

Patent Cooperation Treaty (PCT) Working Group

**Fifth Session
Geneva, May 29 to June 1, 2012**

REPORT

adopted by the Working Group

CORRECTIONS RELATING TO DOCUMENT PCT/WG/5/22

This document reproduces the text of document PCT/WG/5/22 with a correction concerning the intervention by the Delegation of Japan in paragraph 307 and the addition of an intervention by the Delegation of the United States of America as paragraph 341, with consequential renumbering of subsequent paragraphs.

INTRODUCTION

1. The Patent Cooperation Treaty Working Group held its fifth session in Geneva from May 29 to June 1, 2012.
2. The following members of the Working Group were represented at the session: (i) the following Member States of the International Patent Cooperation Union (PCT Union): Algeria, Australia, Austria, Barbados, Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, China, Colombia, Congo, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Germany, Hungary, India, Japan, Kazakhstan, Latvia, Libya, Lithuania, Mexico, Morocco, Namibia, New Zealand, Norway, Oman, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Singapore, Slovakia, South Africa, Spain, Sweden, Switzerland, Thailand, Turkey, United Kingdom, United States of America, Zambia (54); (ii) the following intergovernmental organizations: European Patent Office (EPO), the Nordic Patent Institute (NPI) (2).

3. The following Member States of the International Union for the Protection of Industrial Property (Paris Union) participated in the session as observers: Bangladesh, Iran (Islamic Republic of), Kuwait, Saudi Arabia (4).
4. The following intergovernmental organizations were represented by observers: African Intellectual Property Organization (OAPI), African Regional Intellectual Property Organization (ARIPO), Eurasian Patent Organization (EAPO), European Union (EU) (4).
5. The following international non-governmental organizations were represented by observers: Asian Patent Attorneys Association (APAA), Institute of Professional Representatives before the European Patent Office (EPI), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), Third World Network (TWN) (5).
6. The following national non-governmental organizations were represented by observers: American Intellectual Property Law Association (AIPLA), Brazilian Association of Intellectual Property (ABPI), Japan Intellectual Property Association (JIPA), Japan Patent Attorneys Association (JPAA), Polish Chamber of Patent Attorneys (5).
7. The list of participants is contained in the Annex.

OPENING OF THE SESSION

8. Mr. Francis Gurry, Director General of WIPO, opened the session and welcomed the participants. Mr. Claus Matthes (WIPO) acted as Secretary to the Working Group.
9. The Director General stated that the full agenda for the session indicated the positive extent to which members of the Working Group were involved in the process of improvement of the PCT system. The PCT had become the backbone and central node of the international system and also of WIPO, generating 74.2 per cent of revenue of the Organization and being the source of financing for all its development programs and activities. Over the course of its history, the PCT had become an extremely successful agreement and an example of very successful international cooperation. The PCT now covered 74 per cent of the countries of the world, and its membership was responsible for 93 per cent of the world's global economic output. Moreover, 87 per cent of the world's population belonged to countries that were members of the PCT, and 99 per cent of research and development expenditure each year around the world was undertaken in countries that were party to the PCT. The PCT was also broadening in its scope, with an increasing range of countries becoming not just party to the PCT but active users of the system. Examples of increases in PCT filings in 2011 in emerging and developing countries included China (+33.4 per cent), consistent with the trend for recent years; Brazil (+17.2 per cent); India (+11.2 per cent), following an increase of about 36 per cent in 2010); the Russian Federation (+20.8 per cent); and Turkey (+12.7 per cent). These examples showed positive signals of the growing importance and universality of participation in the PCT system.
10. The Director General added that the success of the PCT could not be taken for granted in the Organization. The PCT was not the only way for a patent applicant to seek international protection for an invention; 54 per cent of non-resident applications came through the PCT, with 46 per cent of filings abroad not using the PCT system. This underlined the importance of the work of PCT Working Group in the process of continuous improvement of the PCT system, similar to the ongoing work with regard to the other global IP systems, for example, the Madrid System and the Hague System, which also had working groups engaged in the continuous improvement of these systems.

11. The Director General concluded by highlighting the good progress that had been made in the implementation of the PCT Roadmap recommendations endorsed by the Working Group at its third session, which would be discussed later in the week, as well as the new proposals for the further improvement of the PCT system to be discussed later in the week, given the importance of the PCT not just to the international patent system but also to the Organization and its financial stability.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

12. The Working Group unanimously elected Ms. Susanne Ås Sivborg (Sweden) as Chair for the session and Mr. Andrés Guggiana (Chile) as Vice-chair; there was no nomination for a second Vice-chair. Ms. Sivborg chaired the discussions on all agenda items, except for the discussions on agenda items 6(f) to 7(a), which were chaired by Mr. Guggiana.

ADOPTION OF THE AGENDA

13. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, proposed an item to be added to the draft agenda set out in document PCT/WG/5/1 Rev.3, as new agenda item 8, entitled *Contribution of the Working Group to the implementation of the respective Development Agenda Recommendations* (and consequent renumbering of agenda items 8, 9 and 10). Given that the Preamble of the PCT set forward clearly the aim “to foster and accelerate the economic development of developing countries ...” and that the Working Group covered important matters, such as recommending amendments to the Regulations under the PCT to the Assembly and making other proposals regarding the PCT, with direct implication on patent legislation in Contracting States and on the work of national patent Offices, the Development Agenda Group believed that delegations should have the opportunity to assess the contribution of the Working Group to the implementation of the Development Agenda recommendations.

14. The Delegation of Egypt, speaking on behalf of the African Group, supported the proposal made by the Delegation of Algeria on behalf of the Development Agenda Group to add the new agenda item *Contribution of the Working Group to the implementation of the respective Development Agenda Recommendations* for the reasons stated by the Delegation of Algeria.

15. The Delegation of the United States of America, speaking on behalf of Group B, stated that it agreed to the inclusion of this new agenda item on the understanding that it was in no way considered to create a precedent towards becoming a standing or permanent agenda item in future meetings of the Working Group.

16. The Delegation of Brazil stated that it supported the inclusion of the new agenda item as proposed by the Delegation of Algeria on behalf of the Development Agenda Group.

17. The Working Group adopted the revised draft agenda as proposed in document PCT/WG/5/1 Rev. 3, with the following addition as new agenda item 8 (and consequential renumbering of agenda items 8, 9 and 10):

“Contribution of the Working Group to the implementation of the respective Development Agenda Recommendations.”

OPENING STATEMENTS

18. The Delegation of the United States of America, speaking on behalf of Group B, stated that since its inception in 1970, the Patent Cooperation Treaty had benefited patent applicants worldwide. It allowed users to seek patent protection simultaneously in a large number of countries by filing a single international application. This saved users' time and money. The mandate of the Working Group was to continually improve the operations and increase the use of the PCT, which Group B believed was happening; for example, last year, over 182,000 PCT applications had been filed, an increase of 10 per cent over 2010. With this in mind, the Working Group needed to progress in a positive manner. The session had a full agenda, comprising issues on technical assistance and more substantive topics, the latter of which should be the basis for the majority of the discussions.

19. The Delegation of the United States of America, speaking on behalf of Group B, further stated that it wished to offer a suggestion that would hopefully make the work at the session proceed much more smoothly, especially during the final day of the session. Group B proposed that, after each agenda item, the Chair should prepare and read out a short factual summary of what was discussed under that item, and, if relevant, whether a decision was taken. The Working Group could then review and approve the summarized items while the discussions were still fresh in everyone's minds. These individual summarized items would then be compiled at the end of the session to form the Summary by the Chair, thus obviating the need to engage in lengthy negotiations late on the last day. Finally, the Delegation stated that the Chair could count on the constructive spirit and support of the delegations of Group B during the session.

20. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, reiterated the interest of PCT Contracting States in the Development Agenda Group to improve the functioning of the PCT system and its usefulness to all Contracting States, users and society as a whole. Therefore, the Delegation underlined the need to ensure that the future development of the PCT system was fully member-driven and did not entail harmonization of patent laws, neither in substance nor in practice, as stipulated under Article 27(5). In relation to the implementation of recommendations adopted in the last session to improve the functioning of the PCT system and the "Coordination of Technical Assistance and Financing of Technical Assistance Projects for Developing Countries under Article 51 of the PCT", the Delegation expressed its hope for productive outcomes which not only improved the functioning of the PCT but also enhanced its contribution to socio-economic growth and the well-being of people in all PCT Contracting States. In addition, the Delegation referred to the Preamble to the Treaty: "Desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology". The Delegation concluded by emphasizing that the Development Agenda Group believed that the work of the Working Group needed to follow the Preamble and its objectives.

21. The Delegation of Egypt, speaking on behalf of the African Group, stated that it attached great importance to the efficient functioning of the PCT and stressed that work in the Working Group should be aimed at making a contribution to the progress of science and technology, including in African countries. In addition, the Delegation underlined the need to ensure that this work facilitated and accelerated access for the public to the technical information contained in PCT documentation, emphasizing the desire of the African Group that the work also fostered and accelerated the economic development of developing countries. Furthermore, the Delegation hoped that the Working Group could adopt efficient measures to provide technical assistance, capacity building and training in order to build the capacities of patent Offices in African countries to become able and capable of reaping the benefits of the PCT system.

22. The Delegation of Egypt, speaking on behalf of the African Group, further stated that the suggestion regarding the conduct of this session of the Working Group made by the Delegation of the United States of America on behalf of Group B could be an efficient way of proceeding with the agenda. Moreover, consideration could be given on how this procedure could be standardized across other WIPO bodies. Since this was first time such a procedure would be applied, it would be important to observe how it could be implemented and how it functioned in practice so as to ensure inclusiveness of all Contracting States represented at the session and decision-making in a democratic manner. Finally, the Delegation stated that the African Group hoped for a positive outcome to the meeting and that the Chair could count on the concerted effort of its members during the session.

23. The Delegation of Chile stated that the National Institute of Intellectual Property in Chile, along with most of the patent Offices worldwide, would be facing challenges, due to the greater number of patent applications and the increasing complexity of inventions. This gave rise to an increase in the time necessary for reviewing applications and longer backlogs of patent applications waiting to be processed. In this regard, the Delegation saw the need to continue to strengthen and perfect the PCT as the backbone of the international patent system by responding in a balanced, efficient and effective way to all users. The Delegation pointed out that the PCT had become widely used by applicants in Chile since its accession to the Treaty in 2009, becoming the third country in Latin America in terms of international filings and bearing witness to the strength and the dynamism of interest for the international patent system. In terms of the agenda of the meeting, the Delegation highlighted the collaborative search and examination of patents, which could not only ensure proper examination of patent applications but also be an effective tool in avoiding unnecessary duplication of work, thereby saving processing time and improving patent quality. One example of collaboration that Chile was involved in along with other countries in Latin America was the PROSUR project, whereby examiners of different patent Offices worked together, enriching the information available to patent examiners at participating Offices when examining applications. Without prejudice to other activities carried out by this project, the Delegation welcomed the proposals set out in document PCT/WG/5/18, entitled *PCT 20/20*, submitted by the United Kingdom and the United States of America, but pointed to the necessity to analyze the practical and technical aspects of these proposals in more depth. Finally, the Delegation hoped that Working Group could contribute to improving the PCT system, one of the main pillars of the work of WIPO.

24. The Delegation of Algeria requested clarification of the procedure proposed by the Delegation of the United States of America on behalf of Group B for the Chair to prepare, at the end of the discussion on each agenda item, a summary to be approved by the Working Group. The Delegation underlined that it was essential that this procedure included a degree of flexibility so that delegations could re-visit the summary of an agenda item and propose amendments at a later stage of the session.

25. The Delegation of Egypt also requested clarification of the proposal by the Delegation of the United States of America on behalf of Group B. The Delegation stated that the Summary by the Chair was prepared under the responsibility of the Chair and was not binding on Member States. The Delegation requested confirmation of the status of the summary and requested it to be inclusive of all the different views expressed by delegations during the discussion of each item.

26. The Delegation of the United States of America, speaking on behalf of Group B, responded to the questions raised by the Delegations of Algeria and Egypt. The Delegation agreed that the procedure should have a certain degree of flexibility and underlined that the purpose of the proposal was to avoid lengthy negotiations or debate on the final day of the session on points that were discussed towards the beginning of the meeting by the Working Group agreeing, in principle, on the summary of the agenda item while the discussion was fresh in the minds of participants. The Delegation also hoped that the summary of each agenda item would reflect the views expressed by all delegations and that the procedure would bring about an efficient use of the time during the meeting.

27. The Chair confirmed agreement by the Working Group to trial the procedure suggested by the Delegation of the United States of America on behalf of Group B to summarize the discussions after every agenda item, with this summary reflecting the different views expressed by delegations. However, the procedure would include the flexibility for delegations to re-visit the summary of an agenda item and propose amendments to this summary at a later stage of the session.

PCT STATISTICS

28. The International Bureau gave a presentation on the PCT statistics in 2011¹, based on the *2012 PCT Yearly Review*. An estimated 181,900 PCT applications had been filed in 2011, representing an increase of 10.7 per cent compared to 2010, the fastest growth since 2005. By country of origin, high percentage growth in PCT applications among the top filing countries had occurred in China (+33.4 per cent) and Japan (+21 per cent). Filings originating from the United States of America, which remained the country with the largest number of users of the PCT system, saw a recovery of growth of 8 per cent after a three year period of decline. European countries showed mixed results. Switzerland (+7.3 per cent), France (+5.8 per cent) and Germany (+5.7 per cent) all experienced strong growth, whereas the number of PCT applications fell from applicants based in the Netherlands (-14 per cent), Finland (-2.7 per cent) and Spain (-2.7 per cent). Four large middle-income countries experienced double digit growth: Brazil (+17.2 per cent), India (+11.2 per cent), the Russian Federation (+20.8 per cent) and Turkey (+12.7 per cent). The United States Patent and Trademark Office (USPTO) remained the Office receiving the most PCT filings with a growth of 9.2 per cent compared to 2010. In terms of method of filing, the share of fully electronic filings had continued to rise (82.7 per cent of total filings in 2011), with falls in the percentage of both paper filings and PCT EASY filings. An estimated 477,500 PCT applications had entered at least one national or regional phase in 2010, a growth of 7.7 per cent over 2009, with PCT national phase applications accounting for about 54 per cent of patent applications filed abroad. The USPTO (90,931 national phase entries) overtook the European Patent Office (EPO) (79,594 national phase entries) to become, for the first time, the Office receiving the highest number of national phase entries.

29. Of the 17 national patent Offices or regional organizations which had been appointed to act as International Searching Authorities and International Preliminary Examining Authorities (three of which were not yet operating as such), the European Patent Office had issued the largest number of international search reports (ISRs) (39.3 per cent of the total). In relation to timeliness, in 2011, 68.3 per cent of ISRs had been transmitted to the International Bureau within the 17-month time limit (compared to 67.0 per cent in 2010), but there had been significant variations between Authorities. Figures for supplementary international searches had remained very low. 13,567 requests for international preliminary examination under Chapter II were received in 2011, representing a smaller percentage decline (-0.02 per cent) than that experienced in previous years since the introduction of the Chapter I written opinion in 2004. The proportion of reports transmitted under Chapter II within 29 months by International Preliminary Examining Authorities (68.7 per cent) in 2011 decreased slightly, compared to 70.7 per cent in 2010, but there were considerable variations between Authorities.

30. The Delegation of Egypt stated that the rising figures for applications filed under the PCT were positive indicator of the functioning of the system. However, the Delegation noted that the numbers of applicants from Africa had stagnated in recent years, and requested further information on the distribution of applications in the African continent and the types of applicants who had filed these applications.

31. The Representative of the European Patent Office (EPO) requested information on the statistics on the timeliness in transmitting international search reports (ISRs). As had been correctly stated in the *2012 PCT Yearly Review*, late transmittal of PCT applications from the receiving Office to the International Searching Authority could negatively affect the timeliness in transmitting the ISR to the International Bureau. In that respect, the EPO requested that the

timeliness statistics of International Searching Authorities in future publications of the *PCT Yearly Review* contained statistics regarding the timeliness under Rule 42, which required the international search report to be established within three months from the receipt of the search copy by the International Searching Authority, or nine months from the priority date, whichever time limit expired later.

32. The Secretariat, responding to the question on applications from Africa raised by the Delegation of Egypt, stated that Table A.2.5 in the *2012 PCT Yearly Review* provided a breakdown of applications by sub-region. This table showed that the majority of PCT applications originating from Africa came from Southern Africa, and showed an overall decline in the number of PCT applications from Africa from 513 in 2007 to 438 in 2011. The publication also showed the distribution by type of applicant for the top 30 PCT filing countries by origin of applicant in Figure A.3.3, which included South Africa. Furthermore, the statistical table in the Annexes to the publication provided the figures for the number of PCT filings by country of origin for all Contracting States.

33. The Secretariat, responding to the request from the Representative of the European Patent Office to include statistics regarding Rule 42 timeliness, informed the Working Group that the International Bureau was working on providing more accurate statistics regarding timeliness of establishing international search reports. This work did, however, depend on receiving information by International Searching Authorities on when the search copy had been received. The Secretariat indicated that this statistical information was available to the International Bureau in much greater detail than had previously been the case, and it hoped to show timeliness statistics based on the date of receipt of the search copy by the International Searching Authority instead of the priority date in the near future.

34. The Working Group noted the presentation by the International Bureau on PCT statistics, based on the recently published *2012 PCT Yearly Review*.

MEETING OF INTERNATIONAL AUTHORITIES UNDER THE PCT: REPORT ON THE NINETEENTH SESSION

35. Discussions were based on document PCT/WG/5/2.

36. The Secretariat informed the Working Group that the time period for International Authorities to comment on the draft full report for nineteenth session of the Meeting of International Authorities (document PCT/WG/19/14 Prov.) had now elapsed. The full report of the session, containing a few minor changes to some of the interventions, would be published shortly.

37. The Secretariat provided an update to the Working Group on the work agreed by the Meeting of International Authorities as set out in paragraph 20 of the Annex to document PCT/WG/5/2. In relation to the study on characteristics of international search reports established by International Authorities, the International Bureau had set up a statistical analysis environment to assist with the study and would shortly be meeting with the European Patent Office (EPO) to discuss the methodology that the EPO had used in a similar project by the Trilateral Offices upon which the Meeting agreed to base the study. Following that meeting, the International Bureau hoped to be in a position to offer an initial analysis to International Authorities on which the Quality Subgroup could begin its analysis.

38. The Working Group noted the report on the nineteenth session of the Meeting of International Authorities under the PCT, based on the Summary by the Chair of that session contained in document PCT/MIA/19/13 and reproduced in the Annex to document PCT/WG/5/2.

IMPLEMENTATION OF RECOMMENDATIONS TO IMPROVE THE FUNCTIONING OF THE PCT SYSTEM

39. Discussions were based on document PCT/WG/5/3.

40. The Delegation of Germany announced that a collaborative project between the German Patent and Trade Mark Office (DPMA) and WIPO to the benefit of selected national Offices in developing countries was envisaged to begin in 2012. The project aimed to assist national Offices in developing countries to enhance their capacities in patent examination by providing selected Offices with access through a limited number of user accounts to the German patent information system DEPATIS, used by patent examiners at the DPMA and containing around 80 million patent documents. This project would therefore enable patent examiners in beneficiary Offices to conduct sophisticated searches and examinations of patent applications through the external client secure login currently offered to selected users, such as the German patent information centers (examiners at the DPMA use an internal version accessible through the so-called internal client login). In the collaboration, WIPO would be providing a first level helpdesk to assist national Offices using DEPATIS. The Delegation stated that the technical and judicial details required to set up and implement the collaboration between the DPMA and WIPO were currently being worked on at expert level, but individual collaborations were scheduled to begin later in 2012.

41. The Delegation of Australia announced that IP Australia would be commencing a new training initiative, "IP Australia's Regional Patent Examination Training Program", aimed at making a useful contribution to implementing the PCT Roadmap recommendations relating to coordinated training in search and examination. The program would also complement other efforts to build capacity in patent examination in the Asia and Pacific region, for example, by Japan, Malaysia, the Republic of Korea and the European Patent Office, as well as those undertaken by WIPO listed in document PCT/WG/5/3. The Delegation believed that effective patent examiner training required time and investment. This was recognized in IP Australia's proposed training initiative by providing a comprehensive program for examiners lasting up to 2 years, comparable to the length of the domestic training program taken by examiners at IP Australia. The regional training program would be unique in combining one-on-one mentoring and assessment by experienced examiners at IP Australia with e-learning opportunities, all based on the competency-based training program of IP Australia. The Delegation believed that the training program would benefit Offices conducting searches and substantive examination of patent applications by equipping examiners with the skills required to examine applications independently and in a manner consistent with the Rules and Guidelines of the PCT. The new program would be partially funded by the ASEAN-Australia-New Zealand Free Trade Agreement under the economic cooperation work program. In delivering online distance learning, IP Australia would be working with the WIPO Academy to learn from its experience in this area. The Delegation stated that a pilot of the training program was scheduled to commence in early 2013. The Intellectual Property Corporation of Malaysia, the Directorate General of Intellectual Property Rights in Indonesia and the Intellectual Property Office of the Philippines would be invited to participate in the pilot, and the Delegation hoped to offer the program to the African Regional Intellectual Property Organization (ARIPO) and national Offices of its Member States. However, participant numbers would initially be kept at a low level to ensure adequate attention could be given to each trainee. In conclusion, the Delegation stated that it looked forward to the project, which was the most significant development cooperation activity undertaken by IP Australia for many years.

42. The Delegation of Egypt, speaking on behalf of the African Group, stated that the African Group was particularly interested in the "recommendations related to the issues of incentives for applicants to use the system efficiently; skills and manpower shortages; access to effective search systems". In this regard, the Delegation hoped to see more focused effort directed towards raising awareness in the scientific community, in particular about the PCT system and how to encourage innovators to use it more. The Delegation noted the acknowledgement in paragraph 31 of the document of the limited capacities of the International Bureau to be able to directly help national Offices to address their training needs, but enquired whether this limitation concerned

manpower training resources or financial facilities in view of the responsibility of the Secretariat to provide training and technical assistance, particularly in view of Article 51(3). The African Group hoped to see more activities and assistance to developing countries in Africa in the area of training, since this could contribute to raising the quality of search and examination as well as reducing backlogs. Finally, the Delegation highlighted the importance of the availability of fee reductions and how more could be achieved in this area for groups such as small and medium-sized enterprises, universities and not-for-profit institutions in developing countries.

43. The Secretariat, responding to the questions raised by the Delegation of Egypt, explained that the International Bureau had been trying to focus for some time on training for the scientific community in developing countries on the patent system in general. When delivering seminars on the PCT, the International Bureau made efforts to reach out to universities and research institutions to teach them not only about the PCT, but also on the basics of patent law and how to use the patent system. With regard to the question on the limited capacity of the International Bureau to provide training and substantive examination itself, there was a financial element, but the main limitation was the number of staff at WIPO having a background in search and substantive examination of patent applications to deliver the training. The focus of the International Bureau was therefore on working with donor Offices to provide this training, for example, in the long-term initiative announced by IP Australia to train examining staff in other Offices over an extended period. Finally, on the issue of fee reductions, the Secretariat acknowledged that little progress had been made, and recalled the difficult discussions on the criteria for fee reductions which had run into an impasse at the third session of the Working Group. At the time, all Member States had been invited to provide suggestions to the International Bureau on financially-sustainable ways forward to make progress on this front. On fee reductions for small and medium-sized enterprises (SMEs), the Secretariat acknowledged the lack of an internationally-accepted definition of an SME. Given that in some countries, such as Germany, as many as 98 per cent of companies could be regarded as falling within the national definition of an SME, fee reductions for SMEs of a general nature would have far-reaching financial implications on the International Bureau. The Secretariat concluded by stating that it hoped to make progress on the PCT Roadmap recommendation set out in paragraph 191 of document PCT/WG/3/2 and it continued to welcome ideas from Member States in this regard while at the same time acknowledging the difficulties of finding financially-sustainable solutions that could be accepted by all members of the Working Group.

44. The Delegation of the United States of America stated that the training initiatives that had been announced at the meeting were interesting examples of coordinating training in search and examination. The Delegation also wished to take the opportunity to highlight the training provided through the Global Intellectual Property Academy at the United States Patent and Trademark Office (USPTO) to a number of Offices, with sessions taking place both at the USPTO and at least one other national Office. The USPTO hoped to hold similar training sessions in the future and the Delegation called on patent Offices wishing to receive such training to contact the USPTO or the Delegation.

45. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, stated that the Development Agenda Group took note of efforts made by the Secretariat in the implementation of the PCT Roadmap recommendations and encouraged work to continue. The Delegation referred to two specific areas of the PCT Roadmap where it had particular comments. First, in relation to the coordination of training in search and examination set out in paragraphs 30 to 32 of the document, the Development Agenda Group requested the Secretariat to take on board elements of the recommendations of the “External Review of WIPO Technical Assistance in the Area of Cooperation for Development” (document CDIP/8/INF/1) and the “Joint Proposal by the Development Agenda Group and the Africa Group on WIPO’s Technical Assistance in the Area of Cooperation for Development” (document CDIP/9/16), as both these documents discussed issues relevant to the PCT Roadmap recommendations, such as access to databases, training, capacity-building and legislative assistance. Second, concerning the recommendation on the availability of fee reductions in paragraph 34 of the document, the Delegation asked for clarification from the Secretariat on whether there were other difficulties in formulating solutions to improve accessibility

to the PCT system, beyond the lack of an internationally-accepted definition of an SME. In particular, the Delegation pointed out that private individuals also had difficulties in accessing the PCT system and requested whether any particular actions were being taken in this respect.

46. The Delegation of Egypt thanked the Secretariat for the clarifications provided and noted that there were many training initiatives being undertaken, but underlined the need for greater coordination, adding that the training needed to be tailor-made to suit the interests and needs of recipient Offices. The Delegation therefore requested the Secretariat to provide a work plan in advance to show how it proposed to coordinate with donor Offices in providing training for developing and least developed countries, especially on facilitating the financial resources required for these activities. With regard to fees, the Delegation understood the difficulties in determining fee reduction eligibility criteria that could be agreed upon by all Member States. However, this did not prevent the Working Group from making attempts to seek solutions to this issue. In order to advance work in developing new eligibility criteria, the Delegation asked whether the Secretariat could prepare a discussion paper for the sixth session of the Working Group on possible criteria for fee reductions for applicants from developing and least developed countries, in particular small and medium-sized enterprises, universities and not-for-profit institutions.

47. The Delegation of China stated that it appreciated the efforts of the International Bureau in the implementation of recommendations to improve the functioning of the PCT. Since China became a Contracting State of the PCT in 1994, it had been committed to improving the quality of international search reports, written opinions of the International Searching Authority and the international preliminary examination report, as well as other services. The Delegation believed that the quality of international reports had improved with steady steps, such as setting up quality control systems, expanding staffing and facilities, enhancing the training and quality inspection, consolidating quality management and opening feedback channels. China looked forward to carrying out the suggestions adopted by the Working Group along with other Member States to improve the functioning of the PCT system so that it performed more effectively and efficiently as an international application system.

48. The Secretariat, responding to the comments made by the Delegation of Algeria on behalf of the Development Agenda Group, stated that the Secretariat closely followed the discussions in the Committee on Development and Intellectual Property (CDIP) on the "External Review of WIPO Technical Assistance in the Area of Cooperation for Development" (document CDIP/8/INF/1). The Secretariat added that the part of the review specific to the PCT would be touched upon later in the session in the discussions on document PCT/WG/5/6, and that the Working Group should see what would evolve from the outcome of the discussions in the CDIP in terms of concrete recommendations. Regarding the intervention by the Delegation of Egypt on the provision of work plans, the Secretariat stated that the focus of development cooperation had for some time been on developing strategic national country plans together with the country concerned to assess individual needs, for example, in terms of training and access to online systems, by identifying gaps and cooperating with the country and donor Offices to address these needs. Pending the outcome of the discussions in the CDIP on the external review, these national plans were being developed by the Regional Bureaus, collaborating with Divisions working on the PCT where appropriate.

