum documentation used for carrying out international searches.

160. In introducing document PCT/WG/4/8, the Delegation of China stated that it highly appreciated that its proposal to amend PCT Rule 34 had been included in the agenda of this session. The proposed amendments would incorporate the Chinese patent documents into the PCT minimum documentation. At the eighteenth session of the Meeting of International Authorities under the PCT (PCT/MIA) in March, International Authorities had unanimously welcomed the proposal to add Chinese patent documentation to the PCT minimum documentation. Taking this opportunity, the Delegation thanked all the International Authorities for their support.
161. The Delegation of China further stated that, over the last decades, Chinese patent applications had experienced a rapid growth, with an annual average increase of more than 22%. WIPO statistics showed that the increase in patent filing in China, in particular first filings, had become one of the most important elements in the increase of the patent applications worldwide. In 2010, China ranked second among all countries in the number of invention patent applications filed and fourth of all countries in the number of PCT applications filed. A large proportion of patent filings in China were domestic first filings and the technical information contained in these domestic filings could only be obtained by searching the Chinese patent documentation. Thus, the addition of the Chinese patent documentation to the PCT minimum documentation would contribute to the improvement of the quality and the completeness of PCT international searches.
162. Furthermore, the State Intellectual Property Office of the People's Republic of China (SIPO) had paid close attention to relevant technical requirements and standards for patent data and had published Chinese patent data produced in a format complying with the applicable WIPO standard. After years of effort, all Chinese patent documents could now be furnished in electronic form, including specifications in TIFF (image) format, bibliographic data in TXT (text) format and English abstracts in XML format. At present, global users could search and have online access to Chinese patent documents via the official website of SIPO, free of charge, and could obtain complete English abstracts and translated specifications of Chinese patent documents. In order to ensure that all PCT International Authorities could timely and effectively make use of Chinese patent documentation, SIPO had been actively communicating with other International Authorities. Up to now, SIPO had provided English language abstracts of Chinese patent documents published since 1985 to all 16 PCT International Authorities, some of which had already received the full English data of Chinese patent documents. SIPO would continue to keep close contact with other PCT International Authorities and provide them with support for the effective use of Chinese patent documents.
163. In concluding, the Delegation of China explained that, in its proposal, it suggested that the Chinese patents and published applications for patents since 1985, as well as the English abstracts, be incorporated into the PCT minimum documentation so as to contribute to the global documentation of technical innovations and inventions, and to further development of the international intellectual property system. Therefore, the Delegation proposed that PCT Rule 34 be amended by adding the words "The People's Republic of China" at the proper place of Rule 34.1(c) as well as the words "Chinese" and the words "The People's Republic of China" in Rule 34.1(e) so as to ensure a more effective utilization of Chinese patent documentation. The Delegation also proposed that the amended PCT Rules should come into force as early as possible. The Delegation looked forward to the consideration and possible support for its proposal by the Working Group and welcomed any comments on the proposal.

164. The Delegation of Japan thanked the Delegation of China for the explanation of its proposal and for the efforts for providing information on the Chinese patent documents, including English abstracts. Japan supported the proposal for adding Chinese patent documents to the PCT minimum documentation, noting that Chinese patent documents were important to conduct appropriate prior searches. Thanks to the efforts by the SIPO, those patent documents were now easily accessible.
165. The Delegation of the United States of America stated that it appreciated the efforts by SIPO to make Chinese patent documents available for inclusion in the PCT minimum documentation. It appreciated the value of the Chinese patent documentation as an addition to the PCT documentation and supported the inclusion. It looked forward to working with the IT personnel from SIPO to ensure that the full data were available in an agreed format in order for an agreement to be reached on a possible date for the amendments to Rule 34 to enter into force.
166. The Delegation of the Russian Federation stated that it wished to reconfirm its support for the addition of the Chinese patent documentation to the PCT minimum documentation, as expressed at the eighteenth session of the Meeting of International Authorities. The Delegation further stated that it recognized the importance of the patent documentation of the People's Republic of China and was satisfied with the fact that all the requirements for the inclusion of the patent documentation into the minimum PCT documentation had been fulfilled.
167. The Representative of the European Patent Office stated that the European Patent Office (EPO) was extremely supportive of the addition of the patent documents of the People's Republic of China as proposed in document PCT/WT/4/8. Noting that Chinese patent documents were already included in the documentation of the EPO, the EPO supported the entry into force of the proposed amendments to Rule 34 as early as possible.
168. The Delegation of Norway stated that, like other delegations who had taken the floor on this matter, it enthusiastically supported the inclusion of the Chinese patent documentation into the PCT minimum documentation.
169. The Delegation of Canada stated that it wished to thank the Delegation of People's Republic of China for its proposal and for also preparing the documentation. The Delegation further stated that it supported the proposal for the addition of the Chinese patent documents to the PCT minimum documentation, stating that this would facilitate high quality PCT searches.
170. The Delegation of Israel stated that it fully supported the proposal to include the Chinese patent documentation in the PCT minimum patent documentation.
171. The Delegation of Denmark stated that, in line with all previous interventions, it also fully supported the proposal by the Delegation of China.
172. The Delegation of the United Kingdom stated that, in line with the previous delegations who had taken the floor on this matter, it supported the proposal to include Chinese patent documentation in the PCT minimum documentation and the proposed amendments to Rule 34. It considered it to be particularly important to ensure that non-Chinese language speaking International Searching Authorities were able to search this documentation as easily as possible and supported efforts to enable the full text collection to be readily searched, noting the importance of reliable translation mechanisms to ensure access to this documentation.
173. The Delegation of India stated that it welcomed and supported the proposal.

174. The Delegation of the Republic of Korea stated that it, too, supported the proposal by the Delegation of China, as it had already expressed at the eighteenth session of the Meeting of International Authorities.
175. The Delegation of Egypt stated that it wished to thank the Delegation of China for its proposal to add Chinese patent documents to the PCT minimum documentation, which it fully supported.
176. The Delegation of the Syrian Arab Republic stated that it supported the proposal by People's Republic of China.
177. The Delegation of El Salvador stated that the inclusion of patent documents from the People's Republic of China in the PCT minimum documentation would make a contribution to the prior art searched and improve the quality of international searches. The Delegation therefore wished to align itself with the other delegations that had supported this initiative.
178. The Secretariat stated that a small drafting change should be made to the proposed amendment of the English text of Rule 34.1(e) as set out in the Annex to document PCT/WG/4/8. The words "People's Republic of China" should appear before the word "Japan", as the countries should be listed in the same order as the respective languages referred to earlier in Rule 34.1(e).
179. The Working Group approved the proposed amendments of the Regulations set out in the Annex to document PCT/WG/4/8, subject to the drafting change referred to in paragraph 178, above, with a view to their submission to the Assembly for consideration at its next session, in September-October 2011.

Presentation of Sequence Listings under the PCT

180. Discussions were based on document PCT/WG/4/9.
181. The Delegation of the United States of America stated that it agreed that a revised sequence listing standard should be "filing-route neutral," that is, equally applicable in national or regional applications as in international applications, and that Annex C of the PCT Administrative Instructions should address only details pertinent to the international phase of an international application. The Delegation further stated that it appreciated the efforts of the International Bureau in preparing the preliminary draft of proposed modifications to Annex C. However, it had some concerns with the approach taken in document PCT/WG/4/9. Paragraph 8 proposed a general "filing-route neutral" WIPO Standard (or Standards) on the presentation, contents and structure of sequence listings, whether they were submitted on paper, in text format or in XML format, and the proposed revision of Annex C, specifically paragraphs 8 and 12, referred to sequence listings submitted in paper, text format or in XML format. The document and its Annex, containing the proposed revision of Annex C, seemed to equate a sequence listing filed in text format with a sequence listing filed in XML format and consequently provided for the filing of a sequence listing in either format, dependent only upon whether the XML format was accepted by the receiving Office and competent authority. This approach raised several issues.
182. First, the proposed sequence listing standard did not simply provide for an XML version of ST.25. The proposed standard differed substantially from ST.25 in its requirements for the presentation, contents and structure of a sequence listing, which meant that a sequence listing that complied with ST.25 would not necessarily comply with the new standard, even with no consideration given to the format. Second, until all Offices were prepared to accept a sequence listing according to the new standard, applicants potentially might be

required to prepare two substantially different listings for different Offices, either upon national stage entry or by way of direct filings, thwarting a key goal of an international standard to provide for the preparation of a single sequence listing acceptable worldwide. Finally, leaving the choice of format open indefinitely might require Offices to accept and process two formats indefinitely, which could prove to be prohibitively burdensome.

