

C. PCT 1480

August 15, 2016

Madam,
Sir,

Proposed modifications to the Administrative Instructions under the PCT (the Administrative Instructions), the PCT Receiving Office Guidelines (the RO Guidelines) and the PCT International Search and Preliminary Examination Guidelines (the ISPE Guidelines).

This Circular is addressed to your Office in its capacity as a receiving Office (RO), an International Searching Authority (ISA) (also, where applicable, in its capacity as an Authority specified for supplementary search (SISA)), an International Preliminary Examining Authority (IPEA) and/or a designated or elected Office (DO/EO) under the Patent Cooperation Treaty (PCT) for the purposes of consultation under PCT Rule 89.2(b). It is also addressed to certain non-governmental organizations representing users of the PCT System.

The main purpose of this Circular is to follow-up on Circular C. PCT 1478, dated June 23, 2016, promulgating certain modifications to the Administrative Instructions, RO Guidelines and ISPE Guidelines, by proposing further guidance (in the form of proposed modifications to the Administrative Instructions, RO and ISPE Guidelines) on how to deal with incoming requests to (1) omit certain information from publication and/or public file access (Rules 48.2 and 94); and (2) not to transmit copies of certain documents received by the RO in the context of a request for restoration of the right of priority (Rules 26*bis*.3).

The occasion of this Circular is also used to propose several editorial changes in the RO Guidelines and the ISPE Guidelines.

I. *Proposed modifications to the Administrative Instructions*

The proposed new Sections 218 and 315 contain further details on how the RO and the IB should process incoming requests under Rules 26*bis*.3(h-*bis*), 48.2(l) and 94.1(e). Details which are already provided for in the Rules themselves have not been repeated in the proposed new Sections.

Based on comments received in reply to Circular C. PCT 1474, the occasion of this Circular is also used to propose a minor modification to Section 413(c) and (d), taking into account that the ISA or IPEA has already notified the applicant about the authorization of the rectification of an obvious mistake and that there would not seem to be any further need for the IB to notify the applicant.

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./ The Sections of the AIs which are proposed to be modified are set out in Annex I to this Circular.

II. *Proposed modifications to the RO Guidelines*

The proposed modifications to paragraphs 166C, 166N to 166Q, 166S, 166T, 333A and 336B are consequential to the amendments to Rules 26*bis*.3(*h-bis*), 48.2(I) and 94.1(e). The proposed guidelines on how to interpret the criteria contained in Rules 26*bis*.3(*h-bis*), 48.2(I) and 94.1(e) which need to be met before a request to omit certain information can be accepted do not yet attempt to be very specific. The International Bureau would instead propose to take a similar approach to the one adopted when Rule 26*bis*.3 (restoration of the right of priority) was first adopted and to only propose more specific guidelines on how to interpret some of the legal terms when more experience has been gained with such requests.

./ The paragraphs of the RO Guidelines which are proposed to be modified are set out in Annex II to this Circular.

III. *Proposed modifications to the ISPE Guidelines*

The proposed modifications to paragraphs 15.36A, 15.36B, 15.88B and 15.88C are consequential to the amendments to Rules 26*bis*.3(*h-bis*), 48.2(I) and 94.1(e).

./ The paragraphs of the ISPE Guidelines which are proposed to be modified or added are set out in Annex III to this Circular.

Comments on the proposed modifications of the Administrative Instructions under the PCT, the RO and ISPE Guidelines

Your Office is invited to provide comments, if any, to the International Bureau by September 16, 2016, by e-mail to: pct.legal@wipo.int.