49. The Secretariat, responding to the questions on criteria for fee reductions, stated that the lack of a definition of a small and medium-sized enterprise was not the only difficulty in developing new eligibility criteria. As there was no agreed definition of what constituted a developing country, there had been a difficult debate in the third session on the issue of which countries should be able to meet the criteria that would allow for at least some of their applicants to qualify for reductions. There were therefore many facets to the issue of fee reductions, be it for applicants from developing and least developed countries, or for SMEs, universities or not-for-profit research institutes in general. The Secretariat stated that it would be willing to produce a discussion paper for the next session of the Working Group, whether on the basis of a revised version of the document discussed by the Working Group at its third session (document PCT/WG/3/4 Rev.), or

on the basis of a new proposal. Meanwhile, the Secretariat encouraged Member States to provide input to facilitate progress towards finding solutions on this issue that would be financially sustainable and improve access to the PCT system.

50. The Delegation of South Africa requested clarity from the Secretariat on the term “PCT Roadmap recommendation”, which was used in some documents, whereas in other documents reference was made to “recommendations to improve the functioning of the PCT”. Moreover, the Delegation pointed out that paragraph 5 of document PCT/WG/5/3 referred to “The PCT Roadmap as expressed in document PCT/WG/2/3 and PCT/WG/3/2 ...”. Mindful of the debate at the second session of the Working Group in 2009 on document PCT/WG/2/3 and the Draft Roadmap in Annex I to this document, and the recommendations which were adopted by the Working Group at its third session on the basis of document PCT/WG/3/2, taking into account views of Member States and the Development Agenda recommendations, the Delegation asked for further explanation of the reference to the PCT Roadmap.

51. The Secretariat, in response to the question raised by the Delegation of South Africa, recalled that the document prepared by the International Bureau to kick-start discussions on the future development of the PCT system was entitled “Draft Roadmap for the Development of the Future PCT”. This document was then brought to the Working Group, resulting in the Working Group endorsing a limited and exhaustive list of recommendations at its third session on which Member States and the International Bureau had subsequently begun work towards their implementation. References to the PCT Roadmap therefore referred to the recommendations endorsed by the Working Group at its third session, but keeping in mind that there was always a standing invitation to Member States to add to this list by proposing future work items which the Working Group could consider to be added to the Roadmap.

52. The Chair summarized the discussions by noting that delegations had raised questions relating to the need for training and awareness-raising of the PCT and the patent system in general among companies, universities and other research organizations, particularly in developing countries, and that the International Bureau had been asked to reinforce its work with donor Offices to provide training and capacity-building possibilities. The Working Group had also heard examples of such activities from the Delegations of Germany, Australia and the United States of America. The issue of fee reductions for certain applicants had also been discussed. While noting the complexity of the issue and difficulties in finding a financially-sustainable way forward to make the PCT system more accessible to certain applicants, the Secretariat agreed to a request from the Working Group to prepare a paper for discussion at its next session. The Secretariat had also clarified the term “PCT Roadmap” as requested by the Delegation of South Africa.

53. The Working Group noted the contents of document PCT/WG/5/3.

THE SURGE IN WORLDWIDE PATENT APPLICATIONS

54. Discussions were based on document PCT/WG/5/4.

55. The Delegation of Brazil stated that the document, which elaborated on the study presented to the fourth session of the Working Group (document PCT/WG/4/4), further addressed the challenges faced by patent Offices today, examining the role and some factors causing the increase in patent filings related to comparative strategy. The Delegation believed that studies such as this helped to reflect on the concrete impact of the system in diverse socio-economic realities. In addition, such studies provided useful information to help determine appropriate action in the face of growth in backlogs at Offices, a problem affecting both developed and developing countries. The Delegation highlighted that document PCT/WG/5/4 covered strategic patenting and “evergreening” strategies in the pharmaceutical industry and also shed some light on the role of the TRIPS agreement in the so-called patent surge. Although there were some limitations regarding empirical evidence, the report was a source of information that Member States could use when

evaluating the effective impact of such tactics on competition and the possible remedies that they may deem appropriate. The Delegation stated that the impact of strategic patenting and evergreening on innovation and competition was a concern that must be taken into account. In this regard, paragraph 12 of the document illustrated the problems faced by patent Offices with the proliferation of filings of low quality patents and the possible negative consequences. The Delegation added that one had to remember that the underlying rationale of the patenting system was that a certain degree of market power could be tolerated in order to stimulate innovation; however, one needed to take into account that the desirable situation was a free market where consumers and producers could reap the benefits of a balance in supply and demand. Thus, a proper assessment of patent strategies was useful to preserve broader societal needs and to ensure a balanced patenting system.

56. The Delegation of Egypt, speaking on behalf of the African Group, welcomed the study and summarized what it understood were its main conclusions. The Delegation stated that the study showed that the first factor, strategic patenting, was not a root cause, but might be an intermediary cause of the surge in patent applications. For the second factor, “evergreening”, the study showed that it did not affect the surge significantly, given that pharmaceutical patents only accounted for about 4 per cent of total worldwide patent filings, and also cited the sector inquiry performed by the European Commission and the study on the US pharmaceutical market which both presented findings on the evolution in the average exclusivity period of products prior to first generic entry (see paragraphs 37 and 38 of the document). For the third factor, the coming into force of the TRIPS Agreement, the study showed that this could not alone provide an explanation for the surge in patent applications. In light of these conclusions, the Delegation raised the question of how to proceed in order to prevent low quality patents from overloading the PCT system and ensure that the system was functioning well, efficiently and continued to receive high quality patent applications. The Delegation hoped that some further work could be conducted to ensure that factors did not prevent the filing of high quality patent applications in the PCT, and made reference to the conclusion in paragraphs 46 and 47 of the document, in particular the phrase in the final sentence that “... progress in collecting richer patent datasets and combining patent data with economic performance statistics, will over time, enable new research on some of the unresolved questions identified in this report”. Finally, the Delegation referred to the invitation in paragraph 3 of the document to group coordinators to submit literature references for the supplement report, stating that individual Member States may not have been aware of the opportunity to participate in this exercise and that some African countries might wish to submit relevant studies or analyses for consideration by the Secretariat.

57. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, stated that the document clearly showed that even if the increase in patent filings worldwide was a sign of more innovative activity, this was not necessarily the case, since the patent thickets described in paragraph 30 of the document and “evergreening” tactics were also factors explaining the statistical increase in patenting. According to the Development Agenda Group, these examples in the study showed that, in fact, there was no dialectic relation between innovation and patent applications. The Delegation illustrated this point by stating that in the context of the current economic crises, where the majority of innovative countries experienced a lack of resources for funding research and development and therefore increasing innovation, filings in patent applications nevertheless continued to rise. However, going beyond this situation, the overriding issue for the Development Agenda Group was that the surge in worldwide patent applications was observed more in developed countries than developing countries. This difference had not been addressed in either the document or in the study presented to the fourth session of the Working Group, both of which referred to the surge in patent applications as being worldwide, despite mainly affecting developed countries. The Development Agenda Group therefore requested further information on the obstacles to patenting for developing countries to explain this “north-south divide” and why developing countries were not part of the surge in patent applications. In this regard, the Delegation emphasized the problems in some countries of the severe lack of capacity to draft patent applications, which created barriers to using the PCT system and other patent filing instruments. According to the Development Agenda Group, the lack of discussion of

this issue in the study created a “grey area” which should be studied, thereby enabling developing countries to become part of the increase in patent applications.

58. The Delegation of South Africa referred to the invitation in paragraph 3 of the document to Group Coordinators to submit literature references for the supplement report and stated that the Delegation would have liked to have provided additional material, which it believed would have contributed immensely to the analysis, especially in the area of “evergreening”. The Delegation therefore requested the Secretariat to explain why it opted to invite regional group coordinators to submit input to the study, rather than all delegations, in view of the fact that the consideration by the Chief Economist of further references was a decision taken by the Working Group as a whole. Referring to paragraph 5 of the document, the Delegation requested work to continue, expanding the scope of the study to cover issues such as patent filing trends of companies and defensive patenting, which were not covered in depth in the document. Moreover, the Delegation requested clarity from the Secretariat in relation to the comment in paragraph 16 of the document that “... from press reports alone, one cannot reliably quantify to what extent patenting strategies may have shifted over the past three decades”, given that significant information from press reports had been included in the document. Furthermore, referring to paragraph 20, the Delegation observed that the study focused on developed countries, primarily the United States of America, and to a lesser extent the Asian region and asked about the coverage and possible difficulties of obtaining relevant information for Europe, notably on strategic patenting. In addition to the issues in paragraph 5 of the document, the Delegation pointed out that further work could be performed on the role of the TRIPS Agreement where evidence-based case studies could be undertaken to support the hypotheses in paragraph 42 but, at the same time, recognizing the difficulties of obtaining empirical evidence as described in paragraph 43.

59. The Delegation of the United States of America, speaking on behalf of Group B, stated that the document made it clear that there was no single factor that could fully explain why the number of patent applications had increased so dramatically worldwide. In the opinion of Group B, the Chief Economist had produced an exhaustive study on the surge in worldwide patent applications, and therefore further work on the issue was unnecessary.

60. The Secretariat, in reply to the comments on the invitation to group coordinators to submit literature references for the supplement report, stated that the opportunity to submit further input to the study had been an open invitation made during the previous session of the Working Group. When it became clear that nobody had followed up on this invitation, the Secretariat had decided to use the traditional means of contacting Member States by approaching the regional group coordinators. Replies to this approach were received from some groups, and the Secretariat also approached some of the non-governmental and intergovernmental organizations who had voiced concerns about the study presented at the Working Group last year. The Secretariat regretted that this request using the traditional means in Geneva to approach Member States had not been received by all the membership of the Working Group, and stated that it had not previously been aware of this problem.

61. The Chief Economist, in reply to the question from the Delegation of Egypt on preventing low quality patents from overloading the PCT system, acknowledged that the study did not deal with this matter at great length and pointed out that there was a lack of empirical evidence of the extent to which low quality patents were present in the system, defining low quality patents as not meeting the criteria for patentability in the jurisdictions concerned. Whereas there was some anecdotal evidence of patents being granted that appeared, on their face value, to be obvious, sometimes these patents had successfully been defended in the courts. Moreover, in order to engage in some type of quantification of patent quality, one would be faced with the substantial challenge of defining a low quality patent and then identifying such patents. These difficulties could therefore provide an explanation for the absence of previous studies to quantify the extent of the problem of low quality patents. In this regard, one solution could be to define some metrics that could offer an indication of the quality of patents in different jurisdictions.

62. The Chief Economist, in reply to the point on the relationship between investment and innovation and patent filings during the economic crisis raised by the Delegation of Algeria on behalf of the Development Agenda Group, acknowledged that IP economists were only beginning to understand this issue, partly because data on research and development expenditure was published with a delay of about two years. However, it was evident that both research and development expenditure and patenting activity fell in most jurisdictions in 2009, the year following the collapse of Lehman Brothers, when there was also a steep decline in economic activity. Nevertheless, a number of jurisdictions experienced economic growth and also saw increases in research and development and patenting activity. The Chief Economist observed further that, since then, there had been a great degree of heterogeneity; in a sense, some companies managed to increase their expenditure on research and development, notwithstanding the tough economic environment, a behavior which could be expected if they had the financial means as a long-term investment in future markets which, in principle, should not necessarily respond to short-term fluctuations. However, economists were only beginning to understand what really happened in 2010 and 2011. Concerning the renewed growth in the PCT system during these years, the Chief Economist pointed out that there were a number of elements that could explain this growth, notably the rapid growth in patent applications from China and other countries in East Asia. On the other hand, the picture was more mixed for Japan, which had experienced a substantial decline in patenting at a national level that had begun before the economic crisis but, at the same time, there had been an increase in the use of the PCT system among Japanese companies.

63. The Chief Economist, in response to the issue of the north-south divide in the distribution and growth in patent filings raised by the Delegation of Algeria on behalf of the Development Agenda Group, explained that the differences in the growth in patenting between developed and developing countries were not analyzed in the study, due to China being a middle income country in terms of GDP per capita but displaying patenting activity more akin to a high income country. For example, China accounted for the highest number of resident patent filings in 2010. Whereas in around 1995, the global distribution of patents would probably have followed a divide between high income countries on the one hand and low and middle income countries on the other hand, the rapid growth in patenting in China in recent years had changed this distribution. However, this did raise the question of what explanatory factors were behind the fast growth in patenting activity in China and what lessons could be learnt, given that significant growth in patenting was not experienced by many other middle income countries. A number of studies had been published on this subject that explained rapid economic growth and increased research and development expenditure as factors, but there were other considerations as well. The Chief Economist added that he would be willing to look into how these factors that applied to other low and middle income countries might be holding patenting back in these countries.

64. The Chief Economist, in response to the request for further analysis of strategic and defensive patenting made by the Delegation of South Africa, indicated that there was more extensive economic and legal literature on this subject, but the document had focused on the academic studies published in peer-reviewed journals that had been most frequently cited in the literature. Whereas a more in-depth coverage of the literature on strategic and defensive patenting could have been possible, this would have resulted in a study arriving at similar conclusions, but being considerably longer and therefore more difficult to digest. The Chief Economist also referred the Working Group to the discussion on this and other issues in the 2011 World Intellectual Property Report.

65. The Chief Economist, in response to the request from the Delegation of South Africa for further clarification on the information from press reports about changes in patent strategies, acknowledged the extensive media coverage of the so-called patent “arms race” in the smartphone industry that indicated that strategic patenting was becoming more important than before. However, the Chief Economist stated that there was a tendency to recall the most recent press coverage, neglecting earlier articles, and provided the example of patent flooding in Japan which attracted considerable attention in the 1980s. Another example was the term “patent thickets”,

frequently used in today's discussions, but a term that was already in use in the early 1980s, citing a paper by the economist Richard Gilbert with David Newbery published in 1982 in *The American Economic Review* Vol. 72, No. 3 pages 514-526, which discussed this concept and the resulting difficulties in negotiating licenses.

66. The Chief Economist, in response to the question on data coverage in Europe from the Delegation of South Africa, stated that there was comprehensive data coverage for Europe in both documents PCT/WG/4/4 and PCT/WG/5/4. The Chief Economist added that comprehensive data were available from the European Patent Office and the major patenting countries in Europe, and that the constraints on data were more acute for low and middle income countries.

67. The Representative of Third World Network (TWN) commented on the remarks made by the Chief Economist set out in paragraph 63, above, on the growth in patenting in China by referring to a paper published by the South Centre in *South Bulletin*, Issue 1 in October 2007, entitled "*Demystifying Explosion in Patenting Growth Rate*" by Xuan Li. The Representative pointed out that this paper raised questions about the link between a resident filing from a country and ownership by nationals in that country, quoting the following sentences from the conclusions of the paper: "To sum up, the WIPO Patent Report conclusion on changing geography of innovation based on sharp rise of the number of patent filings in Northeast Asian with an emphasis on China should be interpreted with caution. ... The drawback of such an international comparison not only relates to how to interpret properly the figures on patent filing and the 'residential patent filings' given the diversified patent law setting across countries, but also to high heterogeneity in the value of patents." The Representative therefore believed that it was important to keep these observations in mind when referring to the surge in patent applications originating from a few developing countries, especially China.

68. The Representative of Third World Network (TWN) continued by quoting the first sentence of paragraph 47 of document PCT/WG/5/4: "In concluding, it is worth pointing out that no single factor can fully explain why the number of patent filings worldwide has markedly increased". In referring to recommendation 149*bis* agreed by the Working Group at its third session (see paragraph 92 of document PCT/WG/3/14 Rev.) that the study should "... analyze the root causes behind the surge of patent applications ..", the Representative stated that the aim of the study was to identify the root causes (whether direct or indirect) behind the surge, not to conclude on whether there was a single cause responsible for the rise in number of patent filings. Although some of the factors behind the surge had been identified in the document, the Representative stressed that it was important to identify an exhaustive list of the factors contributing to the worldwide surge in patent applications. In this regard, the Representative pointed out that the study depended predominantly on economic literature and believed that a more inter-disciplinary approach would have been more appropriate, particularly covering legal developments that might have contributed to the surge, such as a court judgment lowering the requirements for patentability. The Representative provided two examples of publications that TWN considered should have been referred to in the document: *Innovation and Its Discontents* by Adam B. Jaffe and Josh Lerner, and *Patent Failure* by James Bessen and Michael J. Meurer. Moreover, the Representative stated that it was important to include case studies to analyze the surge in patent applications, since individual examples of anecdotal evidence could be codified into an organized body of knowledge. Furthermore, the Representative remarked on the absence of the treatment of patenting in the life sciences field in the document, a domain where TWN believed that patent proprietors engaged in patent fencing tactics. The Representative concluded by asking that these comments be taken into account in further work to update the study.

69. The Delegation of Denmark aligned itself with the statement made by the Delegation of the United States of America on behalf of Group B and added that the supplementary report produced by the Chief Economist was comprehensive and responded to the comments raised by the Working Group at its previous session. Noting the conclusion in the document that there was no single factor to explain the growth in patent filings worldwide, the Delegation pointed out three contributory factors to the surge. First, the globalization of the world economy resulted in

companies filing a larger number of multiple applications in different jurisdictions. Second, the ever-increasing rate of evolution of technology resulted in more patent applications - the so-called "snowball effect". Third, the increasing complexity of technology resulted in the need for more patent applications to be filed to protect different technological aspects of inventions. Furthermore, the Delegation noted the methodological challenges highlighted in the document, which continued to constrain the generation of empirical evidence. Therefore, the Delegation concluded that there was no need at present for a new supplementary study.

70. The Delegation of the United States of America supported the statement it had made on behalf of Group B. Concerning the calls for the International Bureau to conduct even more research on the worldwide surge in patent applications, given the level of detail contained in the document as well as the earlier study (document PCT/WG/4/4), the Delegation believed that significant resources had already been dedicated to analyzing this issue. Given the conclusions in paragraph 47 of document PCT/WG/5/4 that "no single factor can fully explain why the number of patent filings worldwide has markedly increased", the Delegation stated that it was unclear that any further expenditure in this regard could accomplish anything, and it questioned whether further studies would be the best allocation of WIPO's limited resources. The Delegation concluded by stating that it would therefore oppose approving any further studies on this subject.

71. The Delegation of Japan supported the statement made by the Delegation of the United States of America on behalf of Group B. In view of the conclusions in paragraphs 46 and 47 of the document, the Delegation added that, in order to make best use of resources of the delegations and the Secretariat of the Working Group, discussion on the surge in worldwide patent applications should be ended.

72. The Delegation of Switzerland stated that it shared the concerns raised by the Delegations of the United States of America and Japan on the financial resources of WIPO if a further study on the surge in patent applications were to be performed. The Delegation therefore requested the International Bureau to explain to what extent a further study could provide more results that had not already been obtained from the studies by the Chief Economist presented to this session and the previous session of the Working Group. Unless there were some predictable new results from a further study, the Delegation stated that it would favor closing the debate on the patent surge and not performing a further study.

73. The Representative of the American Intellectual Property Law Association (AIPLA) stated the AIPLA was an organization based in the United States of America composed of 15,000 members of the intellectual property community from around the world involved in the practice of patent, trademark, copyright and trade secret law as well as other fields of law affecting intellectual property, and was the largest organization in the United States of America solely focused on patent matters. Although the remarks of the Representative at the Working Group were made on behalf of AIPLA, the Representative added that he personally represented small inventors and companies and was therefore acutely sensitive to the issue of how to minimize the costs of the patent system, something he believed to be of interest to developing countries.

74. The Representative of the American Intellectual Property Law Association (AIPLA) continued by pointing to paragraphs 22 and 23 of the document which illustrated the difficulties of moving beyond the document to disentangle the various root causes and reach a more productive conclusion. While agreeing with the findings in the document, the Representative provided different reasons for the conclusions reached. Referring to the point made by the Delegation of Egypt on the filing of low quality patents, the Representative stated that AIPLA wanted the market to be the place that ultimately fleshed out the better and more innovative ideas and permitted competition to select the products. In this context, the Representative believed that on the low quality patent issue, people might "be losing the forest from the trees". When an inventor or applicant applied through the international patent system, he had to make a disclosure of his idea - in other words, he had to lay it out and let his idea "float down the river uncontrolled". While the goal of the system was to foster disclosure and then to grant limited rights in return for giving that

disclosure, it was important to bear in mind that the applicant making that disclosure needed to provide complete enablement of the invention. At 18 months from the priority date, the applicant faced publication regardless of the quality of that disclosure since a decision had to be taken at 16 months on whether to pull back the application. Therefore, if an applicant had not withdrawn an application at 16 months and then received an international search report at 17 months criticizing the application on patentability requirements, the applicant had a problem - the application would be published anyway with all the technology being disclosed to the public. The AIPLA therefore suggested that a better objective was for resources to be allocated to improve the timeliness and quality of international searches, in particular the international search report. In this regard, the Representative acknowledged the efforts made by the International Bureau, as had been touched upon during the presentation on PCT statistics.

75. The Representative of the American Intellectual Property Law Association (AIPLA) further continued by describing the situation following publication of an international patent application. Looking at the larger picture, after publication, the world, including developing countries, had benefited from the disclosure in the application. An individual trying to compete in the market place would have, for free, the entire description of the technology, yet the applicant would not yet have a patent. In fact, at this stage, the applicant would enter the crucible of competition because somebody would be able to produce the product from the disclosure in the application. Although a competitor might face the risk of a later issued patent, the competitor could nonetheless begin to produce the product from the disclosure. On the other hand, the applicant still ran the risk of a negative international search report if this had not been available before 16 months due to a low quality patent application, with the result that the patent would not be granted anywhere in the national phase. Moreover, looking at the situation in the applicant's shoes, someone else may examine the disclosure and find another innovation having an inventive step. In this case, it would make little difference whether the first applicant eventually obtained a patent because the market would determine that in fact that original disclosure didn't have the value that the subsequent disclosure revealed.

76. The Representative of the American Intellectual Property Law Association (AIPLA) continued by referring to "evergreening" in pharmaceuticals and the acknowledgement by the Chief Economist of the possibility of a third party attack on the validity of patents filed as a result of "evergreening" strategies. On this subject, the Representative pointed out the difficulties for a patent proprietor in employing "evergreening" tactics. For example, an applicant attempting to patent a method for a basic compound whose patent had expired would have difficulties demonstrating an inventive step in view of articles in the medical literature describing developments on the basic compound as well as the publication of the original patent disclosure; in fact, a competitor might have already published the inventive step in the method or made a disclosure that would mean the method was not inventive in light of the basic compound. In addition, the Representative stated that, the more an applicant tried to promote a new product protected by "evergreening" technologies, to a competitor in the generic pharmaceutical industry, the applicant would be creating more demand in the base market place, and it would become more difficult to control the use of the product due to both grey market and off-label issues. The Representative therefore concluded that the "evergreening" issue was a red herring and the consequences of such strategies were less significant than the specter that was sometimes presented.

77. The Representative of the American Intellectual Property Law Association (AIPLA) continued by commenting on the access to the patent system. The Representative stated that, at the United States Patent and Trademark Office, any person submitting a description with points of novelty had the right to have a claim drafted for them by the examiner, whether or not the applicant was a citizen, resident or registered user in the United States of America. Therefore, for a small entity fee of 190 US dollars and a search fee of 105 US dollars, it was possible to apply online and have an examiner write a patent claim; in other words, for 305 US dollars you could have an opinion as to the allowability of a patent covering the United States of America affecting up to 315 million citizens.

78. The Representative of the American Intellectual Property Law Association (AIPLA) concluded by stating that a more productive use of WIPO resources would be to defer any further study since the document that had been presented to the Working Group was conclusive. Instead, the AIPLA advocated that the focus should be on allocating resources on improving the quality and timeliness of the international search report and international preliminary examination report, which by themselves exposed the low quality of patents. Secondly, the AIPLA believed that there could be a greater flow of information about countries, such as the United States of America, where an open and relatively inexpensive patent system was available to all applicants. Finally, the Representative pointed out that, where an invention was disclosed in a weak patent, developing countries had cost advantages compared to developed countries to exploit the technology.

79. The Chair, summarizing the discussions, stated that delegations had raised some questions and had sought clarification on the presentation made by the Chief Economist. In particular, the Secretariat had responded to comments raised on the mechanism for submitting literature references to the International Bureau as a basis for the study. Moreover, the Chief Economist had addressed all the questions raised by delegations, notably on the scope of the study and the results. On the question of whether further elements should be analyzed by the Chief Economist performing a third study on the patent surge, delegations had expressed different views. The Chair therefore proposed to the Working Group that it should take note of these different views along with the contents of the document which had been presented at the session by the Chief Economist.

80. The Working Group took note of the contents of document PCT/WG/5/4.

COORDINATION OF TECHNICAL ASSISTANCE AND FINANCING OF TECHNICAL ASSISTANCE FOR DEVELOPING COUNTRIES UNDER ARTICLE 51 OF THE PCT

81. Discussions were based on document PCT/WG/5/5.

82. The Delegation of El Salvador thanked the Secretariat for the important information contained in the document and for clarifying the various issues discussed.

83. The Delegation of Egypt, speaking on behalf of the African Group, thanked the Secretariat for the document that contained the historical development of the PCT Committee for Technical Assistance (PCT/CTA). The Delegation highlighted the need for building capacity for training and investment in human resources as part of endeavors for members of the African Group and other developing countries to benefit from the PCT system, as required by the Treaty. Efforts were already taking place in this regard, but the question was how to capture these efforts. Whereas the Committee on Development and Intellectual Property (CDIP) carried out its mandate in relation to monitoring and implementing the Development Agenda recommendations and addressing the broader issue of technical assistance, it was not dealing with technical assistance concerning the implementation of the PCT. Therefore, the African Group saw the need and importance of focused discussion on technical assistance for developing countries under the PCT. The Delegation observed that the Secretariat was continuing efforts to mobilize extra-budgetary resources through follow-up activities, and considered it useful to have additional reporting to further explain these activities, which could then be discussed by the Working Group as part of the implementation of the requirements of Article 51 and the establishment of the PCT/CTA. Finally, the Delegation underlined that the important outcome was to see additional resources being generated and allocated to developing countries, with more focused efforts in their mobilization to implement the obligations of the PCT system.

84. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, thanked the Secretariat for the useful document describing the history of the PCT Committee for Technical Assistance (PCT/CTA) and all technical assistance activities undertaken within its framework. From the point of view of the Development Agenda Group, the PCT/CTA was still-born. The

Committee, whose creation was a legal obligation under the PCT, had been established, but it had never held any meetings as it appeared that there had been no need for the Committee to meet. However, the Development Agenda Group believed that it was now necessary to convene the Committee to help its countries to improve and fully benefit from the PCT as stipulated in Article 51, by receiving training for specialists in order to be able to adapt its Offices and the examinations performed by them to the requirements of the PCT. Concerning broader aspects of technical assistance beyond the mandate of the PCT/CTA, whose remit was limited to the objectives of the PCT, the Development Agenda Group urged the Secretariat to continue to work to obtain additional resources so that its countries could benefit from better access to the intellectual property system.

85. The Delegation of the United States of America, speaking on behalf of Group B, thanked the Secretariat for the preparation of the document, specifically Annex II with details of the International Bureau's efforts in providing technical assistance related to the PCT during the 2010/11 biennium. The tables in Annex II clearly indicated that the approximately 70 PCT-related technical assistance programs formed an integral part of WIPO's work in improving the PCT, and that the assistance was well-coordinated and on point. Group B had also noted that the Secretariat had pointed out that it was difficult to separate or distinguish PCT-related assistance from WIPO's broader technical assistance efforts and saw little utility in convening the Committee for Technical Assistance (PCT/CTA). However, Group B believed that the information contained in the tables of Annex II of document PCT/WG/5/5 should be reported by the International Bureau to the Working Group on an annual basis.