183. The Delegation of the United States of America further stated that, to date, no discussion had taken place on the transition from ST.25 to a new standard. Discussion had to occur, and decisions had to be made as to the mechanism and timing for transition, because the two standards differed in the presentation, contents and structure of a sequence listing. While acceptance of two formats might be necessary temporarily as international applications moved into the national or regional phase, submissions under ST.25 should be phased out at some defined point in time, leaving in effect only a single standard. During the transition period, after a new standard had been adopted, it might be possible to allow applicants to file a sequence listing under the new standard in XML format in those Offices that were prepared to receive it, with two conditions in effect. First, no Office should be allowed to require a sequence listing in XML; an ST.25 listing had to be accepted until all Offices were prepared to accept a listing in XML under the new standard, at which point the new standard would become the only standard. Second, it had to be made very clear to applicants that if they chose to file a listing in XML under the new standard, then they might be required to prepare and file an ST.25 listing for other Offices. In this scenario, it would make sense to leave ST.25 and Annex C as is, but draft a new Annex to accompany the new standard, where the new Annex would contain only procedures related to processing of the international application in the international phase.
184. The Representative of the European Patent Office stated that the European Patent Office supported the proposal by the International Bureau to separate issues related to the PCT procedure from those regarding the contents and structure of sequence listings. The former would be kept in Annex C to the Administrative Instructions under the PCT while the latter would be transferred to a WIPO Standard for the presentation of sequence listings that is independent from the PCT. In the near future, Offices could then accept sequence listings presented in either text and/or in XML formats, at their option. A smooth transition from one format to the other had to be ensured. The EPO acting as Task Force leader informed the Working Group that the third consultation round had now been completed. The fourth and final round should be finalized by mid-July, the objective being to submit the draft new Standard for the presentation of sequence listings in XML for adoption at the second session of the WIPO Standard Committee in November this year.
185. The Delegation of Japan stated that it supported the direction to move both the WIPO Standard ST.25 and the PCT Standard for sequence listings into a XML environment. At the same time, it was important to take into account the International Authorities which might not be ready to accept sequence listings in XML format. Therefore, the Delegation believed that it was important to ensure efficient flexibility for such Authorities to allow them to continue to use the current WIPO Standard ST.25. With regard to the preliminary draft proposed modifications to Annex C of the PCT Administrative Instructions contained in the Annex to document PCT/W/4/9, this preliminary draft took this concern into account, in particular in paragraph 12 on pages 10 and 11.
186. The Delegation of Switzerland stated that it supported the statement made by the Representative of the European Patent Office.

187. The Delegation of China stated that it supported the proposed modifications to WIPO Standard ST.25 and Annex C of the PCT Administrative Instructions, aimed at reviewing the relationship between these two standards and helping to make their relationship coherent and more reliable.

188. The Working Group noted the contents of document PCT/WG/4/9.

Proposed Amendments of Rules 17.1(b-bis) and 20.7(b)

189. Discussions were based on document PCT/WG/4/10 Rev.

190. In introducing document PCT/WG/4/10 Rev., the Secretariat stated that informal comments received by several delegations after the publication of the document had led the Secretariat to reconsider the wording of Rule 17.1(b-bis) as proposed to be amended and that it had prepared a further revised proposal of that Rule, taking these comments into account. The revised wording of Rule 17.1(b-bis), which should form the basis of the discussions in the Working Group, read as follows: "Where the priority document is, in accordance with the Administrative Instructions, made available to the International Bureau from a digital library prior to the date of international publication of the international application, the applicant may, instead of submitting the priority document, request the International Bureau prior to the date of international publication to obtain the priority document from such digital library."

191. The Delegation of Canada stated that it was in agreement with the concept of the proposed amendment to Rule 17.1(b-bis) so as to change the time limit within which the applicant could request that a copy of the priority document be obtained from a digital library and to delete the option of requesting the receiving Office to obtain such copy from a digital library. It fully supported the further revised wording of Rule 17.1(b-bis) as introduced by the Secretariat, noting that it clearly indicated the time-limit by when the request would have to be made, namely, before the date of international publication; that had been the Delegation's only concern with the previous version. The Delegation further stated that it was in agreement with the proposed amendments to Rule 20.7.

192. The Delegation of the United States of America stated that it agreed with the statement made by the Delegation of Canada and that it supported both of the proposals to amend Rule 17.1(b-bis) as further revised by the Secretariat and also the proposed amendment to Rule 20.7(b).

193. The Delegation of France stated that it had no substantive problem with the proposals by the International Bureau but suggested a modification to the French text of the proposed amendments to Rule 20.7(b). The Delegation proposed that the first part of Rule 20.7(b) be changed to read as follows: "Lorsque aucune correction selon l'article 11.2) ni aucune communication selon la règle 20.6.a) confirmant l'incorporation par renvoi d'un élément mentionné à l'article 11.1)iii)d) ou e) est reçue par l'office récepteur avant l'expiration du délai applicable en vertu de l'alinéa a), ...".

194. The Delegation of China stated that it supported the proposed amendments, noting that they would bring benefits to applicants and would help to make the PCT system more efficient. In the interest of applicants, the International Bureau should notify applicants of the status and availability of priority documents from a digital library, and clearly inform them of the legal consequence of a failure to obtain the priority documents within the applicable time limit. The Delegation proposed that the International Bureau should consider improving the technical measures and making the necessary recommendations to

ensure the smooth implementation of amended PCT Regulations. In that regard, the Delegation stated that it was willing to work together with the International Bureau and other Member States to make efforts to having a more efficient PCT system.

195. The Delegation of India stated that it had some difficulty in understanding Rule 20.7(b) as proposed to be amended and requested further explanations. It expressed the view that, in general, the language of the PCT Regulations was extremely complicated.
196. In response to the statement made by the Delegation of India, the Secretariat stated it agreed with the views expressed by that Delegation as to the complexity of the PCT Regulations, exemplified by the Rules dealing with the incorporation by reference of missing elements or parts of the international application. However, while there had been calls and efforts in the past to simplify the Regulations and to make them more readable and user friendly, it had to be recognized that much of the complexity was due to the fact that many of the Rules were the result of compromises achieved by Member States within the Working Group or its predecessor bodies, based on what was deemed appropriate and acceptable to all PCT Member States at the time, in light of national laws and practices. This notwithstanding, the objective of further simplifying the Regulations remained an important aim for the future.
197. The Delegation of Israel stated that it fully supported the proposed amendments of Rule 17.1 and especially Rule 20.7(b).
198. The Working Group approved the proposed amendments to the Regulations set out in the Annex to document PCT/WG/4/10 Rev. with a view to their submission to the Assembly for consideration at its next session in September-October 2011, taking into account the suggestions by the Delegation of France concerning the French version of Rule 20.7(b) (see paragraph 193, above) and provided that Rule 17.1(b-*bis*) should be further amended to read as follows:

“Where the priority document is, in accordance with the Administrative Instructions, made available to the International Bureau from a digital library prior to the date of international publication of the international application, the applicant may, instead of submitting the priority document, request the International Bureau prior to the date of international publication to obtain the priority document from such digital library.”

