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**INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)**

ASSEMBLY

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PROPOSED AMENDMENTS OF THE PCT REGULATIONS

PROPOSED MODIFICATIONS OF THE DIRECTIVES OF THE ASSEMBLY RELATING
TO THE ESTABLISHMENT OF EQUIVALENT AMOUNT OF CERTAIN FEES

PROPOSED AMENDMENTS OF PCT ARTICLE 16(3) AGREEMENTS

Document prepared by the International Bureau

CORRECTIONS RELATING TO DOCUMENT PCT/A/40/2

This document reproduces the text of document PCT/A/40/2 with the addition of a number of corrections of a drafting nature.

The corrections, in the case of the English version, relate to Annexes I, III, IV, V, VI and VIII and concern Rules 45*bis*.4 (amended title appearing in Annex I, page 2), 45*bis*.5(g) (amended text appearing in Annex I, page 3), 96.1 (amended text appearing in Annex I, page 5), 15.2(d)(ii) (amended text appearing in Annex III, page 2) and 57.1(b) and (d) (amended text appearing in Annex III, pages 8 and 9). Furthermore, the corrections, in the case of the English version, concern paragraphs 2 and 4 of the Directives by the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees (amended text appearing in Annex IV, page 2), Article 11(4) of the Agreements under PCT Article 16(3) (amended text appearing in Annex V, page 1) and paragraphs (a) and (b) of the draft decisions for dates of entry into force and transitional arrangements (amended text appearing in Annex VI, page 1). Each correction is noted in a footnote to the relevant text, denoted by an asterisk (*) in order to make a distinction from the footnotes appearing in document PCT/A/40/2.

The corrections relate in some cases to amendments proposed in document PCT/A/40/2 and in other cases to the existing text of the Rules concerned. Annex II of the English version of document PCT/A/40/2 is unchanged. The main body and the explanatory notes appearing in Annex VII also remain unchanged but should be read subject to corrections corresponding to those appearing in the present document. The clean text of the relevant provisions as they would stand after amendment and modification appearing in Annex VIII has been updated to include the corrections appearing in this document.

For corrections of the French version of document PCT/A/40/2, which in only some instances correspond to those made in the English version, see the French version of the present document.

SUMMARY

1. This document contains proposals for amendment of the Regulations under the Patent Cooperation Treaty (PCT)¹, as recommended by the PCT Working Group (“the Working Group”). The proposed amendments relate to the following matters:
 - (a) the supplementary international search system;
 - (b) the form of amendments;
 - (c) the establishment of equivalent amounts of certain PCT fees.
2. Furthermore, this document contains proposals for modifications of the Directives by the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees and, also related to the matter of establishment of equivalent amounts of certain PCT fees, proposals for amendment of Article 11 of the agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities, as recommended by the Working Group.
3. The texts of the proposed amendments of the PCT Regulations appear in Annexes I to III. The text of the proposed modifications of the Directives appears in Annex IV. The text of the proposed amendments of Article 11 of the agreements under PCT Article 16(3) appears in Annex V. For proposed dates of entry into force and transitional arrangements, see paragraphs 11 to 16, below, and Annex VI. A brief outline of the purpose of each group of amendments and modifications appears in paragraph 4 to 10, below, and more detailed explanations are set out in Annex VII. A “clean” text of all of the proposed amended and modified provisions (without underlining or striking through) appears in Annex VIII.

¹ References in this document to “Articles” and “Rules” are to those of the Patent Cooperation Treaty (PCT) and the Regulations under the PCT (“the Regulations”), or to such provisions as proposed to be amended or added, as the case may be. References to “national laws”, “national applications”, “the national phase”, etc., include references to regional laws, regional applications, the regional phase, etc.

PROPOSED AMENDMENTS OF THE PCT REGULATIONS

4. Proposals were considered by the Working Group during its second session, held in May 2009, at which the Working Group agreed on proposed amendments to be submitted to the Assembly for adoption at the present session, subject to possible further drafting changes to be made by the Secretariat (document PCT/WG/2/14, reproduced in Annex II to document PCT/A/40/1).

5. The proposed amendments of the PCT Regulations are set out in Annexes I to III to the present document, the amendments in the three Annexes having different entry into force and transitional arrangements. Where further drafting changes have been included, beyond the text as agreed by the Working Group, attention is drawn to that fact in a footnote with an explanation, where necessary, in Annex VII. Information concerning proposed further drafting changes was posted by the Secretariat on the Working Group's electronic forum on the WIPO website² for comments and suggestions by delegations and representatives. The proposals contained in this document take into account the comments and suggestions received.

6. The purpose of the proposed amendments is outlined briefly in the following subparagraphs. More detailed explanations appear in Annex VII.

(a) *Supplementary international search.* Proposed amendments of Rules 45bis.1, 45bis.2, 45bis.3, 45bis.5, 45bis.6, 45bis.9 and 96.1 are set out in Annex I and explained in Annex VII, paragraphs 3 to 7. The proposed amendments concern the different types of limitations and conditions an Authority may wish to set in the applicable agreement under Article 16(3)(b) with regard to its preparedness to carry out supplementary searches; the refund of the supplementary search handling fee and the supplementary search fee; and the Schedule of Fees annexed to the Regulations (as far as the supplementary search handling fee, the supplementary search fee and the late payment fee are concerned).

(b) *Form of Amendments.* Proposed amendments of Rules 46.5 and 66.8 and the proposed addition of new Rule 70.2(c-bis) are set out in Annex II and explained in Annex VII, paragraphs 8 to 12. The proposed amendments concern the filing of amendments of the description, claims or drawings and would oblige applicants, when making amendments, to indicate the basis for those amendments in the application as filed.

(c) *Establishment of Equivalent Amounts of Certain Fees.* Proposed amendments of Rules 15.2, 15.3, 15.4, 15.5, 15.6, 16.1, 16bis.1, 19.4, 57.2, 57.4, 57.5 and 57.6 are set out in Annex III and explained in Annex VII, paragraphs 13 to 24. The proposed amendments concern the procedure of the establishment of equivalent amounts of the search fee, the international filing fee and the handling fee.

PROPOSED MODIFICATIONS OF THE DIRECTIVES OF THE ASSEMBLY RELATING TO THE ESTABLISHMENT OF EQUIVALENT AMOUNT OF CERTAIN FEES

7. Proposals were considered by the Working Group during its second session, held in May 2009, at which the Working Group agreed on proposed modifications to be submitted to the Assembly for adoption at the present session, subject to possible further drafting changes to be made by the Secretariat (document PCT/WG/2/14, reproduced in Annex II to document PCT/A/40/1).

² <http://www.wipo.int/pct-wg/en/index.html>

8. Proposed modifications of the Directives by the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees are set out in Annex IV and explained in Annex VII, paragraphs 13 to 24. The proposed modifications concern the procedure of the establishment of equivalent amounts of the search fee, the international filing fee and the handling fee.

PROPOSED AMENDMENTS OF PCT ARTICLE 16(3) AGREEMENTS

9. Proposals were considered by the Working Group during its second session, held in May 2009, at which the Working Group agreed on proposed amendments to be submitted to the Assembly for adoption at the present session, subject to possible further drafting changes to be made by the Secretariat (document PCT/WG/2/14, reproduced in Annex II to document PCT/A/40/1).

10. Proposed amendments of Article 11(2) and (4) of the agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities are set out in Annex V and explained in Annex VII, paragraphs 19 and 24. The proposed amendments concern the time limits within which Authorities would have to notify the International Bureau of any change in the amount of the fees and charges, or of changes in the conditions for and the extent of reductions thereof.

ENTRY INTO FORCE AND TRANSITIONAL ARRANGEMENTS

11. Proposals concerning entry into force and transitional arrangements in respect of the proposed amendments and modifications were posted by the Secretariat on the Working Group's electronic forum on WIPO's website³ for comments and suggestions by delegations and representatives. The proposals contained in this document take into account the comments and suggestions received.

12. As regards the proposed amendments of the Regulations relating to the supplementary search system (proposed amendments of Rules 45*bis*.1, 45*bis*.2, 45*bis*.3, 45*bis*.5, 45*bis*.6, 45*bis*.9 and 96.1), it is proposed that those amendments should enter into force on July 1, 2010, and should apply to any international application, regardless of its international filing date, in respect of a supplementary search request under Rule 45*bis*.1(a) made on or after July 1, 2010.

13. As regards the proposed amendments of the Regulations relating to the form of amendments (proposed amendments of Rules 46.5 and 66.8, and proposed addition of new Rule 70.2(c-*bis*)), it is proposed that those amendments should enter into force on July 1, 2010, and should apply to any international application, regardless of its international filing date, in respect of an amendment of the claims, description or drawings made on or after July 1, 2010.

