

Patent Cooperation Treaty (PCT) Working Group

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

Study prepared by the International Bureau

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TERMINOLOGY

The following main WIPO bodies are referred to in this document:

PCT Interim Committee for Technical Assistance (PCT/TAS) (“the Interim Committee”): An Interim Committee established by the WIPO General Assembly, the Conference of Representatives and the Executive Committee of the Paris Union in 1970 to prepare the establishment of the PCT Committee for Technical Assistance referred to in PCT Article 51; the Interim Committee met seven times, from 1971 to 1977.

PCT Committee for Technical Assistance (PCT/CTA): The body required to be established under PCT Article 51 whose task shall be “to organize and supervise technical assistance for Contracting States who are developing countries in developing their patent systems individually or on a regional basis” (see PCT Article 51(1) and (3)(a)). The PCT/CTA was established by the PCT Assembly in 1978 but has never met.

WIPO Permanent Committee for the Acquisition by Developing Countries of Technology Related to Industrial Property (AT/PC): The WIPO body established in 1973 to oversee the running of the “WIPO Legal-Technical Program for Acquisition by Developing Countries of Technology related to Industrial Property” (the “Permanent Program”), whose objective was “to promote and facilitate, by all means within the competence of the World Intellectual Property Organization (WIPO), the acquisition by developing countries, under fair and reasonable terms and conditions, of technology related to industrial property”. The AT/PC was renamed the “WIPO Permanent Committee for Development Cooperation related to Industrial Property (PC/IP)”, following the enlargement of the objectives of the Permanent Program in 1976 (see below).

WIPO Permanent Committee for Development Cooperation related to Industrial Property (PC/IP): The name from 1976 of the WIPO Permanent Committee with responsibility for overseeing the Permanent Program of WIPO concerning activities in favor of developing countries related to patents and other industrial property rights. Predecessor of the WIPO Permanent Committee for Cooperation for Development Related to Intellectual Property (PCIPD) (see below). The AT/PC and the PC/IP met 17 times in total, from 1974 to 1996.

WIPO Permanent Committee for Cooperation for Development Related to Intellectual Property (PCIPD): Established in 1998 by merging the WIPO Permanent Committee for Development Cooperation related to Industrial Property (PC/IP) (see above) and the Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (PC/CR) into a single body to manage the new single WIPO Permanent Program for Cooperation for Development. The PCIPD met four times, from 1999 to 2005. It ceased to exist on the establishment of the WIPO Committee on Development and Intellectual Property (CDIP) (see below).

WIPO Committee on Development and Intellectual Property (CDIP): Established in 2007 to develop a work-program for implementation of the adopted Development Agenda Recommendations; to monitor, assess, discuss and report on the implementation of all recommendations adopted, and to coordinate for that purpose with relevant WIPO bodies; and to discuss intellectual property and development related issues as agreed by the Committee, as well as those decided by the General Assembly. The seventh session of the CDIP will take place in Geneva from May 2 to 6, 2011.

I. EXECUTIVE SUMMARY

1. The Working Group at its third session held in 2010 endorsed a series of recommendations to improve the functioning of the PCT system. The Working Group recommended, *inter alia*, that a study be conducted by the International Bureau to look into the issue of coordination of technical assistance for developing countries under PCT Article 51 (notably, the history of the PCT Committee for Technical Assistance (PCT/CTA) under Article 51(1) to (3)) and the issue of agreements with relevant international financing organizations and inter-governmental organizations for financing of technical assistance projects under Article 51(4)). The present document contains the requested study.

PCT Committee for Technical Assistance under PCT Article 51(1) to (3)

2. Following seven meetings of the PCT Interim Committee for Technical Assistance between 1971 and 1977, the PCT Committee for Technical Assistance (PCT/CTA) was established by the PCT Assembly in 1978. Membership of the PCT/CTA comprised all PCT Contracting States. Its Rules of Procedure, which have not been amended in this regard since they were adopted in 1978, state that the PCT/CTA's meetings shall be joint with those of the WIPO Permanent Committee for Development Cooperation related to Industrial Property (PC/IP), the WIPO body with responsibility at the time for overseeing the Permanent Program of WIPO concerning activities in favor of developing countries related to patents and other industrial property rights. On several occasions up to 1985, the PCT Assembly considered and reaffirmed the membership and mode of meeting (if required) of the PCT/CTA, together with its relationship to the PC/IP. At the time of its establishment, the PCT/CTA's tasks were defined as giving guidance to that Committee "on those aspects of technical assistance to developing countries that have a direct bearing on the use of the PCT by the countries concerned".
3. In 1998, the PC/IP was merged with the Permanent Committee for Copyright and Neighboring Rights, creating the WIPO Permanent Committee for Cooperation for Development Related to Intellectual Property (PCIPD). The PCIPD in turn was disbanded in 2007 when the WIPO Committee on Development and Intellectual Property (CDIP) was established. None of the documents establishing the PCIPD nor any of the documents establishing the CDIP contains any reference to the need to amend the Rules of Procedure of the PCT/CTA which continue, in its Rule 4, to expressly refer to the PC/IP as the body with which the meetings of the PCT/CTA shall be joint.
4. Neither the PC/IP nor the PCIPD nor the CDIP has ever 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 has never been a need to convene the PCT/CTA, which thus never met since it has been established in 1978.

Agreements with Relevant International Financing Organizations and Inter-Governmental Organizations for Financing of Technical Assistance Projects under PCT Article 51(4)

5. During the existence of the PCT Interim Committee for Technical Assistance between 1971 and 1977, the International Bureau obtained assistance under PCT Article 51(4) from the UNDP for the financing of technical assistance projects within the scope of PCT Article 51, resulting in the funding and supervision of various technical assistance projects by UNDP.

6. Following the establishment of the PCT/CTA in 1978 and the decision to re-orient its tasks to give “guidance only on aspects of technical assistance to developing countries which have a direct bearing on the use of the PCT by such countries”, technical assistance activities in developing patent systems of developing countries fell within the remit of the PC/IP. During those years, UNDP continued to be the main extra-budgetary source of funding for technical assistance in developing countries.
7. Funding from the UNDP declined in the early 1990s. The International Bureau therefore investigated extra-budgetary funding from other organizations mentioned in PCT Article 51(4). WIPO also responded to reduced external funding by increasing support for development work from its own resources.
8. In 1998, the PC/IP was replaced by the WIPO Permanent Committee for Cooperation for Development Related to Intellectual Property (PCIPD), which in turn was disbanded, in 2007 on the establishment of the WIPO Committee on Development and Intellectual Property (CDIP). Efforts by WIPO to mobilize extra budgetary resources continued in the context of both the PCIPD and the CDIP and are continuing today.
9. Technical assistance and capacity building is one of the six clusters of the Development Agenda. Work in the CDIP is ongoing to provide additional assistance to WIPO from extra budgetary sources in favor of developing countries. A “Conference on Mobilizing Resources for Development” took place in November 2009. Following completion of the project in November 2010, the performance targets set for the end of the 2010/11 biennium will be assessed in 2012, based on relevant information available in the Financial Management Report 2010/11 and Program Performance Report 2010/11. Various follow-up activities have been mainstreamed into WIPO’s Program and Budget 2010/2011.

II. INTRODUCTION

10. The Working Group at its third session, held in Geneva from June 14 to 18, 2010, endorsed a series of recommendations to improve the functioning of the PCT system, based on a study prepared by the International Bureau entitled “The Need for Improving the Functioning of the PCT System” (document PCT/WG/3/2) and related submissions from certain Member States (documents PCT/WG/3/5 and PCT/WG/3/13). The Working Group’s discussions are outlined in the report of the session (document PCT/WG/3/14 Rev., paragraphs 14 to 137). The recommendations endorsed by the Working Group cover a variety of actions which should be undertaken by the International Bureau, applicants, Contracting States and national Offices (acting in both their national and international capacities) to make the PCT system more effective both for processing patent applications and for supporting technology transfer and technical assistance for developing countries.
11. The discussions of the Working Group on actions which should be undertaken to make the PCT system more effective for supporting technology transfer and technical assistance for developing countries, as envisaged by PCT Article 51, are set out in paragraphs 113 to 130 and parts of paragraphs 131 to 137 of the report of the third session (document PCT/WG/3/14 Rev.), reproduced in the Annex to this document.
12. “Recommendation 204*bis*”, set out under paragraph 129 of the report, reads as follows:
“204*bis*. 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 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.

“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.

13. The present document contains the study requested by the Working Group in that recommendation.

III. COORDINATION OF TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES UNDER PCT ARTICLE 51

Establishment of the PCT Interim Committee for Technical Assistance (PCT/TAS) (1970)

14. Article 51 of the PCT requires the PCT Assembly to establish a Committee for Technical Assistance (hereinafter referred to as the “PCT/CTA”), whose task shall be “to organize and supervise technical assistance for Contracting States who are developing countries in developing their patent systems individually or on a regional basis” (see PCT Article 51(1) and (3)(a)). Article 51(3)(b) states the following examples with regard to the means of providing such technical assistance: “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.”
15. The “History of the Patent Cooperation Treaty” in the Records of the Washington Diplomatic Conference on the Patent Cooperation Treaty in 1970 (WIPO Publication No. 313(E))¹, provides further details of technical assistance under Article 51 (post-conference document PCT/PCD/2, paragraphs 65 and 66):

“Technical Assistance

- “65. The Treaty provides for the organization and supervision of technical assistance to developing countries in developing their patent systems individually or on a regional basis. For example, 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 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. The Treaty itself provides that technical assistance comprises the training of specialists, the loaning of experts, and the supply of equipment both for demonstration and for operational purposes.
 - “66. For the financing of such assistance, the International Bureau will seek to enter into agreements with international financing organizations, the United Nations and agencies thereof, particularly the United Nations Development Programme.”
16. In order to prepare the envisaged establishment of the PCT/CTA, the Washington Diplomatic Conference passed a resolution “Concerning Preparatory Measures for the Entry into Force of the PCT”, recommending the setting up of an “Interim Committee for Technical Assistance” (WIPO Publication No. 313(E), page 169), as follows:

¹ Available at <http://www.wipo.int/export/sites/www/pct/en/texts/pdf/washington.pdf>

“Considering the desirability of preparing the application of the Patent Cooperation Treaty, pending the entry into force of the Treaty,

“1. Invites the Assembly and the Executive Committee of the International (Paris) Union for the Protection of Industrial Property and the Director General of the World Intellectual Property Organization to adopt, direct and supervise the measures necessary for the preparation of the entry into force of the Treaty.