Yours sincerely,



John Sandage
Deputy Director General

Enclosures: Annex I — Proposed modified Sections of the Administrative Instructions
(modified Sections only)

Annex II — Proposed modified paragraphs of the RO Guidelines
(modified paragraphs only)

Annex III — Proposed modified paragraphs of the ISPE Guidelines
(modified paragraphs only)

PROPOSED MODIFICATIONS
TO THE ADMINISTRATIVE INSTRUCTIONS UNDER THE PCT

Section 218

**Processing of a Request for Omission of Information Referred to in
Rules 48.2(l) and 94.1(e)**

(a) Where the International Bureau decides to omit information from international publication under Rule 48.2(l) or not to provide access to information contained in its file under Rule 94.1(e), it shall:

(i) indelibly mark, in the upper right-hand corner of each replacement sheet, the international application number and the date on which that sheet was received;

(ii) indelibly mark, in the middle of the bottom margin of each replacement sheet, the words "SUBSTITUTE SHEET (RULE 48.2(l))" (where the replacement sheet contains an omission under Rule 48.2(l)) or "SUBSTITUTE SHEET (RULE 94.1(e))" (where the replacement sheet contains an omission under Rule 94.1(e)) or their equivalent in the language of publication of the international application;

(iii) indelibly mark on the letter containing the omission or accompanying any replacement sheet the date on which that letter was received;

(iv) keep in its files the letter containing the proposed omission or, where the proposed omission is contained in a replacement sheet, the replaced sheet, the letter accompanying the replacement sheet, and the replacement sheet;

(v) promptly transmit a copy of any replacement sheet to the receiving Office, the International Searching Authority, the Authority specified for supplementary search or the International Preliminary Examining Authority (where the replaced sheet is also contained in the file of the international application held by that Office or Authority).

(b) Where the International Bureau decides not to omit information from international publication under Rule 48.2(l) or to provide access to information contained in its file under Rule 94.1(e), it shall proceed as indicated under paragraph (a)(i), (iii) and (iv).

(c) Section 311, paragraphs (a) to (c) shall apply *mutatis mutandis* to any deletion, substitution or addition of a sheet of the international application received by the International Bureau.

Section 315

Processing of Documents by the Receiving Office under Rule 26bis.3(h-bis)

(a) Where the receiving Office decides not to transmit a document or part thereof to the International Bureau under Rule 26bis.3(h-bis), it shall

(i) indelibly mark, in the upper right-hand corner of each replacement sheet, the international application number and the date on which that sheet was received;

(ii) indelibly mark, in the middle of the bottom margin of each replacement sheet, the words "SUBSTITUTE SHEET (RULE 26bis.3(h-bis))" or their equivalent in the language of publication of the international application;

(iii) indelibly mark on the request not to transmit a document the date on which that request was received;

(iv) keep in its files a copy of the request under Rule 26bis.3(h-bis), the replaced sheet, and a copy of the replacement sheet;

(v) promptly transmit any replacement sheet to the International Bureau.

(b) Where the receiving Office receives a request under Rule 26bis.3(h-bis) and finds that information in a part of a document meets the requirements in this Rule, but the

receiving Office has not received a replacement sheet from the applicant in which that part has been removed, it shall invite the applicant to submit such a replacement sheet. Where the applicant submits a replacement sheet within the time limit set by the receiving Office, the receiving Office proceeds as indicated under paragraph (a). Where the applicant does not submit a replacement sheet within the time limit set by the receiving Office, the receiving Office promptly transmits the document containing that part and the request under Rule 26bis.3(h-bis) to the International Bureau and proceeds as indicated under paragraph (a)(iii) and (iv).

(c) Where the receiving Office finds on its own decision that information in a part of a document meets the requirements in Rule 26bis.3(h-bis), it shall either invite the applicant to submit a replacement sheet in which that part has been removed and proceed as indicated under paragraph (b), or decide not to transmit the entire document containing that part.

(d) Where the receiving Office receives a request under Rule 26bis.3(h-bis), but nevertheless decides to transmit the document or part thereof to the International Bureau, it shall proceed as indicated under paragraph (a)(i), (iii) and (iv) and promptly transmit the request under Rule 26bis.3(h-bis) and any proposed replacement sheet to the International Bureau.

Section 413

Incorporations by Reference under Rule 20, Corrections of Defects under Rule 26.4, Rectifications of Obvious Mistakes under Rule 91, and Corrections under Rule 9.2

(a) Where the International Bureau receives from the receiving Office a letter containing a correction of any defects under Rule 26.4, or a replacement sheet and the letter accompanying it, the International Bureau shall transfer the correction to the record copy, together with the indication of the date on which the receiving Office received the letter, or shall insert the replacement sheet in the record copy. Any letter and any replaced sheet shall be kept in the file of the international application.

