

C. PCT 1363

December 14, 2012

Madam,
Sir,

Questionnaire on the Restoration of the Right of Priority During the National Phase under PCT Rule 49ter

This Circular is addressed to your Office in its capacity as a designated or elected Office under the Patent Cooperation Treaty (PCT).

At the Fifth Session of the PCT Working Group, held in Geneva from May 29 to June 1, 2012, the International Bureau's findings on the restoration of the right of priority practices among Offices were discussed (see document PCT/WG/5/22 Rev., paragraphs 288 to 303). During this session, the PCT Working Group agreed that the International Bureau would again invite all designated Offices to report on their experiences in the operation of Rules 49ter.1 and 2 so that the International Bureau could report further at the next session of the PCT Working Group (document PCT/WG/5/22 Rev., paragraph 302).

In order to carry out a meaningful analysis of the current restoration of the right of priority practices during the national phase under Rules 49ter.1 and 2, the International Bureau invites your Office to complete an on-line questionnaire. Your participation is important for it will allow the International Bureau to provide the requested data to the PCT Working Group. If your Office has notified the International Bureau that Rule 49ter.1 and 2 are not compatible with the national law applied by your Office, this Circular is sent to your Office for information purposes only.

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You are kindly invited to complete this on-line questionnaire no later than January 31, 2013 at the following Internet address: <https://webaccess.wipo.int/opinio/s?s=5572>

Should you have any questions or difficulties completing the on-line questionnaire, please contact Ms. Silke Weiss, Program Officer, PCT Legal Division (e-mail: silke.weiss@wipo.int, facsimile: +41 22 910 00 30).

./ Please also find attached a copy of the questionnaire for information purposes.

Yours sincerely,



James Pooley
Deputy Director General

Enclosure: Annex – Questionnaire on the Restoration of the Right of Priority by Designated Offices under PCT Rule 49ter

Questionnaire

Restoration of the Right of Priority during the National Phase under PCT Rule 49ter

This questionnaire consists of four parts. Part 1 contains some general questions concerning your Office. Part 2 contains questions concerning Rule 49ter.1. Part 3 contains questions concerning Rule 49ter.2 and Part 4 contains some general questions concerning Rule 49ter.

PART 1

1. RESPONSE FROM:

Name of respondent:

E-mail address:

On behalf of [State, Office or Organization]:

2. Criteria Applied as a designated Office (Rule 49ter.2):

- Due Care
- Unintentional
- Both (due care and unintentional)
- Other [please provide details].....

PART 2: RULE 49ter.1

Rule 49ter.1 deals with the effect of decisions made by receiving Offices in respect of requests to restore the right of priority by applicants during the international phase on designated Offices during the national phase.

1. Please indicate, up until the end of 2012, how many international applications entered the national phase before your Office where the receiving Office (RO) had restored or refused to restore the right of priority under Rule 26bis.3(a).

- a. Number of national phase entries where the RO restored the priority right based on “due care”:
- b. Number of national phase entries where the RO restored the priority right based on “unintentional”:
- c. Number of national phase entries where the RO refused the applicant’s request under either criterion:

2. If your Office as a designated Office applies the “due care” criterion only, please explain your Office practice concerning national phase entries where the receiving Office restored the right of priority under Rule 26bis.3(a) based on the “unintentionality” criterion.

3. Up until the end of 2012, in how many cases did your Office review the positive decision of a receiving Office under Rule 49ter.1(d)? Please specify the reasons for the review.

4. Up until the end of 2012, in how many cases did your Office reverse the positive decision of a receiving Office under Rule 49ter.1(d)? Please specify the reasons for reversing the receiving Office’s positive decision.

5. Does your Office review the refusal of a request to restore the right of priority by a receiving Office (Rule 49*ter*.1(e) and (f))?
 - a. Yes, always, by default
 - b. Yes, but only on request
 - c. No, our Office never reviews the negative decision of a receiving Office
 - d. Only in certain circumstances (please specify)

6. Does your Office know of any cases where a court or other competent organ in your jurisdiction found a decision by a receiving Office not effective under Rule 49*ter*.1(c)?
 - a. No
 - b. Yes (please specify)

PART 3: RULE 49*ter*.2

Rule 49*ter*.2 provides applicants with the possibility to request designated Offices during the national phase to restore the right of priority, irrespective of whether such a restoration request had been submitted to the receiving Office.

1. Up until the end of 2012, in how many instances did your Office as a designated Office receive a request to restore the right of priority under Rule 49*ter*.2(a)?

2. Out of the cases indicated in question 1, in how many instances did the applicant previously submit a request to restore the right of priority to the receiving Office under Rule 26*bis*.3(a)?

3. Up until the end of 2012, please indicate for each criterion applied by your Office the total number of grants and refusals of requests to restore the right of priority under Rule 49*ter*.2.
 - a. Due care
 - b. Unintentional
 - c. A more favorable criterion than “unintentional”
 - d. Refusal

4. Up until the end of 2012, in how many instances has your Office restored the right of priority under Rule 49*ter*.2(a) whereas for the same case the receiving Office had refused an earlier request for restoration under Rule 26*bis*.3(a)? Please characterize the circumstances of any such cases.

5. If your Office applies the “unintentionality” criterion, what are the minimum requirements to meet this criterion before your Office?

6. What are in general the main reasons for a refusal of such a request by your Office under the “unintentionality” criterion?

7. If your Office applies the “due care” criterion, what are the minimum requirements to meet this criterion before your Office?

8. What are the main scenarios that have resulted in the restoration of the right of priority by your Office under the “due care” criterion?

9. What are generally the main reasons for a refusal of such a request by your Office under the “due care” criterion?

10. Does your Office require the payment of a fee (Rule 49*ter*.2(d))?
 - a. No
 - b. Yes (please specify the currency and amount)

11. Does your Office apply any requirements which are more favorable to the applicant than the requirements provided for in Rule 49*ter*.2(a) and (b) (Rule 49*ter*.2(f))?
 - a. No
 - b. Yes (please specify)

PART 4: GENERAL QUESTIONS

1. Are there any questions in respect to Rule 49*ter* which your Office as a designated Office would like the International Bureau to raise with other designated Offices?

2. Are there any other comments or suggestions that your Office would like to share with other Offices?

[End of annex]