Excuse of Delay in Meeting Certain Time Limits due to *Force Majeure*

199. Discussions were based on document PCT/WG/4/12.
200. The Delegation of Japan stated that it wished to say a few words about the disaster in Japan on March 11, 2011. On behalf of the Japanese people, the Delegation expressed its sincere thanks for the warm support received by various colleagues and its appreciation for all the prompt and kind support in various fields, including intellectual property, shown by many countries and regions following the devastating earthquake and the subsequent tsunami disaster. Japanese government officials, local authorities and the private sector were making every effort to tackle the damage, with the support from friends all around the world. The Delegation expressed the view that the kind support and warm messages received would encourage the Japanese people and industries and would be a great source of support and help for Japan to overcome the challenges ahead.
201. The Delegation of Japan further stated that its commitment to the PCT Working Group would never be changed and that Japan continued to make every effort to further support the discussions in this important PCT body. Turning to document PCT/WG/4/12, the Delegation stated that it welcomed the proposal, noting that the PCT would be able to

provide proper safeguards to PCT users who find themselves in such difficult circumstances as Japanese users did following the earthquake and the tsunami in Japan. The Japan Patent Office would try to do what was permissible under the PCT to safeguard the rights of applicants, based on thorough consideration of the situation following the disaster.

202. The Delegation of Australia supported the statement made by the Delegation of Japan. It welcomed the proposal for the addition of a new Rule, noting that the present Rules were not sufficiently flexible to deal with major natural disasters. Australian patent law provided a broad mechanism in such instances where an applicant failed to meet a particular time limit due to circumstances beyond the control of the person concerned. Under its national law, it was possible to grant relief, whether or not the time limit had expired, and there was no statutory limitation for the time extension that might be granted. However, there was an expectation that a person affected would seek relief at the earliest possible opportunity, and there were certain administrative requirements to be met, including the provision of evidence and, if required, the payment of a fee.
203. The Delegation of Canada stated that it fully supported the inclusion of the new provision in the PCT and that it agreed with the suggestion that the new provision should only apply to time limits that were fixed in the PCT Regulations. The Delegation of Canada further stated that it was one of the Delegations which, prior to the meeting, had informally suggested introducing an upper time limit to Rule 82*quater*, such as a limit of 6 months from the expiration of the time limit applicable in the given case. It expressed the view that such an upper time limit was necessary, as some of the time limits that could be affected by the new Rule could cause unfairness to third parties if they were not resolved in a timely manner. For example, Rule 26*bis*.1, which allowed for the correction or addition of priority claims, could have a substantive effect on the international application. The Delegation therefore suggested adding the following sentence to proposed new Rule 82*quater*: “Any such evidence shall in no case be submitted later than 6 months after the expiration of the time limit applicable in the given case”.
204. The Delegation of Sweden stated that it welcomed the introduction of a possibility for receiving Offices, International Searching Authorities and International Preliminary Examining Authorities to excuse the delay in meeting certain time limits in the international phase where such a delay was caused by *force majeure* or similar reasons. The Delegation had, however, some concerns with regard to the proposed wording of paragraph (b), notably the use of the words “national Offices or intergovernmental organizations” instead of “receiving Offices, International Searching Authorities or International Preliminary Examining Authorities”, although it was aware of the use of those words elsewhere in the Regulations, such as present Rule 82.2. It also questioned the use of the words “any interested party” in paragraph (a) and wondered who other than the applicant was meant to be covered by those words.
205. The Delegation of the United States of America stated that it had sympathy for the reasons behind the proposal and in general supported it. It nevertheless had a number of questions, noting that the proposal could be interpreted as being somewhat broad. It wondered, for example, whether the new Rule could be interpreted so that circumstances such as a broken water pipe which ruined the computer of the applicant would constitute a situation warranting relief under the new Rule, or whether a very localized and brief strike would fall under the Rule. The Delegation expressed the view that it might be appropriate for the International Bureau to create some guidance on how to apply this Rule, such as, for example, that the event must be such that multiple parties were affected and was out of the control of the applicant and alternative means to meet the time limit were not available. As to the issue of the time limit, the Delegation stated that it had been concerned with the

previous version and that it had felt that it would be appropriate to introduce an outside time limit, such as the six months limit mentioned by the Delegation of Canada or possibly even the 30 months time limit for entering into the national phase. The Delegation stated further that it, too, had found the use of the phrase “any interested party” in the new Rule somewhat confusing, although it had noted that this phrase had been carried over from the language used in the present Rule 82.2. It would appear to the Delegation that the only appropriate party that should be permitted to submit such evidence should be the applicant and the applicant’s representative, whereas “any interested party” might imply that any person who had a security interest in the invention or some other party might have the right to do so.

206. The Delegation of Israel stated that, in response to the recent disaster in Japan, the Israel Patent Office, like other Offices, had decided to put in place special measures to assist the applicant community in Japan in dealing with the Israel Patent Office, within the scope of available legal options and limitations. As to the proposal set out in document PCT/WG/4/12, the Delegation in general welcomed the proposed addition of a new Rule containing a general provision which would offer protection to applicants by excusing delays in meeting time limits when the delay resulted from *force majeure* circumstances.
207. The Delegation of El Salvador stated that it wished to thank the International Bureau for the presentation of this proposal and that it would like to add its voice to those of other Delegations who supported the proposal, especially in light of the recent events in Japan, which justified this type of amendment to the Regulations. A number of Member States had similar provisions in their respective national laws providing for the extension of time limits in the event of *force majeure* but there was no such provision in the PCT. The Delegation therefore supported the proposal.
208. The Delegation of India stated that it wished to offer its condolences to the Delegation of Japan. At present, the Indian national legislation did not contain any *force majeure* provision. As had been expressed by other Delegations, it too had difficulties in understanding the use of the phrase “any interested party” in the proposed new Rule.
209. The Delegation of China stated that, in its view, the proposed amendment had fully considered the impact of natural disasters on patent applicants and would make the PCT system more user-friendly; the Delegation thus supported the proposed new Rule. However, the proposed new Rule did not provide for a specific time limit within which a request for an excuse had to be made. In that regard, the Delegation was of the view that, while it appreciated the applicant’s interest in an excuse where time limits had been missed, the consequential uncertainty as to further processing of the application by Offices might damage this interest. The Delegation thus suggested that an outside time limit should be set within which such a request had to be made. Furthermore, it suggested clarifying further whether the new Rule would apply to the time limit for requesting the restoration of the right of priority.
210. The Representative of the European Patent Office stated that the European Patent Office supported the introduction of a new Rule to deal with *force majeure* situations and was supportive of the time limit for entry into the national/regional phase not being covered by the new Rule. The Representative also noted that certain national Offices had the flexibility to waive the furnishing of evidence in accordance with the applicable national laws and practices. Following the recent events in Japan, the European Patent Office had made use of such flexibility under the European Patent Convention. Further, the Representative suggested that national Offices should inform the International Bureau every time they waived the furnishing of evidence so as to enable it to inform PCT users accordingly, for example, in the PCT Newsletter.