(b) Paragraph (a) shall apply *mutatis mutandis* to rectifications of obvious mistakes under Rule 91 authorized by the receiving Office, by the International Searching Authority or, where a demand has been made, by the International Preliminary Examining Authority and to corrections submitted by the applicant to the receiving Office or the International Searching Authority aimed at complying with the prescription of Rule 9.1 concerning certain expressions, drawings, statements or other matter.

(b-bis) Where the International Bureau receives from the receiving Office, under Sections 309(c)(iv), 310(b)(iv), or 310bis(b)(v), corrected sheets of the request or later submitted sheets, the International Bureau shall transfer any correction to the record copy and insert any later submitted sheets in the record copy.

(c) Where the International Bureau is notified by the International Searching Authority under Rule 43.6bis(b) that the rectification of an obvious mistake authorized under Rule 91 has not been taken into account for the purposes of the international search, the International Bureau shall notify ~~the applicant,~~ the designated Offices and, where a demand has been made, the International Preliminary Examining Authority accordingly.

(d) Where the International Bureau is notified by the International Preliminary Examining Authority under Rule 70.2(e) that the rectification of an obvious mistake authorized under Rule 91 has not been taken into account for the purposes of the international preliminary examination, the International Bureau shall notify ~~the applicant and~~ the elected Offices accordingly.

[End of Annex I]

PROPOSED MODIFICATIONS TO THE PCT RECEIVING OFFICE GUIDELINES

Restoration of the Right of Priority

166C. **Receipt of a Request for the Restoration of the Right of Priority.** The applicant may request restoration of the right of priority directly on the request form (Box No. VI) or by filing a separate request within the time limit provided in Rule 26bis.3(e). The receiving Office checks whether the request form contains a request by the applicant to restore the right of priority in Box No. VI. If the receiving Office receives a separate restoration request, the Office promptly notifies the International Bureau of it. ~~and The receiving Office transmits a copy of all documents the restoration request received from the applicant (including a copy of the restoration request, the statement of reasons, any declaration or other evidence) to the International Bureau, unless it finds that any such document contains information meeting the criteria of Rule 26bis.3(h-bis) (see paragraphs 166N to 166Q below) (item 6 of Form PCT/RO/118). Where the applicant submits a separate statement of reasons, the receiving Office promptly transmits a copy of the statement to the International Bureau (item 12 of Form PCT/RO/118). Where the applicant submits a declaration or other evidence as part of the restoration request, the receiving Office should preferably transmit a copy of any of these documents to the International Bureau (item 12 of Form PCT/RO/118), in order to enable designated Offices to perform the limited review of the decision by the receiving Office provided for under Rule 49ter.1(d).~~ The receiving Office transmits a copy of all documents the restoration request received from the applicant (including a copy of the restoration request, the statement of reasons, any declaration or other evidence) to the International Bureau, unless it finds that any such document contains information meeting the criteria of Rule 26bis.3(h-bis) (see paragraphs 166N to 166Q below) (item 6 of Form PCT/RO/118).

166F. **Statement of Reasons.** Under Rule 26bis.3(b)(ii), the applicant is required to explain why he failed to file the international application within the priority period. For the “due care” criterion, the statement should describe in detail the facts and circumstances that led to the late filing and any remedial or alternative steps taken to attempt a timely filing of the international application. For the “unintentionality” criterion, a statement indicating that the failure to comply with the priority period was not deliberate may be sufficient. If the receiving Office finds the statement of reasons insufficient to determine whether the applicant satisfies the applicable criteria, the receiving Office may invite the applicant to submit further information by way of a revised statement within a reasonable time limit (item ~~2~~ 5 of Form PCT/RO/158). The receiving Office explains in detail, by text in the Annex to that Form, why it finds the statement insufficient. In this notification, the receiving Office may also require the applicant to submit a declaration or other evidence in support of the statement of reasons (see paragraph 166G). If the applicant does not respond to that notification within the time limit, the receiving Office proceeds as outlined in paragraph 166O. If the applicant submits new arguments in response to that notification and the receiving Office decides to restore the right of priority, the Office proceeds as outlined in paragraph 166O. If the applicant submits new arguments in response to that notification and the receiving Office nevertheless intends to wholly or partially refuse the request to restore the right of priority, the receiving Office proceeds as outlined in paragraph 166N.