³ <http://www.wipo.int/pct-wg/en/index.html>

14. As regards the proposed amendments of the Regulations relating to the establishment of equivalent amounts of certain fees (proposed amendments of Rules 15.2, 15.3, 15.4, 15.5, 15.6, 16.1, 16*bis*.1, 19.4, 57.2, 57.4, 57.5 and 57.6) and the proposed modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees, it is proposed that these amendments and modifications should enter into force on July 1, 2010, and apply to the establishment of equivalent amounts which, in accordance with the Regulations and the Directives as in force as of July 1, 2010, are established according to an exchange rate prevailing on, or a date after, July 1, 2010. It is proposed that the proposed amendments should not apply to the establishment of equivalent amounts which, in accordance with the Regulations and the Directives as in force prior to July 1, 2010, are established according to an exchange rate prevailing on a date prior to July 1, 2010; in respect of the establishment of such equivalent amounts, the Regulations and the Directives as in force prior to July 1, 2010 should continue to apply until the new equivalent amounts so established become applicable.

15. As regards the proposed amendments of Article 11(2) and (4) of the agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities, the Secretariat proposes that the Assembly be invited to approve the inclusion of Article 11(2) and (4) as amended in the applicable agreements under PCT Article 16(3), with effect from a date to be agreed upon by each Authority and the Director General. In addition, the Secretariat proposes that the Assembly be invited to recommend that such amendments should be made to the applicable agreements and should, where possible, become effective on July 1, 2010.

16. Draft decisions of the Assembly concerning dates of entry into force and proposed transitional arrangements are set out in Annex VI.

17. The Assembly of the PCT Union is invited:

(i) to adopt the proposed amendments of the Regulations under the PCT set out in Annexes I, II and III;

(ii) to adopt the proposed modifications of the Directives Relating to the Establishment of Equivalent Amounts of Certain Fees set out in Annex IV;

(iii) to approve the inclusion in the applicable agreement under PCT Article 16(3) of the provisions set out in Annex V; and

(iv) to adopt the proposed decisions and recommendations set out in Annex VI relating to entry into force and transitional arrangements.

[Annexes follow]

ANNEX I

AMENDMENTS OF THE PCT REGULATIONS¹
RELATING TO THE SUPPLEMENTARY SEARCH SYSTEM
PROPOSED TO ENTER INTO FORCE ON JULY 1, 2010²

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¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. A “clean” copy of the proposed amended provisions (without underlining or striking through) appears in Annex VIII.

² For dates of entry into force and transitional arrangements, see paragraph 12 of the main body of this document and Annex VI.

Rule 45bis
Supplementary International Searches

45bis.1 Supplementary Search Request

(a) to (c) [No change]

(d) Where the International Searching Authority has found that the international application does not comply with the requirement of unity of invention, the supplementary search request may contain an indication of the wish of the applicant to [restrict](#) ~~limit~~ the supplementary international search to one of the inventions as identified by the International Searching Authority other than the main invention referred to in Article 17(3)(a).

(e) [No change]

45bis.2 Supplementary Search Handling Fee

(a) to (c) [No change]

(d) The International Bureau shall refund the supplementary search handling fee to the applicant if, before the documents referred to in Rule 45bis.4(e)(i) to (iv) are transmitted to the Authority specified for supplementary search, the international application is withdrawn or considered withdrawn, or the supplementary search request is withdrawn or [is](#) considered not to have been submitted [under Rule 45bis.1\(e\)](#).

45bis.3 Supplementary Search Fee

(a) to (c) [No change]

(d) The International Bureau shall refund the supplementary search fee to the applicant if, before the documents referred to in Rule 45bis.4(e)(i) to (iv) are transmitted to the Authority specified for supplementary search, the international application is withdrawn or considered withdrawn, or the supplementary search request is withdrawn or [is](#) considered not to have been submitted [under Rules 45bis.1\(e\) or 45bis.4\(d\)](#).

(e) The Authority specified for supplementary search shall, to the extent and under the conditions provided for in the applicable agreement under Article 16(3)(b), refund the supplementary search fee if, before it has started the supplementary international search in accordance with Rule 45bis.5(a), the supplementary search request is considered not to have been submitted [under Rule 45bis.5\(g\)](#).

*45bis.4 Checking of Supplementary Search Request; Correction of Defects; Late Payment of Fees; Transmittal to ~~International Searching~~ Authority [Specified for Supplementary Search](#)**

(a) to (c) [No change]

* The following changes have been made to the text of the title of Rule 45bis.4 as it appears in document PCT/A/40/2: the words “International Searching Authority” have been replaced by “Authority Specified for Supplementary Search”.

[Rule 45bis.4, continued]

(d) [No change] If the applicant does not furnish the required correction or does not pay the amount in full of the fees due, including the late payment fee, before the expiration of the time limit applicable under paragraph (a) or (b), respectively, the supplementary search request shall be considered not to have been submitted and the International Bureau shall so declare and shall inform the applicant accordingly.

(e) and (f) [No change]

*45bis.5 Start, Basis and Scope of Supplementary International Search*³

(a) [No change]

(b) The supplementary international search shall be carried out on the basis of the international application as filed or of a translation referred to in Rule 45bis.1(b)(iii) or 45bis.1(c)(i), taking due account of the international search report and the written opinion established under Rule 43bis.1 where they are available to the Authority specified for supplementary search before it starts the search. Where the supplementary search request contains an indication under Rule 45bis.1(d), the supplementary international search may be ~~restricted~~ **limited** to the invention specified by the applicant under Rule 45bis.1(d) and those parts of the international application which relate to that invention.

(c) to (f) [No change]

(g) If the Authority specified for supplementary search finds that carrying out the search is entirely excluded by a limitation or condition referred to in Rule 45bis.9(a), other than a limitation under Article 17(2) as applicable by virtue of Rule 45bis.5(c), the supplementary search request shall be considered not to have been submitted, and the Authority shall so declare and shall promptly notify the applicant and the International Bureau accordingly.*

(h) The Authority specified for supplementary search may, in accordance with a limitation or condition referred to in Rule 45bis.9(a), decide to restrict the search to certain claims only, in which case the supplementary international search report shall so indicate.

45bis.6 Unity of Invention

(a) to (e) [No change]

³ Further drafting changes have been made to Rule 45bis.5(g), beyond the text as agreed by the Working Group (Annex VII, paragraph 6).

* The following changes have been made to the text of Rule 45bis.5(g) as it appears in document PCT/A/40/2: the words “or condition”, which erroneously had been omitted from the existing text of present Rule 45bis.5(g), have been added.

[Rule 45bis.6, continued]

(f) Paragraphs (a) to (e) shall apply *mutatis mutandis* where the Authority specified for supplementary search decides to restrict ~~limit~~ the supplementary international search in accordance with the second sentence of Rule 45bis.5(b) or with Rule 45bis.5(h), provided that any reference in the said paragraphs to the “international application” shall be construed as a reference to those parts of the international application which relate to the invention specified by the applicant under Rule 45bis.1(d) or which relate to the claims and those parts of the international application for which the Authority will carry out a supplementary international search, respectively.

45bis.7 and 45bis.8 [No change]

45bis.9 *International Searching Authorities Competent to Carry Out Supplementary International Search*⁴

(a) and (b) [No change]

(c) The limitations referred to in paragraph (a) may, for example, include limitations as to the subject matter for which supplementary international searches will be carried out, other than limitations beyond those which would apply under Article 17(2) as applicable by virtue of Rule 45bis.5(c) to the international search, ~~and~~ limitations as to the total number of supplementary international searches which will be carried out in a given period, and limitations to the effect that the supplementary international searches will not extend to any claim beyond a certain number of claims.

⁴ Further drafting changes have been made to Rule 45bis.9(c), beyond the text as agreed by the Working Group (Annex VII, paragraph 6).

Rule 96
The Schedule of Fees

96.1 *Schedule of Fees Annexed to Regulations*

The amounts of the fees referred to in Rules 15, [45bis.2](#) and 57 shall be expressed in Swiss currency. They shall be specified in the Schedule of Fees which is annexed to these Regulations and forms an integral part thereof.*

[Annex II follows]

* The following changes have been made to the text of Rule 96.1 as it appears in document PCT/A/40/2: the incorrect reference to “Rule 45bis” has been replaced by a reference to “Rule 45bis.2”.

ANNEX II

AMENDMENTS OF THE PCT REGULATIONS¹
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¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. A “clean” copy of the proposed amended provisions (without underlining or striking through) appears in Annex VIII.

² For dates of entry into force and transitional arrangements, see paragraph 13 of the main body of this document and Annex VI.

Rule 46
Amendment of Claims before the International Bureau

46.1 to 46.4 [No change]

46.5 *Form of Amendments*

(a) [No change]

(b) The replacement sheet or sheets shall be accompanied by a letter which:

(i) [No change]

(ii) shall identify the claims originally filed which, on account of the amendments, are cancelled;

(iii) shall indicate the basis for the amendments in the application as filed.