211. The Delegation of Switzerland thanked the International Bureau for preparing the document and supported the proposal. With regard to the proposed outside six months time limit, it wondered whether that six months time limit would start from the end of the catastrophic event or from the expiration of the time limit concerned.
212. In response to the question raised by the Delegation of Switzerland, the Secretariat explained that it was its understanding that the proposal by the Delegation of Canada was that the six months time limit should apply as of the expiration of the applicable time which had been missed, not as of the end of the catastrophic event.
213. The Representative of the Japan Intellectual Property Association (JIPA) stated that JIPA appreciated the efforts of the International Bureau and Member States in support of applicants, following the devastating events in Japan. As such disasters might happen elsewhere, there was a good argument for adding the proposed new Rule to the PCT Regulations, and JIPA welcomed the proposal. It nevertheless hoped that applicants were never required to rely on the new Rule.
214. Following informal discussions, the Secretariat stated that it wished to propose to further amend proposed new Rule 82*quater*.1 by adding, at the end of paragraph (a), the sentence “Any such evidence shall be submitted not later than six months after the expiration of the time limit applicable in the given case”, along the lines of what had been proposed by the Delegation of Canada and supported by several other delegations.
215. The Representative of the European Patent Office stated that the European Patent Office had some concerns with regard to the proposed new wording insofar as actions could be taken by PCT Offices and Authorities with respect to excusing delays in meeting PCT time limits after the end of the international phase when national phase entries before various designated Offices had already taken place. At this point, the European Patent Office was not in a position to support such a proposal. In its view, after the end of the international phase, the delay in meeting certain time limits should be excused under the respective national laws of the designated Offices concerned. The Representative suggested replacing the proposed additional sentence at the end of paragraph (a) by the words “Any such evidence shall not be submitted later than 30 months from the priority date”, based on similar wording used in present Rule 92*bis*.1(b).
216. The Delegation of Switzerland stated that it, too, was concerned about the impact of the excuse of meeting time limits on national phase procedures and thus supported the statement made by the Representative of the European Patent Office.
217. The Delegation of Sweden stated that it, too, supported the text as proposed by the Representative of the European Patent Office. Furthermore, it continued to have a concern with regard to the use of the term “national Office or intergovernmental organization”.
218. The Delegation of the United States of America stated that it had no problem with the language as proposed by the International Bureau concerning the six months time limit, but it was willing to accept a limit of 30 months from the priority date if this was the consensus of the Working Group.
219. The Representative of the African Regional Intellectual Property Organization (ARIPO) stated that, although he was not a lawyer and English was his third language, he wondered whether it was acceptable to use the words “has *his* place of business” in proposed new Rule 82*quater*.1(b), or whether it would not be more appropriate to use a gender neutral wording, as was the case in all of ARIPO’s legal texts.

220. In response to the query by the Delegation of Sweden, the Secretariat explained that the term “national Office or intergovernmental Organization” was a standard term used throughout the Regulations to describe the national Office or intergovernmental organization acting in a PCT capacity (as a receiving Office or International Authority).
221. In response to the suggestion made by the Representative of the European Patent Office to introduce a “cut-off” date at 30 months from the priority date, the Secretariat stated that such a proposal had been considered internally and had found some sympathy. However, the Secretariat had some concerns that such a cut-off date would also affect designated or elected Offices before which the applicant, at the time of the decision to grant the excuse of the delay in missing a time limit, had not yet entered the national phase. The Secretariat thus wished to propose to leave paragraph (a) unchanged (including the additional sentence as had been proposed by the Delegation of Canada) and to add in paragraph (b), at the end, the phrase “, provided that any such excuse shall have no effect in any designated or elected Office where the processing or examination of the international application has already started”. That additional phrase would cover the case of both “early” and “regular” national phase entry, and it would also have the benefit that the general upper six month time limit would still apply in respect of time limits which expired very early during the international phase procedure.
222. The Delegation of Brazil stated that it still had difficulties understanding the objective of the new Rule. As the Delegation had understood, the objective of the provision was that the applicant, for instance, in the case of a national emergency or a national calamity, could have any time limit fixed in the Regulations extended. So, it might happen that, on the last day before the expiration of 30 months from the priority date, a natural emergency occurred and that the applicant missed a particular time limit. In the understanding of the Delegation of Brazil it was obvious that, if the delay in meeting that time limit was excused, that excuse would have an impact the 30 months of the international phase.
223. In response to the statement by the Delegation of Brazil, the Chair stated that he would like to try to address the issue from a different perspective. In exactly the situation that the Delegation had raised, there was certainly a good justification for allowing the extension of a time limit for an action usually to be taken during the international phase; in the case referred to by the Delegation, the time would be extended and the moral issue was addressed. However, in that case, there was also the practical concern with regard to what should happen in an Office where the national phase procedure had already begun. To address that practical concern, the idea was that any extension of international phase time limits should not affect the processing or decision-making in any national Office during the national phase. One way of addressing that concern was suggested by the Representative of the European Patent Office and supported by several other delegations, namely, to change the six month upper time limit measured from the expiration of the time limit which had been missed to 30 months from the priority date, that is, ending at the time when the international phase would normally end. The Secretariat’s suggestion was another way of addressing the same issue which would allow some more flexibility for applicants who find themselves in this difficult situation, but would still meet the concern that was expressed originally by the Representative of the European Patent Office. The additional “proviso” suggested by the Secretariat would have the effect that any extension of a time limit would not apply to any Office where the national phase processing had already started.
224. The Delegation of El Salvador stated that it considered the addition of proposed new Rule 82*quater* appropriate, noting that it would establish a general rule which would allow Offices to reflect the circumstances of each individual application in the case of *force*

majeure. Consequently, the Delegation supported the proposal, which was compatible with its national laws.

225. The Delegation of Australia stated that it had a question about the effect of the change to paragraph (b) as proposed by the Secretariat. Taking the example used by the Delegation of Brazil, a natural disaster occurred at 29 months and 28 days after the priority date and a time limit which had been missed because of the disaster had been extended within the six month period but after the expiration of 30 months from the priority date. At the time the decision to excuse the delay in meeting the time limit had been taken, national phase entry had already occurred in a particular country, say, at 29 month and 29 days. The Delegation asked whether it was correct to assume that the excuse would not have any effect in that country because it was not granted before the applicant had entered the national phase in that country.
226. In response to the query by the Delegation of Australia, the Secretariat further explained on the basis of another example: a national disaster occurred one day before the end of the 30 months period and the applicant, because of the disaster, failed to meet a particular time limit for an action. In such a case, the applicant had at the most six months to request that the missing of the time limit be excused and to perform the required action. Where the applicant did so at, say, 32 months from the priority date but, by the time the missing of the time limit was excused, the application had already entered the national phase before a particular national Office, that excuse had no effect and did not need to be taken into account by that Office. On the other hand, any Office before which national phase entry had not yet taken place had to take the excuse into account. So, depending on whether or not national phase entry had taken place, the excuse might have different effects in different Offices.
227. The Delegation of South Africa stated that it wondered what the relationship was between the proposed new Rule and Rule 49.6, which gave the applicant an additional time limit for national phase entry (2 months from the removal of the cause of failure to meet the applicable time limit under Article 22 or 12 months from the date of the expiration of the applicable time limit, whichever period expired first), noting that proposed new Rule would also apply to the time limit under Rule 49.6, as that was a time limit which was "fixed in the Regulations".
228. In response to the query by the Delegation of South Africa, the Secretariat stated that, since the time limits for national phase entry were time limits which were fixed in the Treaty and not in the Regulations, new Rule 82*quater* would not apply.
229. The Representative of the European Patent Office stated that the European Patent Office could accept the proposal by the Secretariat to further amend paragraph (b).
230. The Delegation of the United States Patent and Trademark Office stated that it would like to echo the statement made by the Representative of the European Patent Office.
231. The Delegation of Switzerland stated that it, too, could accept the proposal.
232. The Delegation of Canada stated that it also agreed with the proposal by the Secretariat.
233. The Delegation of Algeria stated that it would like to request the Secretariat to provide the proposed further amendment to paragraph (b) of Rule 82*quater* also in French.
234. The Representative of the German Association for Industrial Property and Copyright (GRUR) stated that German Association for the Protection of Intellectual Property and Copyright had a membership of about 5200 individuals, professionals and experts with all

kinds of responsibilities in the field of intellectual property, including cooperate members. Concerning the agenda item under consideration, the Representative offered a few remarks for the further processing of the proposal for new Rule 82^{quater}. First, the catastrophic earthquake and tsunami and its aftermath which had occurred in March 2011 had triggered feelings of compassion in Germany with the persons and families hit by the disaster. In Germany, everybody seemed ready to lend a helping hand to help to overcome the terrible repercussions of the events. Japan was constantly present in the German media.