“2. Recommends that such measures include:

“(a) the setting up of an *Interim Committee for Technical Assistance*, which should prepare the establishment of the Committee for Technical Assistance referred to in Article 51 of the Treaty;

“(b) the setting up of an *Interim Committee for Technical Cooperation*, which should prepare the establishment of the Committee for Technical Cooperation referred to in Article 56 of the Treaty and advise the prospective International Searching and Preliminary Examining Authorities on the questions which will require solution when the Treaty enters into force;

“(c) the setting up of an *Interim Advisory Committee for Administrative Questions* which should study and recommend measures on the questions which will require solutions by the national Offices and the International Bureau when the Treaty enters into force.

“3. Expresses the desire that the organizations of inventors, industries, and the patent profession be associated, as in the preparation of the Treaty, in the preparatory work referred to in the present Resolution.”

17. This resolution was subsequently endorsed by the WIPO General Assembly, the Conference of Representatives and the Executive Committee of the Paris Union, at their sessions held in Geneva in September 1970 (see document AB/I/33, paragraph 99):

“99. The Resolution of the Washington Diplomatic Conference on the Patent Cooperation Treaty was unanimously endorsed, and the proposals for its implementation as set out in document AB/I/18 were unanimously adopted, by the Assembly, the Conference of Representatives and the Executive Committee of the Paris Union, and it was decided that all States which had signed or would sign the said Treaty would be members of each of the three Interim Committees in question.”

The First Session of the Interim Committee (1971)

18. The PCT Interim Committee for Technical Assistance (hereinafter referred to as the “Interim Committee” held its first session in Geneva in February 1971. Concerning its program, the Interim Committee arrived at the following conclusions (document PCT/TAS/I/6, paragraphs 33 to 37):

“Assistance in the Field of Legislation, Administration and Documentation

“33. The Interim Committee should advise and assist the International Bureau in its technical assistance activities carried out through financing from sources other than WIPO’s budget for the benefit of developing countries, particularly in the following fields:

“(i) advice on legislative and administrative measures to make the developing country’s patent system more effective and more responsive to the needs of its developing economy,

“(ii) assistance in adapting the developing country’s patent legislation to the Patent Cooperation Treaty,

- “(iii) assistance in establishing new centers (collections) of patent documentation, in completing the collections of documents in existing centers, and in administering such centers.”

“Periodical on Licensing Opportunities

- “34. The International Bureau should carry out a feasibility study as to the possible creation of a periodical technical publication to be issued by WIPO and to contain classified abstracts of certain inventions or of know-how offered for licensing and identify parties interested in offering or requesting licenses (the abstracts to be prepared by the offering party), and should report to the Interim Committee.

“Priorities

- “35. The Interim Committee agreed that the International Bureau should give first priority to the technical assistance projects as requested by the Government of Brazil and by ICDAS.

“Future Meetings

- “36. The Interim Committee agreed that its next meeting should be held at Geneva in 1972 preferably immediately after or before another WIPO meeting in which most countries were likely to be represented by the same person who would represent them in the Interim Committee so as to allow for economy in travel expenses.

“Executive Committee of the Paris Union

- “37. The Interim Committee noted that its suggested program would be reported to the Executive Committee of the Paris Union when it met in September 1971, that it was the Executive Committee which would establish the final program, and that the extent of the involvement of the International Bureau in the program would depend on the amount of the special PCT contributions of the member States of the Paris Union.”

19. This program was endorsed by the Executive Committee of the Paris Union when it met in September/October 1971 (see documents P/EC/II/5, Annex A, Part III and P/EC/II/21).

Establishment of the WIPO Permanent Committee for the Acquisition by Developing Countries of Technology Related to Industrial Property “(AT/PC)” (1973)

20. At the 1970 sessions of the WIPO General Assembly, the Conference of Representatives and Executive Committee of the Paris Union at which the Interim Committee had been established (see paragraph 17, above), those WIPO bodies also authorized the circulation of a questionnaire and the establishment of preparatory documentation for the convening of a committee of governmental experts or a working group to study in depth a proposal made by the Government of Sweden concerning developing countries and patent licensing (see document AB/I/21 and document AB/I/33, paragraph 78).
21. This resulted, three years later, in the adoption of a resolution establishing the “WIPO Legal-Technical Program for Acquisition by Developing Countries of Technology related to Industrial Property” (the “Permanent Program”) at the second session of the WIPO Conference, held in Geneva in November 1973 (see document WO/CF/II/2 and document WO/CF/II/4, paragraphs 13 to 25). The objective of this program was “to promote and facilitate, by all means within the competence of the World Intellectual Property Organization (WIPO), the acquisition by developing countries, under fair and reasonable terms and conditions, of technology related to industrial property” (see Article 1 of the Organizational Rules of the Program, document WO/CF/II/2, Annex). The Organizational Rules also established a “Permanent Committee for the Acquisition by Developing Countries of Technology Related to Industrial Property (AT/PC)” (hereinafter referred to as the “AT/PC”) to oversee the running of the program.

The Third Session of the Interim Committee (1973)

22. The third session of the Interim Committee, held in Tokyo in October 1973 just prior to the establishment of the AT/PC, considered a report concerning draft Regulations under Chapter IV of the PCT which contains Article 51 (document PCT/TAS/III/3). The conclusions in paragraphs 16 to 19 of this report are reproduced in the following paragraphs:
- “16. It would appear that the question of the legal form of the implementing provisions under Chapter IV would require further consideration.
- “17. A careful review of the relationship of the PCT Technical Assistance Program with the other WIPO technical assistance activities is needed in order to determine the scope of and framework for technical assistance activities under Chapter IV in a way avoiding any duplication of effort.
- “18. In this context, the proposed WIPO Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property deserves particular attention, since it covers to a certain extent the same problem area as Chapter IV, but in a more general framework of a program of the Conference of WIPO.
- “19. Since the said Program so far exists only in its draft form and a decision on its contents will only be taken at the November 1973 session of the Conference of WIPO, no definitive conclusions as to its relationship with the PCT Technical Assistance Program can be drawn at present. The study of the said relationship as a condition for determining the need for and possible contents of implementing provisions under Chapter IV will therefore have to await a final decision on the said Program by the Conference of WIPO.”
23. In approving these conclusions, the Interim Committee, at its third session, decided on future activities of the PCT technical assistance program (document PCT/TAS/III/8, paragraph 28):
- “28. The Interim Committee approved the conclusions referred to above, agreed that a further study on any detailed rules for the implementation of Chapter IV of the PCT, possibly in the form of decisions of the PCT Assembly, should be deferred for the time being. It should not be undertaken before a clear delimitation of fields between the PCT technical assistance program and other WIPO technical assistance programs was possible and should, in any case, be delayed until the entry into force of the PCT was nearer. The PCT Technical Assistance Program should in the future be more specifically directed to PCT-related activities, whereas other technical assistance projects should be dealt with in the framework of the WIPO Legal-Technical Program for Acquisition by Developing Countries of Technology related to Industrial Property.”

First, Second and Third Sessions of the AT/PC (1974 to 1976)

24. The AT/PC held its first two meetings in March 1974 and March 1975. At the third session of the AT/PC in March 1976, documents were presented providing suggestions for the enlargement of the scope of the Permanent Program so as to include activities for development cooperation in any appropriate field of industrial property (see documents AT/PC/III/7 and AT/PC/III/8). Examples of such activities are mentioned in document AT/PC/III/8, paragraph 2:

- “2. The Permanent Program in its present form, therefore, covers activities for the facilitation of the acquisition of technology; it does not necessarily cover wider activities for development cooperation in the field of industrial property, such as those already undertaken by WIPO in respect of the granting of fellowships for training in industrial property offices of industrialized countries or the holding of regional seminars or other meetings for developing countries on subjects of industrial property in general. In particular, existing or new activities aimed at strengthening national technological capacities by promoting creativity and innovation do not appear to be directly covered by the present form of the Permanent Program and its Organizational Rules.”
25. Having reviewed the activities under the Permanent Program and taking into account the decisions of the seventh special session of the General Assembly of the United Nations², of which WIPO became a member in December 1974, the AT/PC, at its third session in March 1976, recommended a draft resolution for adoption by the WIPO Conference. This draft resolution suggested enlarging the objectives of the AT/PC and amending its Organizational Rules to take into account the range of activities undertaken by WIPO in respect of development cooperation.

Establishment of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property (PC/IP) (1976)

26. The “WIPO Conference Resolution: WIPO Permanent Program for Development Cooperation related to Industrial Property” was accordingly adopted at the third session (3rd ordinary) of the WIPO Conference in October 1976. This session also passed a resolution establishing the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights (see documents AB/VII/7 and AB/VII/23, Annexes E and F).
27. The Resolution enlarged the objectives of the Permanent Program and changed its title to the “WIPO Permanent Program for Development Cooperation related to Industrial Property”; the title of the Permanent Committee was changed accordingly, from “Permanent Committee for the Acquisition by Developing Countries of Technology Related to Industrial Property” to “Permanent Committee for Development Related to Industrial Property” (hereinafter referred to as “PC/IP”).
28. Article 1 of Organizational Rules adopted by the 1976 WIPO Conference defined the objectives of the Permanent Program:
- “(1) The objectives of the WIPO Permanent Program for Development Cooperation related to Industrial Property (hereinafter referred to as the “the Permanent Program”) are to promote in favor of developing countries by all means within the competence of the World Intellectual Property Organization (WIPO),
- “(i) inventive and innovative activity in developing countries with a view to strengthening their technological capacities,
- “(ii) the acquisition by developing countries, under fair and reasonable terms and conditions, of technology related to industrial property, and
- “(iii) the development of legislation and institutions in the field of industrial property in developing countries.

² Resolution 3362 (S-VII) on “Development and international economic cooperation” – reproduced in Annex I to document AT/PC/III/6

- “(2) Such means shall in particular include, as appropriate, organizing meetings, providing advice, information, assistance and training, carrying out studies, making recommendations and preparing and publishing model laws and guidelines.
- “(3) All activities under the Permanent Program shall be carried out with due regard to the need for coordination and cooperation with other organizations of the United Nations system and intergovernmental organizations concerned.”

Decision to Hold Joint Meetings of the PC/IP and the PCT/CTA (1977)

- 29. At their sessions in September 1977, the Executive Committee of the Paris Union and the WIPO Coordination Committee adopted a decision titled “Decision establishing the WIPO Permanent Committee on Patent Information and dealing with related matters” (document AB/VIII/16 Annex B). As well as setting up the WIPO Permanent Committee on an interim basis, this decision provides for various simplifying measures (see document AB/VIII/5, paragraph 6). In relation to development cooperation, paragraph 4 of the decision states that the Committees:
 - “4. Further agree that the meetings of the PCT Committee for Technical Cooperation shall be *joint* with those of the WIPO Permanent Committee on Patent Information and that the meetings of the PCT Committee for Technical Assistance shall be joint with those of the WIPO Permanent Committee for Development Cooperation related to Industrial Property, it being understood that the activities of the said Committees shall be *coordinated* and it being further understood that, where decisions are made by any of the said PCT Committees, only the members of those PCT Committees shall vote.” (document AB/VIII/16, Annex B). (*Emphasis added.*)
- 30. The WIPO Permanent Committee on Patent Information was established definitively by the Assemblies of the Paris, PCT and IPC Unions in September 1979 (see documents AB/X/14 and AB/X/32, paragraphs 20 and 21).