Rule 66
Procedure before the International Preliminary Examining Authority

66.1 to 66.7 [No change]

66.8 *Form of Amendments*

(a) Subject to paragraph (b), when amending the description or the drawings, the applicant shall be required to submit a replacement sheet for every sheet of the international application which, on account of an amendment, differs from the sheet previously filed. The replacement sheet or sheets shall be accompanied by a letter which shall draw attention to the differences between the replaced sheets and the replacement sheets, [shall indicate the basis for the amendment in the application as filed](#) and shall preferably also explain the reasons for the amendment.

(b) and (c) [No change]

66.9 [No change]

Rule 70
International Preliminary Report on Patentability
by the International Preliminary Examining Authority
(International Preliminary Examination Report)

70.1 [No change]

70.2 *Basis of the Report*³

(a) to (c) [No change]

(c-bis) If the claims, description or drawings have been amended but the replacement sheet or sheets were not accompanied by a letter indicating the basis for the amendment in the application as filed, as required under Rule 46.5(b)(iii) as applicable by virtue of Rule 66.8(c), or Rule 66.8(a), as applicable, the report may be established as if the amendment had not been made, in which case the report shall so indicate.

(d) and (e) [No change]

70.3 to 70.17 [No change]

[Annex III follows]

³ A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 70.2: new paragraph (c-bis) has been added (Annex VII, paragraph 12).

ANNEX III

AMENDMENTS OF THE PCT REGULATIONS¹
 RELATING TO THE ESTABLISHMENT OF
 EQUIVALENT AMOUNT OF CERTAIN FEES,
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¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. A “clean” copy of the proposed amended provisions (without underlining or striking through) appears in Annex VIII.

² For dates of entry into force and transitional arrangements, see paragraph 14 of the main body of this document and Annex VI.

Rule 15 The International Filing Fee

15.1 [No change]

15.2 *Amount*

(a) [No change]

(b) The international filing fee shall be payable in the currency or one of the currencies prescribed by the receiving Office (“prescribed currency”), ~~it being understood that, when transferred by the receiving Office to the International Bureau, it shall be freely convertible into Swiss currency. The amount of the international filing fee shall be established, for each receiving Office which prescribes the payment of that fee in any currency other than Swiss currency, by the Director General, after consultation with the receiving Office of, or acting under Rule 19.1(b) for, the State whose official currency is the same as the prescribed currency. The amount so established shall be the equivalent, in round figures, of the amount in Swiss currency set out in the Schedule of Fees. It shall be notified by the International Bureau to each receiving Office prescribing payment in that prescribed currency and shall be published in the Gazette.~~

(c) Where the prescribed currency is the Swiss franc, the receiving Office shall promptly transfer the said fee to the International Bureau in Swiss francs. ~~Where the amount of the international filing fee set out in the Schedule of Fees is changed, the corresponding amount in the prescribed currencies shall be applied from the same date as the amount set out in the amended Schedule of Fees.~~

(d) Where the prescribed currency is a currency other than the Swiss franc and that currency:

(i) is freely convertible into Swiss francs, the Director General shall establish, for each receiving Office which prescribes such a currency for the payment of the international filing fee, an equivalent amount of that fee in the prescribed currency according to directives given by the Assembly, and the amount in that currency shall promptly be transferred by the receiving Office to the International Bureau;

(ii) is not freely convertible into Swiss francs, the receiving Office shall be responsible for the conversion of the international filing fee from the prescribed currency into Swiss francs and shall promptly transfer that fee in Swiss francs, in the amount set out in the Schedule of Fees, to the International Bureau. Alternatively, if the receiving Office so wishes, it may convert the international filing fee from the prescribed currency into euros or US dollars and promptly transfer the equivalent amount of that fee in euros or US dollars, as established by the Director General according to directives given by the Assembly as referred to in item (i), to the International Bureau.*

* The following changes have been made to the text of Rule 15.2(d)(ii) as it appears in document PCT/A/40/2: the words “receiving Offices” in the fourth line have been replaced by the words “receiving Office”; the word “Euros” has been replaced with the word “euros” wherever it appears.

[Rule 15.2(d), continued]

~~Where the exchange rate between Swiss currency and any prescribed currency becomes different from the exchange rate last applied, the Director General shall establish the new amount in the prescribed currency according to directives given by the Assembly. The newly established amount shall become applicable two months after the date of its publication in the Gazette, provided that the receiving Office referred to in the second sentence of paragraph (b) and the Director General may agree on a date falling during the said two-month period, in which case the said amount shall become applicable from that date.~~

~~15.3 [Deleted]~~

15.3 ~~15.4~~ *Time Limit for Payment; Amount Payable*

The international filing fee shall be paid to the receiving Office within one month from the date of receipt of the international application. The amount payable shall be the amount applicable on that date of receipt.

~~15.5 [Deleted]~~

15.4 ~~15.6~~ *Refund*

[No change]

Rule 16 The Search Fee

16.1 *Right to Ask for a Fee*

(a) [No change]

(b) The search fee shall be collected by the receiving Office. The said fee shall be payable in the currency ~~or one of the currencies~~ prescribed by that Office (“prescribed receiving Office currency”). ~~it being understood that, if any receiving Office currency is not that, or one of those, in which the International Searching Authority has fixed the said fee (“fixed currency”), it shall, when transferred by the receiving Office to the International Searching Authority, be freely convertible into the currency of the State in which the International Searching Authority has its headquarters (“headquarters currency”). The amount of the search fee in any receiving Office currency, other than the fixed currency, shall be established by the Director General after consultation with the receiving Office of, or acting under Rule 19.1(b) for, the State whose official currency is the same as the receiving Office currency. The amounts so established shall be the equivalents, in round figures, of the amount established by the International Searching Authority in the headquarters currency. They shall be notified by the International Bureau to each receiving Office prescribing payment in that receiving Office currency and shall be published in the Gazette.~~

(c) Where the prescribed currency is the currency in which the International Searching Authority has fixed the said fee (“fixed currency”), the receiving Office shall promptly transfer the said fee to that Authority in that currency. ~~Where the amount of the search fee in the headquarters currency is changed, the corresponding amounts in the receiving Office currencies, other than the fixed currency or currencies, shall be applied from the same date as the changed amount in the headquarters currency.~~

(d) Where the prescribed currency is not the fixed currency and that currency:

(i) is freely convertible into the fixed currency, the Director General shall establish, for each receiving Office which prescribes such a currency for the payment of the search fee, an equivalent amount of that fee in the prescribed currency according to directives given by the Assembly, and the amount in that currency shall promptly be transferred by the receiving Office to the International Searching Authority;

(ii) is not freely convertible into the fixed currency, the receiving Office shall be responsible for the conversion of the search fee from the prescribed currency into the fixed currency and shall promptly transfer that fee in the fixed currency, in the amount fixed by the International Searching Authority, to the International Searching Authority.

~~Where the exchange rate between the headquarters currency and any receiving Office currency, other than the fixed currency or currencies, becomes different from the exchange rate last applied, the Director General shall establish the new amount in the said receiving Office currency according to directives given by the Assembly. The newly established amount shall become applicable two months after its publication in the Gazette, provided that any receiving Office referred to in the third sentence of paragraph (b) and the Director General may agree on a date falling during the said two-month period, in which case the said amount shall become applicable for that Office from that date.~~

[Rule 16.1(d), continued]

(e) Where, in respect of the payment of the search fee in a prescribed ~~receiving-Office~~ currency, other than the fixed currency ~~or currencies~~, the amount actually received under paragraph (d)(i) of this Rule by the International Searching Authority in the prescribed ~~headquarters~~ currency is, when converted by it into the fixed currency, less than that fixed by it, the difference will be paid to the International Searching Authority by the International Bureau, whereas, if the amount actually received is more, the difference will belong to the International Bureau.

(f) As to the time limit for payment of the search fee and the amount payable, the provisions of Rule 15.3 ~~15.4~~ relating to the international filing fee shall apply *mutatis mutandis*.

16.2 and 16.3 [No change]

Rule 16bis
Extension of Time Limits for Payment of Fees

*16bis.1 Invitation by the Receiving Office*³

(a) Where, by the time they are due under Rules 14.1(c), [15.3](#) ~~15.4~~ and 16.1(f), the receiving Office finds that no fees were paid to it, or that the amount paid to it is insufficient to cover the transmittal fee, the international filing fee and the search fee, the receiving Office shall, subject to paragraph (d), invite the applicant to pay to it the amount required to cover those fees, together with, where applicable, the late payment fee under Rule 16bis.2, within a time limit of one month from the date of the invitation.

(b) and (c) [No change]

(d) Any payment received by the receiving Office before that Office sends the invitation under paragraph (a) shall be considered to have been received before the expiration of the time limit under Rule 14.1(c), [15.3](#) ~~15.4~~ or 16.1(f), as the case may be.