235. Turning to the agenda item, the Representative of the German Association for Industrial Property and Copyright stated that he welcomed the ideas and policy reflections which had led to the draft of new Rule 82^{quater}. However, the debate had shown that the draft was not yet fully ripe for adoption by the PCT Assembly at its next meeting in September of this year despite the consensus which appeared to have been achieved in the Working Group. The frequency of regional and global disasters during the last ten years, notably the idea of a catastrophic climate change, would make it indispensable to reconsider the legal framework dealing with social and natural catastrophes and the impact on the behavior and rights of applicants in PCT proceedings. In that regard, it would appear indeed advisable to take a very broad approach, as proposed by the Secretariat.
236. Looking more closely at the proposal, however, the Representative expressed doubts as to whether it was really the right time to completely give up the specific approach as contained in the text of present Rule 82.2 on irregularities in the mail service caused by disastrous events which had become so frequent in our times. The text of present Rule 82.2 had in fact stood the test of time, noting that it was the formulation which had been adopted by the Diplomatic Conference in Washington 1970, and had served its purpose well until now. So, the German Association for Industrial Property and Copyright wondered whether it was really prudent to delete the text of Rule 82.2 in the hope that the cases covered by that text were also covered by the more general approach underlying the proposed new Rule 82^{quater}. A possible conflict between the two provisions could certainly be resolved by applying the principle of *lex specialis derogat legi generali* (a specific provision has precedence over general ones).
237. Another issue raised by the Representative was the problem of solving the transition from the old Rule to the new one. The new Rule amounted, in effect, to an extension of time limits and the question had to be resolved whether the new Rule should apply retroactively, that is, whether it should be applicable to pending cases and to time limits which had already expired on the date of the entry into force of the new Rule or whether it was applicable only to time limits which had not yet expired at the relevant date of entry into force and should thus only apply to future cases. In the interest of legal certainty, it would appear to be necessary to consider this issue and to spell it out clearly in some detail in order to avoid confusion and misunderstandings. With regard to the concerns expressed as to the six month upper time limit, the Representative wondered whether it made much sense to combine a Rule which was based on the principle of equity, where all the individual circumstances applicable in a given case had to be taken into account, with a sharp time limit which certainly caused new problems of *restitutio in integrum*. This question had been referred to in some interventions but not finally resolved, making life of the parties concerned even more difficult.
238. In conclusion, the Representative stated that the German Association for Industrial Property and Copyright was in favor of maintaining present Rule 82.2 combined with the new Rule as proposed to be further amended by the Secretariat, supplemented by appropriate transitional arrangements.

239. The Delegation of India stated that, as it had explained previously, India national legislation did not provide for a *force majeure* provision. It still had some concerns and questions as to whether and if so, how, the proposed new Rule would apply to national Offices once national phase processing had started. Furthermore, it suggested that the International Bureau should attach a note to the new Rule to state clearly which time limits should not be affected by that new Rule. In particular, it sought clarification as to whether any of the following time limits were affected by the new Rule: the 12 months priority period; the time limit for entry into the national phase; and any of the national time limits applicable during national phase procedures.
240. In response to the concerns and queries raised by the Delegation of India, the Chair stated that he wanted to emphasize that the proposed new Rule affected only time limits within the international phase, the limits that are set according to the Regulations and that, as participants in that international system, national Offices, if that new Rule was adopted, had to recognize the effect of the compliance with this new Rule, just as in the case of other Rules, but that it would not have any effect at all on national rules in the national phase. That was, in his understanding, the general intention of the new Rule. The Chair further requested the Secretariat to respond to the questions about the specific Rules that the Delegation of India had identified.
241. The Secretariat further explained that a clear distinction had to be made between, on the one hand, an Office acting in any of its PCT capacities as a receiving Office or an International Authority during the international phase and, on the other hand, an Office acting as a designated or elected Office during the national phase. The intention of the new Rule was that it should apply to Offices acting in a PCT capacity during the international phase but not to Offices acting as designated or elected Offices during national phase procedures. With regard to the specific time limits identified by the Delegation of India, the Secretariat stated that the new Rule would not apply to the priority period, since the priority period was not a time limit “fixed in the Regulations” but set by the Paris Convention. It would further not apply to the time limits for national phase entry, since those time limits were either set in the PCT Treaty or in national legislation. As regards its impact on procedures before a designated or elected Office, the new Rule would indeed impact on those procedures, as could be seen from the following example: an applicant had missed the time limit for the rectification of an obvious mistake; the missing of that time limit is excused under new Rule 82*quater* at, say, 31 months from the priority date, and the obvious mistake is rectified accordingly; that rectification had to be taken into account by any designated or elected Office before which the applicant had not yet entered the national phase at the time when the decision to excuse the missing of the time limit had been taken. The new Rule would not, however, affect any time limit set by the designated or elected Office during national phase processing.
242. The Delegation of India thanked the Secretariat for its explanations. Despite those explanations, it still had a concern with regard to the proposed wording “provided that such excuse shall have no effect in any designated or elected Office where the processing or examination of the international application has already started”, noting that it was not clear what would happen to an application in respect of which such processing or examination had not yet started but the time for entering the national phase had already expired.
243. The Chair stated that he wished to again point out that the phrase “shall be excused” was the same mandatory language that appears in virtual all other Regulations dealing with compliance within the Regulations in the international phase. To that extent, national Offices were required to recognize decisions taken during the international phase. The question was in what circumstance was there an exception to that general rule. And that exception was the case that the excuse that had been granted, because of a natural

disaster, would not apply to any national Office which had already begun its work after the applicant had entered the national phase before that Office, unless that Office itself decided, based upon applicable national laws or practices, to grant an excuse under the circumstances. But there was nothing the national Office should be worried about in terms of changing time limits once national processing had begun.

244. The Secretariat further explained that the basic idea was that an Office before which the applicant had entered the national phase should no longer be bound by any decision taken under the new Rule by another Office or Authority during the international phase. If the confusion was a result of language used in the proposed new Rule “where the processing or examination of the international application has already started”, that language could be replaced with words along the lines of “where the applicant has performed the acts referred to in Article 22 or 39”, which was used elsewhere in the Regulations to describe the act of national phase entry by the applicant and thus may take out a bit of the ambiguity as to what was meant by the phrase “where the processing or examination has already started”.
245. The Chair stated that he wished to point out that the processes that the delegations were engaged in was the preparation of a recommendation to the PCT Assembly as to how to address the issue of a delay in meeting a time limit where such delay was due to *force majeure*. There was the opportunity between now, if the Working Group agreed to recommend to the PCT Assembly to adopt the new Rule, and the time when the PCT Assembly actually met, in September/October of this year, to revisit the precise wording of that new Rule and to confer and negotiate the language before any decision is taken. Therefore, as a practical way forward, the Chair suggested that the concerns raised by the Delegation of India and others, and further issues which may be raised in the follow up to the meeting, should be collected and taken into consideration in any further revised draft to be prepared by the Secretariat in advance of the Assembly meeting for its adoption by the Assembly in September/October 2011.
246. The Delegation of India thanked the Chair for the explanations and his patience. It further stated that it did not want to block any consensus that may exist on this issue and that it intended to submit its comments on this particular issue in writing to the Secretariat, if it considered it necessary.
247. The Working Group approved the proposed amendments to the Regulations set out in the Annex to document PCT/WG/4/12, provided that Rule 82^{quater} should be further amended to read as follows:

“82^{quater}.1 Excuse of Delay in Meeting Time Limits

“(a) Any interested party may offer evidence that a time limit fixed in the Regulations was not met due to war, revolution, civil disorder, strike, natural calamity or other like reason in the locality where the interested party resides, has his place of business or is staying, and that the relevant action was taken as soon as reasonably possible. Any such evidence shall be submitted not later than six months after the expiration of the time limit applicable in the given case.

“(b) If such circumstances are proven to the satisfaction of the national Office or intergovernmental organization which is the addressee, delay in meeting the time limit shall be excused, provided that any such excuse shall have no effect in any designated or elected Office where the processing or examination of the international application has already started.”