Seventh and Last Session of the Interim Committee (1978)

- 31. Taking into account the “Decision establishing the WIPO Permanent Committee on Patent Information and dealing with related matters”, the seventh and final session of the Interim Committee met in a joint session with the fifth session of the PC/IP, held in Geneva in March 1978. At this session, the Interim Committee considered its recent activities in light of changes to WIPO’s approach to development cooperation and patent information since the adoption of the PCT in 1970 (document PCT/TAS/VII/2, paragraph 2):
 - “2. The PCT was adopted in 1970. In the meantime, fundamental changes have taken place in WIPO’s approach to the problems of development cooperation and patent information. Two new bodies have been created since then: the WIPO Permanent Committee for Development Cooperation Related to Industrial Property and the WIPO Permanent Committee on Patent Information. Most of the “technical assistance” activities which have, in the past, been considered, or also considered, by the PCT Interim Committee for Technical Assistance are now within the jurisdiction, or mainly within the jurisdiction, of the said two Permanent Committees and, naturally, of the competent bodies of WIPO itself and of the Paris Union for the Protection of Industrial Property.”
- 32. In light of this new approach, paragraph 3 of document PCT/TAS/VII/2 made suggestions, which were noted with approval by Interim Committee (see document PCT/TAS/VII/7), concerning the future tasks of the PCT/CTA:

- “3. It is believed these new facts should lead to a consequential reorientation of the tasks of the PCT Committee for Technical Assistance, in order to avoid unnecessary duplication and the danger of conflicting decisions. In this connection, it may be of interest to note that the WIPO Coordination Committee and the Executive Committee of the Paris Union, when establishing (in 1977) the WIPO Permanent Committee on Patent Information, decided that the meetings of PCT Committee for Technical Assistance should be *joint* with those of the Permanent Committee for Development Cooperation Related to Industrial Property and that the activities of the two Committees should be *coordinated* (the text of the decision is reproduced in the Annex to this document). This decision was taken in order to avoid unnecessary duplication and the danger of conflicting decisions. The consequential reorientation of the tasks of the PCT Committee for Technical Assistance, in the opinion of the Director General, should consist in asking for guidance from the PCT Committee only on those aspects of technical assistance to developing countries which have a direct bearing on the use of the PCT by such countries.” (*Emphasis added.*)

Establishment of the PCT Committee for Technical Assistance (PCT/CTA) (1978)

33. The Assembly of the PCT Union, at its first session (1st extraordinary) held in April 1978, adopted decisions concerning the PCT/CTA (see document PCT/A/I/14, Annex VIII, reproduced below):

“Decisions concerning the PCT Committee for Technical Assistance (PCT/CTA)

“The Assembly of the PCT Union, at its first session held from April 10 to 14, 1978, adopts the following decisions:

- “1. With reference to PCT Article 51(1) and (2)(a), the Assembly hereby establishes the PCT Committee for Technical Assistance (PCT/CTA) and elects all States members of the PCT Union as members of the said Committee, it being understood that the election of any State which will become a member of the PCT Union in the future shall take effect on the date on which such State becomes a member of the PCT Union. Finally, the Assembly decides that once the number of States members of the PCT Union reaches 30, it will, in its session following such an event, reconsider the question of the composition of the said Committee.
- “2. With reference to PCT Article 51(5), the Assembly decides that it will itself establish and, where necessary in the future, amend the Rules of Procedure of the PCT Committee for Technical Assistance (PCT/CTA).
- “3. With reference to its decision under PCT Article 51(5), the Assembly hereby establishes the Rules of Procedure of the PCT Committee for Technical Assistance as set out in Annex IX.
- “4. With reference to the decision taken by the Executive Committee of the Paris Union and the WIPO Coordination Committee in their September 1977 sessions establishing the WIPO Permanent Committee on Patent Information (WIPO/PCPI), in which it was agreed, *inter alia*, that the meetings of PCT/CTA “shall be joint” with those of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property, “it being understood that the activities of the said Committees will be coordinated and it being further understood that, where decisions are made by [PCT/CTA] ..., only the members of [PCT/CTA] ... should vote” (AB/VIII/16, Annex B, Decision, paragraph 4), and recommending that the Assembly of the PCT Union “endorse the above measures,” the Assembly decides to endorse the measures in question.”

34. The Rules of Procedure for the PCT/CTA adopted at the first session of the Assembly of the PCT Union (see document PCT/A/I/14, Annex IX) are reproduced below:

“Rules of Procedure for the PCT Committee for Technical Assistance (PCT/CTA)

“Rule 1: Application of the General Rules of Procedure

“The PCT Committee for Technical Assistance (PCT/CTA, hereinafter referred to as “the Committee”), being, within the meaning of Rule 12 of the General Rules of Procedure of WIPO, a subsidiary body of the PCT Assembly, the provisions of the said General Rules of Procedure shall be the Rules of Procedure of the Committee, supplemented and amended by the provisions set forth hereinafter.

“Rule 2: Special Observers

- “(1) States not members of the Committee which have the status of special observer in the PCT Assembly, as well as intergovernmental authorities which have such a status, shall be invited as “special observers” to all sessions of the Committee.
- “(2) Special observers shall have the same rights in the sessions of the Committee as States members of the Committee, except the right to vote.

“Rule 3: Observers

“The Director General shall, on his own initiative or at the request of the Committee, invite representatives of interested international non-governmental organizations to attend the sessions of the Committee in an observer capacity.

“Rule 4: Joint Meetings with the WIPO Permanent Committee for Development Cooperation related to Industrial Property

“The meetings of the Committee shall be joint with those of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property, 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.”

35. In relation to the tasks of the PCT/CTA (see paragraph 26, above), the Director General reported on the activities of the Interim Committee to the September 1978 meetings of the Governing Bodies of WIPO and Unions administered by WIPO (document AB/IX/7, paragraph 273):

“273. The Interim Committee noted with approval the future tasks of the PCT Committee for Technical Assistance, which should lead to a situation where guidance would be sought from the PCT Committee for Technical Assistance on those aspects of technical assistance to developing countries that had a direct bearing on the use of the PCT by the countries concerned.”

36. Document AB/IX/7 was approved by the WIPO Coordination Committee and the Executive Committee of the Paris and Berne Unions and the Assembly of the PCT along with other reports on activities of the International Bureau presented to the meetings (see document AB/IX/19, paragraph 70).

Decisions Related to the Composition of the PCT/CTA

37. In the years following the establishment of the PCT/CTA, the PCT Assembly took several decisions with respect to the composition of the Committee and its Rules of Procedure, taking into account its relationship to the PC/IP.

38. When, on October 1, 1980, the number of PCT Contracting States reached 30, the Assembly of the PCT Union, at its seventh session (5th extraordinary) held in June/July 1981, reconsidered the composition of the PCT/CTA along with the composition of the PCT Committee for Technical Cooperation (PCT/CTC), in line with paragraph 1 of the decision by the PCT Assembly to establish the PCT/CTA (see paragraph 33, above). The International Bureau proposed to keep the compositions of these Committees unchanged (document PCT/A/VII/7, paragraph 4):
- “4. It is the opinion of the International Bureau that there is no reason, at the present time, to change the composition of the Committees since the only change which one could envisage would be a limitation on the number of members which would lead to elections and, as a consequence, some Contracting States ceasing to be members of the said Committees. Each of the Committees meets in joint sessions with another body (the PCT/CTC with the WIPO Permanent Committee on Patent Information and the PCT/CTA with the WIPO Permanent Committee for Development Cooperation Related to Industrial Property), in each case the sessions are presided over by the chairman of the other body, and in each case there is no limitation on the membership of the other body. It would make little sense to exclude States from membership of the PCT/CTC and the PCT/CTA when they would probably be participating in their (joint) sessions as members of other bodies”.
39. In discussing this proposal, the Assembly of the PCT in June/July 1981 decided that (see document PCT/A/VII/5, paragraph 72):
- “(2) With regard to the PCT Committee for Technical Assistance,
- “(a) all Contracting States shall, until the ordinary session of the Assembly in 1985, be members of the said Committee, provided that the said Committee continues, until that time, to meet in joint sessions with the WIPO Permanent Committee on Development Cooperation Related to Industrial Property and the membership of the latter remains unrestricted,
- “(b) the Assembly will, in the event that the said Committee ceases, before that time, to meet in joint session with the WIPO Permanent Committee on Development Cooperation Related to Industrial Property or the membership of the latter Committee ceases to be unrestricted reconsider at its next session, the question of the composition of the said Committee.”
40. The Rules of Procedure for the PCT/CTA were amended by the eleventh session (7th extraordinary) of the Assembly, held in Geneva in January/February 1984, to remove a category of special observers since all States contributing to the budget of the PCT Union had become members of the Union by that date (see documents PCT/A/XI/2 and 9). With the exception of this amendment, the Rules of Procedure for the PCT/CTA remained unchanged between 1978 and 1985. During this time, the membership of the PC/IP remained unrestricted among WIPO Member States.
41. In line with the decision from the Assembly in 1981, the composition of the PCT/CTA was reconsidered by the Assembly in 1985. Since membership of the PC/IP meeting in joint session with the PCT/CTA remained unrestricted, the International Bureau proposed that membership of the PCT/CTA should not be changed (see document PCT/A/XIII/1, paragraph 25). At its thirteenth session (5th ordinary) in September/October 1985, the Assembly:

- “(vi) decided that all PCT Contracting States--in addition, in the case of the Committee for Technical Cooperation, to the ex officio members according to Article 56(2)(b) of the PCT--would continue to be members of the Committee for Technical Cooperation and the Committee for Technical Assistance until any State member of the PCT Union or the Director General proposed that the matter be reconsidered” (see document PCT/A/XIII/3, paragraph 11).”