166I. **Unintentionality Criterion.** Under Rule 26bis.3(a)(ii), the receiving Office should restore the right of priority if it finds that the failure to file the international application within the priority period was “unintentional”. The applicant satisfies this criterion if he demonstrates that he did not deliberately refrain from filing the international application within the priority period and that he had a continuing underlying intention to file the ~~PCT~~international application within the priority period. The receiving Office should focus on the applicant’s intent at the time when the priority period expired, irrespective of any changes in the applicant’s intent before or after the expiration of the priority period.

166M. While each receiving Office must engage in its own case-by-case analysis for each restoration request, the application of the “due care” criterion to the following factual circumstances (based on the experience of the International Bureau) may be of assistance:

(a) Lack of Knowledge by the Applicant

A prudent applicant acquires the requisite knowledge of the PCT system in order to be able to timely file a complete international application, and/or appoints a competent agent to file on his behalf if the applicant lacks the requisite knowledge. An applicant who failed to file the international application within the priority period due to a lack of knowledge concerning the operation of the PCT system or concerning the 12 months priority period as set out in Article 4C of the Paris Convention generally did not act with “due care”.

(b) Lack of Financing by the Applicant

A prudent applicant ensures sufficient financial means in order to timely file an international application. An applicant who failed to file the international application within the priority period due to financial constraints generally did not act with “due care”.

(c) Human Error by the Applicant or Agent Himself

A reasonably prudent applicant or agent recognizes the importance of meeting crucial priority deadlines and ensures that all aspects of the preparation and filing of the international application are carried out with the diligence and meticulousness needed to successfully and timely submit the international application. A human error attributable to increased workload, lost files and incompletely filed [PCT-international](#) applications is, in general, evidence of lack of “due care”.

(d) Miscommunication between the Applicant and the Agent

Where the applicant appoints an agent, both the applicant and the agent must act with “due care” in their communication with each other. A prudent applicant instructs the agent in a clear and timely manner to file the international application. A prudent agent acts upon instructions received from the applicant and clarifies with the applicant in case of doubt. A prudent agent advises the applicant of all important matters in relation to the timely filing of an international application and the consequences of a late filing in a clear manner. A prudent applicant or agent finds alternative ways to communicate with the other person if the usual communication channels fail. Where the failure to timely file an [PCT-international](#) application was caused by technical difficulties (e.g. unexpected email delivery failure between the applicant and the agent), both the applicant and the agent may have acted with “due care” if they can demonstrate that the system had worked reliably in the past and that the breakdown could not have been anticipated by either party.

(e) Absence from the Office by the Applicant or Agent

Where an applicant or agent is absent from the office at the expiration of the priority period, a prudent applicant or agent either files the international application in advance insofar as the absence was predictable, or instructs another person to timely file the international application during his absence. For example, a prudent applicant with a scheduled absence from the office due to vacation or a medical appointment checks whether the priority period for the filing of an international application expires during this absence and instructs an agent, a colleague or a staff member to file the international application on his behalf. In addition, a prudent agent/applicant maintains a reliable communication system that provides other persons in the office with access to important communications so that other

persons can receive and react upon filing instructions in case of unplanned absences. For example, a prudent agent ensures that instructions to file an international application are sent to an email account to which several persons have access. An applicant or agent generally fails to demonstrate “due care” if he failed to timely file ~~a PCT~~ [an international](#) application due to illness or vacation. It is only in cases where the applicant or agent fell unexpectedly ill and needed urgent treatment that prohibited all communication with other persons that the failure to timely file an international application may have occurred in spite of “due care”.