(e) [No change]

16bis.2 [No change]

³ A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 16bis.1 (Annex VII, paragraph 22).

Rule 19
The Competent Receiving Office

19.1 to 19.3 [No change]

19.4 *Transmittal to the International Bureau as Receiving Office*

(a) and (b) [No change]

(c) For the purposes of Rules 14.1(c), [15.3](#) ~~15.4~~ and 16.1(f), where the international application was transmitted to the International Bureau under paragraph (b), the date of receipt of the international application shall be considered to be the date on which the international application was actually received by the International Bureau. For the purposes of this paragraph, the last sentence of paragraph (b) shall not apply.

Rule 57
The Handling Fee

57.1 [No change]

57.2 *Amount*

(a) [No change]

(b) ~~[Deleted]~~ The handling fee shall be payable in the currency or one of the currencies prescribed by the International Preliminary Examining Authority (“prescribed currency”).*

(c) Where the prescribed currency is the Swiss franc, the Authority shall promptly transfer the said fee to the International Bureau in Swiss francs.

~~The handling fee shall be payable in the currency or one of the currencies prescribed by the International Preliminary Examining Authority (“prescribed currency”), it being understood that, when transferred by that Authority to the International Bureau, it shall be freely convertible into Swiss currency. The amount of the handling fee shall be established, in each prescribed currency, for each International Preliminary Examining Authority which prescribes the payment of the handling fee in any currency other than Swiss currency, by the Director General after consultation with the Office with which consultation takes place under Rule 15.2(b) in relation to that currency, or, if there is no such Office, with the Authority which prescribes payment in that currency. The amount so established shall be the equivalent, in round figures, of the amount in Swiss currency set out in the Schedule of Fees. It shall be notified by the International Bureau to each International Preliminary Examining Authority prescribing payment in that prescribed currency and shall be published in the Gazette.~~

(d) Where the prescribed currency is a currency other than the Swiss franc and that currency:

(i) is freely convertible into Swiss francs, the Director General shall establish, for each Authority which prescribes such a currency for the payment of the handling fee, an equivalent amount of that fee in the prescribed currency according to directives given by the Assembly, and the amount in that currency shall promptly be transferred by the Authority to the International Bureau;**

* The following changes have been made to the text of Rule 57.2(b) as it appears in document PCT/A/40/2: the words “handling filing fee” have been replaced by the words “handling fee”.

** The following changes have been made to the text of Rule 57.2(d)(i) as it appears in document PCT/A/40/2: the words “handling filing fee” have been replaced by the words “handling fee”, and, at the end of sub-paragraph (i), the words “in the prescribed currency” have been deleted.

(ii) is not freely convertible into Swiss francs, the Authority shall be responsible for the conversion of the handling fee from the prescribed currency into Swiss francs and shall promptly transfer that fee in Swiss francs, in the amount set out in the Schedule of Fees, to the International Bureau. Alternatively, if the Authority so wishes, it may convert the handling fee from the prescribed currency into euros or US dollars and promptly transfer the equivalent amount of that fee in euros or US dollars, as established by the Director General according to directives given by the Assembly as referred to in item (i), to the International Bureau.*

~~Where the amount of the handling fee set out in the Schedule of Fees is changed, the corresponding amounts in the prescribed currencies shall be applied from the same date as the amount set out in the amended Schedule of Fees.~~

* The following changes have been made to the text of Rule 57.2(d)(ii) as it appears in document PCT/A/40/2: the words “the Swiss Franc” have been replaced by the words “Swiss francs”, and the word “Euros” has been replaced by the word “euro” wherever it appears.

[Rule 57.2(d), continued]

(e) ~~[Deleted] Where the exchange rate between Swiss currency and any prescribed currency becomes different from the exchange rate last applied, the Director General shall establish the new amount in the prescribed currency according to directives given by the Assembly. The newly established amount shall become applicable two months after its publication in the Gazette, provided that the interested International Preliminary Examining Authority and the Director General may agree on a date falling during the said two-month period in which case the said amount shall become applicable for that Authority from that date.~~

57.3 [No change]

~~57.4 and 57.5 [Deleted]~~

57.4 ~~57.6~~ *Refund*

[No change]

[Annex IV follows]

ANNEX IV

PROPOSED MODIFICATIONS OF THE DIRECTIVES
OF THE ASSEMBLY RELATING TO THE ESTABLISHMENT
OF EQUIVALENT AMOUNT OF CERTAIN FEES^{1, 2}

The Assembly establishes in the following terms the directives relating to the establishment of equivalent amounts of the international filing fee, the handling fee, the search fee and the supplementary search fee (see ~~referred to in~~ Rules 15.2(d)(i), 16.1(d)(i), 45bis.(3)(b) and 57.2(d)(i)(e)), it being understood that, in the light of experience, the Assembly may at any time modify these directives:

Establishment of Equivalent Amounts

(1) The equivalent amounts of the international filing fee and the handling fee in any currency other than Swiss franc, and of the search fee and the supplementary search fee in any currency other than the fixed currency, shall be established by the Director General, in the case of:

- (i) the international filing fee, after consultation with each receiving Office which prescribes payment of that fee in such currency;
- (ii) the search fee, after consultation with each receiving Office which prescribes payment of that fee in such currency;
- (iii) the handling fee, after consultation with each International Preliminary Examining Authority which prescribes payment of that fee in such currency.

In the case of the international filing fee, the search fee and the handling fee, the equivalent amounts shall be established according to the exchange rates prevailing on the day preceding the day on which the consultations are initiated by the Director General. In the case of the supplementary search fee, the equivalent amounts shall be established according to the exchange rates prevailing on the day on which the Director General receives the notification of the amount of the supplementary search fee or prevailing on the day two months prior to the entry into force of the supplementary search fee, whichever is the later.

(2) The amounts so established shall be the equivalent, in round figures,

- (i) of the amount of the international filing fee and of the handling fee, respectively, in Swiss franc set out in the Schedule of Fees;
- (ii) of the amount of the search fee and the supplementary search fee (if applicable) established by the International Searching Authority in the fixed currency.

¹ For date of entry into force and transitional arrangements, see paragraph 14 of the main body of this document and Annex VI.

² Further drafting changes have been made to the Directives, beyond the text as agreed by the Working Group (Annex VII, paragraph 23).

[Directives, paragraph 2, continued]

They shall be notified by the International Bureau to each receiving Office, International Searching Authority and International Preliminary Examination Authority, as applicable, prescribing payment or establishing fees in the currency concerned and shall be published in the Gazette.*

Establishment of New Equivalent Amounts Consequential on Changes in the Amount of the Fee Concerned

(3) Paragraphs (1) and (2) shall apply *mutatis mutandis* where the amount of the international filing fee, the handling fee, the search fee or the supplementary search fee is changed. The new equivalent amounts in the prescribed currencies shall be applied from the same date as the changed amount of the international filing fee or of the handling fee set out in the amended Schedule of Fees, or from the same date as the changed amount of the search fee or the supplementary search fee in the fixed currency.

Establishment of New Equivalent Amounts Consequential on Changes in Exchange Rates

(4) ~~(1)~~ In the month of October of each year ~~At the time of each ordinary session of the Assembly,~~ the Director General shall, where applicable, ~~after undertake~~ consultations with the Offices or Authorities referred to in paragraph (1), along the lines of the consultations referred to in Rules 15.2(b) and 57.2(e) and shall establish new equivalent amounts of the international filing fee, ~~the and~~ handling fee, ~~the search fee and the supplementary search fee in currencies other than Swiss francs~~ according to the exchange rates prevailing on the first Monday in the month of October applicable on the first day of that session, so that their amounts correspond to the amounts of the fees expressed in Swiss currency. ~~Where such adjustment would only slightly affect the income of the International Bureau, the Director General may decide not to proceed with it.~~ Unless otherwise decided by the Director General Assembly, any adjustment under this paragraph shall enter into force on the first day of the subsequent calendar year ~~subsequent to the ordinary session referred to above.~~

(5) ~~(2)~~ Where, for more than four consecutive Fridays (midday, Geneva time) ~~30 consecutive days,~~ the exchange rate between Swiss franc currency (in the case of the international filing fee and the handling fee) or the fixed currency (in the case of the search fee and the supplementary search fee) and any applicable prescribed ~~other~~ currency is by at least 5% higher, or by at least 5% lower, than the last exchange rate applied,**

~~(i) so far as Rule 15.2(d) is concerned, any receiving Office referred to in the second sentence of Rule 15.2(b) or~~

~~(ii) so far as Rule 57.2(e) is concerned, any receiving Office or International Preliminary Examining Authority referred to in the second sentence of Rule 57.2(e)~~

* The following changes have been made to the text of paragraph 2 as it appears in document PCT/A/40/2: the words “or establishing fees” have been added to the last sentence.