SUPPLEMENTARY INTERNATIONAL SEARCHES

248. Discussions were based on document PCT/WG/4/11.
249. The Representative of the European Patent Office stated that the European Patent Office wished to thank the International Bureau for its excellent report on the implementation of the supplementary international search system. In view of the small number of requests for supplementary international search received so far at the European Patent Office, it was not possible to draw any particular conclusions as to the reasons for the low uptake of the system. But the European Patent Office would certainly encourage users to provide feedback with a view to identifying how to make the system more attractive.
250. The Delegation of the Russian Federation stated that its Office, too, had considered how to make the supplementary international search system more attractive for users. One possibility might be to take a path similar to the PCT (UK) Fast Track service and to offer accelerated examination. No final decision had been taken yet but this possibility should be further discussed in the context of future discussions on the further development of the supplementary international search system. With regard to the statistics on supplementary international searches carried out by the Federal Service for Intellectual Property, Patents and Trademarks (Rospatent), so far the Office had received 57 requests for supplementary searches, 36 of which had been completed, 11 were still processed and for the remainder no main international search report had been received yet. Most of the main searches in respect of international applications for which supplementary search had been requested had been carried out by the European Patent Office (38 applications), followed by the United States Patent and Trademark Office (9 applications) and the Swedish Patent and Registration Office (6 applications). The subject matter concerned was mainly chemistry, organic chemistry and pharmaceuticals, and a number of applications related to inventions concerning milking machines.
251. The Representative of the Nordic Patent Institute stated that the Nordic Patent Institute wished to thank the International Bureau for providing the excellent document. The Representative further stated that the Nordic Patent Institute, being one of the International Authorities which offered supplementary international searches, supported the statement made by the Representative of the European Patent Office and noted that it would indeed be very useful to have feedback from users on how the system could be made more attractive.
252. The Delegation of China stated that it wished to thank the International Authorities which provided the service of supplementary international search. Timely review and assessment of the supplementary international search system was necessary. The PCT system should be improved step by step, taking into account the needs of all stakeholders.
253. The Delegation of Japan stated that it would like to thank the International Bureau for the preparation of the comprehensive information concerning the supplementary international search system. At this point, the Japan Patent Office had no intention to offer supplementary international searches, as had been stated on several previous occasions. The Delegation further stated that it wished to repeat its position that there was a need to focus on the goal of improving the search of the main International Searching Authority.
254. The Representative of the Federation of Industrial Property Attorneys (FICPI) stated that it had noted that, at the most recent Meeting of International Authorities, several delegations had expressed their disappointment with the low uptake of the supplementary international search system and that one delegation had expressed the view that one reason for that low uptake might be that the system was not consistent with the philosophy of the PCT

system, where the focus should be on the main international search. In the view of FICPI, however, the main reason was different: the expectation of users was that the supplementary international search should focus on other aspects than the main search, should be truly supplementary and thus involve less work and be much less expensive than the main search, as had been expressed in several resolutions published by FICPI in the past. FICPI advocated for a sequential additional search, taking into account the search strategy and results from the main search. The supplementary international searches offered today were basically independent full searches at full prices which inevitably involved a duplicate effort. Furthermore, the searches and examinations performed by some designated or elected Offices were also starting from “scratch” and were as comprehensive and expensive as in the pre-PCT times when each examining Office made a full independent search in respect of each international application which entered the national phase. In the opinion of FICPI, the aim for each designated or elected Office had to be built on the search and examination results obtained from other Offices. For this to happen, the search results had to be more detailed than the case today. The supplementary international search system could be made more attractive if the costs were considerably lower, which could be achieved if the search would build on the main search already carried out and be limited as in the case of a search made in respect of an international application which had entered the national phase. It would also help if other major Offices, such as the Japan Patent Office, the State Intellectual Property Office of the People’s Republic of China and the United States Patent and Trademark Office, would also participate in the system, as all of these Offices normally provided further relevant prior art.

255. The Representative of the Japan Patent Attorneys Association (JPAA) stated that it supported the statement made by the Delegation of Japan.

256. The Working Group noted the contents of document PCT/WG/4/11.

PCT ONLINE SERVICES (“E-PCT”)

257. Discussions were based on document PCT/WG/4/13, supplemented by a “live” online presentation by the Secretariat of the e-PCT private file inspection system which was currently piloted by the International Bureau with a small group of users.

258. The Delegation of Japan thanked the International Bureau for the preparation of document PCT/WG/4/13 and the in-depth presentation. The Delegation considered that it was vital to ensure transparency and accountability for a major project such as the e-PCT project. While the various screenshots shown in both the document and during the presentation had been informative, the Delegation had not been able to have a complete picture of the e-PCT system. It therefore requested the International Bureau to explain in detail not only the features and functions of the e-PCT system as described in the working document but also the whole picture of e-PCT and the processes of how e-PCT would be developed and implemented, especially in terms of the expected cost and the planned schedule.

259. With regard to the idea of a “centralized, interactive PCT electronic dossier” as referred to in the long-term vision for e-PCT (paragraphs 20 to 23 of document PCT/WG/4/13), the Delegation of Japan further stated that this would require Member States to re-design their IT systems as well as their national laws and PCT procedures and thus had a powerful impact on the PCT system as a whole. The Delegation therefore requested the International Bureau to undergo appropriate processes to implement e-PCT so that Member States could be engaged in the discussion and prepare for the implementation of this very interesting new system.

260. The Delegation of the United States of America thanked the International Bureau for its work on this informative report as well as the development of the e-PCT system. The initial phases of the program were very similar to the United States Patent and Trademark Office's own Patent Application Information Retrieval (PAIR) system, which applicants had found useful in tracking the prosecution of their applications. While the Delegation had a number of questions concerning the implementation of the e-PCT system and a number of concerns regarding certain aspects of the envisaged system, it agreed that Member States should be looking to modernize the PCT processes and looked forward to working with the International Bureau on this project.
261. The Delegation of the United States of America further requested information as to what type of editing would be allowed, referring to the "editing functions" mentioned under the first bullet point in paragraph 18, discussing actions to be offered as the functionality of e-PCT system was expanded. Furthermore, the third bullet point in paragraph 18 indicated "web-based online filing" as one of the next steps, and the Delegation was curious as to how this might relate to the current PCT-SAFE electronic filing processes. With regard to the long term vision, the Delegation agreed that Member States should be looking to modernize the PCT process; in that regard, it had found the concept as set forth in the document under the heading "long-term vision" to be promising. However, the Delegation had some initial concerns. First, it had noted that the system envisaged, among other things, a central web-interface where applicants could submit their applications and select the desired receiving Office with no physical copy of the record copy being transmitted to the International Bureau. In that regard, the Delegation noted that the PCT specifically required that an international application had to be filed with a competent receiving Office and also required that the search copy and the record copy be transmitted to the International Searching Authority and the International Bureau, respectively. The Delegation added that it did not want to raise these points to block the modernization of the PCT processes, but rather to point out that any legal framework under which the future e-PCT system was established had to respect the specific legal requirements of the Treaty. Furthermore, the system also had to respect, to the extent possible, legal requirements of Contracting States. For example, under the national law of the United States of America, applications which were directed to certain subject matter had to undergo a security review before they could be transmitted abroad; in that regard, the Delegation was curious as to how this review could be ensured if an application was filed via a central web-interface without the applicant running the risk of violating national security laws.
262. The Delegation of the United States of America further stated that it had a number of comments regarding the technical framework under which the future e-PCT system was to be established. Any new system should be designed with ease of use for applicants as the primary goal so that applicants; otherwise, if applicants were not using the system, a tremendous amount of resources would be wasted. Furthermore, technology should be based on industry standards whenever possible, minimizing development costs; it had been the Delegation's experience in the past that, when developing a new system, Offices often invented their own solutions even when existing industry standard products were available for the same purpose. As a result, Offices had non-standard software that was more difficult and costly to maintain. Finally, past experience suggested that consideration should be given to decentralized solutions, permitting each Office to invest in its own systems, at its own pace and on its national terms but centered around common standards based on industry best practice. What should be avoided was building heavy centralized systems. Instead, Offices should agree on an architecture and standards systems which could be implemented by Offices as and when they were able to do so. A network of more or less interdependent but identical nodes communicating using a common protocol and standards would work better in long run. Nevertheless, the Delegation concluded by

stating that the long term vision for e-PCT appeared to be very promising and that it looked forward to future developments.