86. The Delegation of South Africa associated itself with the statements made by the Delegation of Egypt on behalf of the African Group and the Delegation of Algeria on behalf of the Development Agenda Group. The Delegation pointed out that convening the Committee for Technical Assistance (PCT/CTA) under Article 51 was a recurring issue and stated that it had expected a debate on this matter at this session of the Working Group. The Delegation reminded the Working Group that Annex II was a response to a request made at its previous session by the Delegation of India on behalf of the Development Agenda Group, for the International Bureau to answer the questions that the Development Agenda Group had raised, for discussion at the following session of the Working Group, by providing further information on existing technical assistance projects relating to the PCT, along with details of all funding sources for this technical assistance (see paragraph 114 of document PCT/WG/4/17). However, the Delegation of South Africa stated that it did not consider that Annex II sufficiently elaborated on what activities the PCT/CTA under Article 51 was required to undertake. The Delegation stated that it saw merit in convening the PCT/CTA, adding that the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (document CDIP/8/INF/1) included recommendations to establish expert groups. The Delegation therefore reiterated its view that an obligation from the Treaty, such as the convening of the PCT/CTA, needed to be fulfilled and that focus of the Working Group should be on the issues this Committee would consider.

87. The Delegation of South Africa continued by stating that, at the previous session of the Working Group, it had requested the Secretariat to explain whether it was conducting the activities listed in Article 51(3), and if so, whether they were undertaken in an intergovernmental body where States were engaged in the discussion of such activities, especially those relating to Article 51(3)(b), which referred to the training of specialists, the loaning of experts and supply of equipment both for demonstration and operational purposes. In this regard, the Delegation informed the Working Group that South Africa had been a PCT Contracting State for some time and the Companies and Intellectual Property Commission (CIPC) wished to become an International Searching and Preliminary Examining Authority in the future, yet the CIPC was still a registration Office for patents. Speaking on behalf of the African Group at the previous session, the Delegation had expressed a preference for WIPO "... to take the lead in providing training on search and substantive examination"; in response to this request, the International Bureau indicated that "... it was not particularly within its competence to provide training directly because of the lack of skilled staff of trainers to perform this work. However, the International Bureau,

would, as in the past, continue to solicit this type of resources from Member States in a position to provide support, and to coordinate the provision of training so that needs could be met” (see paragraphs 58 and 59 of document PCT/WG/4/17). However, the Delegation stated that it believed that the International Bureau should have the capacity to provide this training, and that it saw the PCT/CTA as an opportunity to advance this goal.

88. The Delegation of South Africa concluded by underlining the need to discuss the issue of convening the Committee for Technical Assistance, adding that South Africa had been enticed by the provisions of Article 51 when acceding to the PCT and wanted to see its objectives being realized. Finally, the Delegation reminded the Secretariat that the former Companies and Intellectual Property Organization (CIPRO), which was referred to Annex II of the document, had changed its name to the Companies and Intellectual Property Commission (CIPC).

89. The Delegation of Japan supported the intervention made by the Delegation of the United States of America on behalf of Group B. At the outset, the Delegation of Japan pointed out that the International Bureau had been engaged actively in technical assistance on the PCT system in an effective and comprehensive manner, as clearly shown in Annex II of the document. In this light, the Delegation was not convinced of the need to hold a session of the Committee for Technical Assistance (PCT/CTA) in the near future. Furthermore, the Delegation expressed its support for the suggestion by the International Bureau in paragraph 11 of document PCT/WG/5/6 that, in order to avoid duplication of effort, the Working Group should await the outcome of the discussions by the Committee on Development and Intellectual Property (CDIP) of the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (document CDIP/8/INF/1), the report of the *ad hoc* working group and the management response by the Secretariat before considering how to proceed with technical assistance issues. The Delegation therefore concluded that it was premature to take a decision on holding a session of the PCT/CTA as long as these discussions in the CDIP had not been completed.

90. The Delegation of Sweden expressed support for the comments made by the Delegation of the United States of America on behalf of Group B and the Delegation of Japan.

91. The Delegation of Brazil supported the statements made by the Delegation of Egypt on behalf of the African Group and the Delegation of Algeria on behalf of the Development Agenda Group. The Delegation of Brazil stated that having access to technical assistance was one of the advantages accruing to Contracting States of the PCT, and that technical assistance was also necessary for implementing the objectives of the Treaty by allowing countries to use and reap the benefits of the patent system. Therefore, the Delegation underlined that the Working Group needed to take Article 51 into account in its debates, and that technical assistance should include, *inter alia*, the training of personnel from Offices, and the facilitation of access to the appropriate tools for search and examination, such as patent databases or technological infrastructure.

92. The Delegation of the United States of America stated that the document thoroughly illustrated the evolution of the Committee on Development and Intellectual Property (CDIP) and the formation of the Committee for Technical Assistance (PCT/CTA). The Delegation believed that all the functions that the PCT/CTA had been intended to perform were now performed by the CDIP, which was established after the PCT/CTA. The Delegation referred to the broad mandate of the CDIP as reported in paragraph 52 of Annex I to the document, and expressed the view that, as explained in paragraph 55 of Annex I, the responsibilities of the CDIP fell within the scope of Article 51 of organizing and supervising technical assistance for developing countries to develop patent systems individually or on a regional basis, in view of recommendations 8 and 10 of the Development Agenda. As the responsibilities of the CDIP extended across all WIPO development-related activities, including those mandated by Article 51(3), the activities of the PCT/CTA, if it were convened now, would be duplicative of the activities carried out by the CDIP. Convening the PCT/CTA would therefore not be useful at this point, as also indicated by the fact that it had never been called on for its guidance on any aspect of technical assistance for developing countries by the Permanent Committee for Development Cooperation related to

Industrial Property (PC/IP), the Permanent Committee for Cooperation for Development related to Intellectual Property (PCIPD), or the current CDIP. The Delegation stressed that there had never been a need to convene the PCT/CTA, which had thus never met since it had been established in 1978, and pointed out that the functions for which it was intended were now carried out by the CDIP and other WIPO bodies. In view of the above, the Delegation stated that it was opposed to convening the PCT/CTA for the first time now because this would result in the duplication of work already undertaken by other WIPO bodies, in particular by the CDIP.

93. The Delegation of Switzerland expressed support for the interventions made by the Delegation of the United States of America and by the Delegation of Japan. The Delegation of Switzerland stated that the study prepared by the International Bureau showed there were no gaps in the provision of technical assistance and therefore, in order to avoid duplication of work, it was not timely for the Committee for Technical Assistance to be reconvened. Moreover, as had been shown by the Delegation of the United States of America when speaking on behalf of Group B, it was not appropriate to separate or distinguish technical assistance in relation to the PCT from the technical assistance provide by WIPO as a whole.

94. The Delegation of France aligned itself with the interventions made by the Delegation of the United States of America, the Delegation of Japan and the Delegation of Switzerland, and underlined that technical assistance questions should be dealt with in the framework of the Committee for Development and Intellectual Property.

95. The Delegation of the Russian Federation stated that it was impressed with the technical assistance performed by the International Bureau for developing countries, described in Annex II to the document. As both developed and developing countries were represented at the Working Group, the Delegation considered the Working Group to be a suitable forum for discussing technical assistance activities in respect of the PCT. The Delegation therefore proposed that technical assistance along the lines of the activities listed in Annex II should be discussed as a permanent agenda item at future sessions of the Working Group. As part of this item, the Secretariat would prepare a document which could be reviewed by delegations, thereby allowing gaps and any special needs in the area of technical assistance for developing countries to be identified. This would also enable the Working Group to decide at a future stage whether it would be worthwhile to convene the Committee for Technical Assistance (PCT/CTA). However, the Delegation believed it was sufficient for the time being for the Working Group to review the activities and assistance relating to the PCT provided by WIPO and developed countries for the benefit of developing countries.

96. The Chair summarized the discussion by acknowledging that different views had been expressed and stating that many delegations were pleased with the information on technical assistance in document PCT/WG/5/5, in particular Annex II to this document, and had requested similar reporting to be made in relation to technical assistance activities for developing countries under the PCT as part of an agenda item for discussion at future meetings of the Working Group, thereby ensuring that technical assistance was coordinated in the best possible way. Some delegations had also expressed the need to ensure that any activities and initiatives in relation to providing technical assistance were undertaken in a coordinated manner and that PCT-related activities were not separated from technical assistance activities being carried out in other programs at the International Bureau, especially those overseen by the Committee on Development and Intellectual Property. The Chair therefore proposed that the coordination of technical assistance under the PCT be an agenda item for the forthcoming session of the Working Group and to have the International Bureau report on activities being undertaken in relation to technical assistance under the PCT, in addition to the current reporting on providing technical assistance and capacity building activities that took place in other WIPO bodies.

97. The Delegation of Egypt stressed that that it would be important for the Secretariat to report to the Working Group on the specific technical assistance activities carried out relating to PCT. In addition to this reporting, the Delegation asked for a work plan of future activities to be provided by the Secretariat so that they could be discussed and endorsed by the Working Group, whether such activities were to be carried out directly as mandated by Article 51 or by coordination and cooperation with other donor Offices. A coherent work plan would therefore facilitate the implementation of Article 51 by guiding the technical assistance activities of the Secretariat and ensuring that activities were not provided in an *ad hoc* or sporadic manner or on a case-by-case basis. Furthermore, while acknowledging the ongoing discussions in the Committee on Development and Intellectual Property on reform of technical assistance provided by WIPO, the Delegation wished to highlight the principles that should guide the activities of the Secretariat in this regard; that the assistance should be demand-driven, tailored to the needs of developing countries receiving assistance, and be evaluated to ascertain the benefits from the assistance. The Delegation observed that these three principles were not captured in the table in Annex II to the document. The Delegation therefore stated that it perceived a need for the quality of reporting to the Working Group on technical assistance activities to be improved. The Delegation concluded by summarizing these three requests; first, that the reporting should be specific to implementation of the PCT, second, that a work plan for the following year should be provided to have clarity and coherence on activities and to ensure they were not provided on an *ad hoc* basis, and third, that assistance continued to be guided by the principles of being demand-driven, effective and tailored to the needs of recipient countries.

98. The Delegation of South Africa, referring to the summary of the discussion by the Chair (see paragraph 96, above), stated that it was important to emphasize that there were divergent views on the convening of the Committee for Technical Assistance (PCT/CTA), adding that the African Group and the Development Agenda Group totaled more than 70 countries, who supported convening the PCT/CTA. In addition, the Delegation underlined that it was important to understand that Annex II to the document was produced in response to a request to the Secretariat to elaborate on the financial resources for technical assistance under the PCT. The Delegation therefore regretted the absence of more detailed information, such as the content of the national seminars delivered, which made it difficult to be certain that the technical assistance had been carried out in accordance with Article 51. Moreover, the Delegation observed that paragraph 1 of Annex II stated that WIPO did not have criteria to determine what constituted a “developing country”, thus making it difficult to implement Article 51. Furthermore, the Delegation asked the Secretariat to respond to the question on how the activities under Article 51(3)(b) were currently being carried out, and whether there was an intergovernmental forum discussing these issues. The Delegation concluded by requesting the reporting of technical assistance projects as outlined in Annex II to include more relevant information for the Working Group on the carrying out of technical assistance under Article 51, including an understanding of what constitutes a developing country according to WIPO, and the nature of the seminars delivered. Finally, the Delegation expressed its support for the request made by Egypt for a work plan of technical assistance activities to be presented as part of this reporting mechanism, adding that similar recommendations had been made in the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (document CDIP/8/INF/1).

99. The Secretariat responded to the questions from the Delegation of South Africa in relation to Annex II to the document by clarifying that the activities were specific to the PCT and mainly carried out by the Regional Bureaus and Divisions in the Innovation and Technology Sector responsible for the PCT. Examples of these activities included national seminars covering training on how to use the PCT system for applicants and potential applicants in the country concerned, and training for staff of national Offices acting in the capacity of a receiving and/or designated/elected Office under the PCT. In delivering this training, particularly to developing countries, the International Bureau took the opportunity to broaden the beneficiaries to universities and staff of research institutes, in which case the scope of seminars would often extend beyond the PCT and cover the use of the patent system in general. With regard to which intergovernmental body supervised the activities foreseen in Article 51, in particular, the training of

specialists, the loaning of experts, and supply of equipment both for demonstration and operational purpose as listed in Article 51(3)(b), the Secretariat responded that these activities were being discussed in various WIPO bodies, such as the Committee on WIPO Standards with regard to the supply of equipment, and the Committee on Development and Intellectual Property with regard to specific technical assistance projects, many of which included elements of the assistance listed in Article 51(3)(b).

100. The Secretariat concluded by acknowledging the need to improve on the reporting of PCT-specific technical assistance if this were to become a regular item on the agenda of the Working Group. In this regard, the Secretariat took note of the suggestions made by the Delegation of Egypt and supported by the Delegation of South Africa, and also highlighted the need to take feedback into account in such a reporting exercise.

101. The Delegation of South Africa, in responding to the comments of the Secretariat to the question of which bodies were supervising the activities covered by Article 51(3), pointed out that Annex I to document PCT/WG/5/5 only referred to two Development Agenda recommendations overseen by the Committee on Development and Intellectual Property, and it did not provide any information on how the Committee on WIPO Standards was implementing Article 51. The Delegation therefore stated that it would be useful for the Working Group to have a clearer picture of which bodies were currently undertaking work related to Article 51.

102. The Chair continued to summarize the discussion by acknowledging the different views expressed by the delegations, especially with regard to whether or not to convene the Committee for Technical Assistance (PCT/CTA). Returning to the proposal made in paragraph 96 above, the Chair clarified that the coordination of technical assistance under the PCT should be a regular item on the agenda of the Working Group, and that the reports by the International Bureau on technical assistance activities should take into account the comments made by the Delegations of Egypt and South Africa in order to improve their quality by including additional items requested by these delegations, for example, a more extensive work plan for the Working Group to see how future activities would be coordinated, and more information on PCT-related technical assistance activities under discussion in other WIPO bodies. Furthermore, the Chair noted that technical assistance activities should be demand-driven, based on the requirements of developing countries receiving assistance, and be evaluated to ascertain the benefits from the assistance.

103. The Delegation of the United States of America, speaking on behalf of Group B, asked for confirmation that the work plan to be provided as part of the reporting of PCT-related technical assistance would be developed and driven by the International Bureau. In other words, the Working Group would be able to see ahead of time what technical assistance activities had been planned to take place, but that the Working Group would not be involved in deciding on the work plan itself.

104. The Chair confirmed the agreement of the Working Group with the summary of the discussions made by the Chair set out in paragraphs 96 and 102, above, on the understanding that the work plan being driven by the International Bureau as stated by the Delegation of the United States of America, speaking on behalf of Group B.

105. The Working Group noted the contents of the study set out in Annex I to document PCT/WG/5/5 and the information on technical assistance projects relating to the PCT set out in Annex II to that document.

THE PCT'S AIMS OF ORGANIZING TECHNICAL ASSISTANCE FOR DEVELOPING COUNTRIES, DISSEMINATING TECHNICAL INFORMATION AND FACILITATING ACCESS TO TECHNOLOGY; SUFFICIENCY OF DISCLOSURE

106. Discussions were based on document PCT/WG/5/6.

107. The Delegation of Egypt stated that it had taken note of the three issues discussed in the document: first, providing technical assistance for developing countries; second, the dissemination of technical information and facilitating access to technology; and third, sufficiency of disclosure. With regard to the first issue of providing technical assistance for developing countries, the Delegation noted that the “External Review of WIPO Technical Assistance in the Area of Cooperation for Development” (document CDIP/8/INF/1) was currently being discussed in the Committee on Development and Intellectual Property (CDIP). However, the Delegation considered that it was important to examine this review as part of the specific technical assistance activities relating to the PCT in order to consider what lessons could be drawn from the recommendations of the report that could guide the work of the Working Group with regard to the PCT. While noting that the Working Group had touched upon some of the recommendations, such as the issue of technical assistance being demand-driven and tailor-made, the Delegation believed there were additional recommendations that the Working Group could look into and try to benefit from. In relation to the second issue regarding facilitating access to technology, the Delegation noted the project under review by the CDIP, but considered that the PCT had an important role to play, which was not limited to one project to be implemented but rather should be part of a continuous and sustained effort. In this regard, the Delegation referred to Article 50(3) “The information services shall be operated in a way particularly facilitating the acquisition by Contracting States which are developing countries of technical knowledge and technology, including available published know-how” and requested more clarification and information from the Secretariat regarding the implementation of this provision of the PCT.

108. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, stated that the information in the document was useful for the members of the Development Agenda Group, allowing them to evaluate the realization of the objectives of the PCT concerning technical assistance for developing countries, the dissemination of technical information and facilitation of access to technology, and sufficiency of disclosure. It was clear from the document that these objectives were currently part of important projects being discussed and undertaken in the Committee on Development and Intellectual Property (CDIP). The Delegation believed that the Working Group should re-take ownership of these activities, particularly with regard to the parts that follow from the provisions of the PCT, stating that this could be achieved, for example, through the creation of the Committee for Technical Assistance, as provided for under Article 51. The principal point was that the Working Group should work in a substantial manner to achieve these objectives which, according to the Development Agenda Group, stemmed from the mandate of the PCT. The Delegation requested the Secretariat to shed some light on the correlation and collaboration between the services of the PCT and those concerned by the execution of the projects supervised by the CDIP, since, while accepting that the CDIP was implementing interesting projects covering technical assistance and the transfer of technology, the Delegation was interested in knowing whether the services of the PCT were involved in these projects. Secondly, with respect to sufficiency of disclosure, the Development Agenda Group believed that the Working Group should reflect on the recommendations set out in paragraphs 89(a) and (b) of the document, which could be taken on by the Working Group, and looked forward to hearing feedback from other delegations with respect to these recommendations.

109. The Delegation of Portugal stated that, regarding the dissemination of technical information and, in particular, the PCT Roadmap recommendations encouraging the availability of national search and examination reports on PATENTSCOPE, it would soon consult with the International Bureau on the future inclusion of its national reports in PATENTSCOPE. Moreover, the Delegation informed the Working Group that the National Institute of Industrial Property was interested in making available its national patent collection on PATENTSCOPE, which could be used by International Authorities and other Offices for search purposes. These patent documents were already available in electronic form and therefore the International Bureau would be consulted soon on this matter. Concerning the issue of sufficiency of disclosure under Portuguese law, the Delegation informed the Working Group that the definition presented in Annex II of the document should read: “... including at least one detailed explanation of at least one way of making the invention so that any person skilled in the art can carry it out” in place of “... including at least one

detailed explanation of how a person skilled in the art can carry it out.” The Delegation added that Portuguese law did not obligate the disclosure of the best mode in the description but only a means of carrying out the invention. Finally, the Delegation emphasized that observations regarding sufficiency of disclosure of international applications were valuable to designated Offices, and that the National Institute of Industrial Property analyzed this requirement during examination of a patent application along with clarity and support by the description. Sufficiency of disclosure was therefore an important condition to grant a patent.

110. The Delegation of the United States of America opposed the proposal to review Rule 5 and the PCT International Search and Preliminary Examination Guidelines on the sufficiency of disclosure requirement. The Delegation pointed out that paragraph 88 of document PCT/WG/5/6 stated that there had been no indication from Offices that the current way in which International Authorities addressed the issue of sufficiency of disclosure in international preliminary reports on patentability was an area of concern and in need of improvement. The Delegation referred to paragraph 80 of the document, recalling that the PCT focused on procedures, preserving the Contracting States’ right to prescribe substantive conditions of patentability. The requirements of sufficiency of disclosure were therefore set by the national laws of the Member States, subject to the minimum standards specified in Article 29.1 of the TRIPS Agreement to be applied by all WTO Member States, as quoted in paragraph 73 of the document. The Delegation concluded by stating that the existing wording of PCT Article 5 and of the International Search and Preliminary Examination Guidelines already provided the tools for national offices to evaluate sufficiency of disclosure in an application according to their national laws and the provisions of the TRIPS Agreement.

111. The Delegation of Japan associated itself with comments made by the Delegation of the United States of America. The Delegation recalled the procedural nature of the PCT as referred to in paragraph 80 of the document, to which it attached high value. In this sense, the Delegation considered it better to seek an appropriate measure for sufficiency of disclosure in the PCT system without departing from the scope of the informational nature of the system.

112. The Delegation of South Africa stated that it had taken note of the recommendation by the Secretariat to await the discussion of the “External Review of WIPO Technical Assistance in the Area of Cooperation for Development” (document CDIP/8/INF/1) in the Committee on Development and Intellectual Property (CDIP) and stated that it would be advisable to take that route, considering that the CDIP had recently considered the report again along with the management response (document CDIP/9/14). However, the Delegation requested clarity from the Secretariat on why technical assistance and dissemination of information had been treated in a single document along with sufficiency of disclosure, rather than discussing sufficiency of disclosure in a separate document, which could have permitted further independent evaluation. In this regard, the Delegation recalled that sufficiency of disclosure was identified as an independent issue in document PCT/WG/3/13 entitled “Views on the Reform of the Patent Cooperation Treaty (PCT) System” submitted by the Development Agenda Group to the third session of the Working Group.

113. The Delegation of Denmark associated itself with the interventions made by the Delegation of the United States of America and the Delegation of Japan, and stated that the PCT was a procedural treaty and did not set requirements in substantive patent law.

114. In reply to the question raised by the Delegation of South Africa on why technical assistance and dissemination of information had been treated in one document along with sufficiency of disclosure, the Secretariat explained that the three issues were adopted by the Working Group at its third session as a single recommendation, as referred to in paragraph 2 of document PCT/WG/5/6. The Secretariat therefore felt it appropriate to cover all the issues of this recommendation in a single study and noted that the issue of sufficiency of disclosure was referred

to in the context of facilitating access to technology. However, the Secretariat had no difficulty with separating the issue of sufficiency of disclosure, should the Working Group decide to review what the PCT was doing *vis-à-vis* the sufficiency disclosure requirements.

115. With regard to the issue raised by the Delegation of Egypt and the Delegation of Algeria, speaking on behalf of the Development Agenda Group, on the collaboration between the PCT and other areas of WIPO on technical assistance, the Secretariat informed the Working Group that interaction between the PCT and other parts of the International Bureau took place, notably with contributions from the PCT to specific projects supervised by the Committee on Development and Intellectual Property (CDIP). The Secretariat recalled that, when Article 50 was drafted in the 1960s, all documents were based on paper. From the perspective of the founders of the PCT, what could be achieved in terms of disseminating technical information contained in patent documents was much more limited than what was possible today. The Secretariat stated that the document intended to convey the message that, thanks to the technological means now available, the dissemination of information went far beyond what the founders of the PCT could ever have envisaged. In this regard, the most important PCT-specific contribution was the PATENTSCOPE database, making available free-of-charge 10 million patent documents, including more than 2 million PCT applications, covering more than 25 national and regional patent collections, with more being added through WIPO's efforts to digitize national patent collections. The PCT was therefore to a large extent the backbone of the dissemination of patent documents and granted patents. Furthermore, other projects under the responsibility of the CDIP referred to in the document included contributions by the PCT, for example, the study on "Intellectual Property and the Public Domain". Moreover, it was one of the ambitions of the International Bureau to enrich the availability of information on applications filed under the PCT which had never entered the national phase and therefore were in the public domain, by making this information available on PATENTSCOPE; in this regard, colleagues in the PCT worked closely with those undertaking the project overseen by the CDIP. Another example of the PCT's efforts to improve the patent system as a whole was to help patent Offices, notably of developing countries, to gain affordable access to technical databases for use by its patent examiners; an example of the results of these efforts was the announcement by the Delegation of Germany (see paragraph 40, above) as to the availability, in a pilot study, of its DEPATIS data base to selected developing countries, an example which the Secretariat hoped to be able to build on with similar initiatives in the future. The Secretariat concluded by stating that the PCT was the node of a broad objective of dissemination of patent information, with collaboration to achieve this aim taking place internally, for example, between the PCT and other areas of the International Bureau, such as those reporting to the CDIP (such as the Global Infrastructure Sector) or to the Standing Committee on the Law of Patents, as well as with external partners. Although there were many collaborative activities to further advance the dissemination of technical information, the Secretariat acknowledged the recommendations on how this could be improved in the "External Review of WIPO Technical Assistance in the Area of Cooperation for Development" (document CDIP/8/INF/1).

116. With regard to question raised by the Delegation of Egypt on the activities carried out under Article 50(3), the Secretariat highlighted the importance of reading this provision in its historical context, drafted in the 1960s, when information was entirely paper-based. Bearing this in mind, the Secretariat pointed to PATENTSCOPE as an example of a freely available database achieving the aims of this provision, the projects on information dissemination under the responsibility of the Committee on Development and Intellectual Property and the efforts to encourage proprietors of technical databases to make them available to developing countries, such as the Access to Research and Innovation (ARDI) program, the Access to Specialized Patent Information (ASPI) program and the creation of Technology and Innovation Support Centers (TISCs). Although the scope of these projects extended beyond the PCT by including patent information in general and were not being led by the Sector responsible for the PCT, individuals working on the PCT collaborated closely with colleagues in other Sectors of WIPO. The Secretariat again highlighted the difficulty of distinguishing between activities specific to the PCT from those being performed

elsewhere in the International Bureau *vis-à-vis* the patent system as a whole, and emphasized the importance of collaboration on the undertaking and delivery of projects that were relevant to different areas of the organization.

117. The Working Group took note of the contents of document PCT/WG/5/6.

PCT 20/20

118. Discussions were based on document PCT/WG/5/18.

119. The Delegation of the United Kingdom, in introducing document PCT/WG/5/18 on behalf of the United Kingdom and the United States of America, stated that the PCT was an established system which had been proved popular with users, citing the figure of more than 181,000 applications received in 2011 as testament of its success. However, in the globalized age where the patent protection was needed across territories, the Delegation believed that there remained much untapped potential and scope for improvement, given that PCT applications made up but a fraction of the estimated 1.9 million annual patent filings worldwide. The Delegation considered that improving the PCT to become simpler, more efficient, higher quality and more flexible would encourage applicants to use the system in an even greater number. Moreover, with the PCT making up a majority of WIPO funding, the Delegation believed greater use could only enable WIPO to be bolder in its many invaluable activities. The Delegation expressed the view that the document entitled “PCT 20/20” set out a vision for improving the PCT, building on many of the valuable ideas set up in the PCT Roadmap, and included a package of measures that the Delegation of the United Kingdom and the Delegation of the United States of America hoped could be discussed by the Working Group and progressed over time. It was acknowledged that not all members of the Working Group might be ready to engage with the ideas put forward and it was noted that some of these ideas were not yet fully developed. However, in preparing the document, the Delegations had three main aims: encouraging interested Offices to work together, identifying any major objections and encouraging other delegations to put forward their ideas. The Delegations therefore welcomed the views of other members of the Working Group on the proposals.

120. The Delegation of the United States of America provided a brief description of the individual proposals in the document. Acknowledging the PCT as the premier international patent filing system, the Delegation explained that by working together with colleagues from the United Kingdom, they had identified a number of improvements focusing primarily on quality, but also dealing with flexibility, transparency and simplification of the system. The Delegation explained that, whereas some of the ideas were simple and could theoretically be carried out in the short term, others were more complex, requiring more time to implement, or were general concepts towards improving the PCT system that could be modified following the discussions in the Working Group.

121. The Delegation of the United States of America continued by introducing the proposals one by one. The idea of proposal (A) “Self-service changes (92*bis*/priority claims)” was to have a system where an applicant could make self-service changes, such as bibliographic data under Rule 92*bis* and priority claims, which would be performed immediately online, giving instant feedback to inform the applicant that the changes had been effected. Proposal (B) “Limited Chapter I claim amendments” would permit limited claim amendments, such as correcting misnumbered claims, incorrect claim dependencies, or multiple claim sets filed with the same application prior to establishing the international search report. Here, the Delegation provided the example of an application with multiple claim sets where the applicant only wanted one set to be searched; this system would be helpful both to the International Searching Authority and to the applicant if a search was avoided on a set of claims in which nobody had an interest. In proposal (C) “Simplify withdrawal of international applications”, requirements for withdrawing PCT applications could be eased, at least in certain situations, such as in cases currently requiring the

signatures of all applicants, which could be simplified to allow the first-named applicant to withdraw the application. Under proposal (D) "Standardized fee reductions for national stage applications", national and regional Offices could offer a national stage fee reduction for national phase applications which had been indicated in the international search report or the international preliminary examination report as meeting the requirements of Article 33 as to novelty, inventive step and industrial applicability. Proposal (E) "International small/micro entity fee (or discount)" would introduce an international small entity fee. Noting that small entities were a prime driver of job creation, a small entity fee would encourage small businesses and independent inventors to benefit more from the patent system by obtaining worldwide protection at a lower cost through the PCT system. Proposal (F) "Integrate national/international phases, use a national first action on the merits for PCT search report, require response to negative comments at the national phase" would integrate the national and international phases in which the international search report and written opinion could be the equivalent or double as first national Office action on the merits. The Delegation believed that this proposal would increase the quality of the reports and provide certain efficiencies. Additionally, national and regional offices could require at the time of national stage entry, a complete response to any outstanding negative indications made by the international searching or preliminary examining authority.