** The following change has been made to the text of paragraph 5 as it appears in document PCT/A/40/2: the figure “4” has been replaced by the word “four”.

[Directives, paragraph 5, continued]

~~may ask~~ the Director General shall, where applicable, after consultations with the Offices or Authorities referred to in paragraph (1), to newly establish the new equivalent amounts of the international filing fee, the search fee, the supplementary search fee and/or the handling fee, as applicable, in that currency according to the exchange rate prevailing on the first Monday following the expiration of the period referred to in the first sentence of this paragraph day ~~preceding the day on which the request is made. The Director General shall proceed accordingly, as provided in Rules 15.2(d) and 57.2(e). The newly established amount shall become applicable two months after the date of its publication in the Gazette, provided that the receiving Offices or the International Preliminary Examining Authorities concerned, as applicable, and the Director General may agree on a date falling during the said two-month period, in which case the said amount shall become applicable from that date.~~

~~(3) [Deleted] Where for more than 30 consecutive days, the exchange rate between Swiss currency and any other currency is by at least 10% higher, or by at least 10% lower, than the last exchange rate applied, the Director General shall,~~

~~(i) so far as Rule 15.2(d) is concerned, after consultation with the receiving Office referred to in the second sentence of Rule 15.2(b) or~~

~~(ii) so far as Rule 57.2(e) is concerned, after consultation with the receiving Office or International Preliminary Examining Authority referred to in the second sentence of Rule 57.2(e)~~

~~and as provided in Rules 15.2(d) and 57.2(e), as the case may be, newly establish the amount of the international filing fee and/or handling fee in that currency according to the exchange rate prevailing on the day preceding the day on which the consultation is initiated by the Director General. Where such adjustment would only slightly affect the income of the International Bureau, the Director General may decide not to proceed with it.~~

~~(4) [Deleted] As far as the international filing fee is concerned, the Director General may decide to apply paragraph (3) as if the percentage referred to in that paragraph was 5%.~~

~~(5) [Deleted] As far as the search fee of any International Searching Authority in any currency other than the currency or currencies fixed by that Authority is concerned, paragraphs (1) to (3) shall, to the extent applicable, apply *mutatis mutandis*, except in the case where the equivalent amount of that fee in Swiss francs is equal to or more than 1,000 Swiss francs, in which case the Director General may decide to apply paragraph (3) as if the percentage referred to in that paragraph was 5%.~~

[Annex V follows]

ANNEX V

PROPOSED AMENDMENTS OF ARTICLE 11 OF THE AGREEMENTS UNDER
PCT ARTICLE 16(3) BETWEEN THE INTERNATIONAL BUREAU AND OFFICES IN
RELATION TO THEIR FUNCTIONING AS INTERNATIONAL SEARCHING AND
PRELIMINARY EXAMINING AUTHORITIES^{16, 17}

**Article 11
Amendment**

(1) [No change]

(2) Without prejudice to paragraph (3), amendments may be made to the Annexes to this Agreement by agreement between the Director General of the World Intellectual Property Organization and the Authority; and, notwithstanding paragraph (4), they shall take effect on the date agreed upon by them.

(3) [No change]

(4) Any amendment notified under paragraph (3) shall take effect on the date specified in the notification, provided that, for any change in the currency or amount ~~increase~~ of fees or charges contained in Annex C, for any addition of new fees or charges, and for any change in the conditions for and the extent of refunds or reductions of fees contained in Annex C, that date is at least two months ~~one month~~ later than the date on which the notification is received by the International Bureau.*

[Annex VI follows]

¹⁶ For dates of entry into force and transitional arrangements, see paragraph 15 of the main body of this document and Annex VI.

¹⁷ Further drafting changes have been made to Article 11, beyond the text as agreed by the Working Group (Annex VII, paragraph 24).

* The following changes have been made to the text of Article 11(4) as it appears in document PCT/A/40/2: the words “and the extent of reductions of fees and charges contained in Annex C” have been replaced by the words “and the extent of refunds or reductions of fees contained in Annex C”.

ANNEX VI

ENTRY INTO FORCE
AND TRANSITIONAL ARRANGEMENTS

1. This Annex sets out draft decisions by the Assembly for dates of entry into force and transitional arrangements in respect of the proposed amendments of the PCT Regulations set out in Annexes I, II and III and of the proposed modifications of the Directives by the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees set out in Annex IV. Furthermore, this Annex sets out a draft recommendation in respect of the proposed inclusion of amended Articles 11(2) and (4) in the applicable agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities.

2. It is proposed that the Assembly adopt the following decisions concerning entry into force and transitional arrangements in respect of the proposed amendments of the Regulations set out in Annexes I, II and III, and in respect of the proposed modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees set out in Annex IV:

“(a) The amendments of the PCT Regulations relating to the supplementary search system (amendments of Rules 45*bis*.1, 45*bis*.2, 45*bis*.3, 45*bis*.5, 45*bis*.6, 45*bis*.9 and 96.1) set out in Annex I shall enter into force on July 1, 2010 and shall apply to any international application, regardless of its international filing date, in respect of a supplementary search request under Rule 45*bis*.1(a) made on or after July 1, 2010.*

“(b) The amendments of the PCT Regulations relating to the form of amendments (amendments of Rules 46.5 and 66.8, and new Rule 70.2(c-*bis*)) set out in Annex II shall enter into force on July 1, 2010 and shall apply to any international application, regardless of its international filing date, in respect of an amendment of the claims, description or drawings made on or after July 1, 2010.*

“(c) The amendments of the PCT Regulations relating to the establishment of equivalent amounts of certain fees (amendments of Rules 15.2, 15.3, 15.4, 15.5, 15.6, 16.1, 16*bis*.1, 19.4, 57.2, 57.4, 57.5 and 57.6) set out in Annex III and the modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees set out in Annex IV:

“(i) shall enter into force on July 1, 2010, and shall apply to the establishment of equivalent amounts which, in accordance with the Regulations and the Directives as in force as of July 1, 2010, are established according to an exchange rate prevailing on, or a date after, July 1, 2010;

“(ii) shall not apply to the establishment of equivalent amounts which, in accordance with the Regulations and the Directives as in force prior to July 1, 2010, are established according to an exchange rate prevailing on a date

* The following changes have been made to the text of paragraphs (a) and (b) as it appears in document PCT/A/40/2: the words “and shall enter into force on July 1, 2010 and” has been added to both paragraphs. In paragraph (c), the word “proposed” has been deleted from in front of the word “modifications”.

prior to July 1, 2010; in respect of the establishment of such equivalent amounts, the Regulations and the Directives as in force prior to July 1, 2010 shall continue to apply until the new equivalent amounts so established become applicable.”

3. It is proposed that the Assembly adopt the following recommendation in respect of the proposed inclusion of amended Articles 11(2) and (4) in the applicable agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities set out in Annex V:

“With regard to the approved inclusion of amended Articles 11(2) and (4) in the applicable agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities set out in Annex V, with effect from a date to be agreed upon by each Authority and the Director General, the Assembly recommends that such amendments should be made to the applicable agreements and should, where possible, become effective on July 1, 2010.”

[Annex VII follows]

ANNEX VII

EXPLANATORY NOTES

1. This Annex sets out more detailed explanations of the amendments of the PCT Regulations, of the modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees and of the amendments of Articles 11(2) and (4) in the applicable agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities proposed in the main body of the document and set out in Annexes I to V. Proposed decisions concerning entry into force and transitional arrangements are set out in Annex VI.

2. Where further drafting changes have been included, beyond the text as agreed by the Working Group, attention is drawn to that fact in a footnote in Annexes I to V, with an explanation, where necessary, in this Annex. Information concerning proposed further drafting changes was posted by the Secretariat on the Working Group's electronic forum on the WIPO website¹ for comments and suggestions by delegations and representatives. The proposals contained in this document take into account the comments and suggestions received.

SUPPLEMENTARY INTERNATIONAL SEARCH

3. See the proposed amendments of Rules 45*bis*.1, 45*bis*.2, 45*bis*.3, 45*bis*.5, 45*bis*.6, 45*bis*.9 and 96.1 set out in Annex I, with the proposed date of entry into force of July 1, 2010, and proposed transitional arrangements set out in Annex VI. Details of consideration of the matter by the Working Group at its second session are set out in document PCT/WG/2/14, paragraphs 156 to 160 (reproduced in Annex II to document PCT/A/40/1).

4. The proposed amendments concern the different types of limitations and conditions an Authority may wish to set in the applicable agreement under Article 16(3)(b) with regard to its preparedness to carry out supplementary searches; the refund of the supplementary search handling fee and the supplementary search fee; and the Schedule of Fees annexed to the Regulations (as far as the supplementary search handling fee, the supplementary search fee and the late payment fee are concerned).