AT/PC and PC/IP Meetings Between 1974 and 1996

42. The PC/IP met 17 times in total (including meetings of the AT/PC), with the final meeting held in June 1996. Within the objectives described in paragraph 22 above, work under the Permanent Program for Development Cooperation related to Industrial Property during its lifetime encompassed a wide range of development cooperation activities. For example, the 1982-1983 biennial program defined the objective of WIPO's development cooperation activities as “to assist developing countries in the establishment and modernization of their industrial property systems in the following seven ways:
- “(i) training specialists,
 - “(ii) creating or modernizing domestic legislation,
 - “(iii) creating of modernizing governmental institutions,
 - “(iv) stimulating domestic inventive activity,
 - “(v) stimulating the acquisition of foreign patented technology,
 - “(vi) creating a corps of practitioners,
 - “(vii) exploiting technological information contained in patent documents.”
- (document AB/XII/2, page 32).”
43. In 1982, the PC/IP began to consider medium-term planning to ensure the cohesiveness, continuity and quality of the Permanent Program. This became an important issue due to the growing demand for development cooperation activity, as illustrated in document PC/IP/VIII/10, paragraph 5:
- “5. The demand for development cooperation has been constantly increasing in the last few years and particularly in the last two or three years. The increase is both in the number of developing countries interested and in the variety and volume of the cooperation desired. To assist developing countries in their efforts to improve their industrial property systems therefore constitutes a continuing task in search of ever growing efficiency. Almost every developing country is by now and in some way associated to WIPO's Development Cooperation Program whether through a mere individual fellowship to one of its officials or through a full-fledged cooperation project the objective of which is the whole industrial property system of the country concerned. Despite this broad coverage, much remains still to be done.”
44. During these years, there was also a change in the main nature of activities performed by the Permanent Program, described in document PC/IP/IX/5, paragraphs 5 and 6:
- “5. Promoting awareness of industrial property is no longer the main thrust of the Permanent Program. Its main thrust now is to assist developing countries to formulate and implement national, sub-regional or regional policies and projects on industrial property, and to integrate such policies and projects with national strategies for development.

“6. This approach entails, first, the involvement of developing countries as active participants in development cooperation, and not merely as passive recipients of technical assistance; second, acknowledgement of development cooperation as the responsibility of the entire international community, and not merely as a task to be performed by the International Bureau for the developing countries; third, recognition of development cooperation as a coordinated effort involving, at the national level, not only the concerned governmental authorities, but all users of industrial property, that is those sections of the public with the greatest interest in having at their disposal a modern legislative and institutional framework and efficient services.”

45. Towards the end of the Permanent Program, the number of areas for development cooperation had further increased. For example, the 1994-1995 Program and Budget of the International Bureau (document PC/IP/XVII/2, paragraph 2) defined as its objective “to assist developing countries in the establishment or modernization of intellectual property systems suited to their development goals in the following ways:

- “(a) developing human resources;
- “(b) facilitating the creation or improvement of national or regional legislation and its effective enforcement;
- “(c) encouraging adherence to WIPO-administered treaties;
- “(d) facilitating the creation or improvement of governmental and other institutions for the administration and effective implementation of national or regional legislation;
- “(e) encouraging local inventive activity and the commercial exploitation of inventions;
- “(f) developing the teaching of and research in intellectual property law, with particular emphasis on the use of that law for economic development;
- “(g) developing the profession of intellectual property lawyer and agent;
- “(h) promoting the exchange of experience and information among legislators in the field of intellectual property;
- “(i) promoting the exchange of experience and information among members of the judiciary concerning the enforcement of the protection of intellectual property;
- “(j) facilitating the access to and the use of technological information contained in patent documents, especially for diversification and accumulation of technology;
- “(k) facilitating the acquisition of foreign, but locally protected technology through licensing contracts;
- “(l) facilitating the management and exploitation by local enterprises of their intellectual property rights;
- “(m) consulting the Permanent Committee for Development Cooperation related to Industrial Property;
- “(n) facilitating participation in certain WIPO meetings.”

46. During the years in which 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” (see paragraph 3 of document PCT/TAS/VII/2, reproduced in paragraph 32, above). Consequently, there never was the need to convene the PCT/CTA, which thus never met during the years in which the PC/IP existed.

Establishment of the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) (1998); PCIPD Meetings Between 1998 and 2007

47. The WIPO Conference sixteenth session (3rd extraordinary), held in September 1998, approved the merger of the PC/IP and the Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (hereinafter referred to as “PC/CR”) (see documents WO/CF/16/1 and WO/CF/16/2) into a single body, namely the Permanent Committee on Cooperation for Development Related to Intellectual Property (hereinafter referred to as the “PCIPD”). The advantages of this merger are discussed in document WO/CF/16/1, paragraph 7, reproduced below:
- “7. A merger of the PC/IP and PC/CR would be in line with the proposal, in the 1998-99 Program and Budget, to facilitate “the participation of developing countries representatives in a WIPO Permanent Committee on Intellectual Property Development (PCIPD)” (see document A/32/2, Main Program 06). The advantages of merging the PC/IP and the PC/CR into one body are:
- “(i) the Organization would have a single Permanent Program for Cooperation for Development which would be managed by the PCIPD;
 - “(ii) the PC/IP and the PC/CR are both identical in terms of eligibility for membership (“...all States Members of WIPO which have informed the Director General of WIPO of their desire to be members of the Permanent Committee.”). Merging them into one body would thus avoid duplication of membership in the area of cooperation for development;
 - “(iii) the respective programs and budgets of the PC/IP and the PC/CR both form part of the legal-technical assistance program of WIPO (see Article 3 of document DA/35/Rev.2 and Article 3 of document PI/95/Rev.3). From a policy point of view, it is increasingly difficult to maintain a strict division between matters which pertain only to industrial property and those which relate only to copyright. An expanding number of issues cover both industrial property and copyright. This tendency is reflected in the internal organizational structure of the Secretariat, in which the bureaus covering various developing regions are responsible for both industrial property and copyright.”
48. The Rules of Procedure of the PCIPD (document PCIPD/1/2) adopted at its first session in May 1999 consisted of the General Rules of Procedure of WIPO, supplemented by provisions related to the composition of the PCIPD. Like the PC/IP and the PC/CR, the PCIPD was composed of all WIPO Member States.
49. None of the documents establishing the PCIPD contains any reference to the need to amend the Rules of Procedure of the PCT/CTA which, in its Rule 4, expressly refers to the (no longer existing) PC/IP (see paragraph 33 above). It can only be speculated as to why such an amendment (referring to the PCIPD instead of the PC/IP) was not made; it could be possible that the need for such an amendment was simply overlooked.

50. The PCIPD held four sessions in the period from 1999 to 2005. While the PCIPD, at its third session in October/November 2002, did consider a paper titled “Positive Aspects in the Use of the Global Protection Systems: PCT System” (document PCIPD/3/7), like in the case of the PC/IP (see paragraph 46, above), the PCIPD never 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” (see paragraph 3 of document PCT/TAS/VII/2, reproduced in paragraph 32, above). Consequently, there never was the need to convene the PCT/CTA, which thus never met during the years in which the PCIPD existed.

**Establishment of the Committee on Development and Intellectual Property (CDIP) (2007);
CDIP Meetings Between 2007 and Today**

51. Following a recommendation by the Provisional Committee on Proposals Related to a WIPO Development Agenda (hereinafter referred to as the “PCDA”) at its fourth session in June 2007, the General Assembly, at its thirty-fourth (18th ordinary) session in September/October 2007, adopted 45 recommendations for action (“the Development Agenda Recommendations”), of which 19 were identified for immediate implementation (see document A/43/16, page 151 and 152). The General Assembly also decided to establish a Committee on Development and Intellectual Property (hereinafter referred to as the “CDIP”) and that the PCIPD should cease to exist and not to renew the mandate of the PCDA (see document A/43/16 pages 151 and 152).
52. According to the decision (see document A/43/16, page 152), the mandate of the CDIP is to:
- “(a) develop a work-program for implementation of the adopted recommendations;
 - “(b) monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose it shall coordinate with relevant WIPO bodies; and
 - “(c) discuss intellectual property and development related issues as agreed by the Committee, as well as those decided by the General Assembly.”
53. The first session of the CDIP was held in March 2008 and adopted Rules of Procedure for the CDIP, applying the WIPO General Rules of Procedure (Publication No. 399 (FE) Rev.3), with two supplementary rules concerning the composition and officers of the Committee. Like previous WIPO committees responsible for development issues, all Member States of WIPO are members of the CDIP (see Annex to document CDIP/1/2 Rev.).
54. The 45 agreed proposals of the Development Agenda overseen by the CDIP are grouped into the following clusters:
- Cluster A: Technical Assistance and Capacity Building
 - Cluster B: Norm-Setting, Flexibilities, Public Policy and Public Domain
 - Cluster C: Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge
 - Cluster D: Assessment, Evaluation and Impact Studies
 - Cluster E: Institutional Matters including Mandate and Governance
 - Cluster F: Other Issues

55. Therefore, like the previous Permanent Committees covering development-related issues, the responsibilities of the CDIP extend across the full range of development-related activities performed by WIPO. Notably, within Cluster A covering technical assistance and capacity building, two particular Development Agenda Recommendations would appear to fall within the scope of PCT Article 51(3) of “organizing and supervising technical assistance for developing countries to develop patent systems, individually, or on a regional basis”:
- “8. Request WIPO to develop agreements with research institutions and with private enterprises with a view to facilitating the national offices of developing countries, especially LDCs, as well as their regional and sub-regional intellectual property organizations to access specialized databases for the purposes of patent searches.
- “10. To assist Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promote fair balance between intellectual property protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with intellectual property.”
56. Recommendation 8 has been taken forward in a project entitled “Specialized Databases’ Access and Support”, which runs for 36 months. This project aims to facilitate access to technological knowledge for users in developing countries, especially LDCs, and their regional and sub-regional IP organizations, enabling patent offices to perform more effective patent searches. Based on an analysis of the needs of patent offices and local users, the project will improve access to specialized patent and non-patent technical databases, establish Technology and Innovation Support Centers, and provide specialized training and awareness-raising.
57. Recommendation 10 has been pursued through several projects. Of these activities, the “Smart IP Institutions Project: the Deployment of Components and Business Solutions Customized for Modernizing IP Infrastructure of National and Regional IP Institutions” will deploy ICT infrastructure and comprehensive customized automation solutions in IP institutions in developing and least-developed countries, thus contributing to development of patent systems in these countries. Like the project taken forward under Recommendation 8, this will provide solutions based on a needs assessment and be complemented by training and other support activity. Document CDIP/6/2 presented to the sixth session of the Committee on Development and Intellectual Property from November 22 to 26, 2010, provides further details and progress on these technical assistance projects.
58. Despite its mandate, covering the full range of development activities performed by WIPO (see paragraph 52(c), above), as was the case when the PCIPD was established (see paragraph 49, above), none of the documents establishing the CDIP contains any reference to the need to amend the Rules of Procedure of the PCT Committee for Technical Assistance (PCT/CTA). Again, it can only be speculated as to why such amendment was not made.