(f) Human Error by the Agent’s or Applicant’s Staff

An applicant or agent may entrust administrative staff (non-attorneys such as assistants or paralegals) with the performance of certain administrative tasks. A prudent applicant or agent carefully chooses, trains and monitors the work of a reliable, experienced, adequately trained and supervised employee. A human error by an assistant in the docketing, monitoring, preparation or filing of the international application is not attributed to the applicant or agent if the applicant or agent can show that “due care” was exercised in the management of the assistant and the failure to file within the priority period in this particular case was an isolated human error. In the statement of reasons, the applicant or agent should usually outline the number of years the assistant has been entrusted with the particular task, the level of training and supervision provided to the assistant and whether the assistant has performed all his duties diligently in the past.

(g) Docketing System Error

Docketing system errors can be divided into human entry errors (see paragraphs (c) and (f) above) and technical errors (e.g. software malfunction or server crashes). Where the applicant or agent failed to timely file the international application due to a technical error, the applicant or agent may have acted with all “due care” if he demonstrates that he set up a reliable and well-functioning reminder system, had sufficient knowledge of the use and operation of the system, sufficiently trained and supervised staff on the use of the system, arranged reliable back-up and entry review (a second person that independently checks the correct entry of dates) procedures, and that the technical error occurred unexpectedly and was as such not foreseeable.

(h) Facsimile or Software Submission Failure

Where an applicant or agent fails to timely file ~~a PCT~~ [an international](#) application due to a transmission error using facsimile, or any filing software, an applicant or agent has to show that the error occurred due to an external technical problem that was beyond the applicant’s/agent’s control in order to satisfy the “due care” criterion (for facsimile submissions, see also Rule 92.4(c) which puts the risk of an unsuccessful transmission on the side of the applicant). A prudent applicant or agent takes particular care and vigilance when he files an international application on the last day or even during the last hours of the priority period. This includes the preparation of the necessary facilities for the filing of the ~~PCT~~ [international](#) application reasonably in advance of the expiration of the priority period, such as where the applicant or agent chooses to file electronically, a well-functioning computer system, the installation of the latest filing software and the digital certificate, a reliable Internet connection and sufficient knowledge of the software used and where the applicant or agent chooses to file via facsimile, a well-functioning fax machine. Where a prudent applicant or agent experiences technical problems during the submission of an international application, the applicant or agent exhausts all reasonable alternative means to timely file the international application (such as hand delivery, express mail, submission via fax instead of electronic filing, use of a different fax machine, submission to a different fax

number within the same receiving Office, filing with another receiving Office in a different time zone which is competent for the main applicant).

(i) Postal Service Difficulties

Where an applicant fails to timely file ~~a PCT~~ an international application due to postal service errors, the receiving Office should apply the underlying idea of Rule 82.1 when evaluating whether an applicant or agent acted with all “due care” required by the circumstances. A prudent applicant or agent mails an international application to the receiving Office at least five days prior to the expiration of the priority period by registered airmail (applicants or agents need not use airmail if surface mail normally arrives within two days of mailing or if airmail is unavailable). The applicant or agent may have acted with all “due care” if the filing of the international application would have been timely under normal circumstances and the postal delay was unforeseeable.

(j) Force Majeure

An event of force majeure means external, unforeseeable and/or unavoidable circumstances beyond the control of the applicant or agent. Disasters, such as hurricanes, volcanic eruptions, earthquakes, international conflicts and war may be considered as such events (see for example Rule 82~~quater~~.1(a)). Generally, if such circumstances make it impossible for an applicant or agent to file the international application within the priority period, the failure to file the application occurs in spite of “due care”. An applicant or agent generally acted with all “due care” if the applicant or agent demonstrates that the consequences of the event could not have been predicted and/or avoided.