5. It is proposed to amend the Regulations so as to better clarify the different types of limitations and conditions an Authority may wish to set in the applicable agreement under Article 16(3)(b) with regard to its preparedness to carry out supplementary searches. In particular, the provisions should draw a distinction between limitations or conditions that result in the supplementary search being *entirely excluded* (in which case the request for supplementary search will be considered not to have been submitted, no supplementary search report will be established, and the supplementary search fee may be refunded) and those that result in the supplementary search being *restricted to certain claims only* (in which case a supplementary search report will be established, but only in respect of claims not affected by the limitation or condition concerned, and there will be no refund of the supplementary search fee).

¹ www.wipo.int/pct-wg/en/index.html

6. Further drafting changes have been made to Rules 45*bis*.5(g) and 45*bis*.9(c), beyond the text as agreed by the Working Group, so as to clarify that a refund of fees only needed to be made by the International Authority in the case where no search was carried out because of a limitation made in accordance with Rule 45*bis*.9 and not in the case where no search was made because of subject matter which was not searched because it pertained to certain subject matter in accordance with Article 17(2) and Rule 39, as they applied under Rule 45*bis*.5(c).

7. It is proposed to amend Rule 96.1 so as to clarify that the amount of fees referred to in Rule 45*bis* (supplementary search handling fee; supplementary search fee; late payment fee) are to be expressed in Swiss currency and to be set in the Schedule of Fees.

FORM OF AMENDMENTS

8. See the proposed amendments of Rules 46.5 and 66.8, and the proposed addition of new Rule 70.2(c-*bis*), set out in Annex II, with the proposed date of entry into force of July 1, 2010, and proposed transitional arrangements set out in Annex VI. Details of consideration of the matter by the Working Group at its second session are set out in document PCT/WG/2/14, paragraphs 101 to 110 (reproduced in Annex II to document PCT/A/40/1).

9. The proposed amendments concern the filing of amendments of the description, claims or drawings and would oblige applicants, when making amendments, to indicate the basis for those amendments in the application as filed.

10. Where the applicant files amendments to an international application without identifying or indicating where the basis for the amendments can be found in the international application, a considerable amount of effort is required from examiners during the international preliminary examination procedure. In particular, where the basis for the amendments in particularly lengthy applications has not been indicated, the risk of making mistakes when assessing the allowability of the amendments is increased and often may lead to quality deficiencies.

11. It is thus proposed to amend Rules 46.5 and 66.8 so as to oblige applicants, when making amendments, to indicate the basis for those amendments in the international application as filed.

12. A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 70.2. Consequential on the proposed amendments of Rules 46.5 and 66.8, it is proposed to amend Rule 70.2 by adding a new paragraph (c-*bis*) so as to clarify that an International Preliminary Examining Authority would be entitled to establish the international preliminary examination report as if an amendment had not been made where the applicant did not comply with the requirement to indicate the basis for the amendment.

ESTABLISHMENT OF EQUIVALENT AMOUNTS OF CERTAIN FEES

13. See the proposed amendments of Rules 15.2, 15.3, 15.4, 15.5, 15.6, 16.1, 16*bis*.1, 19.4, 57.2, 57.4, 57.5 and 57.6 set out in Annex III, the proposed modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees set out in Annex IV, and the proposed amendments to the Agreements under PCT Article 16(3) between the International Bureau and all International Searching and Preliminary Examining Authorities set out in Annex V, with the proposed date of entry into force of July 1, 2010, and

proposed transitional arrangements set out in Annex VI. Details of consideration of the matters by the Working Group at its second session are set out in document PCT/WG/2/14, paragraphs 130 to 141 (reproduced in Annex II to document PCT/A/40/1).

14. The proposed amendments and modifications concern the procedure of the establishment of equivalent amounts of the search fee, the supplementary search fee, the international filing fee and the handling fee.

15. The establishment of equivalent amounts of the search fee, the supplementary search fee, the international filing fee and the handling fee are governed by the Regulations (see present Rules 15.2, 16.1, 45*bis*.3(b), and 57.2) and, as regards the establishment of new equivalent amounts in the case of changes in the exchange rates between the currency fixed by the International Searching Authority and the prescribed currency (in the case of the search fee), or between the Swiss currency and any prescribed currency (in the case of the international filing fee and of the handling fee), by “Directives” of the Assembly (see present Rules 15.2(d), 16.1(d) and 57.2(d)).

16. In practice, while the establishment of equivalent amounts and the transfer of fees from the receiving Office to the International Searching Authorities and to the International Bureau, and from the International Preliminary Examining Authorities to the International Bureau work fairly well, there are a number of issues which require amendments to the Regulations governing the payment of fees, as well as modifications to the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees and amendments to the agreements under PCT Article 16(3) between the International Bureau and all International Searching and Preliminary Examining Authorities.

17. The wording of present Rules 15.2, 16.1 and 57.2 appears complex and difficult to understand, with duplicative provisions contained in both the Regulations and the Directives of the Assembly. It is thus proposed to greatly simplify the text of the Regulations governing the establishment of equivalent amounts of fees by moving large parts to the Directives of the Assembly.

18. Neither the present Regulations nor the present Directives contain any provisions governing the case that the currency in which the receiving Office prescribes payment of fees is *not* freely convertible into Swiss currency or the currency in which the International Searching Authority has fixed its fees. It is thus proposed to amend Rules 15.2, 16.1 and 57.2 so as to make a clear distinction between: (i) the case where the prescribed currency is Swiss franc (or, as regards the search fee, the currency fixed by the International Searching Authority); (ii) the case where the prescribed currency is a currency different from Swiss franc (respectively, different from the fixed currency) but is freely convertible into Swiss franc (respectively, into the fixed currency); and (iii) the case where the prescribed currency is a currency different from Swiss franc (respectively, the fixed currency) which is *not* freely convertible into Swiss franc (respectively, the fixed currency).

19. Neither the present Regulations nor the present Directives contain any provisions governing the establishment of new equivalent amounts where the amount of the fee concerned changes (the present provisions only deal with the establishment of new equivalent amounts as a result of changes in the exchange rates). It is thus proposed to modify the Directives accordingly. In this context, it is also proposed to amend the Agreements between the International Bureau with all International Searching and Preliminary Examining Authorities so as to provide for a longer period of time for the International Bureau for

implementation (notably, for the establishment of new equivalent amounts) where an Authority notifies the International Bureau of a change in the amount of the fees and charges, or of changes in the conditions for and the extent of reductions thereof.

20. The present arrangements for the regular adaptation of the equivalent amounts to up-to-date exchange rates (outside of the procedure governing strong fluctuations of exchange rates, see below) appear not flexible enough, noting that they only provide for a biennial review cycle (“at the time of each *ordinary* session of the Assembly”). So as to be able to set new equivalent amounts which more accurately reflect developments in exchange rates more frequently, it is proposed to modify the Directives so as to move to a yearly review cycle.

21. Moreover, the present arrangements governing adaptation of the equivalent amounts where there are strong fluctuations of exchange rates appear not flexible enough. Under the present arrangements, in order to be able to establish new equivalent amounts, the exchange rate concerned must be for at least “30 consecutive days” 5% (in some cases, even 10%, see below) higher or lower than the exchange rate last applied, which requires a daily monitoring of all exchange rates between the various currencies. Once the 5% (or 10%) higher or lower criterion has been fulfilled on a given day and the 30-day period has begun, if on only one subsequent day prior to the 30th day the exchange rate does not fulfill this criterion, the 30-day period begins anew. In order to simplify procedures, it is proposed to modify the Directives so as to change the present “30 consecutive days” period to “4 consecutive Fridays. In addition, it is proposed to apply the 5% criterion to all fees concerned (international filing fee, search fee, supplementary search fee and handling fee). In this context, it is to be noted that, in accordance with paragraphs 4 and 5 of the Directives as currently in force, it has already been the practice of the Director General in the past to apply the 5% criterion to the international filing fee and the search fee.

22. A further drafting change, beyond the amendments of the Regulations agreed by the Working Group, has been made to Rule 16*bis*.1. Consequential on the proposed renumbering of Rule 15.4 to become Rule 15.3, it is proposed to amend Rule 16*bis*.1(a) and (d) by replacing the reference to “Rule 15.4” with a reference to “Rule 15.3”.

23. Further drafting changes have been made to the Directives, beyond the text as agreed by the Working Group. The text now also covers equivalent amounts for the supplementary search fee. In addition, paragraph 1(ii) has been further amended and now no longer requires consultation with the International Searching Authority, the interests of that Authority being sufficiently covered by proposed Rule 16.1(e), in the same way as at present.

24. Further drafting changes have been made to Article 11(2) of the agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities so as to clarify that, if so agreed between the Director General and the Authority, any change in the currency or amount of fees and charges may take effect earlier than two months from the date on which an Authority has notified the Director General of any such change (see Article 11(4)).