Conclusions

59. The PCT/CTA was established by the PCT Assembly in 1978. Membership of the PCT/CTA comprises all PCT Contracting States. Its Rules of Procedure, which have not been amended in this regard since they were adopted in 1978, state that the PCT/CTA's meetings shall be joint with those of the WIPO Permanent Committee for Development Cooperation related to Industrial Property (PC/IP), the WIPO body with responsibility at the time for overseeing the Permanent Program of WIPO concerning activities in favor of developing countries related to patents and other industrial property rights. On several occasions up to 1985, the PCT Assembly considered and reaffirmed the membership and mode of meeting (if required) of the PCT/CTA, together with its relationship to the PC/IP. At the time of its establishment, the PCT/CTA's tasks were defined as to give guidance to that Committee "on those aspects of technical assistance to developing countries that have a direct bearing on the use of the PCT by the countries concerned".
60. Following the establishment of the PCT/CTA in 1978, the PCT Assembly took several decisions (in 1981 and 1985) which explicitly allowed for membership of the PCT/CTA to continue to include all PCT Contracting States.
61. In 1998, the PC/IP was merged with the Permanent Committee for Copyright and Neighboring Rights, creating the WIPO Permanent Committee for Cooperation for Development Related to Intellectual Property (PCIPD). The PCIPD in turn was disbanded on the establishment of the WIPO Committee on Development and Intellectual Property (CDIP) in 2007. None of the documents establishing the PCIPD nor the ones establishing the CDIP contains any reference to the need to amend the Rules of Procedure of the PCT/CTA which continue, in its Rule 4, to expressly refer to the PC/IP.
62. Neither the PC/IP nor the PCIPD nor the CDIP has ever 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 has never been a need to convene the PCT/CTA, which thus never met since it has been established in 1978.
63. Noting that the PCT/CTA under PCT Article 51 has been established and its tasks have been defined and approved by Member States, it would appear that there is no room for the International Bureau to include, in the present study, "recommendations on terms of reference for the possible establishment of the Technical Assistance Committee", as had been set out in recommendation 204*bis* as endorsed by the third session of the PCT Working Group (see paragraph 129 of the report of the PCT Working Group's fourth session, reproduced in paragraph 11, above).

IV. FINANCING OF TECHNICAL ASSISTANCE TO DEVELOPING COUNTRIES UNDER PCT ARTICLE 51

64. With regard to the financing of technical assistance projects coordinated by the Committee for Technical Assistance, Article 51(4) states: "The International Bureau shall seek to enter into agreements, on the one hand, with international financing organizations and intergovernmental organizations, particularly the United Nations, the agencies of the United Nations, and the Specialized Agencies connected with technical assistance, and, on the other hand, with the Governments of the States receiving the technical assistance, for the financing of projects pursuant to this Article."
65. To provide a clear basis to negotiate such agreements, the General Assembly and Conference of WIPO, at their September 1970 sessions, adopted the following resolution (document AB/I/33 paragraph 62 and Annex E):

“The General Assembly and the Conference of the World Intellectual Property Organization (WIPO),

“Noting that the Assembly, the Conference of Representatives and the Executive Committee of the International (Paris) Union for the Protection of Industrial Property have established an Interim Committee for Technical Assistance in accordance with the resolution of the Washington Diplomatic Conference on the Patent Cooperation Treaty, 1970,

“Emphasizing the need to continue and strengthen the work undertaken by the United International Bureaux for the Protection of Intellectual Property (BIRPI) under its Technical Assistance Program,

“Instruct the Director General of the World Intellectual Property Organization to inform the Administrator of the United Nations Development Program of the willingness of the World Intellectual Property Organization to act as an executing agency or as a subcontractor in technical assistance projects within the field of the promotion of the protection of intellectual property, with particular reference to facilitating the transfer of technology to developing countries;

“Authorize the Director General of the World Intellectual Property Organization, with the advice of the Interim Committee for Technical Assistance, to negotiate with the Administrator of the United Nations Development Program and with other appropriate intergovernmental organizations such general agreements as may be desirable to facilitate the financing and execution of technical assistance projects requested by Governments within the context of the Patent Cooperation Treaty and of the Convention Establishing the World Intellectual Property Organization;

“Recommend that the Interim Committee for Technical Assistance give early consideration to pilot technical assistance projects requested by individual Governments or by groups of Governments within the context of the Patent Cooperation Treaty with a view to their commencement before the formal entry into force of the Treaty.”

The PCT Interim Committee for Technical Assistance

66. Following the adoption of the above resolution, the International Bureau provided an update to the first session of the Interim Committee in February 1971 (document PCT/TAS/I/2, paragraph 21):
 - “21. In anticipation of possible requests for technical assistance, the International Bureau contacted, in October and November 1970, the United Nations Development Programme, whose secretariat is in New York. Aid by the UNDP for the purposes in question appears to be a distinct possibility. The request for aid is to be presented by the interested State or States. The International Bureau is at the disposal of such States to assist them in drawing up plans for presentation to the UNDP, provided that WIPO has some part in carrying out the technical assistance program. Time permitting, the Director General will seek the advice of the Interim Committee in connection with any request for technical assistance in the present context.”
67. Further details of technical assistance from the UNDP are provided in the report of this meeting (document PCT/TAS/I/6, paragraphs 10 and 13):
 - “10. Pilot Technical Assistance Program. The Secretary outlined the procedures for obtaining assistance from the United Nations Development Programme (UNDP). The request for assistance is to be presented by the interested State or States which, themselves, have to invest substantially in the project that they have asked UNDP to subsidize. Assistance given by UNDP to any State will be charged against the total aid (“quota”) assigned by UNDP to that State. The International Bureau is

at the disposal of interested States for two purposes: to assist them in drawing up plans for presentation to UNDP, and to act as an executing agency of any UNDP project.”

“13. The Representative of UNDP called the attention of the Interim Committee to the following three points, namely, that (i) the objective of any UNDP project must be development, and might consist of or include the creation of new institutions and the carrying out of research; (ii) the executing agencies generally were existing UN agencies but exceptionally might be other intergovernmental organizations (like WIPO)³ or non-governmental organizations, (iii) that UNDP would soon give indicative country figures, that is, would specify for the next 4 or 5 years the amount of the aid likely to be available for each developing country in order to permit planning for more than one year.”

68. The main technical assistance project funded by UNDP discussed by the Interim Committee concerned the Modernization of the Brazilian Patent System, where WIPO concluded a contract with the UNDP entrusting it with the responsibility for carrying out the Project. Documents PCT/TAS/III/4, PCT/TAS/IV/2, PCT/TAS/V/3 and PCT/TAS/VI/2 provide further details of this project. Another project discussed by the Interim Committee related to the creation of a regional patent documentation and information service within the African Intellectual Property Organization, which was proposed in the draft Second Regional Programme (1977-1981) for Africa of UNDP for approval by the Governing Council of the UNDP at its January 1977 session (see document PCT/TAS/VI/3, paragraph 4). Documents PCT/TAS/III/5, PCT/TAS/IV/3, PCT/TAS/V/4, PCT/TAS/VI/3 provide further background to this project.

The WIPO Permanent Program for Development Cooperation related to Industrial Property (PC/IP)

69. Following the re-orientation of tasks for the PCT/CTA to being called upon for guidance only on aspects of technical assistance to developing countries which have a direct bearing on the use of the PCT by such countries (see paragraphs 32 and 35 above), technical assistance activities in developing patent systems of developing countries fell within the remit of the PC/IP (see paragraphs 26 to 28, above). Under this Program, the International Bureau financed some development cooperation activities from its regular budget. However, as reported to the eighth session of the PC/IP in September 1982, its own resources were far from sufficient to cover all requests for cooperation received from developing countries (see document PC/IP/VIII/3, paragraphs 37 to 42).
70. WIPO was therefore obliged to identify and seek extra-budgetary financing for the projects. The main outside source of financing at the time for the implementation of activities under the Permanent Program was the UNDP. An additional outside source of funding consisted of financial and technical resources made available to WIPO through the Trust Funds by Governments of certain Member States (“Funds-in-trust”) and other similar contributions. In 1982, the UNDP provided nearly 51% of WIPO’s expenditure on development cooperation, with Funds-in-trust and the WIPO regular budget providing 27.5% and 21.5%, respectively.

³ WIPO became a specialized agency of the United Nations on December 17, 1974 on entry into force of The Agreement between the United Nations and the World Intellectual Property Organization

71. During the 1990s, availability of funds from the UNDP decreased for projects under the Permanent Program, as reported to the fifteenth and sixteenth sessions of the PC/IP held in November 1992 and June 1994, respectively. The following excerpts from the report of the first of these meetings in 1992 describe efforts by WIPO to mobilize extra budgetary resources in response to this situation (document PC/IP/XV/8, paragraph 80):
- “80. The International Bureau confirmed to delegations it had clearly registered their serious concern about the erosion of funds available to WIPO from UNDP. It stated that WIPO would persist in its efforts to mobilize resources from UNDP as well as from other sources, citing the recent successful cases of the regional projects in Asia and the Pacific and Latin America and the Caribbean. The International Bureau informed about its recent contacts with the World Bank and the Inter-American Development Bank, clarifying that these institutions essentially provided loans which were not the grant assistance preferred by most recipient countries.”
72. Efforts continued in this respect, as reported to the sixteenth session of PC/IP, held in 1994 (document PC/IP/XVI/2, paragraphs 13 and 14).
- “13. Given the strong continuing demand from developing countries for WIPO’s assistance and services, the general decline in extra budgetary funds from UNDP remains a cause for concern. Efforts continued to mobilize resources from other sources (donor countries, Commission of the European Communities (CEC), the World Bank, the Inter-American Development Bank (IDB), the Islamic Development Bank, etc.) and resulted in some additional funding possibilities for some groups of countries (i.e. the CEC-ASEAN Patents and Trademarks Program, national projects for some Latin American countries funded by the Inter-American Development Bank (IDB)).
- “14. Such other sources, however, do not necessarily constitute direct alternatives to UNDP which remains the principal multilateral institution providing grant funding for technical cooperation. On many occasions, developing countries have underlined their preference for UNDP funding for development cooperation activities, since it is universal, neutral and impartial in nature. Furthermore, UNDP is and should remain the funding institution of the UN development system”.
73. One reason for this fall in contributions from UNDP appears to have been a change in the overall orientation of UNDP funding from regional to national projects (see document PC/IP/XVI/2, paragraphs 15 and 16):
- “15. In this connection, it should be noted that the overall contribution of UNDP funding in the Fifth Programming Cycle is focused largely on national programs and country projects. If during the Fourth Programming Cycle of the UNDP (1987-1991), regional UNDP funded projects in the field of industrial property accounted for 60% of the total amounts available, during the present, Fifth Programming Cycle (1992-1996) the funds available under regional projects represent only 40% of the UNDP funds available. Moreover, the total reduction of UNDP funding available to date for WIPO-executed projects in the Fifth Cycle, compared to that available during the 4th Cycle is more than 55%.
- “16. This represents a serious handicap for WIPO’s development cooperation activities, since a large part of the awareness building and training activities are organized at the regional or interregional levels, because of the cost-effectiveness of such an approach”.
74. Against this background, WIPO’s assistance to developing countries was increasingly funded from the Organization’s own budget, as shown by these excerpts from PC/IP documents from its sixteenth and seventeenth sessions in 1994 and 1995, respectively:

- “19. As UNDP’s funding situation is not expected to improve, the high level expected of WIPO’s assistance to developing countries will have to be sustained by the Organization’s own budget. In view of the reduced possibilities for external funding of WIPO’s development cooperation activities and the concern for maintaining the level of such activities, the decision of the Governing Bodies of WIPO in September 1993 to approve the Director General’s recommendation that the budgetary allocations for development cooperation activities be increased by 28.4 percent from about 7.05 million Swiss francs in 1992-93 to about 9.05 million Swiss francs in 1994-95 is noteworthy. In such a way WIPO’s budget allocations for development cooperation activities experienced were increased by 66% since the 1990-1991 biennium.” (See document PC/IP/XVI/2, paragraph 19.)
- “31. As mentioned earlier, during the period under review the trend in UNDP’s reduced funding for WIPO’s development cooperation activities was confirmed. However, the increased need to WIPO’s assistance to developing countries continued and will have to borne from the Organization’s own budget. In order to maintain the level of WIPO’s development cooperation activities and to permit the Organization to meet the growing needs for such assistance, the Governing Bodies of WIPO decided at their 1995 session to further increase the budgetary allocations for development cooperation activities by 33% from 9.05 million Swiss francs in 1994-1995 to 12.05 million Swiss francs. Furthermore, as stated earlier the Governing Bodies also approved the allocation of an amount of six million Swiss francs to cover the increased needs of assistance to developing countries in respect of the implementation of the TRIPS Agreement in the 1996-97 biennium. Thus WIPO’s budgetary allocations to development cooperation activities have been increased by 100% compared to the 1994-1995 biennium and by 129% compared to the 1992-1993 biennium....” (See document PC/IP/XVII/2, paragraph 31).

The WIPO Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD)

75. Following the establishment of the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD) (see paragraphs 47 to 50, above), technical assistance activities in developing patent systems of developing countries fell within the remit of that Permanent Committee.
76. Efforts by WIPO to mobilize extra-budgetary resources continued during the lifetime of the PCIPD, as mentioned in the biennial Program and Budget documents. For example, the Revised Proposal for Program and Budget 2004-2005 dated July 31, 2003 (document WO/PBC/7/2, paragraph 171) details efforts to attract extra-budgetary resources as part of a Main Program “Cooperation with Developing Countries”:
- “171. It is expected that the Main Program will continue to attract extra-budgetary resources made available to WIPO including by Member States, international funding agencies and recipient countries through cost-sharing and similar arrangements. Contributions in kind will continue to be sought from organizations with special expertise. WIPO’s effectiveness in promoting economic development has been substantially enhanced thanks to contributions from Multilateral Funds-in-Trust agreements with France and Japan, and an agreement to jointly organize and finance cooperation for development activities with Australia, Republic of Korea and Singapore”.
77. The Proposed Program and Budget 2006/2007 (document WO/PBC/8/3) presented to the Program and Budget Committee in April 2005 outlines proposals to embark on a more proactive strategy for resource mobilization.

- “49. While the Organization’s income is entering a period of more moderate and stable growth, there is nevertheless an ever increasing demand for its services, in particular regarding cooperation with developing countries and countries in transition. To help meet this need the Organization is proposing to embark on more proactive extrabudgetary resource mobilization.
- “50. In the recent past, a number of Member States have provided extrabudgetary funding by means of contributions in kind, cost-sharing agreements for specific activities (such as seminars, workshops or training activities), or provision of funds to WIPO under special Fund-in-Trust (FIT) arrangements. In the 2004/05 biennium, WIPO had FIT arrangements with the governments of Austria, France, Germany, Italy, Japan, Republic of Korea, and Spain, as well as the European Union, the International Organization of French-Speaking Countries, and the Geneva International Academic Network. These FIT arrangements have also enabled the funding of Junior Professional Officers (JPOs) attached to WIPO headquarters in Geneva. In the 2004/05 biennium, the governments of Austria, Germany, Italy, Japan and Korea, and the International Organization of French-Speaking Countries provided a total of eight JPOs.
- “51. As shown in Table X, it is estimated that a total amount of 12.9 million Swiss francs may be available to WIPO in the 2006/07 biennium under FIT arrangements. Other additional resources are also expected to continue to be made available through cost-sharing agreements and contributions in kind.
- “52. As described under Program 23, in 2006/07 WIPO proposes to build on this through a more proactive strategy targeting a broader spectrum of the donor community: governments, intergovernmental organizations, non-government organizations, academic institutions, and, subject to guidelines to be approved by the Member States, the private sector.”

The Committee on Development and Intellectual Property (CDIP)

78. Following the establishment of the Committee on Development and Intellectual Property (CDIP) (see paragraph 51, above), technical assistance activities in developing patent systems of developing countries are covered by certain Development Agenda Recommendations within Cluster A, entitled “Technical Assistance and Capacity Building” (see paragraphs 55 to 57, above).
79. Efforts by WIPO to mobilize extra budgetary resources continue in particular, but not exclusively, in relation to Development Agenda Recommendation 2 within Cluster A, which calls for additional assistance to WIPO through donor funding (document A/43/16, Annex A):
- “2. Provide additional assistance to WIPO through donor funding, and establish Trust-Funds or other voluntary funds within WIPO specifically for Least Developed Countries (LDCs), while continuing to accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote, *inter alia*, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.”
80. This Recommendation is being taken forward in a project entitled “Conference on Building Partnerships for Mobilizing Resources for Development”. This project’s objective is to increase resources available to WIPO, either through direct contributions and managed as Funds in Trust, or through access to existing external funding modalities to support its technical assistance and capacity building work in developing countries, providing a coordinated approach to mobilizing extra-budgetary resources within WIPO. The benefits of the project are being channeled into development-related activity across the Organization.

81. The Conference on Building Partnerships for Mobilizing Resources for Development took place in November 2009. An oral report from the Conference was provided to the fourth session of the CDIP on November 16 to 20, 2009 (document CDIP/4/14 paragraphs 349 and 350):
- “349. The Secretariat informed that in response to the WIPO Development Agenda Recommendation 2, WIPO hosted an International Conference on Building Partnerships for Mobilizing Resources for Development on November 5 to 6, 2009. The conference was developed as a Development Agenda project, the details of which were found in CDIP/3/INF/2 and the update in CDIP/4/2. The purpose of that report was to provide an update to Member States on the implementation of a project and then the convening of the conference. The approved project report would be presented to CDIP/5. A conference summary report had been prepared and would be available on the web site that week, and had been submitted for translation into the six languages of the conference. The conference program was developed in close consultation with Member States and with the Donor Community. In doing so, three main themes were identified for the conference program: Aid for Trade, Science, Technology; Innovation for Development; and the Digital Divide. Keynote speeches and presentations on IP in Action and roundtable policy discussions were prepared around those three themes. The conference was opened by the Director General of WIPO, followed by keynote speeches including those from the UN Under Secretary General; the African Union; and the Under Secretary for Economic and Technological Affairs, Ministry of External Relations, Brasilia, Brazil. In addition, there were panel discussions on private sector partnerships and sessions on WIPO’s prevailing resource mobilization activities which involved presentations by a number of WIPO’s current donors, as well as a look at how development agencies worked and what WIPO might consider in terms of future steps. The WIPO Assistant Director General for Development, closed the Conference. Copies of the program, the key speeches and the various PowerPoint presentations made during the two days were later made available on the web site. While the outputs were fairly short-term in nature, the objectives were perhaps the more important. This was the first output-conference prepared and organized by WIPO. A concept paper was prepared and distributed to the Member States together with a draft program. Both those documents reflected extensive consultations and briefing sessions with Member States. An oral progress report was provided to Member States on the preparations for the conference. In addition, several briefing sessions were held, including during the WIPO Assemblies, to update Member States on the progress of the preparations. The conference agenda and the list of speakers were developed as part of a broad consultative process which endeavored to ensure that all interests were accommodated in the final version of the program. The conference was convened on schedule. The budget for the conference and consultation process was 240,000 Swiss francs, the final accounts had not yet been closed, it appeared that expenditure will be between 200,000 and 220,000 Swiss francs, so a saving of 20,000 Swiss francs is expected on the original budget. Post conference report to the CDIP was the next indicator; that report itself was that first interim report to the Member States. Looking at the most important objective of the project, i.e., an increase in resources available to WIPO either through direct contributions or through access to existing funding modalities, and the establishment of funds-in-trust or other voluntary funds, it was always the intention that the conference was a first step and that it was not expected that funds would be pledged at the Conference. The targets presented in the document were to be assessed at the end of the 2010-2011 biennium to allow sufficient time there would have been time to follow-up on the conference and to achieve the objectives contained in the project document. In terms of next steps

and what comes next, it was noted that the conference was in the beginning of the process of developing stronger relationships with the bilateral and multilateral donor community. A great deal of momentum was created by the conference, many contacts were established, and it was important that the organization follow-up on those. While the donor community was well represented at the Conference, certainly not all the donor and development agencies were present. A more intensive and extensive campaign to address those agencies and help them understand the relevance IP was a priority. In terms of the actual contacts made with those who were there, such as the European Union, the World Bank, the African Development Bank, DFID and USAID, there were a number of areas explored for potential cooperation in the future. One example of that, the World Bank was organizing an event in December where they were looking to develop action plans for science technology and innovation for development. WIPO was invited to participate in the preparation of work on those action plans which would be taken to donors in the New Year. The idea being that IP was an important component of science technology and innovation for development and that WIPO would want to be a partner in that endeavor. The Secretariat stated that one of the key messages both before and during the conference was that resource mobilization activities needed to be directed at developing country Member States to demonstrate how the Organization could provide a service to help Member States to develop projects which could be taken to the donor community. The Secretariat added that whether it was with respect to development agencies or foundations or any of the main stream donor community, everything depended upon country-driven and country-owned presentations of those projects. The Secretariat stated that it would seek to identify projects with countries, as well as appropriate donors so as to support the efforts to mobilize resources. The Secretariat mentioned the fact that the World Bank planned to drop action plans and indicated that another key aspect was partnering with other international organizations in approaching the donor community over the following month, the intention was to identify joint projects with other organizations which could be taken to the donor community. The Secretariat also spoke of how it could support developing country Member States, on a country and regional basis. In that context, it was suggested that, at meetings held with heads of IP offices, a day should be added to focus on resource mobilization issues, and that regional development agencies, donors and other potential partners be invited to participate. Another suggestion concerned the need for more information about the work done with WIPO's existing donors, including ways in which collaboration could be improved through annual meetings of donors. With respect to proposed work on outcomes from the conference, the Secretariat expressed the need for internal reflection on developing a resource mobilization strategy and appropriate guidelines in terms of partnerships with the private sector.