122. In explaining proposal (G) "Mandatory recordation of search strategy", the Delegation of the United States of America further stated that the examiner normally recorded the search strategy such as key words on an application. By making such information available to other Offices, this would provide increased confidence in the quality of PCT searches. Proposal (H) "Collaborative searching (2+ Offices), eliminate supplementary international search" would involve examiners from several Offices collaborating to create a single search report, which would generally be of a greater quality than a report prepared by a single Office and therefore more useful in the national phase to all PCT Member States. The Delegation referred to document PCT/WG/5/9, describing a pilot project between the European Patent Office, the Korean Intellectual Property Office and the United States Patent and Trademark Office as an example of collaborative searching. Proposal (I) "Mandatory top-up searches", also proposed in document PCT/WG/5/11, would require a mandatory "top-up" search in the Chapter II examination process to uncover recent documents, thereby increasing the quality of reports. By using the device in proposal (J) "Development and implementation of the global dossier and incorporation of said system into the PCT", applicants could file a single application and thereafter, movement and duplication of documents would be minimized or even eliminated by the creation of a "one-stop" portal for all stakeholders. Under this system, the need for multiple priority documents would be reduced or eliminated and applicants could be reminded of certain requirements, such as time limits for national stage entry. Under proposal (K) "Formal integration of the Patent Prosecution Highway into the PCT, fast track of national phase applications, improve reuse of PCT work at the national phase", a Patent Prosecution Highway (PPH) type system, already shown to benefit both Offices and applicants, would be inserted into the PCT, and Offices could fast track national applications which presented only claims which had received a positive PCT report. Finally, proposal (L) "Making the written opinion of the International Searching Authority available to the public after international publication" would alter the current situation of only making the search report available at publication. Since the written opinion of the International Searching Authority contained a more detailed explanation of the items in the international search report, the Delegation believed it made little sense to keep it confidential, and referred to document PCT/WG/5/10 for details of the proposal to address this situation. The Delegation concluded by stating that the proposals had the aim of improving the PCT and that it hoped that they could instigate discussion, and indicated the flexibility of the Delegation of the United Kingdom and of the Delegation of the United States of America to consider additional items that could further this goal.

123. The Delegation of Canada expressed the view that the document contained interesting ideas that merited further consideration and discussion, but pointed to the need for more time to study and consult internally and with stakeholders in order to perform a detailed assessment. The Delegation gave initial comments, supporting proposal (B) since limited Chapter I amendments could avoid situations where the most appropriate claims were not searched, due to the applicant

not easily being able to make amendments which could minimize inconsistencies and unproductive work by the International Searching Authority. The Delegation also supported proposal (G) with regard to the recordation of the search strategy. With regard to proposal (L), the Delegation cited concerns revealed by the Intellectual Property Institute of Canada (IPIC) that publication of the written opinion with the international search report without the applicant having the opportunity to amend and/or respond to the comments in the written opinion might adversely affect the applicant. Applicants therefore requested this opportunity, which the Delegation noted could be an onerous task, given the timeframe of two months between issuance of the written opinion and the opinion being made public. Another concern raised on proposal (L) was possible contravention of Article 38, stipulating the confidential nature of the international preliminary examination, given that the written opinion of the International Searching Authority became the first written opinion of the International Preliminary Examining Authority under Chapter II. The Delegation also highlighted the possibility of abuse and legal complications in proposal (C) if an application were withdrawn by one applicant when the other applicants were not aware of the intention of first-named applicant and did not support the withdrawal.

124. The Delegation of Australia agreed with the Delegation of Canada that there was merit in some of the proposals, but also underlined the need for consultation with stakeholders. The Delegation gave some initial comments on certain proposals. The Delegation believed proposal (B), allowing limited Chapter I amendments, could be useful, but it would be necessary to clearly define what was obviously incorrect so that a decision could be made efficiently and it was also necessary to ensure that any amendments did not go beyond the scope of the specification. The Delegation had similar comments to proposal (C) to those of the Delegation of Canada, highlighting potential situations where a dispute between applicants might arise and the application might be withdrawn without the consent of the other applicants. With respect to proposal (D) on standardizing fee reductions for national phase applications, the Delegation stated that the international phase examination must be worthwhile for the applicant, pointing out that applicants would be less likely to seek a clear international preliminary report on patentability (IPRP) if they did not see any benefit for obtaining a report meeting the criteria of Articles 33(2) to (4). The Delegation believed that providing incentives in the national phase for positive IPRPs could encourage the early correction of defects, examples of such incentives being the incorporation of PCT work products into Patent Prosecution Highway (PPH) work arrangements, and the fast track system at the United Kingdom Intellectual Property Office. The Delegation added that IP Australia also had an expedited examination system which was easily accessible to applicants at no additional cost. With respect to proposal (G), the Delegation supported the mandatory recordation of search strategy. This proposal would maximize the quality by using international search results, providing value especially to national phase examiners. IP Australia had already indicated its intention to share search strategy information on PATENTSCOPE at the nineteenth session of the Meeting of International Authorities (MIA), and the Delegation noted that the quality subgroup of the MIA was undertaking work to determine best practice in relation to the recordation of search strategies. With respect to proposal (K) on the formal integration of the PPH into the PCT, the Delegation stated that the general position of Australia was supportive of a plurilateral approach to PPH which incorporated PCT work. Finally, the Delegation stated that it might have comments on other initiatives in the document that were being discussed as part of upcoming agenda items.

125. The Delegation of Denmark stated that it believed that many of the proposals in the document were interesting and could provide useful input to further work on improving the PCT system. The Delegation wished to consult with users to obtain their opinions on the proposals and looked forward to participating in further discussions in this respect.

126. The Delegation of Sweden noted that it needed more time to look in more depth at some of the proposals and to consult users, for example, regarding proposal (I) on mandatory top-up searches. The Delegation highlighted concerns with regard to legal and safety reasons regarding proposal (C) on withdrawals, and potentially proposal (B) on Chapter I claim amendments. The Delegation was not in a position to support proposals (D), (F) and (K) at this stage, commenting that these ideas appeared to relate to national legislation rather than the PCT as such.

127. The Delegation of France stated that it took a favorable view to some of the proposals, particularly proposal (F) on integration of the international and national phases, and proposal (I) on mandatory top-up searches. However, the Delegation expressed a reservation concerning proposal (C), based on an initial legal opinion. While acknowledging the benefits of only requiring one signature to correct errors, such as electronically submitting an application twice, there were important legal consequences in allowing only the first-named applicant to withdraw an application, since this would result in the loss of rights of an individual without express consent from the individual.

128. The Delegation of South Africa shared the concerns of other delegations with regard to proposal (C) to simplify the withdrawal process, which could possibly lead to abusive situations. The Delegation was also not in a position to support proposals (D), (F) and (K), which were not reconcilable with a patent registration system.

129. The Delegation of China expressed the view that the development and implementation of technology had an important impact on the improvement of the PCT, such as self-service changes and the global dossier mentioned in proposals (A) and (J). However, when the technical development led to Rule changes, the Delegation highlighted that further consideration should be given to the needs of different countries at different stages and levels of development, making sure that all applicants and Offices from all Member States could fully enjoy the benefits of technology developments to make the development of PCT system more balanced and efficient. Moreover, the Delegation considered that improvement of the PCT should be under the existing legal framework while taking pragmatic, practical, step-by-step measures. Where measures might bring new problems, they should be considered and evaluated thoroughly and objectively before adopting them to ensure the PCT system runs effectively, giving the examples of proposal (L) to make the written opinion available to the public at international publication and proposal (C) to simplify the procedure of withdrawal. The Delegation added that the development of the PCT should move towards a more user-friendly, high quality and efficient direction. The needs of the users of the PCT, including users from developing countries and least developed countries, should also be paid attention to in order to achieve the overall objectives of the PCT system. In this regard, the Delegation believed that proposal (E) on the establishment of a small or micro entity fee was one of the important measures to enhance the accessibility of the PCT system. Finally, the Delegation stated that China was willing to work with all Member States in order to contribute to the improvement of the functioning of the PCT.

130. The Delegation of the Russian Federation noted that it had sympathy with some of the proposals in the document but could not support all of them. The Delegation acknowledged that some of the items had already been under consideration by the Working Group, for example proposal (H) on collaborative searching, proposal (I) covering mandatory top-up searches and proposal (G) on mandatory recordation of search strategy. However, the proposals had different complexity and required different resources for their implementation; for example, proposal (J) on development and implementation of the global dossier and incorporation of said system into the PCT would require considerable resources for extension to all Offices. The Delegation expressed its concerns in respect of proposals with legal implications, such as proposal (C) to simplify withdrawal of international applications, even though the examples cited in the proposal appeared quite acceptable and evident, and also proposal (L) to make the written opinion of the International Searching Authority available to the public after international publication. With regard to the latter proposal, the Delegation was of the opinion that it should be up to the applicant to decide if he wanted the written opinion to be available to all before 30 months, so it would be necessary to consult with applicants. The Delegation also expressed its concerns with regard to proposal (E), since the definition of small and medium-sized entity was very unclear and differed from country to country, as had already been pointed out by the Secretariat. Overall, the Delegation believed that these proposals should be discussed together with document PCT/WG/5/20 "Proposals for Further Improvement of PCT Services and Products" submitted by the European Patent Office. A short and long-term program of actions could then be prepared in light of these considerations.

131. The Delegation of Norway considered that the document contained interesting proposals but stated that it needed more time to discuss internally and to consult further with users before giving an opinion on all the different issues at a later occasion. However, the Delegation shared the legal concerns of several other delegations on proposal (C) to simplify withdrawals.

132. The Delegation of Slovakia expressed its concerns with regard to proposals (D), (E) and (K). The Delegation stated that proposal (D) on a fee reduction for national stage applications was not possible, as it was inconsistent with its national law on administration fees. With regard to proposal (E), the Industrial Property Office of the Slovak Republic under its applicable national law offered a reduction of 50 per cent of the filing fee to all natural persons who were applicants and inventors, and a reduction of 50 per cent for annual renewal fees if the patent applicant or owner offered to license the invention. However, the reduction of national fees in the national stage, as proposed in the document, was not allowed under Slovak national law. The Delegation also expressed its concerns with regard to proposal (K) to integrate a fast track system into national phase processing, which would not be allowable under Slovak patent law. The Delegation also shared the concerns expressed by other delegations in relation to proposal (C) for withdrawing an international application by the first name applicant.

133. The Delegation of Japan supported the spirit and objective of the proposals in the document aiming at improving the PCT, especially from the viewpoint of users. The document covered a variety of PCT-related issues in a comprehensive manner, providing Member States with many suggestions towards the improvement of PCT system. Listening to the interventions that had been made by other delegations, the Delegation understood that Member States took divergent views on the respective proposed items. The Delegation further stated that it needed more time for a full investigation of the details of the proposals. Noting that some issues appeared more elaborated than others, the Delegation requested the proponents to explain their proposals in more detail so that Member States and PCT users could achieve a better understanding of the aim and merit of the proposals. The Delegation expressed the hope that the Working Group could agree to a constructive discussion on the details of the proposals in this document at a future session.

134. The Delegation of Portugal stated that it was generally supportive of the proposals set out in the document, but that it needed more time to analyze the proposals at its national Office. The Delegation shared the concerns expressed by the Delegations of Australia, Canada and others on proposal (C) to simplify withdrawal of international applications. However, the Delegation emphasized the importance of making the written opinion of International Searching Authorities available to third parties and, in particular, for national Offices when performing patent examinations.

135. The Delegation of Brazil considered the document to be rich in ideas with different levels of complexity and shared the view that improvements could be made to the PCT to the benefit of all stakeholders. However, more time would be necessary for a full assessment of the document. In providing preliminary views on the document, the Delegation had reservations with regard to proposal (K) on formal integration of the Patent Prosecution Highway into the PCT. With regard to proposal (H) on collaborative searching, the Delegation believed that information sharing must occur on a voluntary basis in order to help patent examiners to reach a more informed decision on a case, and that the patent examiner must not be bound by the decisions of other patent Offices. Finally, the Delegation considered that mandatory recordation of search strategy as set out in proposal (G) could lead to an extra burden on patent examiners, given the variety of search strategies that might be adopted within patent Offices. However, the use of keywords could be very useful, particularly when top-up searches had been carried out.

136. The Delegation of Singapore appreciated efforts to simplify the PCT application process and initiatives to improve the quality of PCT products. The Delegation requested further time to review the proposals but was, in principle, supportive of some of the proposals. The Delegation expressed support for proposal (A) to allow applicants or inventors to make self-service changes to his name, address etc. as could be expected during the international application process, adding

that this idea was similar to what the Intellectual Property Office of Singapore was currently looking at for its national applications. In relation to proposal (I) to make top-up searches mandatory during the international preliminary examination, the Delegation considered the proposal could be useful as providing a more exhaustive international search and preliminary examination process, but a more detailed time and cost-benefit analysis should be performed before the feature was made mandatory.

137. The Delegation of India stated that, with respect to proposal (D), national law in India did not support a proposal on fee reductions for national stage applications, but in order to incentivize applicants, the Delegation could consider this proposal positively. Concerning proposal (E), providing for an international small and micro entity fee, the Delegation emphasized the need to achieve a consensus on the definition of a small and micro entity, but if this was reached, the proposal could be considered positively. However, the Delegation was unable to agree on proposals (H) and (K) on collaborative searching and formal integration of the Patent Prosecution Highway into the PCT, respectively. The Delegation stated that the remaining proposals would require discussion with users and that it might be able to provide its comments at the next session of the Working Group.

138. The Delegation of Switzerland expressed the view that the document had some excellent ideas, but expressed its reservations on some of the proposals. In particular, on proposal (C), the Delegation considered that the signature of all applicants should be necessary to withdraw an application. In relation to the self-service changes in proposal (A), the Delegation highlighted the need for supervision and stated that it was necessary to provide list of modifications that could be made by the applicant and those that would require approval. Finally, the definition of a small entity could be problematic concerning the fee reductions in proposal (E).

139. The Delegation of Chile stated that it believed that the document included very relevant and important issues which required further time to be studied in depth. As a preliminary comment, the Delegation expressed particular interest in proposal (A) on self-service changes, proposal (B) on Chapter I claim amendments and proposal (E) on an international small/micro entity fee. The Delegation also expressed its willingness to discuss the proposals with the Delegations of the United Kingdom and the United States of America.

140. The Representative of the European Patent Office (EPO) supported the spirit of the proposals towards further improving the PCT for the benefit of all stakeholders, an objective dear to the EPO, and made some preliminary comments on some of the proposals. The EPO had some concerns with proposal (B) relating to claim amendments under Chapter I; the EPO considered that even minor amendments, such as claim renumbering or changing claim dependencies, could introduce problems with added subject matter. Otherwise, the EPO broadly supported most of the proposals. However, although proposal (A) regarding self service changes went in the right direction, some corrections might need checking and approved by a formalities officers. Therefore, a list of various corrections should be made in order to study in detail which ones would require checking and approval and which ones could be done directly by applicants. The EPO was fully supportive of proposal (F) on integration of the national and international phase. The EPO was in favor of more top-up searching under Chapter II, as mentioned in document PCT/WG/5/20 by the EPO, but did not believe that top-up searches in Chapter II should be mandatory as in proposal (I), stating that an International Authority should perform these top-up searches as they wish under the conditions of their national law. Finally, again making reference to document PCT/WG/5/20, the Representative stated that the EPO supported the proposed integration of the Patent Prosecution Highway (PPH) into the PCT as outlined in proposal (K). In this regard, the Representative stated that PCT applicants should not be disadvantaged with respect to Paris route applicants and should therefore be able to benefit from any accelerated examination scheme, such as the PPH, when entering the national phase.

141. The Representative of the American Intellectual Property Law Association (AIPLA) supported the spirit and overall objectives of the document and applauded the Delegations of the United States of America and the United Kingdom for presenting a brave proposal. The AIPLA believed the proposal to have some interesting aspects and emphasized that the important role of national Offices should continue. Therefore, the concept of a central access point for ease of review of information related to files referred to in proposal (J) should not be intended to diminish the role of or the fees payable to national Offices; rather, it should create a “cloud” computer point of access to information. The Representative added that certain legislative changes would be required in the United States of America with respect to some of the points advanced in the document. However, the Representative considered that it could be productive for the Working Group to strongly encourage countries to adopt a particular point where possible, giving other countries the flexibility to urge their national legislative bodies to amend their laws to become consistent, while preserving the principle of national sovereignty.

142. The Representative of the Japan Intellectual Property Association (JIPA) expressed JIPA’s interest in the proposals set out in the document and expressed the hope that they would continue to be discussed by the Working Group. Regarding proposal (F) on integration of the national and international phase, JIPA considered the issue of how to accomplish equal examination quality in the international phase and national phases should be discussed first. Moreover, the benefit to the applicants should also be considered.

143. The Representative of Third World Network (TWN) stated that TWN viewed the proposals as having far-reaching implications requiring thorough discussion, especially proposal (K) on integration of the Patent Prosecution Highway into the PCT. The Representative referred to a history of debate on harmonization in the context of discussions on work sharing and again emphasized the need for thorough discussions before taking a decision on the issues set out in the document.

144. The Representative of the Asian Patent Attorneys Association (APAA) welcomed the proposals that would improve the PCT system. APAA supported limited Chapter I claim amendments in proposal (B) as being useful to the applicant, and believed that top-up searches in Chapter II should be mandatory as mentioned in proposal (I). However, APAA disagreed with proposal (L) to make the written opinion available to the public at international publication since this would not be beneficial to the applicant.

145. The Representative of the Japan Patent Attorneys Association (JPAA) expressed JPAA’s support for the proposals set out in the document, but stated that it was necessary to have more time to further discuss the ideas.

146. The Delegation of Spain stated that the document contained useful suggestions and that it shared many of the views and comments that had been voiced in the discussions. While not disagreeing with any of the proposals at his stage, the Delegation requested more information and details on how they would be put in place. In this regard, the Delegation understood from the document that the proposals could be phased in progressively in some cases, whereas other measures could be implemented unilaterally.

147. The Chair, in summarizing the discussions, emphasized the requests from delegations for further information on the specific proposals and more time for discussion. The Chair therefore proposed that the Working Group invite the Delegations of the United Kingdom and the United States of America to provide further details on the proposals to enable delegations to consult with their users and national administrations. The Chair further emphasized the importance of considering the way forward on the different proposals in light of the comments that had made by delegations during the discussion on the document.

148. The Delegations of the United Kingdom and the United States of America agreed to further elaborate on the proposals set out in document PCT/WG/5/18, providing more detail on how to take the proposals forward, for discussion at the next session of the Working Group.

PROPOSALS FOR FURTHER IMPROVEMENT OF PCT SERVICES AND PRODUCTS

149. Discussions were based on document PCT/WG/5/20

150. The Representative of the European Patent Office, in introducing document PCT/WG/5/20, stated that the PCT was the most successful global patent system, noting the 54 per cent share of non-resident filings in 2011 compared to Paris route filings and the notable increase of 11 per cent compared to 2010, with more than 182,000 applications filed in 2011. Many improvements to the PCT system had been introduced during the past 10 years which had made this success possible; in particular, the PCT reform process and the still ongoing PCT Roadmap process. The proposals set out in document PCT/WG/5/20 were aimed at further adapting the system to enable it to face current challenges, such as the new IT environment, backlogs and especially the issue of quality of PCT work products. The proposals were the result of an internal assessment within the European Patent Office to further improve the quality of both services and products with respect to the PCT. Most of the proposals could be implemented by an International Authority on its own and in a unitary manner, but the Representative hoped that there was consensus for general improvement of the PCT services and products. That was the reason why the set of proposals were divided into two packages.

151. The first set of proposals aimed at offering better services and products to PCT users. The first proposal in this package was to strengthen the services under Chapter II, which was something the European Patent Office had already started in October 2011, when it implemented its new policy with respect to establishing a second written opinion in cases where applicants made bona fide amendments under Article 34, in line with one of the recommendations of the PCT Roadmap. To further strengthen Chapter II, it was proposed to start assessing whether one could introduce some form of top-up search as part of the Chapter II procedure while still leaving the flexibility for any International Authority to do so under its own national legislation and, if so wished, with limited scope.

152. The second proposal was more of a principle which the European Patent Office intended to follow, namely, to develop equal service levels for the PCT as for the national or regional procedures, with the aim of having an equal treatment, irrespective of the procedure that had been chosen. There were some instances in respect of services offered to users, like online services, where the national procedures and the PCT procedures diverged; the intention was to eliminate these discrepancies.

153. The third proposal was to improve further the timeliness with respect to international search reports, noting the importance for users to receive their international search reports prior to international publication at 18 months. The proposal was to change Rule 42 with a view to making that Rule more flexible so as to make it possible to establish international search reports within a time limit of either 3 months after the receipt of the search copy or 16 months from the priority date, whichever expired later. The Representative stated that the European Patent Office would take other steps to further improve timeliness within the Office and expressed the hope that receiving Offices would do their best to send search copies promptly to it when it acted as an International Searching Authority, in order to meet the objective of having the international search report established sufficiently in advance for it to be published at 18 months together with the application.

154. The Representative of the European Patent Office further stated that the fourth proposal just made reference to the ongoing phase II of the pilot project on collaborative search and examination carried out by the European Patent Office, the United States Patent and Trademark Office and the Korean Intellectual Property Office; a status report on that project would follow under agenda item 6(i).

155. The Representative of the European Patent Office continued by stating that the second set of proposals set out in document PCT/WG/5/20 related to making the system more efficient for Offices. Furthermore, there also were some elements which would make the system more attractive for users, the first proposal in this package related to two projects which were already ongoing or were about to start. The first pilot project, a pilot between the United States Patent and Trademark Office, the International Bureau and the European Patent Office, related to the transfer of search fees from the receiving Offices to the International Searching Authority via the International Bureau, which would start soon, following the signature of a Memorandum of Understanding. The second pilot project related to the transmittal of the search copy to the International Searching Authority by the International Bureau, in respect of which a Circular had been issued by the International Bureau to commence consultations with Offices. The Delegation expressed its hope that a pilot project could be launched soon, noting that such a new procedure would help the current workflows between different offices. The Delegation expressed the view that, if both pilots were successful, it might be worthwhile to consider introducing corresponding Rule changes at a later point in time.

156. A further proposal set out in document PCT/WG/5/20 related to the recognition by Offices of their own PCT work products upon entry into the national phase. The Delegation stated that it believed that one of the most important elements of the PCT was the quality of the work products produced during the international phase; therefore, whenever the same Office acted as International Authority and thereafter as a designated Office, it should dispense of its own search during the national phase as proof that the quality of its international search was similar to the quality of its national search. Noting that the principle was also a recommendation under the PCT Roadmap, the Representative reiterated the view of the European Patent Office that the implementation of this principle should be discussed further.

157. The third proposal contained in this package was similar to a proposal set out in the document submitted by the United Kingdom and the United States of America, namely, to give PCT users the same advantages as users could enjoy under the national law where they could benefit from existing acceleration schemes, in particular—but not only—the Patent Prosecution Highway (PPH).

158. The fourth proposal was to make a reply to the written opinion by the International Searching Authority mandatory when entering the national phase where that written opinion was negative or where international preliminary examination report was negative.

159. The fifth proposal related to the quality of the work products. When speaking about quality, it was essential to know what quality was. Facts were of the essence, which was why the Trilateral Offices were carrying out a pilot study relating to quality metrics. That study had been discussed at this year's Meeting of International Authorities, where it was agreed that quality metrics were essential to assess the quality of international search and examination reports and how to improve the situation. The Representative stated that the EPO believed that quality metrics should become an integral part of Chapter 21 of the International Search and Preliminary Examination Guidelines.

160. In concluding, the Representative of the European Patent Office elaborated on how to go forward with the different proposals set out in document PCT/WG/5/20. As the Representative had stated, several of the proposals could be taken up unilaterally by Offices, whereas others required Rule changes. Alternatively, in many cases perhaps some form of recommendations of best service or best practice of Offices might also be an option; in general, the aim was to stress the necessity for all International Authorities to improve the quality of their PCT work.

161. The Delegation of Sweden stated that it generally supported the proposals set out in document PCT/WG/5/20. However, as it had stated earlier with regard to the proposals made by the United Kingdom and United States of America set out in document PCT/WG/5/18, it needed time to consult with users concerning some of the issues. Furthermore, the Delegation stated that it had some concerns regarding the points which seemed to relate to national legislation rather than the PCT, for example, the proposal set out under item 2(C), namely, to extend the PPH/PCT concept to PCT work products from all PCT Authorities, and the proposal set out under item 2(D) to make the reply to the written opinion of the International Searching Authority mandatory when entering the national phase.

162. The Delegation of Japan appreciated the efforts by the European Patent Office and that it supported the spirit and objective of the proposals for further improvement of PCT services and products. The document contained many topics concerning the PCT system and therefore could be a good basis for future discussions. However, further explanations as to the details of the proposals were needed; once provided, the Delegation looked forward to fruitful discussions on the details at one of the future sessions of the Working Group.

163. The Delegation of the Russian Federation shared the opinion that, in spite of the many improvements of the PCT system made over the past 10 years, the system needed to be adapted to take into account new IT technologies as well as the challenges facing the global patent system, such as reduction of backlogs and the enhancement of the quality of search and preliminary examination work products. The Delegation supported the range of proposals intended to offer new or better services and products to users of the PCT system, in particular the proposal to supply more services with a view to providing equal service levels for national and for PCT work and the efforts to improve timeliness with respect to international search reports.

164. The Delegation of the Russian Federation further stated that, concerning the second group of proposal to make the system more efficient for applicants and more effective for users, it was useful to discuss the initiatives referred to by the European Patent Office to transfer search fees and transmit search copies to the International Searching Authority via the International Bureau, and to introduce quality metrics in Chapter 21 of the International Search and Preliminary Examination Guidelines. The Delegation strongly supported the measures for exclusion of duplication of work during the international and national phases and consequently the acceleration of the examination process during the national phase. The Delegation therefore supported the proposal to extend the PPH/PCT concept to PCT work products of all PCT Authorities as a very important step towards PCT reform and development of worldwide work-sharing between patent Offices. With regard to the proposal to make mandatory a reply to a negative written opinion of the International Searching Authority when entering the national phase, the Delegation considered that replies were useful for the national phase procedure but that it was necessary to amend national legislation in order to implement this proposal; against this background, it preferred a more flexible wording, for example, to give the applicant an opportunity to reply to a negative written opinion of the International Searching Authority when entering the national phase.

165. The Delegation of Denmark thanked the European Patent Office for this catalogue of good thoughts for improving the PCT system. It considered many of the proposals to be very interesting and something the Working Group should pursue in due course. The Delegation further stated that it had not have enough time to consult with users on the proposals but looked forward to further elaboration of the individual proposals by the European Patent Office. One proposal which the Delegation wished to further elaborate on was the proposal set out as item 2(B) of document PCT/WG/5/20; PCT work carried out by the Nordic Patent Institute was of the same quality as its national work products. Consequently, the Delegation supported the proposal by the European Patent Office that Offices should recognize their own work in the national phase.

166. The Delegation of Finland noted that it was especially interested in the second set of proposals which were aimed at making the system more efficient for applicants and more attractive for users. Concerning the proposal set out in document PCT/WG/5/20 as item 1(A), the Delegation generally supported the concept of top up searches since it would enhance the quality of patents. However, it was of the view that the top up searches should not be mandatory at this stage.