[Annex VIII follows]

ANNEX VIII

PROPOSED AMENDMENTS OF THE PCT REGULATIONS;

PROPOSED MODIFICATIONS OF THE DIRECTIVES OF THE ASSEMBLY RELATING
TO THE ESTABLISHMENT OF EQUIVALENT AMOUNT OF CERTAIN FEES

PROPOSED AMENDMENTS OF PCT ARTICLE 16(3) AGREEMENTS

(clean text)

Proposed amendments of the PCT Regulations, proposed modifications of the Directives of the Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees, and proposed amendments of Article 11 of the agreements under PCT Article 16(3) between the International Bureau and Offices in relation to their functioning as International Searching and Preliminary Examining Authorities are set out in Annexes I to V, in which additions and deletions are shown, respectively, by underlining and striking-through of the text concerned. This Annex contains, for convenient reference, a “clean” text of the relevant provisions as they would stand after amendment and modification, respectively.

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Rule 15
The International Filing Fee

15.1 [No change]

15.2 *Amount*

(a) [No change]

(b) The international filing fee shall be payable in the currency or one of the currencies prescribed by the receiving Office (“prescribed currency”).

(c) Where the prescribed currency is the Swiss franc, the receiving Office shall promptly transfer the said fee to the International Bureau in Swiss francs.

(d) Where the prescribed currency is a currency other than the Swiss franc and that currency:

(i) is freely convertible into Swiss francs, the Director General shall establish, for each receiving Office which prescribes such a currency for the payment of the international filing fee, an equivalent amount of that fee in the prescribed currency according to directives given by the Assembly, and the amount in that currency shall promptly be transferred by the receiving Office to the International Bureau;

(ii) is not freely convertible into Swiss francs, the receiving Office shall be responsible for the conversion of the international filing fee from the prescribed currency into Swiss francs and shall promptly transfer that fee in Swiss francs, in the amount set out in the Schedule of Fees, to the International Bureau. Alternatively, if the receiving Office so wishes, it may convert the international filing fee from the prescribed currency into euros or US dollars and promptly transfer the equivalent amount of that fee in euros or US dollars, as established by the Director General according to directives given by the Assembly as referred to in item (i), to the International Bureau.

15.3 *Time Limit for Payment; Amount Payable*

The international filing fee shall be paid to the receiving Office within one month from the date of receipt of the international application. The amount payable shall be the amount applicable on that date of receipt.

15.4 *Refund*

[No change]

Rule 16
The Search Fee

16.1 *Right to Ask for a Fee*

(a) [No change]

(b) The search fee shall be collected by the receiving Office. The said fee shall be payable in the currency prescribed by that Office (“prescribed currency”),

(c) Where the prescribed currency is the currency in which the International Searching Authority has fixed the said fee (“fixed currency”), the receiving Office shall promptly transfer the said fee to that Authority in that currency.

(d) Where the prescribed currency is not the fixed currency and that currency:

(i) is freely convertible into the fixed currency, the Director General shall establish, for each receiving Office which prescribes such a currency for the payment of the search fee, an equivalent amount of that fee in the prescribed currency according to directives given by the Assembly, and the amount in that currency shall promptly be transferred by the receiving Office to the International Searching Authority;

(ii) is not freely convertible into the fixed currency, the receiving Office shall be responsible for the conversion of the search fee from the prescribed currency into the fixed currency and shall promptly transfer that fee in the fixed currency, in the amount fixed by the International Searching Authority, to the International Searching Authority.

(e) Where, in respect of the payment of the search fee in a prescribed currency, other than the fixed currency, the amount actually received under paragraph (d)(i) of this Rule by the International Searching Authority in the prescribed currency is, when converted by it into the fixed currency, less than that fixed by it, the difference will be paid to the International Searching Authority by the International Bureau, whereas, if the amount actually received is more, the difference will belong to the International Bureau.

(f) As to the time limit for payment of the search fee and the amount payable, the provisions of Rule 15.3 relating to the international filing fee shall apply *mutatis mutandis*.

16.2 and 16.3 [No change]

Rule 16bis
Extension of Time Limits for Payment of Fees

16bis.1 Invitation by the Receiving Office

(a) Where, by the time they are due under Rules 14.1(c), 15.3 and 16.1(f), the receiving Office finds that no fees were paid to it, or that the amount paid to it is insufficient to cover the transmittal fee, the international filing fee and the search fee, the receiving Office shall, subject to paragraph (d), invite the applicant to pay to it the amount required to cover those fees, together with, where applicable, the late payment fee under Rule 16bis.2, within a time limit of one month from the date of the invitation.

(b) and (c) [No change]

(d) Any payment received by the receiving Office before that Office sends the invitation under paragraph (a) shall be considered to have been received before the expiration of the time limit under Rule 14.1(c), 15.3 or 16.1(f), as the case may be.

(e) [No change]

16bis.2 [No change]

Rule 19
The Competent Receiving Office

19.1 to 19.3 [No change]

19.4 *Transmittal to the International Bureau as Receiving Office*

(a) and (b) [No change]

(c) For the purposes of Rules 14.1(c), 15.3 and 16.1(f), where the international application was transmitted to the International Bureau under paragraph (b), the date of receipt of the international application shall be considered to be the date on which the international application was actually received by the International Bureau. For the purposes of this paragraph, the last sentence of paragraph (b) shall not apply.

Rule 45bis
Supplementary International Searches

45bis.1 Supplementary Search Request

(a) to (c) [No change]

(d) Where the International Searching Authority has found that the international application does not comply with the requirement of unity of invention, the supplementary search request may contain an indication of the wish of the applicant to restrict the supplementary international search to one of the inventions as identified by the International Searching Authority other than the main invention referred to in Article 17(3)(a).

(e) [No change]

45bis.2 Supplementary Search Handling Fee

(a) to (c) [No change]

(d) The International Bureau shall refund the supplementary search handling fee to the applicant if, before the documents referred to in Rule 45bis.4(e)(i) to (iv) are transmitted to the Authority specified for supplementary search, the international application is withdrawn or considered withdrawn, or the supplementary search request is withdrawn or is considered not to have been submitted under Rule 45bis.1(e).

45bis.3 Supplementary Search Fee

(a) to (c) [No change]

(d) The International Bureau shall refund the supplementary search fee to the applicant if, before the documents referred to in Rule 45bis.4(e)(i) to (iv) are transmitted to the Authority specified for supplementary search, the international application is withdrawn or considered withdrawn, or the supplementary search request is withdrawn or is considered not to have been submitted under Rules 45bis.1(e) or 45bis.4(d).

(e) The Authority specified for supplementary search shall, to the extent and under the conditions provided for in the applicable agreement under Article 16(3)(b), refund the supplementary search fee if, before it has started the supplementary international search in accordance with Rule 45bis.5(a), the supplementary search request is considered not to have been submitted under Rule 45bis.5(g).

45bis.4 Checking of Supplementary Search Request; Correction of Defects; Late Payment of Fees; Transmittal to Authority Specified for Supplementary Search

(a) to (c) [No change]

(d) [No change] If the applicant does not furnish the required correction or does not pay the amount in full of the fees due, including the late payment fee, before the expiration of the time limit applicable under paragraph (a) or (b), respectively, the supplementary search request shall be considered not to have been submitted and the International Bureau shall so declare and shall inform the applicant accordingly.

[Rule 45bis.4, continued]

(e) and (f) [No change]

45bis.5 Start, Basis and Scope of Supplementary International Search

(a) [No change]

(b) The supplementary international search shall be carried out on the basis of the international application as filed or of a translation referred to in Rule 45bis.1(b)(iii) or 45bis.1(c)(i), taking due account of the international search report and the written opinion established under Rule 43bis.1 where they are available to the Authority specified for supplementary search before it starts the search. Where the supplementary search request contains an indication under Rule 45bis.1(d), the supplementary international search may be restricted to the invention specified by the applicant under Rule 45bis.1(d) and those parts of the international application which relate to that invention.

(c) to (f) [No change]

(g) If the Authority specified for supplementary search finds that carrying out the search is entirely excluded by a limitation or condition referred to in Rule 45bis.9(a), other than a limitation under Article 17(2) as applicable by virtue of Rule 45bis.5(c), the supplementary search request shall be considered not to have been submitted, and the Authority shall so declare and shall promptly notify the applicant and the International Bureau accordingly.

(h) The Authority specified for supplementary search may, in accordance with a limitation or condition referred to in Rule 45bis.9(a), decide to restrict the search to certain claims only, in which case the supplementary international search report shall so indicate.