- “350. The Chairman thanked the Secretariat for its report on the conference and indicated that it was a first stage towards the implementation of the sub-program on resource mobilization, as well as a small step towards the implementation of Recommendation 2. He added that the Secretariat would be providing a written report to Member States.”

82. A version of this oral report was published prior to the fifth session of the CDIP⁴. This outlined the next steps in the follow-up to the Conference on Building Partnerships for Mobilizing Resources for Development:

“Next Steps

“The Conference was a first step and began the process of developing relationships with the bilateral and multilateral donor community. WIPO needs now to intensify this work and to build on the momentum gained. The next steps in this regard are:

- “(i) To identify projects with developing countries, selected from across all regions, and to develop with them project proposals to present to targeted donor institutions. These project proposals must be country-owned and presented to donors by those countries, with WIPO’s support. (WIPO’s role is to provide a service to its developing country Member States in developing project proposals, identifying potential donors and presenting project proposals.)
- “(ii) Identify partnerships with other organizations e.g. ARIPO, OAPI, the regional economic commissions, WTO, WHO (ANDI), UNCTAD, ITC, ITU, World Bank, etc to develop joint projects with targeted recipient countries to present to the donor community and use multi-agency approaches to support developing country Member States access resources through, for example, the WTO’s Enhanced Integrated Framework and UN Multi-Donor Trust Funds.
- “(iii) Following a suggestion from Brazil, the Secretariat will explore the organizing at the next regional Heads of IP Offices meeting in the Latin America and Caribbean region, an additional day devoted to partnership and resource mobilization activities in the region. Invitations would be extended to relevant regional organizations and financing institutions as well as other potential donors, whether organizations or countries, with particular interest in the region. Subject to the success of this in the LAC region, the Secretariat will explore the possibility of organizing the same for Heads of Office meetings in the other regions. This regional approach to resource mobilization is considered particularly relevant given that many donors operate at the country or regional level, with budgets and decision-making devolved to country and regional offices.
- “(iv) Following general support from WIPO’s existing donors, the Secretariat proposes to organize annual meetings of WIPO’s current donors, starting with such a meeting in Geneva in 2010, to support information sharing and an informal and voluntary coordination of donor funded activities, taking into account the specific focus and priorities of the donors concerned as these relate to the needs of developing countries. Such meetings would also offer an opportunity for donor cooperation in funding certain regional and/or interregional projects and could better streamline FIT activities towards the attainment of the strategic goals of the organization.

⁴ Available at http://www.wipo.int/export/sites/www/ip-development/en/agenda/projects/pdf/donor_conf_oral_report_to_cdip4.pdf

- “(v) The Secretariat will undertake an intensive and comprehensive outreach program with the donor community to increase their understanding of IP and its relevance to development, building on the initial achievements of the Conference. In addition to focusing on those development agencies and donors who were not represented at the Conference, this initiative will also ensure follow up with those donor agencies who did attend.
- “(vi) The various initiatives listed above, need to be undertaken as part of a clearly established WIPO resource mobilization strategy with appropriate organizational policies, guidelines, roles and responsibilities established. This strategy should be based on the need to provide a service to WIPO’s developing country Member States in accessing resources, whether through funds-in-trust or other funding mechanisms.
- “(vii) The Secretariat will develop, for approval by Member States, guidelines for partnership with the private sector.”
83. The project has set performance targets by the end of the 2010/11 biennium: a 20% increase in funds available through Funds-in-Trust arrangements, five WIPO projects funded through existing external funding modalities, an increase from 9 to 12 donors to WIPO, and the establishment of Funds-in-Trust for LDCs with resources in excess of 1 million Swiss francs. Following the completion of the project in November 2010, these indicators will be assessed in 2012 based on relevant information available in the Financial Management Report 2010/11 and Program Performance Report 2010/11 (see document CDIP/6/2). Various follow-up activities as set out in the “Next steps” section of the “Oral Report to the Fourth Session of the CDIP” (see paragraph 82, above) have been mainstreamed into WIPO’s Program and Budget 2010/2011.
84. In addition to regular reporting of individual projects implementing the Development Agenda recommendations, the Director General of WIPO has also made a commitment to report annually to the CDIP on the implementation of the Development Agenda recommendations (see documents CDIP/5/2 and CDIP/7/2).
85. Examples of Agreements entered into with financing institutions include the Memorandums of Understanding entered into with institutions providing voluntary contributions which are managed as Funds-in-Trust to support technical assistance activities as referred to in paragraphs 70, 72 and 77. A list of such providers of financial assistance is provided in Annex V of the Program and Budget 2010/11. There have also been inter-agency agreements with Organizations such as UNIDO, UNCTAD and the ITC for the purposes of providing donor funded technical assistance to developing countries.

Conclusions

86. During the existence of the Interim Committee between 1971 and 1977, the International Bureau obtained assistance under PCT Article 51(4) from the UNDP for the financing of technical assistance projects within the scope of PCT Article 51, resulting in the funding and supervision of various technical assistance projects by UNDP.
87. Following the establishment of the PCT/CTA in 1978 and the decision to re-orient its tasks to give “guidance only on aspects of technical assistance to developing countries which have a direct bearing on the use of the PCT by such countries”, technical assistance activities in developing patent systems of developing countries fell within the remit of the PC/IP. During those years, UNDP continued to be the main extra-budgetary source of funding for technical assistance in developing countries.

88. Funding from the UNDP declined in the early 1990s. The International Bureau therefore investigated extra budgetary funding from other organizations mentioned in PCT Article 51(4). WIPO also responded to reduced external funding by increasing support for development work from its own resources.
89. In 1998, the PC/IP was merged into the WIPO Permanent Committee for Cooperation for Development Related to Intellectual Property (PCIPD), which was disbanded in 2007 on the establishment of the WIPO Committee on Development and Intellectual Property (CDIP). Efforts by WIPO to mobilize extra budgetary resources continued in the context of the both the PCIPD and the CDIP and are continuing today.
90. Technical assistance and capacity building is one of the six clusters of the Development Agenda. Work in the CDIP is ongoing to provide additional assistance to WIPO from extra budgetary sources in favor of developing countries. A “Conference on Building Partnerships for Mobilizing Resources for Development” took place in November 2009. Following completion of the project in November 2010, the performance targets set for the end of the 2010/11 biennium will be assessed in 2012, based on relevant information available in the Financial Management Report 2010/11 and Program Performance Report 2010/11. Various follow-up activities as set out in the “Next steps” section of the “Oral Report to the Fourth Session of the CDIP” have been mainstreamed into WIPO’s Program and Budget 2010/2011.

91. *The Working Group is invited to note the contents of the study set out in this document.*

[Annex follows]

ANNEX

EXTRACT FROM THE REPORT OF THE THIRD SESSION OF THE PCT WORKING GROUP

(reproduced from document PCT/WG/3/14 Rev)

- “– *Recommendations Relating to Technical Assistance; PCT Information and Technology Transfer*
- “113. Several delegations expressed general support for the recommendations in paragraphs 204 (ensuring that technical assistance is appropriate), 207 (better information on the status of patent applications) and 211 (promotion of licensing).
- “114. In relation to the recommendation in paragraph 207 [*better information on the status of patent applications*] it was suggested that this aim might be most efficiently pursued by building on the existing INPADOC database. However, it needed to be understood that searching to determine whether technology was freely available would always be difficult. The fact that either a patent application had not entered into force in a particular Contracting State or else it had lapsed did not mean that there were no other rights which might be relevant to exploiting a particular piece of technology. It was observed that a system offering both patent technical information and related patent status information may be of particular importance to universities and should be made available to them.
- “115. In relation to the recommendation in paragraph 211 [*promotion of licensing*], one representative of a civil society organization noted that the PCT was only a filing system and that thus applicants would still have to pursue applications at the national phase. He considered that there thus would be little value in applicants signaling that they were willing to license patents that had not only not been granted, but not been considered in the national phase. In addition, the main difficulty for developing countries was to get licensing terms which were fair and reasonable, and it was apparent that this could not be facilitated by the PCT. While the proposed register might create a perception that technology transfer was being facilitated by the PCT, there was nothing that showed that such a measure would effectively promote technology transfer, particularly by facilitating licensing terms which were advantageous for developing countries.
- “116. The Delegation of Egypt, speaking on behalf of the PCT Member States that were members of the Development Agenda Group, stated that it believed that the issue of technical assistance was a key issue to be dealt with under PCT reform. This was why it had presented document PCT/WG/3/13 “Views on the Reform of the Patent Cooperation Treaty (PCT) System”. While the study prepared by the Secretariat recognized that the problems of backlogs and quality could be ultimately addressed most effectively by national Offices recruiting, training and equipping a sufficient number of examiners, it left this to be addressed by national Offices and the big Patent Offices. It focused instead on how these issues could be addressed at the international level through work-sharing arrangements aimed at minimizing duplication of work in Offices.
- “117. The Delegation stated that it should be recognized that an effective long-term and sustainable resolution of the problems of backlogs and quality would require augmenting the capacity of Offices to conduct as comprehensive a search and examination as possible for every application in a timely manner. This would require enhanced support for Offices, especially in developing countries, which must be provided in accordance with the provisions of the PCT and the recommendations of

the Development Agenda. In this context, the Delegation recalled that one of the two principal aims of the PCT was the “*organization of technical assistance, particularly for developing countries*” (paragraph 15 of the study).