167. The Delegation of France stated that it considered the proposals by the European Patent Office to go in the right direction, as had been communicated to it by its user community. The Delegation thus supported the proposals, particularly the proposals related to ensuring an equal quality of services provided by different units for national and international work products. The Delegation further supported the introduction of quality measures which were absolutely essential for the improvement of the PCT system, aimed at having one standard level of quality in different countries. In conclusion, the Delegation supported the suggestions that the proposals should be further studied and discussed.

168. The Delegation of Switzerland thanked the European Patent Office for its proposals which were aimed at improving the PCT and that it supported those proposals, to the extent that they did not affect the national phase procedures.

169. The Delegation of the Republic of Korea thanked the European Patent Office for its proposals to advance the PCT system. With regard to the pilot project on collaborative search and examination further described in document PCT/WG/5/20 under item 1(D), the Delegation stated that the Korean Intellectual Property Office was participating in the second phase of the pilot project which, once it was completed, required detailed analysis. The Delegation agreed with the proposal to extend the PPH/PCT concept to work products from all PCT Authorities, as set out in document PCT/WG/5/20 under item 1(C). However, more time was needed to further consult on the proposals with users. The Delegation therefore hoped that discussions on the proposals would continue.

170. The Delegation of the United Kingdom welcomed the efforts of the European Patent Office to improve the PCT. It believed that the many ideas set out in document PCT/WG/5/20 fell closely with those set out in document PCT/WG/5/18 submitted by the United Kingdom and the United States of America. The Delegation stated that it would in particular be happy to work with the European Patent Office with regard to its efforts to improve quality under the PCT. In terms of specific comments, the Delegation needed more time to consider and reflect. However, it believed that the proposals relating to the provision of top up searches could have been bolder. Rather than top up searches covering only "EP" and "WO" documents, the Delegation wanted to encourage the European Patent Office to cover patent documents globally so that top up searches were useful to all Contracting States when undertaking national phase processing.

171. The Delegation of the United States of America appreciated and welcomed the submission by the EPO of proposals for improving PCT services and products. It had noted that a number of the proposals had similar counterparts in the PCT 20/20 proposal submitted by the United Kingdom and the United States of America and that it could support many of the proposals set out in document PCT/WG/5/20, in particular those relating to collaborative search and examination and to extending the PPH/PCT concept. With regard to the latter, the United States of America had actively pursued PCT/PPH agreements with all acting International Authorities. The Delegation stated further that it supported the mandatory reply to the written opinion of the International Searching Authority; it had noted that the European Patent Office had already implemented such a procedure unilaterally and was looking into what steps it could take to do the same in its Office. The Delegation supported the transfer of search fees and search copies, being partners in these projects together with WIPO and the European Patent Office.

172. The Delegation of the United States of America further stated that it also supported the proposal set out under item 2(B) with regard to recognizing own PCT work products in the national phase; it was continuing to work towards implementing this goal within its own Office. In this

regard, the United States of America had taken steps to revise and strengthen its agreements with its searching contractors to correspond to the quality requirements that were expected of its own examiners; in addition, it had provided those contractors with additional training on classification and claim interpretation and had started subjecting the work of those contractors to the same quality review process as its own national applications. With regard to item 1(C) "Improving the timeliness with respect to the international search reports", the Delegation stated that the United States of America had taken efforts in its own Office to improve the timeliness performance to the point where more than 80 per cent of its search reports were issued in time for the 18 month publication. However, with regard to paragraph 6 of the document, the Delegation wished to express its concerns, noting that that paragraph appeared to be a recommendation that the standard in the Regulations be changed from the current "three months from the date of receipt of the search report" to a fixed time limit of 18 months from the priority date. It considered that the ability of the International Searching Authority to meet its obligations under the Treaty should not be tied to variables with regard to which they had no control, such as receiving Office processing time and late payment of the search fee by the applicant.

173. With regard to the proposal for top up searches set out in item 1(A), the Delegation stated that it needed some clarification but did support the call for top up searches, as was stated in the PCT 20/20 document submitted by the United Kingdom and the United States of America. However, it wished to receive some further explanations from the European Patent Office as to what it was the European Patent Office was calling for, as it appeared that it was only calling for top up search in respect of those applications which had entered the EP regional phase. The Delegation felt that the International Authority should issue a work product that was usable for all Offices in their national processing. The Delegation further stated that top up searches were inherently a function of examination in order to provide the most complete international phase work product and that therefore, already today, top up searches were performed by its examiners in respect of all international applications. If the European Patent Office felt that performing top up searches were beneficial, then it would like to urge the Office to perform top up searches in respect of all applications undergoing Chapter II examination before the EPO in order to benefit all Offices which were party to the PCT.

174. The Delegation of Spain supported in general terms the proposals by the European Patent Office that were aimed at improving the services and products under the PCT. It supported in particular the proposal for top up searches set out in item 1(A), dealing with what was deemed secret prior art in accordance with Article 54(3) of the European Patent Convention and similar provisions under its own national patent law. With regard to the proposals to improve the timeliness with respect to international search reports set out in item 1(C), the Delegation stated that it was not in favor of the modification to Rule 42.1 as proposed by the EPO. The Delegation further stated that it supported the proposals set out under item 2 aimed at making the PCT system more efficient for applicants and more attractive for users, notably the proposals set out in item 2(A) aimed at establishing more efficient transfers of search fees and search copies. With regard to the latter, the Delegation stated that it had replied to Circular C. PCT 1332 and hoped that the International Bureau would take its comments into account. With regard to the proposal aimed at ensuring that PCT work products were of the same quality as national work products as set out under item 2(B) and that Offices which acted as both an International Authority and a national Office should recognize their own work products in the national phase, the Delegation stated that its own Office already had implemented this principle; where the Office had carried out the international search, no additional search was carried out where the same application later entered the national phase.

175. The Delegation of India thanked the EPO for presenting document PCT/WG/5/20, setting out a number of proposals, some of which related to policy, whereas others related to national laws. With regard to the proposal to making the reply to a written opinion mandatory when entering the national phase, the Delegation stated that it supported that proposal. The Delegation was not, however, able to agree with the proposal to establish a collaborative search and examination system as set out in item 1(D) and the proposal to extend the PCT/PPH concept to

PCT work products from all PCT Authorities. The Delegation further stated that it would appreciate receiving more details and more in-depth explanations on the proposals so as to enable it to hold further discussions on the proposals at the national level.

176. The Delegation of China thanked the European Patent Office for its proposals for further improvement of the PCT system and of PCT services and products but expressed some concerns. While it believed that the national or regional Offices should be encouraged to use the results of the work of international phase to reduce unnecessary duplication of work, the procedure in national phase should be governed by the applicable national law of the Member States; thus, mandatory or uniform requirements in the national phase would not be appropriate.

177. The Delegation of Egypt thanked the European Patent Office for presenting these proposals for further improvement of PCT services and products. Like other Delegations, it also required additional time to reflect and to study the proposals in more detail. It welcomed the opportunity to consult with the European Patent Office on these proposals, notably with regard to the scope of those proposals, their implications and whether they would require any amendments to the PCT Regulations.

178. The Delegation of Chile thanked the European Patent Office for the presentation of document PCT/WG/5/20, aimed at improving PCT services and products, and stated that it would contribute to the debate on the proposals once it had been able to analyze the various aspects of those proposals.

179. The Delegation of Norway stated that it also wished to thank the European Patent Office for its proposals to further improve the PCT system but that it required more time to study the proposals before being able to comment on them in more detail.

180. The Delegation of Brazil thanked the European Patent Office for its proposals set out in document PCT/WG/5/20 aimed at improving the PCT system, which it welcomed. However, it needed more time to fully analyze the proposals. The Delegation further stated that it wished to take the opportunity to reiterate that it could not support the proposal to extend the PPH approach to the PCT; sharing of information had to serve the purpose of increasing the data available to patent examiners, but use of that information had to be on a voluntary basis and the autonomy of national Offices had to be preserved.

181. The Delegation of Mexico thanked the European Patent Office for the presentation of document PCT/WG/5/20, which it believed to be very interesting. As it had stated with regard to the proposals set out in document PCT/WG/5/18, it believed that both documents contained some proposals which were important towards the improvement of the PCT system and which should be taken on board. However, the Delegation required more time to further study the proposals, notably those which related to national phase processing.

182. The Representative of Japan Intellectual Property Association (JIPA) thanked the European Patent Office for the presentation of its proposals, which JIPA found to be very interesting. With regard to the proposal set out in item 2(E), the Representative expressed the view that quality metrics were very important because they could visualize both the present situation and the progress of improvement quantitatively; the Representative expressed the hope that concrete proposals with regard to quality metrics could be discussed in one of the next meetings. With regard to the proposal set out in item 2(D), aimed at making a reply to the written opinion of the International Searching Authority mandatory upon national phase entry, the Representative requested to receive more information from the European Patent Office in the next meeting as to the impact of Office's current practice, for example, on the number of office actions required before grant.

183. The Representative of the Institute of Professional Representatives before the European Patent Office (EPI) stated that EPI supported all efforts to improve the PCT procedure and practice, in particular in terms of quality and timeliness, and that it wished to thank the European Patent Office for the proposals, some of which were similar to the proposals of the Delegations of the United States of America and the United Kingdom set out in document PCT/WG/5/18. EPI planned to hold discussions with its members within the coming weeks in order to have a comprehensive response on the proposals set out in both documents. As a general comment regarding quality, the Representative believed that PCT reports should be comprehensive, that search reports should be complete and that written opinions should address all aspects of patentability. EPI thus welcomed the practice of the European Patent Office to issue a second written opinion within the PCT Chapter II procedures. Regarding the issue of timeliness, the EPI understood that search reports should be issued before the 18-month deadline so as to be available together with the publication of the international application and so as to give applicants enough time to consider whether to file a demand for PCT Chapter II.

184. The Representative of the American Intellectual Property Law Association (AIPLA) stated that he was excited about the proposals presented by the Delegations from the United States of America, the United Kingdom and from the European Patent Office aimed at improving the PCT system. However, AIPLA had to await further input from users before being able to comment in more detail. The only observation he wished to make at this stage, from a user's perspective, was that the proposed various new deadlines and continued improvements created a very complex mixture of procedural and substantive issues which required further discussion in the user community.

185. The Representative of the Third World Network (TWN) stated that he wished to comment on the proposal set out in item 2(B) "Recognize own PCT work products in the National Phase", referring to the recommendation contained in paragraph 170(a) of document PCT/WG/3/2, which stated that Offices which acted as International Authorities should recognize the quality of their own work and not routinely conduct more than a top-up search when an international application for which they had acted as an International Authority entered the national phase before the same Office. The Representative stated that he felt that, under certain circumstances, there might be unique national provisions to be taken into consideration before granting a patent in the national phase, and that therefore this recommendation should not be made mandatory but rather that it should be left to the national authorities to decide on a case-by-case basis. With regard to the proposal set out in item 2(C), proposing to extend the PPH/PCT concept to PCT work products from all PCT Authorities, the Representative stated that TWN felt that this proposal would integrate PPH into the PCT system and thus in a way legitimized work sharing and the harmonization of patent laws. TWN thus wished to call upon the Member States to exercise utmost caution with regard to this proposal. Finally, with regard to the proposal set out in item 2(E), related to the integration of quality metrics in Chapter 21 of the International Search and Preliminary Examination Guidelines, TWN wished to call upon Member States to engage in a very transparent process when developing such quality metrics; it was important to first understand the content of such quality metrics before agreeing on the proposal to introduce such metrics.

186. The Representative of the European Patent Office thanked all delegations that had taken the floor for their comments and their support for the proposals. With regard to the comment by the Representative from the TWN on the content of quality metrics, the Representative wished to refer to a document which had been published in the context of the most recent Meeting of International Authorities (PCT/MIA), which contained sufficient details on what was meant by "quality metrics". With regard to the question on top up searches, this was an item which was under discussion within the European Patent Office; the idea had been that, as a first step, a top up search should be offered to those applicants who filed a demand for Chapter II with the European Patent Office as an International Preliminary Examining Authority and which were also likely to later enter the regional phase before the European Patent Office, noting that a top up search would be particularly useful for those applicants. It was, of course, also a question of resources; to offer a complete top up search covering the entire documentation would require

much more resources compared to a limited top up search. At present, internal systems were set up to handle limited top up searches but would have to be changed if top-up searches were to be extended to cover the entire documentation; at this early Chapter II stage, not all documents had already been classified, so that it would be very difficult to retrieve documents considered to be secret prior art at this early stage in the procedure. With regard to the question as to the effect of the introduction, as part of the “raising the bar” project within the EPO, of the mandatory reply to the PCT Chapter I and Chapter II reports, the Delegation stated that, prior to the change in practice, in 2009, the EPO had received amendments prior to the start of the examination in the regional phase in about 18 per cent of all international applications. After the change in practice, between April 2011 and April 2012, amendments had been received in respect of around 85 per cent of all international applications. As to the impact on examination, in 2009, in 15 per cent of cases a patent was granted as a first action, following a reply to the PCT Chapter I or Chapter II report, whereas in 2011, 2012, after the change in practice, that figure had risen to about 27.5 per cent, this being a significant increase.

187. The Representative from the Third World Network (TWN) stated that perhaps he had not expressed himself very clearly. Of course, information on the issue of quality metrics was already available. But the message he had been trying to convey was that there should be transparent process to find ways what exactly the content of the quality metrics was that was currently missing from the process.

188. The Representative of the American Intellectual Property Law Association (AIPLA) stated that users, having paid the international search fee, were often asking themselves “why is it that, when I enter the national phase before the very same Office which has established the international search report, I end up with what appears to be a completely different search? What did I pay my money for?” If users were encouraged to use the PCT system, the quality and the credibility of the initial search for which users paid the international search fee was of the utmost importance; it was something that was an obligation for Offices to deliver which could not be imposed “from above” but needed to be strongly encouraged to be organic to each of the Offices.

189. The Representative of the European Patent Office agreed to further elaborate on the proposals set out in document PCT/WG/5/20 to enable a more in-depth analysis at the next session of the Working Group.

THIRD PARTY OBSERVATIONS SYSTEM; QUALITY FEEDBACK SYSTEM

190. Discussions were based on document PCT/WG/5/7.

191. The Secretariat informed the Working Group that the deadline to respond to Circular C. PCT 1338, dated May 2, 2012, referred to in paragraph 2 of the document, would expire the following day. Responses received thus far were minor drafting suggestions rather than major objections to the basic arrangements set out in the draft modifications of the Administrative Instructions and the International Search and Preliminary Examination Guidelines. The Secretariat also announced that it would soon be issuing a further Circular providing the details of how designated Offices can transmit feedback through PCT-EDI and requesting International Authorities to provide appropriate contact points to which such feedback should be directed.

192. The Delegation of the Russian Federation noted that the third party observations system would come into force on July 2, 2012, and enquired about the preparations of new versions of the Administrative Instructions and International Search and Preliminary Examination Guidelines, including the modifications relating to the third party observations system.

193. The Delegation of Brazil stated that it believed that the work on technical systems to allow third parties to make observations on international applications would help improve the quality of examination, both in the international and national phases. The Delegation expressed the view

that the use of the system by Offices of Contracting States and International Authorities should be optional at this stage. After evaluating the usefulness and the benefits arising from the system, Contracting States would be in a better position to consider the possibility of using the system on a regular basis.

194. In response to the question from the Delegation of the Russian Federation on the availability of new versions of the Administrative Instructions and International Search and Preliminary Examination Guidelines, the Secretariat stated that modifications to the Administrative Instructions would introduce a new Part 8. The International Bureau hoped to promulgate the modifications as soon as possible and make a new consolidated version of the Administrative Instructions available on the WIPO web site in advance of July 1, 2012. Concerning the International Search and Preliminary Examination Guidelines, the International Bureau apologized for the delay in providing a consolidated version of the Guidelines to incorporate some earlier modifications to the Guidelines but hoped that it would be able to promulgate such consolidated version in the near future.. In response to the comment by the Delegation of Brazil relating to the optional nature of third party observations, the Secretariat confirmed that the Administrative Instructions stated that designated Offices were free to treat any third party observations received on an application in accordance with their respective national laws.

195. The Representative of Japan Intellectual Property Association (JIPA) supported the introduction of the third party observations system with a view to improving the quality of international search products and appreciated that the International Bureau, in preparing Circular C. PCT 1338, took into consideration ideas to prevent the abuse of the system. However, JIPA still had some concerns on the proposal from the point of view of users. According to Section 804 of the proposed new Part 8 of the Administrative Instructions, the applicant is notified by the International Bureau of third party observations but does not have the right to receive copies. However, each International Searching Authority was not required to comment on whether or not an observation has been taken into consideration. Under such circumstances, if the international search report did not refer to some of the documents submitted as third party observations, the applicant would need to study the relevance of all submitted documents from third parties, whether or not they were relevant. This had particular implications for entering the national phase before the United States Patent and Trademark Office (USPTO), due to the duty of disclosure requirement under the national law of the United States of America. JIPA believed that this could place undue burden on the applicant who would need to decide whether or not to send the document to the USPTO. According to the comment in Section 805(b) of the draft Administrative Instructions, the International Bureau would send the third party observations to all designated Offices on specific request within the meaning of PCT Rule 93*bis*.1. However, in order to reduce the burden of applicants, JIPA wished to ask the International Bureau to send all documents automatically to the USPTO if possible.

196. The Representative of the American Intellectual Property Law Association (AIPLA) stated that it wished to provide some background on the point raised by the Representative of the Japan Intellectual Property Association. In the United States of America, the inventor and the inventor's attorney had a duty to disclose any art they knew of that could be material to the examination of the patent application. Therefore, once literature had been brought to the attention of the applicant, this would give rise to a new substantive obligation on the part of the applicant, despite the applicant not being a participant in the process that gave rise to this obligation.

197. The Secretariat, responding to the comment raised by the Representative of the Japan Intellectual Property Association, confirmed that under the proposed modifications to the Administrative Instructions and to the International Search and Preliminary Examination Guidelines, an International Preliminary Examining Authority would not be obliged to comment on every individual observation in a Chapter II report. In providing for a third party observations system, the International Bureau intended the system to be flexible, partly because of the timing that would allow for observations to be submitted up to 28 months from the priority date of the international application. In addition, given that international preliminary examination was carried

out only in respect of about 10 per cent of applications and given the fact that, among these cases, the process would often be completed before the expiry of the period for submitting third party observations, it would not be practical for International Preliminary Examining Authorities to comment on all observations made, even if there was a Chapter II examination. Nevertheless, the Secretariat considered that where observations had been received in sufficient time for the examiner to consider them prior to establishing the international preliminary examination report, it would be expected of the International Preliminary Examining Authority to comment on any relevant observations and indeed it would be in its own interest in view of the likelihood that the application would later enter the national phase before the same Office acting in its national capacity. With regard to making documents submitted by third parties available automatically to the United States Patent and Trademark Office (USPTO), the Secretariat stated that this was a matter the International Bureau needed to take up with the USPTO. The USPTO would probably be receiving these documents in any case, either by the International Bureau automatically sending the documents or by the USPTO automatically retrieving the required documents from the systems at the International Bureau, as was the case at present in respect of many other document types. Furthermore, the Secretariat informed the Working Group of plans to implement a feature in the ePCT system to allow an applicant to provide a consolidated list of any citations on an international application—whether cited in the international search report, through the applicant's own knowledge, or submitted in a set of third party observations—in a format that could be accepted by the USPTO as part of an information disclosure statement.

198. The Delegation of the United States of America expressed sympathy for the comments made by the Representatives of the Japan Intellectual Property Association and the American Intellectual Property Law Association, adding that it had concerns with the burden that a third party observations system would place on applicants. The Delegation had hoped that a requirement would be adopted for third parties to submit copies of all documents that they were citing, thereby relieving the burden on both applicants and Offices. The Delegation pointed out that it was often difficult for Offices to obtain copies of patents and non-patent literature, and therefore hoped that a procedure could be adopted to require third parties to submit copies of all documents being cited to enable proper consideration by Offices and applicants alike.

199. The Delegation of Japan expressed the concern that technical details of the third party observations system may not have been discussed thoroughly enough to enter into force in July. The Delegation therefore requested the International Bureau to provide such information as soon as possible, along with modified Administrative Instructions and International Search and Examination Guidelines. The Delegation informed the Working Group that the Japan Patent Office was in the process of responding to the questions regarding the system as a part of its comments on Circular C. PCT 1338 and requested the International Bureau to respond to comments to the Circular submitted by Offices well in advance of the envisaged entry into force date of the third party observation system to ensure the smooth release of the system.

200. The Working Group noted the contents of document PCT/WG/5/7.

REVIEW OF THE SUPPLEMENTARY INTERNATIONAL SEARCH SYSTEM

201. Discussions were based on document PCT/WG/5/8.

202. The Delegation of Sweden supported the conclusions in the document. The Swedish Patent and Registration Office (SPRO) currently offered supplementary international searches, performing a full search equivalent to that of the "main" international search. However, the SPRO was in close contact with its users to examine the question of whether the supplementary international search should become more specialized and cheaper for applicants.

203. The Representative of the European Patent Office (EPO) fully supported the proposal of the International Bureau set out in paragraph 37 of the document. The Representative reported that the EPO's users had expressed a desire for more International Authorities to offer supplementary international searches, particularly those located in Asia. In addition, the EPO considered that it was essential to promote the supplementary international search service in order for it to be more widely known among the user community. Since the beginning of 2012, the EPO had experienced an increase in the number of requests for supplementary international search, suggesting increased interest among users. The EPO would therefore be observing how this trend would evolve.

204. The Delegation of France fully agreed with the observations made by the International Bureau on the lack of background available for a pertinent analysis of the supplementary international search system in view of the low demand for supplementary international searches to date. The Delegation therefore supported carrying out a further review of the system in 2015. Moreover, the Delegation pointed to the need to increase the range of options available to applicants for supplementary international searches in order to increase the use of the system. In general, users in France recognized the international search as being of good quality. Furthermore, users considered the possibility of a different linguistic approach offered by a supplementary international search, for example, in Russian, as a positive element and saw further added value from having the Chinese language incorporated into the system in the future.

205. The Delegation of Brazil supported the continuation of the supplementary international search system and a further review to be carried out in 2015, as proposed by the International Bureau. The Delegation stated that it had taken positive note of the low cost associated with continuing supplementary international searches for three more years and that it attached great importance to activities to raise awareness of the system. Finally, the Delegation expressed the view that supplementary international searches might play a significant role in expanding prior art searched in different languages, which could lead to increased patent quality.

206. The Delegation of the United States of America, noting the low usage rate for supplementary international searches, questioned whether it would be worthwhile to maintain the system. However, the Delegation was willing to accept the continuation of supplementary international searches for a further three years in view of the support of other delegations for the proposal set out in paragraph 37 of the document. However, if requests for supplementary international search did not increase significantly in the next three years, the Delegation believed that it should be considered whether or not it would be appropriate to continue to spend limited resources in the International Bureau and International Authorities on supplementary international searches, or whether other avenues should be explored to improve the quality of the PCT system.

207. The Delegation of the Russian Federation expressed the view that the International Bureau had performed a thorough analysis of the supplementary search system, taking into account views of stakeholders, including Offices, applicants and users. The Delegation highlighted what it considered to be the main reasons for requesting a supplementary international search which had emerged from the user survey set out in document PCT/WG/5/8: the possibility of searching in different languages from the "main" international search; the possibility of searching subject matter covered by a declaration under Article 17(2)(a) and therefore not searched by the International Searching Authority; and a request made by the applicant with a view to entering the national phase in the country of the Supplementary International Searching Authority. In the view of the Delegation, the reasons for the low use of the supplementary search system were: insufficient awareness of the system by applicants; the high level of fees for the service; and the fact that only six Authorities offered the service, three of which had only begun performing supplementary international searches relatively recently. The Delegation highlighted the need for more awareness-raising, both by the International Bureau and by Offices, including those Authorities that did not support supplementary international searches in principle, believing that there was currently insufficient activity in this area. In addition, the Delegation stated that lower fees would lead to greater interest in supplementary searches by applicants. Furthermore, the Delegation hoped that

workload and backlog problems which currently made it difficult for some Offices to offer additional services would become less of an impediment over time. By addressing all these issues, the use of supplementary international search might improve. The Delegation further stated that it considered plans to offer benefits to applicants in the national phase when a supplementary international search had been performed, such as fast-track handling of the application similar to the Patent Prosecution Highway and fee reductions, and expressed the hope that such incentives would also make supplementary international searches more attractive to applicants.

208. The Representative of the Nordic Patent Institute supported the conclusions set out in the document. The Nordic Patent Institute was an International Authority that currently offered supplementary international searches, performing a full search equivalent to that of the “main” international search, like the Swedish Patent and Registration Office. The Representative stated that the Nordic Patent Institute had considered adjusting the supplementary international search and would continue to examine that option after consulting its users and Member States.

209. The Delegation of China stated that it appreciated the experience accumulated by the national and regional intellectual property organizations offering supplementary international searches. The Delegation considered it necessary to continue monitoring the supplementary international search system and that future improvements should be practical, considering the needs of various users and the possible problems so the system could play its due role.

210. The Delegation of Egypt supported the comments made by the Delegation of Brazil and agreed with the analysis presented in paragraph 36 of the document, especially regarding the concrete reasons for the low uptake, namely, the very limited mix of languages of International Authorities currently carrying out supplementary searches, the level of fees charged by those Authorities which continued to be high, and the continuing lack of awareness among PCT users. The Delegation therefore recommended that these three reasons be better reflected in the recommendations to be presented to the Assembly and proposed the following amendments to paragraphs (b) and (c) of the draft decision set in paragraph 37 of document PCT/WG/5/8 (new text underlined):

“(b) to invite the International Bureau, International Authorities and national Offices and user groups to increase their efforts to raise awareness of and promote the service to users of the PCT system;

“(c) to invite the International Authorities which offer supplementary international searches to consider reviewing the scope of their services provided under the system and consequently the levels of fees charged for the services provided, which should be reasonable; and to invite Authorities which currently do not offer the service to reconsider whether to offer the service in the near future;”

211. The Delegation of Portugal agreed with the continuation of the supplementary international search service and the further review to be performed in 2015. The Delegation highlighted the importance of raising awareness of the supplementary international search service to increase interest among PCT applicants, mentioning the PCT Newsletter and seminars as a means to achieve this aim. In addition, the Delegation suggested that all the important information regarding this service should be provided on the web sites of Offices of PCT Contracting States. Furthermore, from the experience of the Delegation, seminars and conferences involving the main applicants achieved positive results in improving the awareness of patent-related information. Therefore, the Delegation proposed collaboration between WIPO and national Offices to organize seminars in PCT Contracting States in order to promote the supplementary international search service, adding that such collaboration would bring about greater dissemination of these seminars among the main PCT applicants.

212. Based on the proposal by the Delegation of Egypt, the Working Group agreed to amend paragraphs (b) and (c) of the recommended draft decision for adoption by the PCT Assembly set out in paragraph 37 of document PCT/WG/5/8 as follows (new text underlined):

“(b) to invite the International Bureau, International Authorities and national Offices and user groups to increase their efforts to raise awareness of and promote the service to users of the PCT system;

“(c) to invite the International Authorities which offer supplementary international searches to consider reviewing the scope of their services provided under the system and consequently the levels of fees charged for the services provided, which should be reasonable; and to invite Authorities which currently do not offer the service to reconsider whether to offer the service in the near future;”.

COLLABORATIVE SEARCH AND EXAMINATION PILOT PROJECT: STATUS REPORT

213. Discussions were based on document PCT/WG/5/9.

214. The Representative of the European Patent Office (EPO) provided a summary of the progress of the collaborative search and examination pilot, involving the United States Patent and Trademark Office (USPTO), the Korean Intellectual Property Office (KIPO) and the EPO. Collaborative search and examination originated from a proposal made by industry, expressing an interest for a single international search report and written opinion presenting views of examiners of several selected patent Offices. The basic concept of collaborative search and examination was to pool examiners from several major Offices to co-produce an international search report under the assumption that, once the examiner at the International Searching Authority had produced an international search report (ISR) and a written opinion (WO-ISA), a small number of examiners from other Offices could collaborate to contribute towards an ISR and WO-ISA of high overall quality, with better coverage of documentation in different languages.