263. The Representative of the European Patent Office stated that the European Patent Office thanked the International Bureau for the excellent presentation on developments which were taking place in the International Bureau with regard to the e-PCT project and expressed the view that the implementation of a centralized, interactive PCT electronic “file” that could be shared and accessed by all stakeholders was an excellent idea. The e-PCT project had considerable potential for introducing efficiency gains, allowing users easy access to the system. The European Patent Office in particular recognized the merit of having a centralized communication platform as described in detail in paragraph 23 of document PCT/WG/4/13. The Representative also encouraged the International Bureau to conduct consultations on extension of e-PCT services as described in paragraph 21 as soon as possible with all international interested parties that wished to participate in the system or work within the framework of a network, and noted that in order to support the developments envisaged in this phase of the project, modification to the PCT legal framework, in particular to the Administrative Instructions, might be necessary.
264. The Delegation of Japan shared the view expressed by the Delegation of the United States of America with regard to the cost implications of the e-PCT project and requested the International Bureau to provide further information about long term cost implications with regard to the implementation of the e-PCT system in due course.
265. In response to the various comments made by delegations, the Secretariat stated that the overall project was in a very early stage of development, including the design of the basic architecture. Although there was a vision expressed in the document, it was intended to move forward only on the basis of detailed consultations with Member States and other interested parties, particularly users, to make sure that all stakeholders had been properly consulted with and that an approach and an architecture would be agreed upon, respecting not only the existing PCT legal framework but also national legal frameworks and other practical constraints. The project was not about changing the existing legal framework and existing structures but attempting within the existing frameworks and structures, to find ways to deliver PCT services which were easier to use for all stakeholders, users and national and regional Offices alike. The International Bureau saw this project as a collaborative effort and appreciated the level of interest that had been expressed in working with the International Bureau to make sure that the goals that had been described were achieved.
266. In response to the questions raised by the Delegation of the United States of America, the Secretariat stated that the “editing functions” referred to in document PCT/WG/4/13 were those related to bibliographic data of international applications. For example, where the applicant wanted to submit a request under Rule 92*bis* for the recording of changes, it could be envisaged that the applicant could enter modifications to certain bibliographic data directly into the new system. Such modifications would not automatically be added to the official record as these would require verification by the International Bureau. Another example would be the submission of a statement under Article 19, which applicants could input directly into the system.

267. With regard to the relationship between the envisaged web-based online filing system and the existing PCT-SAFE system, the Secretariat stated that early feedback received from participants in the e-PCT pilot project had suggested that users had strong interest in an e-filing system being part of e-PCT. To respond to that demand, the International Bureau was working on two streams, the first aimed at integrating PCT-SAFE filing into e-PCT and the second aimed at developing a web-based online filing system as part of e-PCT, both of which would exist in parallel.
268. The Representative of the African Regional Intellectual Property Organization (ARIPO) stated that the African Regional Intellectual Property Organization hoped that the system would help small Offices in carrying out examinations. In that context, he asked about implementation of the system in small Offices, both technically and economically.
269. In response to the query by the Representative of the African Regional Intellectual Property Organization, the Secretariat stated that the main requirement for an Office wishing to participate in the e-PCT system was a high speed internet connection to access the functions of the system required to process an international application, for example, in its capacity as a receiving Office.
270. The Working Group noted the contents of document PCT/WG/4/13.

CONTRIBUTION OF THE WORKING GROUP TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

271. The Delegation of India, speaking on behalf of the Development Agenda Group, thanked all delegations for their cooperation and flexibility in the inclusion of the proposed new agenda item "Contribution of the Working Group to the implementation of the respective Development Agenda Recommendations". For the Development Agenda Group, the inclusion of this agenda item was important since development is an integral part of the PCT, and the Members of the Working Group were required to report to the WIPO General Assembly as to how the Working Group was contributing to the implementation of the Development Agenda Recommendations. This agenda item would enable PCT Contracting Parties and other Members to express their views on this matter and allow the Working Group to report to the WIPO General Assembly.
272. The Delegation of India, speaking on behalf of the Development Agenda Group stated that the PCT was a holistic and well-considered Treaty that recognized and accorded due importance to the special needs and interests of developing countries and least developed countries in its provisions and in the functioning of the PCT system. The preamble of the PCT included, as one of its aims, the desire to "foster and accelerate the economic development of developing countries". Article 51 specifically mandated the establishment of a Committee for Technical Assistance to organize and supervise technical assistance for developing countries. The negotiating history and records of the Washington Diplomatic Conference on the PCT envisaged deep and meaningful assistance for the development of developing countries, such as strengthening their domestic innovation capacities and assisting them in ensuring the award of high quality patents through meaningful examination of the technical aspects of inventions.
273. The Delegation of India, speaking on behalf of the Development Agenda Group, further stated that it was understood that the International Bureau was providing some of the mandated technical assistance to developing countries through projects overseen by the Committee for Development and Intellectual Property (CDIP) and also through other avenues. As requested by the Delegation under agenda item 6(c), the International Bureau was requested to furnish details of all such technical assistance being provided

currently, and also a break down indicating the source of funding, whether they were being funded through the regular budget or through funds-in-trust, to the next session of the Working Group. As also stated under this agenda item, the Delegation believed that it was important to urgently reconvene the PCT Committee for Technical Assistance immediately preceding the sessions of the PCT Working Group, where all PCT-related technical assistance activities could be properly coordinated and overseen, while avoiding duplication and overlap with similar activities being undertaken in other WIPO bodies. The Delegation also looked forward to the submission of the review of the “PCT’s Aims of Disseminating Technical Information, Facilitating Access to Technology and Organizing Technical Assistance for Developing Countries” at the fifth session of the Working Group. It trusted that the review would address the important issue of sufficiency of disclosure, which was not included in the CDIP project and contained recommendations and suggestions on how to improve the realization of this aim.

274. The Delegation noted with satisfaction the decision of the second session of the PCT Working Group to integrate the Development Agenda recommendations in the discussions on improvements to the PCT system and hoped that the Development Agenda would continue to inform the discussions in this body on this important issue. Similarly, the Delegation welcomed the ongoing discussions on reviving the PCT Committee for Technical Assistance and also the review of the extent to which PCT has succeeded in its aim of disseminating technical information and facilitating access to technology for developing countries. It looked forward to continued constructive discussions on these important issues at the fifth session of the Working Group and hoped that these discussions would contribute to meaningful improvements to the PCT system, alongside other technical improvements.
275. The Delegation remained committed to engaging actively and constructively in the PCT Working Group and to work with other Members and the International Bureau in ensuring that the PCT system fulfilled its objectives and functions effectively, to the benefit of all Contracting States.
276. The Delegation of South Africa, speaking on behalf of the African Group, stressed the importance of the implementation on the monitoring, assessing, discussing and reporting mechanism, commonly referred to as the “coordination mechanism”. The WIPO General Assembly had approved this mechanism with the view that all relevant WIPO bodies should be part of the contribution towards the implementation of the Development Agenda recommendations. The African Group emphasized that over and above its purpose of enabling the reporting to the General Assembly on the mainstreaming of the Development Agenda recommendations, the coordination mechanism, if properly applied, facilitated the scrutinizing within the Organization of cross-cutting issues and activities in a manner that was complementary so as to avoid duplication, a concern that had been expressed by some Member States. The Delegation was pleased that the PCT Working Group would report to the General Assembly on its contribution to the implementation of the Development Agenda recommendations.
277. The Delegation of South Africa, speaking on behalf of the African Group, further stated that the discussion on the contribution of the PCT Working Group to the implementation of the Development Agenda recommendation was being held at an opportune time when the Membership was currently discussing the improvements to the functioning of the PCT system. This had provided the Membership with an opportunity also to assess the activities of the PCT as they related to development. Development activities were intrinsically part of the PCT, as articulated in its preamble and Article 51. In this context, the Delegation noted particularly paragraph 5 of the preamble, which read: “desiring to foster and accelerate the economic development of developing countries through the adoption of

measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology". With this paragraph in mind, the African Group was pleased that the third session of the Working Group took the decision to undertake a study that looked into the PCT implementation of the technical assistance activities referred to in paragraph 5 of the preamble. As the Delegation had mentioned in its opening statement, it had been rather disappointed that the study on these activities had not been ready for discussion in the present session of the Working Group. It expected, however, that the study, once presented, would provide the Membership with some insight on the implementation of the Development Agenda recommendations by the Working Group, mindful of the effect that the study was being undertaken as a CDIP project.