166N. Documents or Parts Thereof Meeting the Criteria of Rule 26bis.3(h-bis). In general, the receiving Office must transmit all documents received from the applicant relating to a restoration request to the International Bureau (Rule 26bis.3(h)(iv)). However, exceptionally, if the receiving Office finds, either on its own or upon a reasoned request by the applicant, that a document or part thereof meets the requirements of Rule 26bis.3(h-bis), that document or part thereof should not to be transmitted to the International Bureau. A document or part thereof does not “obviously serve the purpose of informing the public about the international application” if it is clearly irrelevant for the disclosure or assessment of the international application as such. A disclosure of a document or part thereof would “clearly prejudice the personal or economic interests of any person” if its disclosure to the public would be harmful to the specific and concrete personal or economic interests of that person. A mere abstract prejudice to hypothetical personal or economic interests would generally not be sufficient. Consequently, for example, a document or part thereof which is clearly not relevant for the international application but which does not cause any harm to any person should nevertheless be transmitted to the International Bureau. Finally, the receiving Office must weigh the different interests involved and only when it finds that, in a particular case, the interest of the affected person to keep the document or part thereof confidential outweighs the public interest to disclose that document or part thereof, the receiving Office should not transmit it to the International Bureau.

166O. Each case must be considered separately as to whether it meets the requirements of Rule 26bis.3(h-bis). Examples of information which might qualify under the Rule could be private details of persons involved in the late filing of the international application, such as the name of the paralegal; medical certificates stating the nature of the illness; and information in relation to other national or international applications or other intellectual property rights unrelated to the international application in question.

166P. The receiving Office may, instead of deciding on its own not to transmit a document or part thereof to the International Bureau, notify the applicant that it finds that a document or part thereof meets the requirements of Rule 26bis.3(h-bis), invite the applicant to submit a reasoned request to the receiving Office not to transmit a certain document or part thereof to the International Bureau, and, where applicable, to submit (a) replacement sheet(s) from which the relevant part is removed (Form PCT/RO/132).

166Q. Depending on the case, the receiving Office may either not transmit the entire document or only the relevant part to the International Bureau. The procedure to be applied is set out in detail in Section 315.

166R. *Intended Refusal of the Request to Restore the Right of Priority.* If the receiving Office intends to wholly or partially refuse the request to restore the right of priority (Rule 26bis.3(g)), the Office notifies the applicant of the intended refusal and allows the applicant to make observations within a reasonable time limit (Form PCT/RO/158). In this notification, the receiving Office may also invite the applicant to submit a declaration or other evidence (see paragraph 166G). The receiving Office should explain in detail, by text in the Annex to that Form, why it intends to wholly or partially refuse the restoration request. If the receiving Office applies both the “due care” and the “unintentionality” criteria and finds that the failure to timely file the international application was “unintentional” but that “due care” had not been exercised, the receiving Office indicates the intent to partially refuse restoration of priority under the “due care” criterion, and explains that the right of priority will nevertheless be restored under the “unintentionality” criterion, by text in the Annex to Form PCT/RO/158.

166S. *Decision and Notification to the Applicant.* As soon as the receiving Office decides to restore the right of priority or, after notifying the applicant of the intended refusal (see paragraph 166NR), decides to wholly or partially refuse the request to restore the right of priority, the Office promptly notifies the applicant of its decision (Form PCT/RO/159). In this notification, the receiving Office indicates whether the Office restores the right of priority or wholly or partially refuses the request to restore the right of priority and the criterion for restoration upon which the decision was based. In the Annex to the Form, the receiving Office summarizes the facts and the reasons for its decision. If the receiving Office decides not to transmit a document or part thereof to the International Bureau under Rule 26bis.3(h-bis), it also notifies the applicant of this decision (relevant box in Form PCT/RO/159) and specifies the document or part thereof in the relevant box in Form PCT/RO/159, without disclosing the actual sensitive information which is not transmitted to the International Bureau. If the receiving Office receives a request under Rule 26bis.3(h-bis) from the applicant not to transmit a document or part thereof to the International Bureau, but nevertheless decides to transmit that document or part thereof to the International Bureau, it also notifies the applicant of this decision (relevant box in Form PCT/RO/159).~~The receiving Office promptly submits a copy of its decision to the International Bureau, along with any correspondence between the Office and the applicant not previously submitted (such as Form PCT/RO/158, a copy of the request for restoration, of the statement of reasons and preferably a copy of any accompanying declaration or other evidence).~~

166T. *Notification of the International Bureau.* The receiving Office promptly submits a copy of its decision (Form PCT/RO/159) to the International Bureau, along with a copy of any correspondence between the Office and the applicant not previously submitted (including the restoration request itself if it was not contained in the request form, any statement of reasons, any declaration or other evidence, Form PCT/RO/132, Form PCT/RO/158, etc.), unless the Office finds that this document contains information meeting the criteria of Rule 26bis.3(h-bis) (see paragraphs 166N to 166Q above).