215. The Representative of the European Patent Office (EPO) provided further details of the two pilot projects on collaborative search and examination, the first now being completed and the second currently in progress. The conclusions from the first pilot project were that collaborative search and examination was a realistic concept, and that the collaboration between examiners brought a clear added-value to the quality of the ISR and WO-ISA, with no major additional time investment necessary for search in the regional/national phase as a result of the collaboration having taken place in the international phase. The second pilot was currently ongoing. The pilot involved eight examiners from each of the three Offices, that is, 24 examiners in total, with all examiners being responsible for eight PCT applications as the first examiner. Therefore, 192 applications in total were being treated within the pilot. The pilot had started in September 2011 and plans were to finish it this summer. With regard to the evaluation of the progress of the pilot it had been seen that collaboration improved significantly once the participants in the group had worked together for a while, that e-mail was the preferred communication means and that the process should ideally be supported by a collaboration tool. The evaluation results of the pilot by the participating examiners from the EPO had shown that collaboration feedback included additional search hints (e.g. classes, keywords, databases) in about one third of all cases. It further had shown that in more than three quarters of all cases additional citations were found by the peer examiners, and in nearly 90 per cent of cases, the feedback had resulted in additional citations being added to the final search report by the first examiner. For the written opinion, the collaboration feedback had resulted in improvements to that opinion in more than half of all cases. The examiners surveyed considered that the quality of the final product had greatly improved by making the product more complete in about 20 per cent of cases. Some 15 to 25 per cent of additional time was needed for the first examiner to complete the search above that which would have been required in a normal search of a PCT application. Examiners felt the quality of the final product was very high and considered that in half of all cases, where they had acted as a peer

examiner in the collaboration, they would need only some additional time for administrative matters in the regional and national phase. In the remainder of cases, little time would be needed for a complementary search or some complementary examination. According to the views expressed by industry associations, an international search report and written opinion from collaborative search and examination would provide applicants with a new product which would assist them in defining the appropriate strategy for extending their IP rights worldwide for specific inventions.

216. The Representative of the European Patent Office (EPO) further explained that the results at the end of the second pilot project would be evaluated, considering all aspects of the pilot, including the production cost of the ISR and WO-ISA resulting from collaborative search and examination. While the cost would be higher than for a conventional ISR and WO-ISA, due to the contributions of several peer examiners, collaboration would result in improved quality of ISR and WO-ISA and thus additional value for applicants and Offices. The EPO's initial estimate indicated that, in the current constellation, the price could be between two and three times the amount of the current international search fee charged by the EPO. The Representative of the EPO further explained that this appeared to be in keeping with the price industry associations had indicated as their expectation. Finally, the Representative of the EPO stated that the results of the collaboration provided a more thorough view on the potential outcome of prosecutions in the national/regional phase, increasing legal certainty at an early stage, to the overall benefit of the PCT system.

217. The Delegation of the United States of America stated that the collaboration between its Office, the European Patent Office and the Korean Intellectual Property Office had been a positive experience. The Delegation continued to be encouraged by the results of the pilot project and the potential benefits that collaborative search and examination might hold with regard to increasing the quality of the work products in the international phase. The Delegation was also encouraged by the potential time saving benefits that collaborative search and examination could bring to the national stage examination process, as noted in the final bullet in paragraph 22 of the document. The Delegation hoped that if such a system were eventually adopted, the price of a collaborative report would be such that the overall cost to applicants would only be slightly increased. The Delegation stated that it looked forward to concluding and analyzing the results of the second pilot project.

218. The Delegation of the Republic of Korea thanked the European Patent Office and United States Patent and Trademark Office for collaborating in the pilot project with the Korean Intellectual Property Office. The Delegation hoped the second pilot project would bring tangible results. During the remaining period of the project, the Offices participating in the pilot would be reviewing how information should be exchanged in order to minimize burdens on participating examiners.

219. The Delegation of Japan appreciated the work of the European Patent Office as well as the Korean Intellectual Property Office and the United States Patent and Trademark Office in delivering a progress report on the second collaborative search and examination pilot with a view to sharing information among all PCT Member States. The Delegation recognized that the project had been fully evaluated from the perspective of examiners and users in respect of quality, efficiency, cost and IP strategy. The Delegation stated that it continued to support the excellent initiative and looked forward to further progress in the future.

220. The Delegation of Brazil stated that the collaborative search and examination initiative could help reduce the backlogs by means of increased reliability of international search reports and written opinions. The Delegation stated that it followed with interest initiatives that led to more information being available to patent examiners. However, the Delegation expressed the view that efforts in this area must not reduce regulatory space in Member States and must not lead to patent harmonization across jurisdictions. The Delegation added that it was a matter of national legislation to regulate on substantive patentability criteria, and that the patent examiner must not be bound by the decisions of other patent Offices. In this regard, the Delegation considered that

international search reports and written opinions produced under the framework of the initiative should not enjoy a differentiated status vis-à-vis the equivalent work products established by other International Authorities not participating in collaborative arrangements.

221. The Delegation of China acknowledged the work of the European Patent Office, the Korean Intellectual Property Office and the United States Patent and Trademark Office and hoped all three participating Offices could perform an objective and comprehensive assessment of collaborative search and examination upon completion of the second pilot project and share the information with all Contracting States.

222. The Delegation of the Russian Federation stated that it followed the collaborative search and examination pilot project with great interest and hoped for positive results that could lead to application or implementation among users. The Delegation requested to receive more information about the philosophy of collaborative search and examination, in particular, whether it would be mandatory for all cases where similar applications were filed at different Offices for one and the same invention, or whether it would be at the discretion of the applicant. The Delegation also wondered whether the applicant could indicate a preference for countries where the collaborative search and examination would be performed, and how this might influence the price.

223. The Delegation of Egypt supported the statement made by the Delegation of Brazil and emphasized that collaborative search and examination should be voluntary, without having a bearing on the functioning of the PCT.

224. In response to the question from the Delegation of the Russian Federation, the Representative of the European Patent Office confirmed that the philosophy of collaborative search and examination was applicant-driven, but that details of implementation were yet to be worked out.

225. The Delegation of the United States of America also confirmed that collaborative search and examination would be optional, that the purpose of the pilot project was to test the feasibility of the concept and that it was premature to provide exact details of how it would work in practice.

226. The Representative of the American Intellectual Property Law Association (AIPLA) stated that it had noted the comments made by the Delegation of the Russian Federation and by the Delegation of Egypt and observed that making collaborative search and examination compulsory for all applicants would increase costs and was unlikely to be a feasible option for patent Offices.

227. The Representative of Third World Network (TWN) stated that TWN aligned itself with the statements made by the Delegation of Brazil and by the Delegation of Egypt, expressing concern that collaborative search and examination could lead to harmonization of patent laws, whether indirectly or directly. The Representative underlined the need to recognize the differences in levels of development between countries and the right of Member States to exercise their own policies in prescribing substantive conditions of patentability. Referring to paragraph 18 of the document, the Representative pointed out that, from the point of view of participating examiners at the European Patent Office, in only around 18 per cent of applications the quality of the final product had “greatly improved by making the product more complete”, in around 71 per cent of applications the quality had “improved a bit making this product more complete”, and in 12 per cent of the applications had “improved a bit by providing confidence to the first examiner”. The Representative asked for further explanation on how “greatly improved”, “improved a bit” and “more complete” were defined, and whether these parameters were considered from the point of view of applicants, patent Offices or third parties.

228. In response to the questions raised by the Representative of Third World Network, the Representative of the European Patent Office (EPO) clarified that substantive patent law harmonization was not an intention of collaborative search and examination. With respect to the comments in paragraph 18 of the document, the Representative clarified that these referred to the

feedback at this stage in the evaluation from examiners at the EPO for their work as first examiners, that is, where they established the provisional ISR and WO-ISA on the application prior to transmission to peer examiners at the other two participating Offices. The Representative added that a fully comprehensive evaluation would be performed at the end of the second pilot project.

229. The Working Group noted the contents of document PCT/WG/5/9 and invited the Offices participating in the pilot project to present a more detailed evaluation at the next session of the Working Group.

AVAILABILITY OF WRITTEN OPINION BY THE INTERNATIONAL SEARCHING AUTHORITY AS OF THE DATE OF INTERNATIONAL PUBLICATION

230. Discussions were based on documents PCT/WG/5/10 and PCT/WG/5/10 Add.

231. The Delegation of the United Kingdom, introducing document PCT/WG/5/10, stated that the making available of the written opinion by the International Searching Authority as of the date of international publication was one of the proposals outlined in document PCT/WG/5/18, entitled *PCT 20/20*, discussed earlier in the session. Currently, the written opinion of the International Searching Authority and any documents relating to international preliminary examination were not made available until 30 months from the priority date. In this respect, the PCT differed from many national patent systems that made similar documents available at 18 months when the patent application was published. The Delegation believed that making these documents available as of the date of international publication would improve transparency in the international phase, and added that users in United Kingdom were wholly in favor of such a proposal. Moreover, the proposal would benefit national Offices by enabling them to utilize these international work products when processing national applications without having to seek the express consent of the applicant. While Article 38 prevented the file of the international preliminary examination being made publicly available during the international phase, the restrictions on access to the written opinion before 30 months were set out in Rule 44*ter*. The Delegation therefore believed that it would be possible to relax the restrictions on publication of the written opinion by an amendment to the Regulations. The Delegation acknowledged the comments made by some delegations in the discussions on document PCT/WG/5/18, in particular, the view that Article 38 prevented the written opinion being made available when the application was published; however, in the view of the Delegation, the written opinion did not form part of the file of the international preliminary examination and therefore was not within the scope of Article 38. Furthermore, the Delegation stated that it did not believe such a change would disadvantage applicants, as the information contained in the published international search report already provided a strong indication of the future outcome of the application. With regard to paragraph 5 of document PCT/WG/5/10 Add., the Delegation appreciated that the public interest would be sufficiently well met by making the written opinion available on PATENTSCOPE without specifically including it as part of the international publication. It could therefore accept the proposal set out in document PCT/WG/5/10 Add. from the International Bureau in this respect. The Delegation could also accept the proposal from the International Bureau set out in paragraph 12 of document PCT/WG/5/10 Add. that translation of the written opinion into English should generally occur at the end of the international phase.

232. The Secretariat, introducing document PCT/WG/5/10 Add., acknowledged the support from the Delegation of the United Kingdom for the proposals from the International Bureau to make the written opinion available as a separate item on PATENTSCOPE and translate the written opinion into English at the end of the international phase. The Secretariat expressed sympathy with the principles expressed in the proposal from the United Kingdom and noted the potential that the proposal would give for improved information to third parties. The Secretariat explained that the International Bureau had responded to the proposal from the United Kingdom, as there was potential in the proposal for significant increases in processing costs at the International Bureau.

The document therefore proposed that, if the Working Group wished to make the written opinion available at the time of international publication, this could be achieved by deleting Rule 44*ter* but not making any amendment to Rule 48. In this way, the written opinion of the International Searching Authority would be published as a separate item, not comprising part of the international publication nor requiring translation until the end of the international phase. On the contrary, the proposed amendments to Rule 48 set out in document PCT/WG/5/10 would bring the time of translation forward, enormously increasing the processing costs at the International Bureau, both in terms of a very large one-off cost of, in effect, publishing written opinions (along with any required translations) over an entire year at the same time as publishing all intervening written opinions and translations, and in terms of significant ongoing costs. Finally, the Secretariat clarified that the possibility for designated Offices to request a translation of the written opinion, due to early entry into the national phase before that Office, was unaffected by the proposal.

233. The Delegation of Canada stated that it was generally supportive of the proposal, but cited concerns from the Intellectual Property Institute of Canada (IPIC) that publication of the written opinion with the international search report, without the applicant having the opportunity to amend and/or respond to the comments in the written opinion, might adversely affect the applicant. This was due to the fact that international search reports were more cryptic and primarily for the use by patent experts, in contrast to the written opinion which explained the patentability issues in a language that could be understood more easily by parties not familiar with the patent system, thus having implications on issues such as the financing of an invention. The Delegation therefore requested that the applicant should be given the opportunity to comment on the written opinion of the International Searching Authority. This could be achieved by making these comments available through PATENTSCOPE along with the written opinion, or alternatively over a more flexible timeframe by putting the comments on PATENTSCOPE at the time they were received by the International Bureau.

234. The Delegation of Sweden expressed the preliminary view that it could support the proposal of making the written opinion of the International Searching Authority available on PATENTSCOPE at 18 months from the priority date, but indicated the need to consult with users before taking a final position.

235. The Delegation of the Russian Federation expressed concern about the radical character of the proposal and believed the reasons to ensure the confidential nature of the written opinion and translation of the opinion in the international phase still existed. In addition, any intention of the applicant to amend the application under Article 19 and Article 34 needed to be taken into account, along with the fact that a written opinion could be equivalent to an international preliminary report on patentability under Chapter II. Therefore, the Delegation stated the need for caution in deleting or making radical changes to Rule 44*ter*. Rather than to delete this provision, the Delegation suggested that an additional paragraph could be added as Rule 44*ter*.2 to provide for the possibility for the applicant to request the International Bureau, before completion of technical preparations of an application for publication, to publish together with the international search report the written opinion of the International Searching Authority. In necessary cases, the International Bureau could then prepare the translation into English. In this way, the interests of the applicant would be safeguarded so that the written opinion would only be made available to the public at the discretion of the applicant, and translation costs for the International Bureau would be reduced in comparison with the proposal from the United Kingdom, since not all written opinions would be published together with the international search report and thereby requiring early translation.

236. The Delegation of Denmark stated that it had consulted its users on the proposal, who had expressed their support for the proposal as suggested by the International Bureau in document PCT/WG/5/10 Add. In essence, users in Denmark supported deletion of Rule 44*ter* and agreed that the written opinion should be made public on PATENTSCOPE at the time of international publication as a separate item, rather than being part of the international publication itself, meaning that Rule 48.2 should not be amended.

237. The Delegation of Australia supported the proposal, in line with the suggestions made by the International Bureau. However, the Delegation expressed concern about the scope of Article 38, which the Delegation of the United Kingdom believed was not engaged as far as the confidentiality of the written opinion of the international search report was concerned, since this was covered by Rule 44*ter*. However, given that, under Rule 66.1*bis*(a), the written opinion established by the International Searching Authority was considered to be a written opinion of the International Preliminary Examining Authority, the Delegation asked whether the written opinion of the International Searching Authority would become part of the file of international preliminary examination and thereby subject to the confidentiality provisions in Article 38.

238. The Delegation of Japan stated that it generally supported the proposal from the United Kingdom and the International Bureau to have the written opinion of the International Searching Authority available from the date of international publication. However, the Delegation proposed that, before implementation of the proposals, the views of users, not only as applicants but also as third parties, be thoroughly investigated and examined regarding making the written opinion available at this early stage. As regards the concerns of cost expressed by the International Bureau in document PCT/WG/5/10 Add, the Delegation believed that it would be beneficial, from the perspective of accessibility of third parties to information, to have the English translation of the written opinion of the International Searching Authority published as part of the international publication together with the international search report. While the International Bureau showed estimates of the costs of including the English translation of the written opinion as part of the international publication, the Delegation requested a more concrete evaluation of the additional cost entailed for each international application when a translation into English of the written opinion was required. If the costs were high for publication of the English translation of the written opinion at an earlier stage in the international phase, the Working Group could consider alternatives, such as only publishing the original written opinion as part of the international publication together with the international search report.

239. The Delegation of India agreed to the proposal that the written opinion be made available at the time of publication, and that the translation should be provided at the end of the international phase, as proposed by the International Bureau, noting that Offices maintained the option of making a specific request for a translation in certain situations. The Delegation also agreed with the proposal of the International Bureau that the written opinion be made available as separate document on PATENTSCOPE. In relation to providing the applicant with the opportunity to make comments on the written opinion, the Delegation acknowledged the suggestion made by the Delegation of Canada and indicated its intention to discuss this idea with users.

240. The Delegation of the United States of America stated that the proposal to make the written opinion of the International Searching Authority available to the public at the time of publication would promote transparency within the PCT process. Back in 2002, as part of a proposal for the establishment of an enhanced international search at the second session of the Working Group on Reform of the PCT, the United States of America had urged that the written opinion be published at the same time as the international search report (see paragraphs 14 to 16 of document PCT/R/WG/2/9) and the Delegation continued to support the early availability of this opinion. The Delegation also supported the recommendation of the International Bureau as set forth in document PCT/WG/5/10 Add. with regard to making the written opinion of the International Searching Authority available on PATENTSCOPE rather than as part of the international publication and with regard to the timing of the translation of the written opinion. The issues raised by the International Bureau regarding cost, resources and IT concerns seemed to outweigh the limited benefits that would be obtained by including the translation of the written opinion as part of the published international application.

241. The Delegation of the United States of America continued by addressing the concerns that had been raised about early publication being prejudicial to applicants in their dealings with third parties. It remained the position of the United States of America that the published international search report itself already contained information that would be considered prejudicial in the form

of X and Y indications and the indications of which claims the references were relevant against. A negative determination was therefore a negative determination, regardless of the form in which it was expressed. In this regard, the Delegation did not support the suggestion by the Delegation of the Russian Federation that it be left to applicants to request this publication of the written opinion, adding that this would be tantamount to not having it available, because the Delegation did not see any applicant making such a request. However, the Delegation could support the intervention of the Delegation of Canada to make the informal comments to the written opinion from the applicant also available on PATENTSCOPE at the time that they were submitted, thereby providing applicants with the opportunity to make their response known to third parties.

242. The Delegation of the United States of America concluded by commenting on the concerns that the early availability of the written opinion could be *ultra vires* in view of the confidentiality provisions of Article 38. The position of the Delegation of the United States of America continued to be the same as it was in 2002 when originally proposing publication of the written opinion together with the international application – that this was a non-issue in that the opinion, while later being accepted as part of the preliminary examination process, was initially issued as part of the search process, which was not subject to the confidentiality requirement of Article 38. However, in an effort to eliminate any Article 38 impediment, when this concern had been previously raised in the context of PCT Reform, the United States of America had proposed that the issue could be dealt with by an amendment to Rule 94, providing for the filing of an application in itself to be an expressed waiver of the Article 38 requirement as far as it pertained to the written opinion of the International Searching Authority. If other delegations continued to view Article 38 as an impediment and would not be willing to implement such a change to Rule 94, as an alternative, the United States of America could propose that, at the very least, the written opinion of the International Searching Authority be made available at the expiration of the period for filing a demand for international preliminary examination if no demand had been filed. At such time, the written opinion could no longer form part of the Chapter II proceedings and therefore would no longer fall under the Article 38 restriction.

243. The Delegation of Finland expressed a preliminary view that it could support the proposal in general, but underlined the need to consult users before being able to take any final decision.

244. The Delegation of Spain stated that the Spanish Patent and Trademark Office made written opinions on national patent applications available to the public through its web site, but the opinions were not included as part of the patent publication. However, the Delegation believed that Article 38 could bring about difficulties in following this practice under the PCT, but would not insist on this point.

245. The Delegation of Brazil stated that more time would be necessary to consult the relevant parties in Brazil, and that it shared the concerns expressed by the Delegation of Canada and other delegations.

246. The Delegation of Portugal supported the proposal for the availability of the written opinion at 18 months from the priority date, stating that this measure would bring several advantages, in particular to national Offices when performing patent examinations. The issue of the authorization of applicants did, however, need to be considered in this discussion, with users being consulted on this matter. Moreover, the Delegation agreed with the written opinion being made available through PATENTSCOPE, as suggested by the International Bureau.

247. The Delegation of the Republic of Korea stated that the written opinion of International Searching Authority could be published at any time prior to the expiration of 30 months from the priority date, provided this had been requested by the applicant. Proposals on modification to the PCT Regulations therefore needed to be analyzed in advance with consultation of user groups. Moreover, as publication of the written opinion of the International Searching Authority concerned the agreement from the applicant and costs of translation into English, the Delegation hoped this issue would be discussed further over time.

248. The Delegation of Germany fully supported the position expressed in the intervention by the Delegation of the United States of America.

249. The Secretariat, responding to the interventions of delegations, clarified that the making available of the written opinion of the International Searching Authority from the date of publication would mainly affect third parties. Designated Offices currently had access to the information in the written opinion after entry into the national phase under Rule 44*bis*, whether after the expiration of 30 months from the priority date when the International Bureau communicated the international preliminary report on patentability (Chapter I), the contents of which were identical to the written opinion, or following early national phase entry when the International Bureau would communicate a copy of the written opinion on request to a designated Office. Moreover, in the current situation, the international preliminary report on patentability (Chapter I) was translated into English if required, and for early national phase entry, a designated Office had the option of requesting the written opinion to be translated into English. Therefore, the making available of the written opinion of the International Searching Authority would not affect the practice of designated Offices performing examination of an international application in the national phase.

250. The Secretariat recalled the discussions in 2002, at the time the written opinion of the International Searching Authority was introduced, which had been referred to by the Delegation of the United States of America. At that time, there had been lengthy discussions on whether to provide a formal right to the applicant to respond to the written opinion of the International Searching Authority, and it had been decided not to formalize that entitlement but to have the possibility to respond as an informal procedure, whereby any comments from the applicant would be made available to designated and elected Offices. Although this possibility did exist, the Secretariat pointed out that it was rarely used by applicants. However, if there were an agreement to make the written opinion available as of the date of international publication, the existing mechanism could be used for allowing applicants to make comments on the written opinion; as pointed out by the Delegation of the United States of America, the main difference from the current situation would be that these comments would be made available on PATENTSCOPE at an earlier date.

251. The Secretariat continued by describing the situation for third parties, for whom the proposal would make a substantial difference. Third parties currently did not have access to the written opinion or the international preliminary report on patentability (Chapter I) until after 30 months from the priority date, whereas access for third parties under the proposal would be possible after 18 months from the priority date. One of the driving elements behind the proposal was that the practice under the PCT would be aligned more closely with some national and regional procedures, such as the procedures before the European Patent Office, which made the European search opinion available to the public at the same time as publication of the European patent application.

252. The Secretariat, responding to comments made on whether the written opinion by the International Searching Authority was part of the file of the international preliminary examination and therefore covered by the confidentiality provisions of Article 38, stated that this issue had also been discussed at great length in 2002. At the time, there was no unanimity on this question, and the way forward agreed by delegations was to provide for confidentiality under Rule 44*ter*. Alternative proposals for a compromise were proposed at the time, such as making the written opinion available after the expiration of the deadline for filing a demand under Chapter II if no demand had been made. If this alternative were applied today, the written opinion would be available on PATENTSCOPE at 22 months from the priority date where no international preliminary examination had been requested (covering about 90 per cent of published applications), with confidentiality being maintained for the remainder of applications undergoing international preliminary examination. The Secretariat added that the interpretation of the scope of the confidentiality provisions of Article 38 was a matter for Contracting States; the International Bureau was not in a position to interpret the legal framework or decide on how it should be applied. Therefore, the Working Group had various options: to make the written opinion available at the

time of international publication and agree that the confidentiality provisions under Article 38 did not apply to the written opinion even if a demand under Chapter II might be made by the applicant; to move to a compromise solution of making available the written opinion after 22 months from the priority date if no Chapter II demand had been filed but maintaining confidentiality of the written opinion for Chapter II cases; or to continue with the current situation where the written opinion remained confidential until 30 months from the priority date.

253. The Delegation of the United Kingdom thanked delegations for their constructive comments regarding the proposal and the Secretariat for its clarification on the making available on PATENTSCOPE of comments by applicants in response to the written opinion, and for clarifying the position regarding the interpretation of the provisions of Article 38. The Delegation acknowledged the range of views that had been expressed and considered that the proposal had broad support from the Working Group, but noted the concerns expressed, particularly regarding the need to consider the interests of applicants. The Delegation also understood the need for members of the Working Group to obtain the views of their users on the proposals. Therefore, the Delegations asked for the proposals to be considered again at a future session of the Working Group, after such consultations had taken place.

254. The Chair, summarizing the discussion, stated that some delegations had expressed support for the proposals, whereas some other delegations stated that they needed more time for consultations with users. The Chair acknowledged that some delegations had the view that some aspects of the proposals required further consideration, such as the relevance of Article 38 to the issue, the opportunity for applicants to provide comments on the written opinion and for those comments to be made available on PATENTSCOPE, whether there was indeed a strong interest of users in such a change, and the issue of timing of translations and resulting costs. In view of the need for consultation and further consideration of the proposals, the Chair proposed that the Working Group examine the proposals in greater detail in a future session of the Working Group.

255. The Working Group agreed to consider the proposals in further detail in a future session of the Working Group.

TOP-UP SEARCHING AND ACCELERATED PROCESSING

256. Discussions were based on documents PCT/WG/5/11 and PCT/WG/5/11 Add.

257. In introducing document PCT/WG/5/11, the Delegation of the United Kingdom stated that it wished to thank the Working Group for considering its proposals, which related to two initiatives discussed by the Working Group at its second session in 2009 but which had not yet been progressed by the Working Group. The first proposal was for a top up search to be incorporated into the international preliminary examination procedure, a proposal which was also one of those set out in document PCT/WG/5/18 discussed earlier during the present meeting and which furthermore was related to a proposal set out in document PCT/WG/5/20. Although there had been much discussion on top up searches in relation to both those documents, the Delegation stated that it would like to take this opportunity to outline its particular views. The Delegation believed that the incorporation of top up searches into the international phase will make the international phase work products more complete and useful to national offices, reducing duplication of work by eliminating the need for further top up searches in the national phase in those jurisdictions where publications occur 18 months from priority date. It could also benefit applicants, giving them the opportunity to amend the application during the international phase to overcome newly discovered prior art which could lead to quicker grant and potential cost savings in the national phase. The Delegation wished to thank the Delegation of United States of America for the proposed amendments to PCT Rule 66 set out in document PCT/WG/5/11 Add and noted that it welcomed this proposal to implement top up searching.

258. The second proposal set out in document PCT/WG/5/11 was to introduce an optional acceleration to processing in the international phase. The Delegation believed that this would provide increased flexibility for applicants, making the PCT a more attractive route. Offering accelerated processing could also help to reduce backlogs by removing the need to file a parallel national application in addition to the PCT application where the applicant sought a quick search or a quick grant. A fee could be imposed for the accelerated processing service, set at an appropriate level to control demand. In concluding, the Delegation stated that users in the United Kingdom had expressed support for both proposals outlined in document PCT/WG/5/11.

259. The Delegation of the United States of America, in introducing document PCT/WG/5/11 Add., stated that the idea of top up searches had first been presented as part of the PCT Roadmap three years ago and had since come up in the Working Group as well as at every Meeting of International Authorities. In every instance, the idea had received widespread support, with delegations generally feeling that performing top up searches as part of Chapter II would be a good idea. Yet, a concrete proposal had never been presented that would implement this idea. So as to move things forward, the United States of America had now presented this proposal to implement this aspect of the PCT Roadmap.

260. The Delegation of Sweden stated that it had found both documents to be interesting. While it could see the merits of top up searches during the international phase, it had at the same time some hesitations, noting the possible consequences for the entire process. It therefore needed more input from both users and International Authorities before being able to form a clear position on the proposals. With regard to the proposal to offer accelerated processing, the Delegation stated that this proposal appeared to be based on a similar proposal by the Republic of Korea presented in 2009; informal consultations with users in Sweden at that time had shown very little interest in such accelerated processing; rather, concerns were expressed about different levels of quality and a risk of a prolonged international phase if applicants were given the choice between accelerated, normal and prolonged processing.

261. The Delegation of the Russian Federation welcomed both of the proposals, top up searching and accelerating processing. Both proposals should, if adopted, be considered as services to be provided to applicants at the discretion of Offices which were ready and in a position to offer such services, at a reasonable cost. While the benefits of top up searches for applicants and Offices were clear, the Delegation had some concerns and saw some contradictions with existing Rules 64.3 and 70.10 and also with Article 33(6). Furthermore, top up searches during the international phase would not eliminate the need for top up searches during the national phase, in particular where the applicant amended the claims under Articles 19 and 34, in which case instead of a top up search a new complete search would have to be carried out in respect of new features. Moreover, where the international search was carried out by one Authority and international preliminary examination by another, top up searches would be more time consuming and labor intensive compared to the situation where both international search and international preliminary examination was carried out by the same Authority. With regard to the proposal for accelerated processing, the Delegation expressed the view that accelerated processing of some applications was usually done at the cost of other applications the processing of which will be delayed.