278. The African Group applauded the initiative by the Secretariat of making information digitally available through the PATENTSCOPE system, which was proving a useful tool for accessing information on patents, especially for developing countries. However, it believed that more could be done to ensure access to relevant information by PCT Contracting States, especially developing countries and least developed countries. With regard to the way forward, as the African Group had stated in its opening statement, the Secretariat should continue facilitating the access to information systems by developing countries, especially least developed countries, and also conduct training for regional and national Offices as well for small and medium-sized enterprises and universities. The training provided to national and regional Offices had to be targeted at examiners, as Africa had few search and substantive examiners. The Delegation thus wished to reiterate its call for the Secretariat to establish an examiner training program, to be set up in the medium to long-term, for the benefit of national and regional Offices in Africa. Understanding the limitation of the WIPO Secretariat explained after the Delegation's earlier intervention on the issue of establishing such a training program, the Delegation continued to be of the view that, if WIPO was to play a meaningful role in rendering technical assistance activities, it needed to move to diversify its workforce so as to enable it to carry out specialized technical assistance in the form of training of examiners in Offices. While the Delegation had no reservations against these training activities being carried out by large intellectual property Offices, WIPO should take a lead on those training activities.
279. In concluding, the Delegation of South Africa stated that the African Group was of the view that all technical assistance activities should be discussed, organized and supervised by the Committee for Technical Assistance, as envisaged by Article 51. It thus called for the revival of the Committee for Technical Assistance which had not met since it had been established in 1978. The revival of the Committee on Technical Assistance would augment the work of the PCT Working Group in implementing not only its goals but the Development Agenda recommendations. The Delegation was looking forward to constructive discussions on the way forward on this matter, which was of great importance to developing countries, in the fifth session of the Working Group.
280. The Delegation of Brazil stated that it supported the statement made by the Delegation of India on behalf of the Development Agenda Group. The Delegation noted with satisfaction that all members of the Working Group agreed that the PCT was relevant and important to the implementation of the Development Agenda recommendations. It was particularly pleased to be able to express its views on this specific agenda item, thus underlining the importance of the matter. The Development Agenda had been adopted by WIPO as a way to address the concerns of developing countries, since it had been perceived that the previous situation had not been adequate to simultaneously address the objectives of

WIPO and spread the benefits of the intellectual property system to all countries. Since its adoption, mainstreaming of the recommendations was the continuous effort by all Committees. Considering the importance of the PCT, the Delegation expected that the PCT Union would incorporate the Development Agenda recommendations in its work

281. The Delegation of Brazil further stated that the study presented by the Office of the Chief Economist on the surge in worldwide patent applications was in line with Development Agenda recommendation 35, which stated that economic studies on the impact of the use of the intellectual property system in developing states were to be undertaken by WIPO, and it was obvious that investigating the root causes of the surge in patent applications was useful when States considered ways to manage the surge well while maintaining a high quality of patents. Another example was document PCT/WG/4/6 (The PCT's Aims of Disseminating Technical Information, Facilitating Access to Technology and Organizing Technical Assistance to Developing Countries), which the Delegation hoped would support the partial implementation of Development Agenda recommendation 25 pertaining to the transfer of technology to the benefit of developing countries. Nevertheless, much work remained to achieve for full mainstreaming of the Development Agenda. One important matter related to technical assistance and capacity building was still missing in the PCT, namely, the revival of the Committee for Technical Assistance under Article 51; the Delegation wished to underline the urgent need of reviving that Committee in order to assist those States who intended to benefit from its activities.
282. The Delegation of Algeria associated itself with the statements made by South Africa on behalf of the African Group and India on behalf of the Development Agenda Group. It also thanked Group B for the constructive spirit and flexibility shown during the present session and hoped that the same agreement regarding the inclusion of the agenda item on the coordination mechanism concerning the development agenda recommendations could be reached for all pertinent WIPO bodies.
283. The Chair stated that, in anticipation of the general nature of the discussion on this agenda item, he had composed a short paragraph for the Summary by the Chair to describe the discussions of the Working Group on this agenda item, as follows: "A number of delegations made statements on the contribution of the PCT Working Group to the implementation of the respective Development Agenda recommendations. The Chair stated that all statements would be recorded in the report for the fourth session of the PCT Working Group and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda coordination mechanism". This summary had the same wording as that used following the discussions on the same subject at the sixteenth session of the Standing Committee on the Law of Patents (SCP).

OTHER MATTERS

284. The Representative of the European Patent Office stated that, in 2012, the provisions on the restoration of the right of priority would have been in force for five years. The European Patent Office therefore believed that it would be interesting at that point for an evaluation to be carried out by the International Bureau concerning potential statistics and practices of Offices that apply those provisions in their functions as a receiving Office during the international phase or as a designated Office on entry into the national or regional phase. This evaluation could also provide useful information to Offices acting as a designated Office applying the criterion for restoration of due care who are required, if necessary on the basis of rule 49ter.1(d), to re-examine decisions of the receiving Office. This would thus clarify if, and to what extent, the standards for applying the criterion of "due care" varied between receiving Offices having this requirement in order to facilitate the work of

designated Offices. Moreover, the information collected during the evaluation could also be useful to make any possible adjustments to these provisions deemed necessary, to exchange information and to inform Offices that have made “reservations” relating to these provisions who could then envisage lifting these reservations.

285. In response to this suggestion, the International Bureau agreed to assess the practice under the Rules dealing with the restoration of the right of priority and to report back to the fifth session of the Working Group in 2012.

FURTHER WORK

286. The Working Group agreed that the present draft report, taking into account comments received from delegations after the session, should be submitted to the Assembly for consideration at its next session, in September-October 2011, to inform the Assembly of the discussions and decisions that had been made at the present session.
287. The Working Group agreed to recommend to the Assembly that, subject to the availability of sufficient funds:
- (i) one session of the Working Group should be convened between the September 2011 and September 2012 sessions of the Assembly; and
 - (ii) the same financial assistance that had been made available to enable attendance of certain delegations at this session of the Working Group should be made available to enable attendance of certain delegations at that next session.
288. The International Bureau indicated that the fifth session of the Working Group was tentatively scheduled to be held in Geneva in May/June 2011.

SUMMARY BY THE CHAIR

289. The Working Group noted the contents of the Summary by the Chair in document PCT/WG/4/16.
290. The Working Group further noted that the official record of the session would be contained in the report of the session. The report would reflect all the interventions made during the meeting, and would be adopted by the Working Group by correspondence, after having been made available for comments on the electronic form of the Working Group as a draft in both English and French.

CLOSING OF THE SESSION

291. The Chair closed the session on June 9, 2011.

292. *The Working Group adopted this report by correspondence.*

[Annex follows]

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS ANNEX

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[End of Annex and of document]