Information Meeting the Criteria of Rule 48.2(I)

333A. The receiving Office is not obliged to check whether the international application or other documents contain any information meeting the criteria of Rule 48.2(I). If the receiving Office notes, however, that the international application or other documents contain information which appears to meet those criteria, it may suggest to the applicant to request the International Bureau to omit this information from international publication (Form PCT/RO/130).

Access to the File held by the Receiving Office

336B. Where the International Bureau has notified the receiving Office (by way of Form PCT/IB/385) that it has omitted information from international publication or public file access, the receiving Office must not provide access to that information, and where applicable, to Form PCT/RO/130, Form PCT/IB/385 and any replaced sheet submitted with Form PCT/IB/385 to any person other than the applicant or a person authorized by him. The receiving Office may provide access to any replacement sheet(s) received from the International Bureau accompanying Form PCT/IB/385.

[End of Annex II]

PROPOSED MODIFICATIONS
TO THE PCT INTERNATIONAL SEARCH AND EXAMINING GUIDELINES

1.07. “International Authority” or “Authority”, unless qualified, mean International Searching Authority and/or International Preliminary Examining Authority, as the case requires. The term “examiner,” unless qualified, is used in the Guidelines to refer to the examiner working in the International Preliminary Examining Authority, the International Searching Authority or the Authority specified for supplementary ~~international~~ search. “Search” and “examination”, unless qualified, mean international search and international preliminary examination according to the Treaty and Regulations.

10.84. The Authority specified for supplementary ~~international~~ search may make its own assessment as to unity of invention, but it should take into account the opinion of the main International Searching Authority included in the international search report as well as any protest by the applicant or decision by the International Searching Authority in relation to such a protest which is received prior to the start of the supplementary international search.

Information Meeting the Criteria of Rule 48.2(I)

15.36A. The International Searching Authority is not obliged to check whether the international application or other documents contain any information meeting the criteria of Rule 48.2(I). If the International Searching Authority notes, however, that the international application or any other document contains information which appears to meet those criteria, it may suggest to the applicant to request the International Bureau to omit this information from international publication (using Form PCT/ISA/215).

Access to the File held by the International Searching Authority

15.36B. Where the International Bureau has notified the International Searching Authority (by way of Form PCT/IB/385) that it has omitted information from international publication or public file access, that Authority must not provide access to that information, and where applicable, to Form PCT/ISA/215, Form PCT/IB/385 and any replaced sheet submitted with Form PCT/IB/385 to any person other than the applicant or a person authorized by him. The International Searching Authority may provide access to any replacement sheet(s) received from the International Bureau accompanying Form PCT/IB/385.

Information Meeting the Criteria of Rule 48.2(I)

15.88B. The Authority specified for supplementary search is not obliged to check whether the international application or other documents contain any information which appear to meet the criteria of Rule 48.2(I). If the Authority specified for supplementary search notes, however, that the international application or any other document contains information which appears to meet those criteria, it may suggest to the applicant to request the International Bureau to omit this information from international publication (using Form PCT/SISA/512).

Access to the File held by the Authority Specified for Supplementary Search

15.88C. Where the International Bureau has notified the Authority specified for supplementary search (by way of Form PCT/IB/385) that it has omitted information from international publication or public file access, that Authority must not provide access to that information, and where applicable, to Form PCT/SISA/512, Form PCT/IB/385 and any replaced sheet submitted with Form PCT/IB/385 to any person other than the applicant or a person authorized by him. The Authority specified for supplementary search may provide access to any replacement sheet(s) received from the International Bureau accompanying Form PCT/IB/385.

[End of Annex III and of Circular]