262. The Delegation of the Republic of Korea thanked the Delegation of the United Kingdom and the Delegation of the United States of America for their efforts to improve the PCT system. The Delegation supported the proposal for accelerated processing. As the Delegation of the United Kingdom had stated, the Republic of Korea had presented a similar proposal at the second session of the Working Group in 2009. Informal consultations with Korea's PCT users had revealed that different groups of PCT users had different needs which, however, at present were not fully met by the current PCT system, resulting in applications being filed via the Paris Convention route and using existing Patent Prosecution Highway arrangements, which had been adopted by many Offices to offer accelerated processing to applicants. In view of this trend, the PCT should take into account the strong demand of users who sought expedited decisions on their patent

applications. With regard to the proposal by the United Kingdom to incorporate top up searches into the international preliminary examination procedure, the Delegation stated that it welcomed continued discussions on this proposal and its possible benefits.

263. The Delegation of China noted that some International Authorities already today offered top up searches for international applications. It believed that top up searches could be introduced as part of the international preliminary examination procedure, but only as an optional service to applicants and not as a mandatory procedure. More time was needed, however, to explore this proposal in further detail. With regard to the proposal for accelerated processing during the international phase, the Delegation expressed the concern that such accelerated processing might add further complexity to PCT system and might require changes to the existing legal framework of the PCT. Further study and evaluation was needed with regard to the feasibility and the actual impact of the proposal. It expressed the hope that the International Bureau would carry out a thorough study on the proposal, taking into account the needs and comments from a wide range of users.

264. The Delegation of Finland supported the general concept of incorporating a top up search into the international preliminary examination procedure but top up searches should not be made mandatory at this stage. Its impact on procedural aspects, such as workload and timeliness, should be evaluated first. The Delegation was thus not in favor of amending Rule 66.6 as had been proposed in document PCT/WG/5/11 Add. With regard to the proposal to introduce accelerated processing in the international phase, the Delegation stated that it was not in favor of this proposal since it was against the equal treatment principle applied in its Office: all applicants should be treated equally, regardless of their financial resources.

265. The Delegation of Canada stated that, in general terms, it supported the proposal to introduce top up searches as part of the international preliminary examination procedure. While this would only require a small increase in examination time and resources during the international phase, any additional prior art found during the top up search would increase quality. It wondered, however, what would happen if there were substantive amendments to the claims, requiring not a top up search but a new complete search. In this context, it did have some questions with regard to the specific wording of Rule 66*ter* as proposed to be amended but would save those questions for later if the discussions moved to that level of detail. With regard to the proposal to introduce accelerated processing during the international phase, since the time frame for performing the international search and examination work was already very compressed, the Delegation felt that it was likely not feasible to accelerate some applications if an Authority wanted to complete its entire work in a timely manner.

266. The Representative of the European Patent Office stated that, in principle, the EPO was in favor of considering the introduction of top up searches as part of the Chapter II procedure, as this would increase the quality of Chapter II. However, the EPO had some concerns with regard to the proposal presented in document PCT/WG/5/11 Add, in particular with regard to the scope of top up search and with regard to its proposed mandatory nature, similar to concerns already expressed by other delegations. The EPO would nevertheless welcome further discussions on this proposal. In this context, the Representative wondered whether it would not be preferable, instead of amending the Regulations, to introduce top up searches as a “best practice” by modifying the International Search and Examination Guidelines. Further questions needed to be addressed, such as when it would be most appropriate to perform a top up search, at the moment of establishing the written opinion or later before issuing the IPER; such questions could be addressed within the framework of the Meeting of International Authorities.

267. The Representative of the European Patent Office further stated that, with respect to the second proposal regarding accelerated processing, it was the EPO’s opinion that the PCT time limits were already extremely short. There was a 3-month time limit to establish the international search report and a 9 months time limit to establish the international preliminary examination report. The EPO was doing its best to meet these strict time limits and would not be in a position

to even further accelerate the procedures. Furthermore, it was not clear what was to be accelerated: was the idea to carry out the international search in less than 3 months? Was it the international preliminary examination procedure? Further clarification was needed but, in any event, as had already been stated by the Delegation of Canada, it would be difficult for the EPO to actually meet even stricter time limits than the ones currently in force. In this context, it was also worth noting that the EPO, within the Chapter II procedure, already established a second written opinion, for the benefit of the users as this improved the quality of the Chapter II report, but which made that procedure even more time consuming and which made it more difficult to accelerate the procedures even further. Add to that the idea to perform a top up search within the Chapter II procedure, which would make it even more difficult to accelerate the process.

268. The Representative of the Nordic Patent Institute (NPI) noted that NPI felt that both proposals were interesting and had some positive elements. At this stage, NPI would like to echo the intervention from the Delegation of Sweden Delegation; before being able to give concrete comments on both proposals, more time was needed to carefully study them and to consult with users in the NPI's Member States.

269. The Delegation of Japan stated that, while it appreciated the proposals by the United Kingdom set out in document PCT/WG/5/11, it could not at this stage fully support it. With regard to the proposal to introduce accelerated processing, as had been pointed out by the Delegation of China and by the Representative of the European Patent Office, it was of the view that each International Authority should give priority to observing the time limits for the establishment of the international search report and the international preliminary examination report prescribed in the PCT Regulations rather than considering the introduction of new time limits under an accelerated processing scheme. According to PCT Rule 42.1, the time limit for establishing the international search report was 3 months from the date of receipt of the search copy by the International Searching Authority or 9 months from the priority date, whichever time limit expired later. Since this period appeared to be early enough for the establishment of the international search report, it was not clear to the Delegation how much need there was for an even earlier establishment of the international search report. Should any International Authority have difficulties in observing those time limits, then the reasons for those difficulties should be identified and discussed by the Working Group. In general, the Delegation felt the need to discuss this proposal very carefully and that more research on the demand by users for accelerated processing was needed before commencing a discussion on the details of how to adopt a system of accelerated processing, which might further complicate the PCT system.

270. The Delegation of Brazil supported the proposal for the introduction of top up searches, which could benefit all Member States. However, it could not support the proposal to introduce accelerated processing during the international phase, since this would create practical difficulties for International Authorities.

271. The Delegation of Denmark stated that, like other delegations, it could certainly see that the proposal for the introduction of top up searches had some merits; however, more time was needed to further discuss this proposal and to consult with users. With regard to the proposal to introduce accelerated processing, it agreed that such accelerated processing could introduce some flexibility which would meet different needs of different users. In Denmark, there was a different kind of fast track processing of patent applications; like the United Kingdom, Denmark participated in different Patent Prosecution Highway programs. It further offered accelerated processing if applicants provided the Office with adequate reasons to justify such a request. Those requests for accelerated processing were free of charge. Moreover, the Office was not allowed to impose a fee for such accelerated processing, so it faced somewhat the same kind of "equal treatment" problem as had been referred to by the Delegation of Finland.

272. The Delegation of the United States of America supported top up searches as proposed by the United Kingdom but wished to comment on some of the statements made by delegations so far. It was surprised by the statements by many delegations as to the need to consult with the

users, noting that the proposal for top up searches had first been presented more than three years ago. With regard to the question on the possible impact of top up searches on resources for examination, the United States Patent and Trademark Office, which had introduced top up searches as an inherent function in providing the best international work product as part of all Chapter II applications, had found the impact to be minimal. With regard to the question as to what to do in the case of an Article 19 or an Article 34 amendment, it was up to the Authority to determine whether to provide a full new search based on the amendment or whether to base its work on the Chapter I search and to only do a top up search to look for art which had become available since that first search had been done.

273. The Delegation of the United States of America further stated that, with regard to the proposal to introduce accelerated processing, it felt that this was an interesting proposal and should be explored further. However, it could only support the proposal in the situation of a first-filed PCT application where there is no priority claim. Furthermore, the Delegation was of the opinion that the adoption of such a modification should require that certain requirements be placed on applicants in exchange for their receiving accelerated processing, such as, for example, the requirement that the applicant should submit a mandatory request for early publication, that there be increased search and examination fees and that the applicant himself should be required to carry out a preliminary prior art search and to submit that prior art to the Authority to assist it in performing its function under an accelerated search and examination scheme.

274. The Representative of the American Intellectual Property Association (AIPAA) stated that AIPAA was delighted and pleased that the United States of America and the United Kingdom had stepped forward to make these proposals. AIPAA did, however, differ slightly with the views expressed by the Delegation of the United States of America. In general, AIPAA supported the idea of top up searches because of the quality enhancement and it also felt that it would be productive for users to have an accelerated examination as an option. AIPAA had taken particular note of the remarks by the Delegations of the Russian Federation and Finland, which were felt to have been very constructive, and of the remarks by the Delegation of Japan with respect to the need to determine what user demand existed. With regard to the question raised by the Delegation of the Russian Federation as to the situation that one Authority carried out the international search whereas another carried out international preliminary examination, the Representative stated that he had always been under the impression that the fact that one authority was willing to accept another's search meant that it had confidence in the quality of that search. With regard to the proposal for a top up search, which it would appear had been discussed already for a number of years, the Representative suggested a number of modifications to the proposals submitted by the United Kingdom and the United States of America. Firstly, the proposal to introduce top up searches should move forward by allowing those Authorities willing to offer that service to do so as part of the Chapter II procedure, based on the principle of full cost recovery, so that if additional resources were needed, the applicant who chose this option would have to pay for it.

275. The Representative of the American Intellectual Property Association (AIPAA) further stated that, secondly, there were many users who, for a variety of different reasons, wanted an acceleration option. If those users were willing to pay for it, then they ought to be able to have such an option, again based on the principle of full cost recovery so that there would not be a diminution in quality with respect to the work on other applications. It should be a user-driven system where users had various options within the system. In this context, the Representative stated that he disagreed with the Delegation of the United States of America that applicants should be required to submit prior art references to the Authority; the system should be left just as it is, and applicants should simply be charged more if they wanted to opt for accelerated processing. Finally, it was important that there be some sort of fee reductions available to applicants from developing countries so that accelerated processing was available to all applicants, similar to the 75 per cent fee reduction offered in respect of the main search.

276. The Delegation of Canada noted that, similar to other delegations, it could support the proposal to modify the PCT Search and Examination Guidelines in such a way that Authorities which now wanted to get started on offering top up searches could move forward, thus allowing progress to be made in the short term, noting that an amendment to the Regulations would take more time.

277. The Representative of the Third World Network expressed serious concerns on both proposals contained in PCT/WG/5/11 and 11 Add. TWN understood international search and preliminary examination reports as tools to support the applicant without any bearing on PCT Member States. Proposals to introduce top up searches were attempts to change this fundamental principle of the PCT framework, attempting to impose international preliminary examination reports against the policies of national patent offices. Furthermore, TWN was concerned that these proposals fell within the domain of substantive law and that discussions on the reform of the PCT system should not be used to bring back door harmonization of patent law. As had been expressed by many Member States, the proposal on accelerated processing was problematic. A patent Office was a public institution, guided by public policy. Accelerated processing, especially against payment of extra fees, would make the patent office claim-driven. In other words, the public policy orientation of a patent office should not be compromised in the name of efficiency.

278. The Delegation of the United Kingdom thanked all delegations who had taken the floor and had made constructive comments regarding the proposals. With regard to top up searches, the Delegation acknowledged the range views expressed, in particular the views expressed by a number of delegations that top up searches should not be made mandatory at this stage. While the Delegation would welcome an amendment to the PCT Regulations to implement top up searches, it would welcome any measures to encourage top up searches in the international phase, for example, through modification of the PCT Search and Examination Guidelines, as had been suggested by the Representative of the European Patent Office PO and supported by the Delegation of Canada. In any event, the Delegation applauded the efforts of the United States Patent and Trademark Office in making top up searches available. It would like to encourage other International Searching Authorities to offer top up searches and, if they did so, to publicize their availability. With regard to both proposals, the Delegation stated that it appreciated that some members of the Working Group needed more time for further consideration and consultations with users, and that it would welcome further discussion of these proposals at a future session of the Working Group.

279. The Working Group invited the United Kingdom and the United States of America to take on board the comments made and the concerns expressed by the Working Group with a view to presenting more detailed and further refined proposals at a future session of the Working Group.

EPCT UPDATE

280. Discussions were based on document PCT/WG/5/12, along with a presentation and demonstration by the Secretariat of the latest features of the ePCT system¹. During the presentation, the Secretariat informed the Working Group that the improvements listed in paragraph 11 of the document that were scheduled to be introduced to the ePCT applicant services were now available, notably the ability for applicants to directly specify changes to bibliographic data, avoiding the need for the International Bureau to transcribe such details from letters.

281. The Delegation of the Republic of Korea expressed the view that there was a need for the ePCT system to be interoperable with current IT systems for international applications, particularly the PCT-ROAD system. Since 2005, the Korean Intellectual Property Office had been working in cooperation with WIPO to disseminate the PCT-ROAD system, enabling receiving Offices to accept electronic filings of international applications, and also facilitating the processing of

applications filed on paper or using the PCT-EASY software. The PCT-ROAD system also supported activities such as formalities checks by receiving Offices and the retrieving of international applications for printing and viewing, and was now used by many IP Offices, including the Intellectual Property Office of the Philippines, the Intellectual Property Corporation of Malaysia and the Department of Intellectual Property, Ministry of Commerce in Thailand. The Delegation therefore stressed that the PCT-ROAD system needed to be able to connect to ePCT, and that WIPO should ensure interoperability of the ePCT system with PCT-ROAD in future versions.

282. The Delegation of the United States of America thanked the International Bureau for its continued work on the development and deployment of the ePCT system. The Delegation stated that the initial phase of ePCT described in the paper was very similar to the United States Patent and Trademark Office's Patent Application Informational Retrieval (PAIR) system, which applicants had found useful in the tracking and prosecution of their applications. The Delegation therefore looked forward to full implementation of the ePCT system and to witnessing the benefits that this would bring to applicants and Offices worldwide. While noting with interest the future vision for the ePCT system and agreeing that Member States should be looking to modernize the PCT process, the Delegation observed that the system envisaged, among other things, a central web-interface where applicants could submit their applications directly and select the desired receiving Office. In this regard, the Delegation underlined that the ePCT system had to respect the specific legal requirements of Contracting States. For example, under the national law of the United States of America, applications directed to certain subject matter had to undergo a security review before they could be transmitted abroad. The Delegation therefore raised the question of whether the central interface filing system would allow for security reviews required by certain receiving Offices.

283. The Secretariat, responding to the question raised by the Delegation of the Republic of Korea on interoperability with existing systems, such as PCT-ROAD, indicated that it was a priority of the International Bureau to provide machine interfaces which will allow for interoperability with systems at other patent Offices. The International Bureau was therefore considering the best form of machine interface that would be acceptable to the largest range of Offices and the largest range of systems, with the minimum development costs to national Offices. In this regard, the International Bureau would be contacting interested Offices shortly.

284. The Secretariat, responding to the question raised by the Delegation of the United States of America in relation to allowing for national security reviews in ePCT, stated that it was aware that this was one of the greatest challenges in opening ePCT to as wide a range of Offices as possible, and that it agreed that it might be difficult to offer this service to all Offices for all applications. However, the Secretariat was exploring possible ways of mitigating this problem so that electronic filing could be available to as many applicants before as many receiving Offices as possible. The Secretariat was therefore willing to discuss this issue with Offices having national security filing requirements that were interested in allowing electronic filing through systems that were not entirely within the control of their respective Office to identify limitations that could be overcome. The Secretariat also emphasized that the aim of ePCT was to allow all Offices to offer the best service possible to their customers without having to spend large sums of money to maintain national infrastructures.

285. The Delegation of India appreciated the work done by the International Bureau on the ePCT system and wished to participate and cooperate in the service, including taking part in any pilot study. The Delegation underlined that an applicant resident in India was required to have permission from the Office of the Controller-General of Patents, Designs and Trademarks in India in order to file abroad, but the Delegation believed that these provisions could be taken care of by making simple provisions in the system.

286. The Chair summarized the discussion by noting that delegations welcomed the work on ePCT presented to the session and described in document PCT/WG/5/12. The Chair acknowledged the concerns of delegations in ensuring the necessary interoperability with existing systems used by national Offices, including PCT-ROAD, and also in relation to ways to allow the

proposed web-filing system to be offered for use with receiving Offices that ensured compatibility with national laws, particularly in relation to national security. The Chair also invited delegations wishing to make further comments on these issues and any other matter to contact the Secretariat.

287. The Working Group noted the planned work by the International Bureau on implementation of the project.

RESTORATION OF THE RIGHT OF PRIORITY

288. Discussions were based on document PCT/WG/5/13.

289. The Delegation of Sweden stated that it had found the review of restoration of the right of priority to be very informative and added that that the practice described by the International Bureau in its capacity as a receiving Office largely reflected the practice at the Swedish Patent and Registration Office. The Delegation could therefore support the further work proposed by the International Bureau in paragraphs 29 to 31 of the document. The Delegation wished to raise a minor question with regard to the use of forms PCT/RO/132 and PCT/RO/158 and would take this matter up bilaterally with the Secretariat.

290. The Delegation of Japan noted that it believed the review to be very useful and added that the Japan Patent Office was considering reviewing its national law with a view to being able to withdraw the notices of incompatibility with the provisions on restoration of the right of priority. The Delegation also informed the Working Group that the Japan Patent Office had withdrawn its notice of incompatibility with PCT Rule 49.6 as of April 1, 2012, following the introduction of the “due care” criterion to allow for restatement of rights in Japan after failure to perform the acts referred to in PCT Article 22.

291. The Delegation of the United States of America informed the Working Group of the renewed interest of the United States Congress to pass legislation implementing the Patent Law Treaty whereby the United States of America would allow for the restoration of priority claims. In this regard, the results of the review were very enlightening. First, the Delegation noted with interest the indication in paragraph 13(a) of the document that the interpretation of “due care” differed among receiving Offices; based on the examples in Annex II, many Offices appeared to apply a very strict standard whereas some other Offices applied a standard more in line with the “unintentional” criterion. Given this disparity, the Delegation supported the suggestion in paragraph 29(d) that the Receiving Office Guidelines be modified with the view to providing further guidance to Offices on the application of the provisions dealing with the restoration of the right of priority. The Delegation also noted that the standard applied by the International Bureau in its capacity as a receiving Office corresponded with its own understanding of how the standard should be applied, as also indicated by the Delegation of Sweden. As such, the Delegation supported the further suggestion in paragraph 29(d) that any revision of the Receiving Office Guidelines be along the lines of the practice guidelines issued by the International Bureau for the staff of its receiving Office (RO/IB). Second, the Delegation noted the indication in paragraph 14(a) that a number of receiving Offices were not submitting the statement of reasons to the International Bureau provided by the applicants, thus making it difficult for designated Offices to perform the limited review of the decision by the receiving Office. As the Delegation was hopeful of the United States Congress passing legislation to implement the Patent Law Treaty, which would allow for the United States Patent and Trademark Office (USPTO) to withdraw its notices of incompatibility regarding restoration of priority right, it expressed its concern that the USPTO would be bound by decisions of receiving Offices applying a disparity of standards without being able to see statements of evidence submitted by the applicant, if these had not been forwarded by the receiving Office. The Delegation therefore supported the recommendation in paragraph 29(c) to amend Rule 26*bis*.3 to require receiving Offices to forward any such statements or evidence to the International Bureau.

292. The Delegation of Australia stated that it had found the review interesting in the way it compared various jurisdictions and that it supported the further work proposed by the International Bureau as set out in paragraphs 29 to 31 of the document. The Delegation raised a question in relation to the correct practice under Rule 26*bis*.3(g), which stated that the receiving Office “shall not refuse, totally or in part, a request under paragraph Rule 26*bis*.3(a) without giving the applicant the opportunity to make observations on the intended refusal”. In cases where the applicant requested restoration of right of priority under both criteria for restoration but the receiving Office granted restoration only under the unintentional criterion with due care not being met, the Delegation believed that applicants should be given an opportunity to make observations on intended refusal to restore right of priority under the due care criterion, and asked whether an Office was obliged to invite the applicant to provide further evidence in such a case.

293. The Delegation of Denmark echoed the comments made by the Delegation of Sweden, supporting the further work proposed by the International Bureau in paragraphs 29 to 31 of the document. The Danish Patent and Trademark Office applied the due care criterion both as a receiving Office and as a designated Office.

294. The Delegation of Canada considered the document to be very informative and useful, supporting the proposals outlined in paragraphs 29 to 31 of the document. As it applied a relatively restrictive practice on restoration of the right of priority, the Canadian Intellectual Property Office had reviewed the International Bureau's guidelines for due care in Annex III and would be adopting these standards. The Delegation was therefore fully supportive of modifying the PCT Receiving Office Guidelines along the lines of these guidelines. The Delegation informed the Working Group that the Canadian Intellectual Property Office was considering an amendment to national legislation which would enable withdrawal of its notice of incompatibility as a designated Office under Rule 49*ter*.1.

295. The Delegation of Finland supported the proposals outlined in paragraphs 29 to 31 of the document, since more consistent practices among Offices would benefit both applicants and the PCT system as a whole.

296. The Delegation of the Republic of Korea considered that it would be helpful for Offices to review its practices and criteria on restoration of the right of priority and to reflect the results in the PCT International Search and Preliminary Examination Guidelines. The Delegation informed the Working Group that the Korean Intellectual Property Office, whose notices of incompatibility both as a receiving Office and a designated Office were still in force, was internally discussing the restoration of the right of priority as needs from users had increased and the field had globally expanded.

297. The Representative of the European Patent Office (EPO) thanked the International Bureau for the review of restoration of the right of priority and the statistics gathered regarding practices at different Offices. The Representative stated that the review highlighted divergences in applying the criterion of due care among Offices, as had been pointed out by the Delegation of the United States of America. The EPO therefore believed that improvements could be made to practices on the basis of the proposals from the International Bureau, such as modifying the Receiving Office Guidelines. The EPO also agreed with the Delegation of Sweden that improvement could be made regarding certain forms. On balance, the EPO was in favor of the proposals outlined in paragraph 29, but also requested the International Bureau to continue to gather statistics concerning practices in different Offices in its future work on the restoration of the right of priority.

298. The Delegation of Mexico considered the document to be very useful and that it would be analyzing it in any upcoming opportunities to change legislation in view of potentially lifting the reservation in force as a designated Office at the Mexican Institute of Industrial Property.

299. The Delegation of Chile informed the Working Group that the National Institute of Industrial Property of Chile applied both criteria for restoration as a receiving Office and as a designated Office and that it considered the document to be very useful for in applying these practices.

300. The Delegation of India reminded the International Bureau that it maintained its notice of incompatibility with national law in respect of the provisions on the restoration of the right of priority and reiterated the position it had expressed at the fourth session of the Working Group that Offices should be allowed to maintain their reservations in conformity with national laws. The proposals in paragraph 29 of the document were therefore not applicable to the Indian Patent Office. In relation to paragraph 30, the Delegation of India believed that restoration of priority was beyond national law in India, particularly Rules 49*ter*.1 and 2, because Section 135 of the Patents Act in India only allowed priority claims for applications filed in India within 12 months of a previous application filed in a convention country. The Delegation stated that it believed the PCT provisions were inconsistent with Article 4(C)(1) of the Paris Convention, which limited the period to 12 months for filing a subsequent patent application and claiming the priority of an earlier application, and pointed to the fact that Article 8 of the PCT referred to the claiming of priority “as provided for by Article 4 of the Paris Convention”.

301. The Delegation of the United Kingdom supported the proposals for further work as outlined in paragraphs 29 to 31 of the document. The United Kingdom Intellectual Property Office applied the “unintentional” criterion for restoration of the right of priority, both as a receiving Office and as a designated Office. The Delegation acknowledged the viewpoint outlined in document PCT/WG/5/13 that the “unintentional” criterion was less strict than the “due care” criterion and accepted that, in many cases, the “unintentional” criterion but not the “due care” criterion would be met. However, the Delegation stated that the “due care” criterion was not always more strict, and it could be possible for cases to arise where the “due care” criterion would be met but not the “intentional” criterion. In applying the “unintentional” criterion, the United Kingdom Intellectual Property Office required evidence to support the request for restoration of the right of priority in the majority of cases.

302. The Secretariat stated that it was grateful to delegations for providing feedback on the practice guidelines of the International Bureau detailed in Annex III of document PCT/WG/5/13 in applying the restoration of the right of priority as a receiving Office. In responding to the question raised by the Delegation of Australia, the Secretariat confirmed that under the current version of Rule 26*bis*.3(g) it would be appropriate for receiving Offices to use form PCT/RO/158 to provide the applicant with the opportunity to make observations on an intended refusal under the “due care” criterion when restoration of the right of priority would be granted under the “unintentional” criterion. In response to the request by the European Patent Office for further statistics, the Secretariat stated that it intended to present additional statistics when reporting to the next session of the Working Group, particularly with regard to the application of Rule 49*ter* on the effect of restoration of the right of priority by receiving Offices on designated Offices, and on the restoration of the right of priority before designated Offices. The Secretariat further stated that it regretted that the low response from designated Offices to the Questionnaire issued in February 2012 prevented meaningful conclusions to be drawn on practices by designated Offices on the restoration of the right of priority, and informed the Working Group that the International Bureau would endeavor to gather further information by issuing a Circular to invite all designated Offices to report on their experiences in the operation of Rule 49*ter*. In terms of other further work, the Secretariat indicated that it would begin by consulting on proposed modifications to the Receiving Office Guidelines, as outlined in paragraph 29(d) of the document, before turning to proposing an amendment to Rule 26*bis*.3, as outlined in paragraph 29(c) of the document and supported by the Delegation of the United States of America. Finally, in response to the comment by the Delegation of India on the question of compatibility of the restoration of priority right with the Paris Convention, the Secretariat recalled that this issue was studied extensively prior to the agreement of the Patent Law Treaty (PLT) in 2000, with all parties to the PLT being in agreement with regard to the status of the provisions on restoration of priority right with respect to the Paris Convention. Moreover, the issue had been discussed again in the context of the PCT before the provisions on restoration of

the right of priority came into effect in 2007, with Member States again being presented with the opportunity to opine on this matter. The International Bureau therefore did not believe that the provisions were incompatible with the Paris Convention in view of the agreement reached on the PLT and the incorporation of the provisions into the PCT. However, the Secretariat reminded the Working Group that Contracting States remained free to take advantage of the “incompatibility provisions” in the PCT by exercising their sovereign right not to grant the restoration of the right of priority under their national laws.

303. The Working Group agreed to the further work suggested in paragraphs 29 to 31 of document PCT/WG/5/13.

PCT SEQUENCE LISTING STANDARD

304. Discussions were based on documents PCT/WG/5/14 and 14 Add.

305. The Delegation of the United States of America expressed the view that there was a necessity for of a clean transition from the current WIPO Standard ST.25 for the filing of sequence listings to the proposed XML-based WIPO Standard ST.26 by having the new standard entering into force for PCT purposes only with effect from a future date referred to as the “transition date”. Acknowledging that discussion on transition was premature, the Delegation recognized that there were several possibilities with regard to the transition date, each having their own advantages and disadvantages. It was therefore necessary to discuss the best way forward concerning the transition at an appropriate time in the future. The Delegation noted that an overlap of the two standards for several years was unavoidable, as applications filed using WIPO Standard ST.25 progressed from the international to the national phase. The Delegation expressed concerns on the feasibility of a properly-functioning conversion tool, especially in view of the substantive differences between the requirements of the two standards which would need to be overcome by the tool. Therefore, should the Task Force conclude that conversion between the two standards was possible, the Delegation requested that experts from the United States Patent and Trademark Office have the opportunity to assess the functioning of the conversion tool, both in terms of its substantive ability to produce compatible outputs and the assistance to the user required in practice to achieve these outputs.

306. The Delegation of China recommended waiting for the new ST.26 Standard to be agreed by the Committee on WIPO Standards before considering modifications to Annex C of the Administrative Instructions under the PCT in order to avoid inconsistencies and duplication of work. The Delegation highlighted the necessity of appropriate transition arrangements to ensure Offices had sufficient preparation time for a smooth transition between the two standards.