- “118. Developing country Patent Offices should be provided enhanced access to effective search systems and good search databases at subsidized rates to facilitate better quality of search and examination (*the study acknowledged that many offices have limited access to effective search systems and databases owing to high costs*); funding, training and assistance should be provided to address the identified skill and manpower shortages; assistance in digitization etc.
- “119. Furthermore, Article 51 of the PCT called for the setting up of a Committee for Technical Assistance “with due representation of developing countries” to which the “Director General shall ... invite representatives of intergovernmental organizations concerned with technical assistance to developing countries to participate in the work of the Committee “. The Committee for Technical Assistance was supposed to “organize and supervise technical assistance for ... developing countries in developing their patent systems ...,” including through training, supply of equipment etc. The mandated Committee had not been established so far. The Delegation believed that it should be set up now to enable the Secretariat to look at technical assistance requirements comprehensively and address them in a focused manner.
- “120. The Delegation believed that a follow-up study by the Secretariat should comprehensively look into how the Secretariat could facilitate the provision of technical assistance as mandated by the PCT Treaty rather than just leaving it to the big IP offices to provide such assistance bilaterally.
- “121. Article 51 also envisaged that WIPO would “enter into agreements ... with international financing organizations and intergovernmental organizations, particularly the UN’ and its Specialized Agencies connected with technical assistance” for the financing of projects pursuant to this Article.” This had not materialized to date and should now be explored.
- “122. The Delegation further stated that another important concern pertained to technology transfer. The Preamble to the PCT outlined the following objective: “Desiring to foster and accelerate the economic development of developing countries ... 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”. As the study acknowledged, the PCT had been reformed over the years to streamline it from the viewpoint of the applicants’ interests. However, issues that were critical from the viewpoint of developing countries, such as whether and how well the PCT had been contributing to facilitating access to technical know-how for developing countries, as mandated by the Treaty, had never been reviewed or addressed by the PCT Working Group. It had also been sidelined in the present study. This important aspect with regard to the functioning of the PCT should also be reviewed in a follow-up study.
- “123. With regard to the issue of sufficiency of disclosure, the Delegation noted that the Preamble to the PCT also outlined the following objective: “*Desiring to facilitate and accelerate access by the public to the technical information contained in documents describing new inventions*”. This translated into the requirement of ensuring ‘sufficiency of disclosure’, which was an important issue from the viewpoint of developing countries. In fact, the promise of transfer of technology through adequate disclosure in patent applications was the primary benefit that developing countries were supposed to derive from the PCT system. However, this important issue had not been addressed in the present study by the Secretariat. Even procedural ways of improving disclosure in patent applications through practical

measures, such as streamlining the application forms etc., had not been explored. The follow-up study should therefore also assess how well the PCT system was functioning from the viewpoint of 'sufficiency of disclosure'. This was a critical issue from the perspective of maintaining the right balance between the holders of rights and public interest.

- "124. The Delegation of Switzerland, speaking on behalf of Group B, stated that it would like to make some preliminary comments on behalf of Group B concerning document PCT/WG/3/13. It wished to thank Egypt and the co-sponsors of document PCT/WG/3/13 for submitting this document and for sharing their views on PCT reform. With regard to the activities set out in this document for the further work of this Working Group and general reflections on the PCT, members of Group B wished to make preliminary comments on three essential points: the issue of quality and backlogs; the issue of technological transfer and the issue of technical assistance.
- "125. With regard to quality and backlogs, Group B wished to recall the framework for the agreed work program for the Working Group. This had been re-affirmed and agreed upon at the beginning of this meeting. It was agreed that the Working Group would not discuss substantive patent law or harmonization issues. The issues mentioned for additional studies to be carried out, such as, for example, disclosure, were not part of the scope of the Working Group's work. The Delegation further stated that it wished to recall at this stage that initiatives relating to quality or initiatives with a view to improving the situation with regard to backlogs were being tabled on an individual basis by offices which were interested in improving their quality of work and the speed of their work. It was also possible on a collective basis, for example, as part of the quality sub-group established within the context of the PCT Meeting of International Authorities (PCT/MIA).
- "126. It was therefore important to assess how these initiatives were moving forward to enable an assessment of how the Working Group was going to move forward on this area of work. As far as technology transfer was concerned, and with regard to the activities being proposed, Group B had to recall that, as far as patents were concerned, studies and discussions were underway within the framework of the Standing Committee on Patents and within the Committee on Development of Intellectual Property. Therefore, the Delegation believed it would be appropriate to look at the outcomes of those discussions and, if need be, complete those with additional studies and discussions related to the PCT, if necessary, rather than launching new activities in this regard within this Working Group. The Delegation stated that it sought to avoid duplication where possible and wished to see synergies. The risk of touching upon substantive issues should also be avoided; these issues should be left to the relevant committees.
- "127. Finally, with regard to technical assistance, the Delegation wished to recall what was mentioned in the Delegation's statement on behalf of Group B at the outset of the present meeting. Group B members felt it to be useful to re-examine and, where necessary, to develop technical assistance programs for patent examiners in developing countries or for small and medium-sized enterprises, research institutions and universities, on the basis of needs, to enable these parties to make better use and draw better benefits from the PCT system, and to be more active in it. In the study and during discussions in the Working Group, the Delegation had received information on the work and the content of the work of the Committee of Technical Assistance provided for under Article 51 of the PCT. With the creation of other Committees it had seen the dwindling relevance of the Committee under Article 51 of the PCT, which did not include the complete membership of WIPO. These other Committees covered issues of development of technical assistance

from a more holistic and cross-cutting point of view, and the Delegation felt that re-instating the Committee under Article 51 would be a retrograde step. For this reason, members of Group B believed that, if there was a need for discussions on PCT technical assistance, something which the Group very much acknowledged, the Group believed that the CDIP was now the appropriate organ for these discussions, which was in a better position and had the capacity in place to undertake a holistic, cross-cutting assessment with discussions on the part of all WIPO members. In general, Group B would favor a recommendation from the Working Group to call upon the competent organs of WIPO to provide PCT-related technical assistance to patent examiners, as had been recalled by the Representative of the African Group in his statement. The Delegation would also be in favor of activities for universities, research centers and small and medium-sized enterprises (SMEs).

- “128. The Delegation stated further that Group B was looking at establishing synergies between these activities, which could be rolled out in addition to existing projects and thus make it possible to be built on existing projects both within WIPO and within States, making best use of existing resources for these activities and avoiding duplicating efforts. For example, there were a number of thematic projects within the CDIP which covered some of the questions which had been mentioned in document PCT/WG/3/13.
- “129. Following extensive informal discussions, the Working Group endorsed the following recommendations relating to Technical Assistance and PCT Information and Technology Transfer, replacing or adding to the relevant recommendations within the study:
- “204. It is recommended that, when requesting technical assistance in the context of the PCT, just as in any other area, Offices and Contracting States ensure that the purpose of the request is clear and that the International Bureau is aware of related national policies. The International Bureau should make sure that advice, training and systems which are delivered take the needs and national policies properly into account.
- “204bis. 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 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.
- “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.
- “207. It is recommended that the IB work with national Offices to deliver effective patent status information covering not only PCT applications and subsequently granted patents but also normal national applications, including information concerning opposition of patents (pre and post-grant), revocation and lapse of patents, issuance of compulsory licenses, etc. This information would be integrated into a search system allowing technology which has fallen into the public domain to be identified more readily. The IB would take up a pilot project to develop an integrated system for automatic updating of the status of the application by linking it with national offices/organizations.

- “211. It is recommended that a system for promoting licensing should be established, including by introducing a register that encourages applicants to signal their willingness to license their potential patents.
- “211*bis*. It is recommended that a follow-up study be conducted by the IB to review and assess how well the PCT system has been functioning in terms of realizing its aim of disseminating technical information and facilitating access to technology as well as organizing technical assistance for developing countries.
- “The 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, recognizing that action on certain issues may require discussion in other WIPO fora.
- “In this context, appropriate changes should be made in the proposed form for third party observations (document PCT/WG/3/6 Annex 2, p.2), including “sufficiency of disclosure” aspects, for discussion at the next session.
- “213. Noting the desire by many Contracting States to have all working documents of the PCT Working Group available in the six official languages of the United Nations, so as to encourage and facilitate engagement in the discussions by all Contracting States, it is recommended that this issue be included in the study by the IB on the overall WIPO language policy currently under way.”
- “130. The Secretariat stated that, with regard to the recommendation set out in revised paragraph 207, it wished to clarify that the International Bureau would carry out the recommended pilot project within the parameters of the existing funding and budget, and that the project would build on already existing similar projects and existing facilities from within and outside of WIPO.”
- “131. The Delegation of Switzerland, speaking on behalf of Group B, stated that it was delighted about the willingness of all to work together in this Working Group during this week. It noted that there had been very technical and interesting discussions on the substantive issues on the agenda of this meeting and very fruitful discussions and a very good approach from delegations, with all delegations listening carefully to each other to understand the respective positions and trying to find solutions to pursue the work in front of the Working Group. All delegations should congratulate themselves for the success achieved.
- “132. The Delegation stated further that, noting that the study on the need to improve the functioning of the PCT system had been submitted several weeks ago and that informal briefing sessions had been held in relation to the document, it would have been useful to facilitate the work of the Working Group if alternative or additional proposals and explanations, such as those presented by the Delegation from Egypt and the other cosponsors of document PCT/WG/3/13, had been made available earlier so as to contribute to a more productive exchange of views during the meeting. The Delegation expressed the view that, this notwithstanding, the Working Group had had healthy discussions and positive interactions and had achieved an encouraging result; the Delegation wished to thank everybody for the good work and the successful result. More generally, the Delegation wished to point out how important it was that the studies and the systems which had been agreed on stayed within existing financial resources and used, as far as possible, existing resources and systems. On the other hand, resources were limited, so existing resources needed to be maximized and duplication and setting up of parallel structures avoided.

- “133. In concluding, the Delegation stated that, with regard to the recommendation set out in paragraph 211 as endorsed by the Working Group, it was the Delegation’s understanding that this recommendation referred to the international phase and not the national phase.
- “134. Concerning paragraph 204*bis*, Group B was looking forward to concluding the discussions the Working Group had concerning the possibility to reestablish the Committee on Technical Assistance or not.
- “135. The Delegation of Egypt, speaking on behalf the PCT Member States that were members of the Development Agenda Group, stated that it wished to congratulate all Member States for achieving this consensus. It noted that the Development Agenda Group had provided specific recommendations set out in document PCT/WG/3/13 which included the views on the PCT reform by that Group and had presented specific recommendations about how to achieve a balanced outcome of the discussions. The Delegation expressed the view that the Group had engaged constructively and thanked particularly Member States that had accepted to engage directly; it also appreciated the proxy measures that had been undertaken by others to reach consensus, but in general would like to encourage a direct engagement from all Member States in the future, noting that this would be the only way in which constructive agreements within the WIPO context could be reached.
- “136. The Delegation further noted that it wished to express its concern about the fact that the issue which had prevented this Working Group from making progress faster was an issue of an obligation under the Patent Cooperation Treaty, namely, that of the obligation under PCT Article 51 to set up a Committee on Technical Assistance. The Delegation noted that there were many other Articles in the PCT Treaty with regard to which the Working Group could find itself in the future in a similar position. In this context, the Delegation stated that Treaty obligations under the PCT needed to be implemented and that it looked forward to engage accordingly in the discussion in the fourth session of the Working Group.
- “137. The Delegation of Angola, speaking on behalf of the African Group, stated that it wished to thank the Secretariat, the members of the Development Agenda Group and of Group B for all of the efforts to reach a consensus. As the Delegation had stated during the informal consultations, it was important for future consultations that issues which were essential for particular Groups were identified early in the process to facilitate the process of reaching a consensus, rather than getting bogged down in controversy, which changed the dynamic of discussions. Such issues should be identified early, for example, during informal briefing sessions prior to the formal meetings, to avoid lengthy discussions during the meeting. The Delegation further stated that, in the end, the process of reaching consensus had worked well and that the Delegation looked forward to seeing the kind of flexibility shown during this meeting in all Committees within WIPO.”

[End of Annex and of document]