45bis.6 Unity of Invention

(a) to (e) [No change]

(f) Paragraphs (a) to (e) shall apply mutatis mutandis where the Authority specified for supplementary search decides to restrict the supplementary international search in accordance with the second sentence of Rule 45bis.5(b) or with Rule 45bis.5(h), provided that any reference in the said paragraphs to the “international application” shall be construed as a reference to those parts of the international application which relate to the invention specified by the applicant under Rule 45bis.1(d) or which relate to the claims and those parts of the international application for which the Authority will carry out a supplementary international search, respectively.

45bis.7 and 45bis.8 [No change]

45bis.9 International Searching Authorities Competent to Carry Out Supplementary International Search

(a) and (b) [No change]

(c) The limitations referred to in paragraph (a) may, for example, include limitations as to the subject matter for which supplementary international searches will be carried out, other than limitations under Article 17(2) as applicable by virtue of Rule 45bis.5(c), limitations as to the total number of supplementary international searches which will be carried out in a given period, and limitations to the effect that the supplementary international searches will not extend to any claim beyond a certain number of claims.

Rule 46
Amendment of Claims before the International Bureau

46.1 to 46.4 [No change]

46.5 *Form of Amendments*

(a) [No change]

(b) The replacement sheet or sheets shall be accompanied by a letter which:

(i) [No change]

(ii) shall identify the claims originally filed which, on account of the amendments, are cancelled;

(iii) shall indicate the basis for the amendments in the application as filed.

Rule 57
The Handling Fee

57.1 [No change]

57.2 *Amount*

(a) [No change]

(b) The handling fee shall be payable in the currency or one of the currencies prescribed by the International Preliminary Examining Authority (“prescribed currency”).

(c) Where the prescribed currency is the Swiss franc, the Authority shall promptly transfer the said fee to the International Bureau in Swiss francs.

(d) Where the prescribed currency is a currency other than the Swiss franc and that currency:

(i) is freely convertible into Swiss francs, the Director General shall establish, for each Authority which prescribes such a currency for the payment of the handling fee, an equivalent amount of that fee in the prescribed currency according to directives given by the Assembly, and the amount in that currency shall promptly be transferred by the Authority to the International Bureau;

(ii) is not freely convertible into Swiss francs, the Authority shall be responsible for the conversion of the handling fee from the prescribed currency into Swiss francs and shall promptly transfer that fee in Swiss francs, in the amount set out in the Schedule of Fees, to the International Bureau. Alternatively, if the Authority so wishes, it may convert the handling fee from the prescribed currency into euros or US dollars and promptly transfer the equivalent amount of that fee in euros or US dollars, as established by the Director General according to directives given by the Assembly as referred to in item (i), to the International Bureau.

57.3 [No change]

57.4 *Refund*

[No change]

Rule 66
Procedure before the International Preliminary Examining Authority

66.1 to 66.7 [No change]

66.8 *Form of Amendments*

(a) Subject to paragraph (b), when amending the description or the drawings, the applicant shall be required to submit a replacement sheet for every sheet of the international application which, on account of an amendment, differs from the sheet previously filed. The replacement sheet or sheets shall be accompanied by a letter which shall draw attention to the differences between the replaced sheets and the replacement sheets, shall indicate the basis for the amendment in the application as filed and shall preferably also explain the reasons for the amendment.

(b) and (c) [No change]

66.9 [No change]

Rule 70
International Preliminary Report on Patentability
by the International Preliminary Examining Authority
(International Preliminary Examination Report)

70.1 [No change]

70.2 *Basis of the Report*

(a) to (c) [No change]

(c-*bis*) If the claims, description or drawings have been amended but the replacement sheet or sheets were not accompanied by a letter indicating the basis for the amendment in the application as filed, as required under Rule 46.5(b)(iii) as applicable by virtue of Rule 66.8(c), or Rule 66.8(a), as applicable, the report may be established as if the amendment had not been made, in which case the report shall so indicate.

(d) and (e) [No change]

70.3 to 70.17 [No change]

Rule 96
The Schedule of Fees

96.1 *Schedule of Fees Annexed to Regulations*

The amounts of the fees referred to in Rules 15, 45*bis*.2 and 57 shall be expressed in Swiss currency. They shall be specified in the Schedule of Fees which is annexed to these Regulations and forms an integral part thereof.

DIRECTIVES OF THE ASSEMBLY RELATING TO
THE ESTABLISHMENT OF EQUIVALENT AMOUNT OF CERTAIN FEES

The Assembly establishes in the following terms the directives relating to the establishment of equivalent amounts of the international filing fee, the handling fee, the search fee and the supplementary search fee (see Rules 15.2(d)(i), 16.1(d)(i), 45*bis*.(3)(b) and 57.2(d)(i)), it being understood that, in the light of experience, the Assembly may at any time modify these directives:

Establishment of Equivalent Amounts

(1) The equivalent amounts of the international filing fee and the handling fee in any currency other than Swiss franc, and of the search fee and the supplementary search fee in any currency other than the fixed currency, shall be established by the Director General, in the case of:

- (i) the international filing fee, after consultation with each receiving Office which prescribes payment of that fee in such currency;
- (ii) the search fee, after consultation with each receiving Office which prescribes payment of that fee in such currency;
- (iii) the handling fee, after consultation with each International Preliminary Examining Authority which prescribes payment of that fee in such currency.

In the case of the international filing fee, the search fee and the handling fee, the equivalent amounts shall be established according to the exchange rates prevailing on the day preceding the day on which the consultations are initiated by the Director General. In the case of the supplementary search fee, the equivalent amounts shall be established according to the exchange rates prevailing on the day on which the Director General receives the notification of the amount of the supplementary search fee or prevailing on the day two months prior to the entry into force of the supplementary search fee, whichever is the later.

- (2) The amounts so established shall be the equivalent, in round figures,
- (i) of the amount of the international filing fee and of the handling fee, respectively, in Swiss franc set out in the Schedule of Fees;
 - (ii) of the amount of the search fee and the supplementary search fee (if applicable) established by the International Searching Authority in the fixed currency.

[Directives, paragraph 2, continued]

They shall be notified by the International Bureau to each receiving Office, International Searching Authority and International Preliminary Examination Authority, as applicable, prescribing payment or establishing fees in the currency concerned and shall be published in the Gazette.

Establishment of New Equivalent Amounts Consequential on Changes in the Amount of the Fee Concerned

(3) Paragraphs (1) and (2) shall apply mutatis mutandis where the amount of the international filing fee, the handling fee, the search fee or the supplementary search fee is changed. The new equivalent amounts in the prescribed currencies shall be applied from the same date as the changed amount of the international filing fee or of the handling fee set out in the amended Schedule of Fees, or from the same date as the changed amount of the search fee or the supplementary search fee in the fixed currency.

Establishment of New Equivalent Amounts Consequential on Changes in Exchange Rates

(4) In the month of October of each year, the Director General shall, where applicable, after consultations with the Offices or Authorities referred to in paragraph (1), establish new equivalent amounts of the international filing fee, the handling fee, the search fee and the supplementary search fee according to the exchange rates prevailing on the first Monday in the month of October. Unless otherwise decided by the Director General, any adjustment under this paragraph shall enter into force on the first day of the subsequent calendar year.

(5) Where, for more than four consecutive Fridays (midday, Geneva time), the exchange rate between Swiss franc (in the case of the international filing fee and the handling fee) or the fixed currency (in the case of the search fee and the supplementary search fee) and any applicable prescribed currency is by at least 5% higher, or by at least 5% lower, than the last exchange rate applied, the Director General shall, where applicable, after consultations with the Offices or Authorities referred to in paragraph (1), establish new equivalent amounts of the international filing fee, the search fee, the supplementary search fee and/or the handling fee, as applicable, according to the exchange rate prevailing on the first Monday following the expiration of the period referred to in the first sentence of this paragraph. The newly established amount shall become applicable two months after the date of its publication in the Gazette, provided that the receiving Offices or the International Preliminary Examining Authorities concerned, as applicable, and the Director General may agree on a date falling during the said two-month period, in which case the said amount shall become applicable from that date.

ARTICLE 11 OF THE AGREEMENTS UNDER PCT ARTICLE 16(3)
BETWEEN THE INTERNATIONAL BUREAU AND OFFICES
IN RELATION TO THEIR FUNCTIONING AS INTERNATIONAL SEARCHING AND
PRELIMINARY EXAMINING AUTHORITIES

Article 11
Amendment

(1) [No change]

(2) Without prejudice to paragraph (3), amendments may be made to the Annexes to this Agreement by agreement between the Director General of the World Intellectual Property Organization and the Authority; and, notwithstanding paragraph (4), they shall take effect on the date agreed upon by them.

(3) [No change]

(4) Any amendment notified under paragraph (3) shall take effect on the date specified in the notification, provided that, for any change in the currency or amount of fees or charges contained in Annex C, for any addition of new fees or charges, and for any change in the conditions for and the extent of refunds or reductions of fees contained in Annex C, that date is at least two months later than the date on which the notification is received by the International Bureau.

[End of Annex VIII and of document]