307. The Delegation of Japan highlighted the desirability of a complete transition from the current WIPO Standard ST.25 to the future WIPO Standard ST.26 by all relevant Offices once they were ready to accept the new standard if the conversion between the two standards were difficult. Nevertheless, it was premature to take decisions regarding the transition before the Task Force had finished the assessment of the feasibility of the conversion tool. The Delegation looked forward to the full report on the conversion tool by the European Patent Office in the summer and to the discussions on the best transition mechanism at the next session of the Meeting of International Authorities or the PCT Working Group.

308. The Delegation of the Republic of Korea stated that it supported the introduction of an XML-based WIPO Standard ST.26 for the presentation of sequence listings. The Delegation emphasized that two or three years would be required to convert its existing IT systems to accepting sequence listings filed using the new standard.

309. The Working Group noted the contents of documents PCT/WG/5/14 and 14 Add.

COLOR DRAWINGS IN INTERNATIONAL APPLICATIONS

310. Discussions were based on document PCT/WG/5/15.

311. The Delegation of Sweden welcomed the document as it dealt with an important question for users. The Delegation expressed the view that it would be essential that all receiving Offices and International Authorities could process color drawings before a system was brought into operation. Therefore, the Delegation believed that the most efficient solution for the introduction of color drawings in international applications would be for WIPO to develop a technical standard for color drawings that International Authorities would be able to adopt. A technical standard, combined with the proposed changes to the Regulations under the PCT, would be a worthwhile step forward, avoiding the need to wait for revisions to national legislation in Contracting States, or for a given number of national Offices to adopt the technical solution envisaged.

312. The Delegation of the United States of America supported the concept of allowing applicants to file color drawings in international applications. The Delegation noted the indication in paragraph 14 of the document that implementation of provisions to this effect would not occur until all International Authorities were able to specify a date after which they could accept and process international applications containing color drawings. In this regard, the Delegation informed the Working Group that the acceptance of color drawings at the United States Patent and Trademark Office (USPTO) was part of a long-term project called "Patents End-to-End", which would re-engineer and modernize the system at the USPTO for the processing of patent applications from the start to the finish. However, the USPTO estimated that deployment of Patents End-to-End, allowing for the USPTO to accept, transfer and store color drawings, would only take place in three to five years at the earliest. Concerning the proposed changes to the Regulations, given the notable increased IT infrastructure, storage and bandwidth requirements for the filing of color drawings, the Delegation suggested that Rule 11 should contain a provision that color drawings should only be permitted in applications where their inclusion was necessary for the understanding of the invention, thereby discouraging applicants from including color drawing unnecessarily. Regarding the proposal to amend Rule 46*bis*, the Delegation suggested that the wording in the comment to the effect that the International Bureau would prepare an automatic conversion of the color drawings into black and white drawings be included in the Rule itself. The Delegation also proposed that this Rule should contain a provision similar to that of Articles 19(2) and 34(2)(b) to the effect that the replacement set of drawings shall not go beyond the disclosure in the international application as filed. Finally, the Delegation suggested that this Rule be clarified to indicate that the replacement set of drawings and the statement should be furnished directly to the International Bureau and not to the receiving Office in order to avoid creating additional unnecessary workload.

313. The Delegation of Canada stated that it was supportive of the proposal to allow color drawings in international applications as being of interest to applicants, but stressed that a preliminary assessment by the Canadian Intellectual Property Office indicated that color drawings would involve changes to both the IT and legal framework, requiring a significant investment of time and resources. The Delegation had concerns about limiting color drawings to the international phase and having designated/elected Offices being able to require drawings to be in black and white. This could cause confusion for applicants if Offices during the national phase raised objections due to poor quality drawings; at a minimum, the applicant should have the opportunity to provide higher quality black and white images to Offices during the national phase. Moreover, it could be misleading to applicants if color drawings were allowed to be filed in the international phase but were not accepted at designated and elected Offices. User groups in Canada had therefore indicated the importance of a critical mass of Offices accepting color drawings during the national phase.

314. The Delegation of France reiterated some of its comments given in response to Circular C. PCT 1317, dated November 15, 2011. The Delegation considered the possibility of allowing color drawings as an interesting practical advance for users of the PCT since it promoted understanding of the invention. However, the option of using color to distinguish between features in a drawing could cause a problem for the applicant if new elements were added or distinctions disappeared when the drawings filed in color were converted into black and white. This process therefore needed to be carefully supervised so that it did not diverge from its intended objective of improving the understanding of the invention, or be misused by the applicant to make misleading technical manipulations to the drawings. The Delegation had not found any particular domain where color drawings would be essential to the understanding of an invention. It was also important to bear in mind the difference between the role of drawings in patent and trademark applications, for patents, the drawings served to facilitate the understanding of the invention and the interpretation of the claims, so were therefore optional. Bearing in mind the technical and legal constraints in incorporating color drawings into the PCT and their overall purpose of facilitating the understanding of the invention, the need to provide for color drawings in the PCT should not be overestimated. Furthermore, the Delegation stated that it wished to draw the attention of the Working Group and of the International Bureau to the consequences on national laws of Contracting States that were also Contracting Parties to the Patent Law Treaty if color drawings were allowed within the legal framework of the PCT.

315. The Delegation of Japan expressed the view that permitting the filing of color drawings in an international application would contribute to making the PCT system more attractive, and pointed to the need for color in various technical fields, citing the example of life sciences. The introduction of color drawings was therefore desirable once several conditions were guaranteed, such as the ability of all Offices working in the capacity of International Authorities and also operating as designated Offices in the national phase to process color drawings in international applications. However, the Delegation expressed the view that it was important to discuss more deeply legal aspects concerning color drawings, the black and white versions of color drawings submitted at a later stage by the applicant, and the black and white drawings created by the automatic conversion process at the International Bureau. Regarding the interim arrangements set out in paragraph 26 of document PCT/WG/5/15 of making available on PATENTSCOPE color drawings filed by the applicant and received by the International Bureau in the record copy, the Delegation expressed its concern that this could confuse users, who might believe the color drawings formed part of the international application for the purposes of further processing.

316. The Delegation of China believed that color drawings could contribute to achieving a clear effective disclosure, thereby helping examiners and the general public to have a better understanding of the invention as well as promoting the dissemination of patent information. However, the Delegation considered it necessary to undertake a meticulous and comprehensive consideration of the proposal from both the legal and technical perspective. In view of the current legal provisions of the PCT and almost all national laws requiring drawings in black and white, the Delegation recommended that drawings in black and white should be filed as part of the application and should serve as the basis for examination in the national phase. Filing of color drawings in the international phase for reference purposes for the black and white drawings could be an option for applicants, with processing of color drawings being introduced progressively when the legal and technical aspects had been examined in detail.

317. The Delegation of Denmark informed the Working Group that the Danish Patent and Trademark Office had been processing national applications with color drawings for some time, having introduced legal provisions to allow for applicants to file color drawings in various different formats. The Delegation stated that users were very pleased with this possibility, enhancing the quality of certain applications by using color to emphasize particular aspects of the invention. Moreover, users had enquired about the possibility of introducing provisions for color drawings on an international scale. The Delegation therefore considered the proposal and the suggestions made by the International Bureau in the document to be interesting, as these could meet the needs of users in this respect.

318. The Representative of the European Patent Office (EPO) informed the Working Group that the EPO was in the process of updating its IT systems and was planning to be able to process color drawings in both the international and the regional phase within the timeframe of five years as suggested in paragraph 13 of the document. The EPO was therefore in a position to support the proposed Rule changes and the interim arrangements. In response to the proposal from the Delegation of the United States of America that Rule 11 should contain a provision that color drawings shall only be permitted in applications where their inclusion was necessary for understanding the invention, the EPO indicated that this could present difficulties for receiving Offices to determine compliance with this requirement as it would not be clear what criteria should be used for legally accepting or refusing color drawings under such a provision. Since the processing of color drawings at the EPO was currently in a planning stage, the EPO stated that it would be open to different options in relation to the format to be prescribed in the Administrative Instructions, but thought it beneficial to have further information from the International Bureau on envisaged formats as soon as possible for the development of its systems. Furthermore, the EPO stated that approximately 10 per cent of the population were color blind, with red-green color blindness being particularly prevalent among this group. The EPO therefore hoped this would be taken into account when drafting requirements for the format of color drawings in the Administrative Instructions, such as avoiding adjacent features in red and green in order to enable adequate distinction, both by patent examiners and users in general.

319. The Delegation of Switzerland noted that, in its opinion, the extent to which there was a need for color drawings in the international phase could not be proven at the moment. While the Delegation could support the principle of accepting color drawings in the international phase, it was not timely to accept color drawings in the international phase at this stage, notably in view of the indirect consequence that color drawings had to be accepted in the national phase. The Delegation therefore requested the International Bureau to study more closely to what extent and under what circumstances the requirement that black and white drawings should be furnished in the national phase could be maintained, independently of any type of interim arrangements put in place. It was also necessary to take into account the provisions of the Patent Law Treaty before accepting color drawings.

320. The Delegation of the United Kingdom supported the move towards accepting color drawings but believed that the timescale should be as flexible as possible to enable Contracting States to make the necessary technical and legal changes. In the short to medium term, the Delegation stated that it would be difficult for the UK Intellectual Property Office to justify making major changes to its IT systems to support color drawings for both PCT and national applications, but that such changes had already been incorporated into future development work at the UK Intellectual Property Office. As a Contracting Party to the Patent Law Treaty (PLT), the United Kingdom shared the concerns expressed by the Delegation of France that by amending the Regulations under the PCT to permit color drawings and adopting the amendments under the PLT, Contracting Parties to the PLT would be obliged to permit color drawings for national applications, which would require legislative changes in the United Kingdom. The Delegation concluded that it could therefore support the proposals in paragraphs 16 to 23 of document PCT/WG/5/15, provided that there was adequate time to allow Offices to implement the technical and legal changes necessary to accept color drawings and that the implications for Contracting Parties to the PLT were taken into account. Meanwhile, the Delegation supported the proposed interim arrangements set out in paragraphs 24 to 26 of the document.

321. The Delegation of the Russian Federation stated that, while it recognized the need and importance of color drawings, the Russian Federal Service for Intellectual Property, Patents and Trademarks (Rospatent) was not ready to accept or handle color drawings for at least five years, both from the legal point of view and due to the non-availability of technical resources. The Delegation appreciated the assistance offered by the International Bureau to give access to systems through ePCT for International Authorities to handle color drawings, as stated in paragraph 15 of the document, and the interim arrangements set out in paragraphs 24 to 26. In relation to the proposed amendments to the Regulations, the Delegation stated that, in its view,

their adoption was premature since Offices in many Contracting States were currently not prepared to process color drawings. Moreover, the Delegation believed that these amendments were in contradiction with Article 27, which implied that something accepted in an international application must be accepted in the national phase. In this context, , the Delegation highlighted the possible confusion for applicants filing color drawings only to be later confronted with the need to make substantial changes to their application when entering the national phase.

322. The Representative of the Asian Patent Attorneys Association (APAA) expressed the view that color drawings were very useful to enable accurate understanding of inventions in some technical fields and that APAA was pleased to see the proposal being considered by the Working Group. The Representative of APAA noted that document PCT/WG/5/15 was to be seen as a first step towards the acceptance and processing of color drawings in PCT applications, but that the proposed changes to the PCT Regulations were not perfect, as users submitting color drawings with their international applications would still need to file black and white drawings at a later stage. APAA therefore urged the International Bureau to continue to encourage all receiving and designated Offices to accept color drawings for processing both in the international and in national phase.

323. The Representative of the Japan Patent Attorneys Association (JPAA) agreed with the comments made by the Delegation of Japan to the effect that color drawings would enhance the quality of the PCT system. JPAA therefore welcomed the efforts of the International Bureau to further advance the proposal based on the work of earlier sessions of the Working Group.

324. The Chair, in summarizing the discussions, stated that delegations supported the work performed thus far by the International Bureau to permit the filing of color drawings in international applications but that many legal and technical concerns had been expressed with regard to the implementation of such provisions. The Chair therefore asked the Working Group whether it supported the interim arrangements proposed in paragraphs 24 to 26 of document PCT/WG/5/15, which could be implemented by a modification to the Administrative Instructions, beginning with consultation through a PCT Circular to be issued in the next couple of months. The Chair also proposed that the International Bureau should continue to report on further developments on color drawings in the next session of the Working Group.

325. The Delegation of Canada reiterated the concern expressed by patent attorneys in Canada that permitting color drawings in the international phase but later requiring black and white drawings in the national phase could cause confusion and give false hope to applicants. In addition, the Delegation also shared the concerns about the legal issues of incompatibility with Article 27 as raised by the Delegation of the Russian Federation and the implications on Contracting States of the PLT as highlighted by several delegations. Rather than the International Bureau issuing a Circular in the coming months to propose modifications to the Administrative Instructions to bring the interim arrangements into effect, the Delegation suggested that a full assessment of the impact of the proposal be performed, covering the practical concerns of applicants and the legal issues raised by delegations. In addition, the Delegation suggested that this assessment should also consider the question of which set of drawings would constitute the record copy when both a color and black and white set of drawings were filed by the applicant.

326. The Delegation of the United States of America stated that it shared the concerns expressed by the Delegation of Canada. Given that many Offices were not currently ready to accept color drawings, the Delegation did not perceive a need for the International Bureau to formalize the process of introducing color drawings in the coming year through the proposed interim arrangements. The Delegation nevertheless supported continuation of the work of the International Bureau on introducing color drawings into the PCT system.

327. The Delegation of France stated that it shared the concerns expressed by the Delegation of Canada and the Delegation of the United States of America.

328. The Delegation of Switzerland stated that it also shared the concerns expressed by the Delegation of Canada, the Delegation of the United States of America and the Delegation of France.

329. The Working Group agreed that the International Bureau should continue to evaluate the issues and present further information and proposals to Contracting States when it appeared appropriate.

PCT MINIMUM DOCUMENTATION - DEFINITION AND EXTENT OF PATENT LITERATURE

330. Discussions were based on document PCT/WG/5/16.

331. The Delegation of Canada supported the broadening of the definition of the PCT minimum documentation under Rule 34 to include as much published patent documentation as possible. To that end, the Canadian Intellectual Property Office supported the creation of the Task Force set up by the Meeting of International Authorities in February 2012 to study the technical issues involved in changing the definition of patent literature in the PCT minimum documentation. The Delegation raised the issue of the time period between International Authorities receiving a notification from the International Bureau of a new patent collection to be added to the PCT minimum documentation and the date when the collection had to be incorporated into their search systems. In this regard, the Delegation questioned the feasibility of the six month period suggested in document PCT/MIA/19/7, since some Authorities needed to contact private database providers to incorporate the new documentation and needed to consider revisions to service contracts with these providers.

332. The Delegation of China stated that extra patent literature in the PCT minimum documentation would have a positive effect in improving the quality of international search. The Delegation acknowledged that more patent literature was becoming accessible through convenient electronic means, allowing for the possibility of expanding the definition of the PCT minimum documentation. However, the Delegation stated that it would be necessary to study the relevant technical and legal issues to ensure that all International Authorities could access these documents in order to achieve the policy objective of improving the quality of international search.

333. The Delegation of the Russian Federation noted that it also was in favor of broadening the definition of the PCT minimum documentation, acknowledging the different electronic facilities for handling patent documentation and the technical issues concerning adding new documentation that would need to be examined by the Task Force. The Delegation highlighted that the technical requirements for adding new patent collections to the minimum documentation should enable efficient searching, such as requiring good abstracts, keywords and International Patent Classification (IPC) symbols from the most recent edition, reclassifying documents where necessary. In relation to the six month period for International Authorities to prepare their systems for searching new documentation, the Delegation believed that this was sufficient in most cases but that, for substantial files, a longer period would be necessary, not only to allow for the inclusion of documents in databases but also to train examiners to search the new documentation. Furthermore, given the financial and technical resource implications of adding new patent documentation for searching by International Authorities, the Delegation suggested that the International Bureau should report any new national patent documentation for inclusion in the PCT minimum documentation to the PCT Assembly for its final recommendation or adoption.

334. The Delegation of Japan supported a new definition for the patent documentation part of the PCT minimum documentation, based on the principle that the minimum documentation should include patent documents from all Contracting States irrespective of language, provided that the relevant documentation had been made available in the required electronic form. However, the Delegation highlighted the need for the Task Force to investigate the details of the format of documentation and the related information required to allow for collections to be readily

incorporated into electronic databases, and also the format of the list for International Searching Authorities to check the completeness of their search collections, as referred to in paragraphs 6(b) and (c) of document PCT/WG/5/16.

335. The Representative of the European Patent Office (EPO) supported the efforts of International Bureau towards modifying Rule 34 to expand the definition of the PCT minimum documentation, in accordance with the goals outlined in paragraph 6 of document PCT/WG/5/16. The EPO supported the establishment of a Task Force to investigate the technical requirements for adding new patent collections to search databases as referred to in paragraph 11 of the document and stated that it wished to participate in the Task Force.

336. The Working Group agreed that the International Bureau should continue to work on this matter in accordance with the principles set out in paragraphs 6 to 9 of document PCT/WG/5/16 and that the Task Force referred to in paragraph 11 of that document should consider the technical issues identified by the Working Group.

REVISION OF WIPO STANDARD ST.14

337. Discussions were based on document PCT/WG/5/17.

338. The Secretariat informed the Working Group about the outcome of the discussions at the second session of the Committee on WIPO Standards (CWS), which took place from April 30 to May 4, 2012. The Summary by the Chair for this meeting (document CWS/2/13) described this outcome as follows: "The CWS noted the request made by the International Bureau on the revision of WIPO Standards ST.14. It was decided to establish a Task Force to carry out the task proposed in paragraph 19(a) of document CWS/2/6. The Task Force should finalize the first component of the task, concerning category codes, and, as far as possible, also the second component, regarding the identification of cited non-patent-literature, for consideration and approval by the CWS at its session to be held in 2013. The International Bureau was designated as the Task Force Leader."

339. The Working Group noted the contents of document PCT/WG/5/17.

CHANGES TO THE PCT REGULATIONS NECESSITATE BY THE AMERICA INVENTS ACT

340. Discussions were based on documents PCT/WG/5/19 and 19 Corr.

341. The Delegation of the United States of America, in introducing documents PCT/WG/5/19 and 19 Corr., stated that the America Invents Act, enacted on September 16, 2011, introduced major changes to patent law in the United States of America which would streamline and simplify some practices. Under the America Invents Act, there was no longer a requirement for inventors to be applicants for the purposes of designation of the United States of America in an application under the PCT, thereby alleviating many of the difficulties encountered by PCT applicants and receiving Offices. Furthermore, the removal of this requirement allowed for the possibility to make certain changes to the PCT Regulations, as presented in the documents

342. The Representative of the American Intellectual Property Law Association (AIPLA) noted that, by no longer requiring the inventor to be named as the applicant in an international application for the purposes of the designation of the United States of America, the America Invents Act and the resulting proposals to amend the PCT Regulations set out in document PCT/WG/5/19 and 19 Corr. would represent a significant simplification to the PCT system for applicants from all Contracting States, bringing the practice in this respect in the United States of America into conformity with those of other Contracting States.

343. The Working Group approved the proposals set out in the Annex to document PCT/WG/5/19, including the correction set out in document PCT/WG/5/19 Corr. (English version only), with a view to their submission to the Assembly for consideration at its next session in October 2012.

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

344. The Delegation of Algeria, speaking on behalf of the Development Agenda Group, thanked all delegations for their cooperation and flexibility with respect of the inclusion in the agenda of the item “Contribution of the Working Group to the Implementation of the Respective Development Agenda Recommendations”. The inclusion of this agenda item was important for the Development Agenda Group since it allowed PCT Contracting Parties and other Members to express their views on this matter to the Working Group, and for the Working Group to report to the WIPO General Assembly. The Development Agenda Group therefore hoped that this item would become a standing item on the agenda of the Working Group.

345. The Delegation of Algeria noted that the PCT was an important treaty, essentially concerning the cooperation between Contracting States in the area of patents. For this reason, the PCT gave due importance to the special needs and interests of developing and least developed countries in its provisions and the system established. The preamble of the PCT included, as one of its aims, the desire to “foster and accelerate the economic development of developing countries”. Article 51 specifically mandated the establishment of a Committee for Technical Assistance to organize and supervise technical assistance for developing countries. The negotiating history and records of the Washington Diplomatic Conference on the PCT envisaged deep and meaningful assistance for the development of developing countries, such as strengthening their domestic innovation capacities and assisting them in ensuring the award of high quality patents through meaningful examination of the technical aspects of inventions.

346. The Delegation of Algeria further stated that the Development Agenda Group had noted that the International Bureau was providing some of the mandated technical assistance to developing countries through projects overseen by the Committee on Development and Intellectual Property (CDIP). As had been requested by the Development Agenda Group under agenda item 6(c), the Committee for Technical Assistance needed to be reconvened, with its meetings being held immediately preceding sessions of the Working Group. The reactivation of the Committee for Technical Assistance would allow all PCT-related technical assistance activities to be coordinated and supervised, making sure that duplication and overlap with similar activities being undertaken in other WIPO bodies is avoided. In addition, the Development Agenda Group believed that the activities of the Committee for Technical Assistance should be inspired by the “Joint Proposal by the Development Agenda Group and the Africa Group on WIPO’s Technical Assistance in the Area of Cooperation for Development” as presented to the ninth session of the CDIP (document CDIP/9/16), which identified and elaborated on specific proposals from the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (CDIP/8/INF/1), aimed at improving WIPO’s development cooperation activities. In conclusion, the Development Agenda Group hoped that the discussions of the Working Group will continue to be inspired by the Development Agenda.

347. The Delegation of the United States of America, speaking on behalf of Group B, stated that it was pleased to offer its views on the contribution of the PCT Working Group to the implementation of the respective Development Agenda Recommendations. Group B noted the comprehensive PCT-related programming information provided by the Secretariat in Annex II of document PCT/WG/5/5, and expressed the view that it was clearly evident that the technical assistance and capacity building provided by the International Bureau contributed to the pertinent recommendations of the WIPO Development Agenda, namely, those recommendations in Cluster A relating to work currently undertaken by the PCT Working Group. The Delegation further

stated that Group B wished to reiterate its position that this item should not be a standing or permanent item on the agenda of the PCT Working Group, and to reiterate its position expressed under agenda item 6(c) that there was no need to convene the Committee for Technical Assistance, considering that work in this area was already undertaken sufficiently by the International Bureau.

348. The Delegation of South Africa aligned itself with the statement made by the Delegation of Algeria speaking on behalf of the Development Agenda Group. The Delegation expressed its concern that the Development Agenda Coordination Mechanism was not included as a standing item on the agenda of the PCT Working Group, noting that the Working Group was a relevant WIPO body required to report on its contribution to the implementation of the respective Development Agenda Recommendations and that it had previously reported to the WIPO General Assembly in this respect. The Delegation recalled that the preamble of the PCT included, as one of its aims, the desire to “foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technical solutions applicable to their special needs and facilitating access to the ever expanding volume of modern technology”. Furthermore, Article 51 elaborated on the activities towards realizing this objective. The Delegation expressed the view that these provisions reinforced the need for a mechanism to evaluate the performance of the PCT in realizing these overall objectives and commitments made to its Member States, especially developing countries.

349. The Delegation of South Africa stated that it was pleased with the work of the Working Group in exploring ways to improve the PCT system, understanding that the improvements should be based upon and take into account the interest of applicants, users and the public. The Delegation further stated that it appreciated the study by the Chief Economist investigating the surge in worldwide patent applications. The study provided an insight of the complexities involved in data collection related to trends in patent filings and illustrated the need for further investigations with the view to understanding the filing of low quality patent applications not meeting the legal patentability requirements. The Delegation noted that it was intrigued by the findings of the study that pointed to the ongoing debate on the effects of patent thickets on innovation and the proven adverse effects this had on small and medium-sized enterprises. The Delegation therefore wished to underline the importance of further work in this area, especially in resolving the reasons behind patent backlogs and quality of patents, adding that that this had a direct and indirect impact on the Development Agenda Recommendations as a whole, in particular recommendations 4, 8, 10, 35 and 37.

350. The Delegation of South Africa further welcomed the work of the Working Group with respect to the coordination of technical assistance and financing of technical assistance projects for developing countries under Article 51 of the PCT. The Delegation acknowledged the PCT-related activities carried out within projects supervised by the Committee on Development and Intellectual Property (CDIP). However, the Delegation expressed the view that discussing PCT-related technical assistance activities in the framework of the CDIP had its limitations, for example, due to time constraints, the absence of appropriate experts and the lack of specific analysis of the impact of activities on the PCT. Given that PCT activities were often specific and nuanced, the Delegation believed it appropriate to centralize these activities under one platform, as had been envisaged by the drafters of the PCT, by establishing the Committee for Technical Assistance. This would enable all PCT-related technical assistance activities to be identified and properly assessed, avoiding overlap or duplication with other technical assistance activities undertaken within WIPO.

351. The Delegation of South Africa further stated that it had noted the work of the Working Group on assessing how well the PCT system has been functioning in terms of realizing its aim of organizing technical assistance for developing countries, disseminating technical information and facilitating access to technology. The Delegation acknowledged the close link to the External Review of WIPO Technical Assistance in the Area of Cooperation for Development (document

CDIP/8/INF/1) being discussed in the Committee on Development and Intellectual Property and expressed the view that it would be useful for the next session of the Working Group to discuss the findings and recommendations of the External Review, in line with recommendation 41 of the Development Agenda. The Delegation added that South Africa had benefited significantly from technical assistance and capacity building activities rendered by WIPO, such as the training of staff in the Companies and Intellectual Property Commission (CIPC), focusing on its role as a receiving and designated/elected Office under the PCT, and the training of universities covering the use of patents and the PCT system and the role of the patent system in promoting research and development and stimulating the transfer of technology. The Delegation also appreciated the worldwide access to patent collections from South Africa made possible through PATENTSCOPE. In concluding, the Delegation stated that it was pleased with how the Working Group had been able to take into account some of the activities from the Development Agenda, but believed that there was room for improvement, especially with regard to bringing Article 51 into effect.

352. The Delegation of Brazil aligned itself with the statement made by the Delegation of Algeria on behalf of the Development Agenda Group. The Delegation considered the PCT Working Group as a relevant body in the context of the Development Agenda Coordination Mechanism and stressed that this agenda item should be made a standing item. The Delegation further stated that the PCT Working Group was not only a technical body, as its decisions affect all members of the Organization. The Delegation noted the importance of the discussions on improvements to the PCT in allowing Offices involved in substantive examination to expedite their work in the national phase and, at the same time, being conducive to patents of higher quality. In this regard, the Delegation highlighted Cluster A of the Development Agenda as being relevant, considering Article 51 of the PCT. The Delegation further stated that it wished to point out recommendation 15, covering norm-setting activities, recommendation 19 on further facilitating access to knowledge and technology, and recommendation 35 in connection with the work on the surge in worldwide patent applications.

353. The Chair stated that all statements would be recorded in the report for the fifth session of the Working Group and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

OTHER MATTERS

354. The Working Group agreed to recommend to the Assembly that, subject to the availability of sufficient funds, that one session of the Working Group should be convened between the October 2012 and September/October 2013 sessions of the Assembly, and that the same financial assistance that had been made available to enable attendance of certain delegations at this session should be made available at the next session.

355. The International Bureau indicated that the sixth session of the Working Group was tentatively scheduled to be held in Geneva in May/June 2013.

SUMMARY BY THE CHAIR

356. The Working Group noted the contents of the Summary by the Chair in document PCT/WG/5/21.

357. The Working Group further noted that the official record of the session would be contained in the report of the session. The report would reflect all interventions made during the meeting, and would be adopted by the Working Group by correspondence, after having been made available for comments on the Working Group's electronic forum as a draft in both English and French.

CLOSING OF THE SESSION

358. The Chair closed the session on June 1, 2012.

359. The Working Group adopted this report by correspondence.

[Annex follows]

¹ The presentations are available on the web site of WIPO at :
http://www.wipo.int/meetings/en/details.jsp?meeting_id=25017

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

I. ÉTATS/STATES

(dans l'ordre alphabétique des noms français des États)
(in the alphabetical order of the names in French of the States)

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