

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

**PATENT LAW TREATY
(PLT)****ASSEMBLY****First (1st Ordinary) Session
Geneva, September 26 to October 5, 2005**

RULES OF PROCEDURE

Document prepared by the International Bureau

1. The Patent Law Treaty (PLT) came into force on April 28, 2005, having received the required number of ten ratifications or accessions. The present document contains information and proposals on procedural questions relative to the inaugural session of the Patent Law Treaty Assembly (herein the “PLT Assembly”). It is proposed that the PLT Assembly adopt rules of procedure, elect officers, and consider its future work during this session (see document PLT/A/1/3). It is also suggested that the PLT Assembly, at its first session, decide on the applicability of the amendments and modifications of the Patent Cooperation Treaty (PCT) to the PLT (see document PLT/A/1/2).

General Rules of Procedure

2. PLT Article 17(7) states:

“Assembly

...

“(7) [Rules of Procedure] The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions.”

3. It is proposed that, in order to fulfill this obligation, the PLT Assembly adopt as its own Rules of Procedure the *WIPO General Rules of Procedure* (WIPO publication number 399(FE) Rev. 3), as has every other body within WIPO, amended by the introduction of the Special Rules detailed below.

Special Rules

4. Being among the most recent expressions of the will of the Member States of WIPO with respect to international legal instruments, the PLT contains certain provisions which depart from practices in other prior WIPO treaties and conventions. As a consequence, it is necessary to consider certain Special Rules to the *WIPO General Rules of Procedure*.

5. Amendment of the *WIPO General Rules of Procedure* is expressly envisaged by those Rules themselves¹.

(a) Delegations

6. The *WIPO General Rules of Procedure* specify that delegations are comprised of only Member States². The *WIPO General Rules of Procedure* also specify that intergovernmental organizations shall be observers³.

7. Notwithstanding the foregoing, the PLT defines the status of certain intergovernmental organizations within the context of the PLT Assembly. That status differs from the observer status which the *WIPO General Rules of Procedure* give to intergovernmental organizations. In that regard, PLT Article 20(1) to (3) states that:

“Becoming Party to the Treaty

“(1) [State] Any State which is party to the Paris Convention or which is a member of the Organization, and in respect of which patents may be granted, either through the State’s own Office or through the Office of another State or intergovernmental organization, may become party to this Treaty.

“(2) [Intergovernmental Organizations] Any intergovernmental organization may become party to this Treaty if at least one member State of that intergovernmental organization is party to the Paris Convention or a member of the Organization, and the intergovernmental organization declares that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty, and declares that:

(i) it is competent to grant patents with effect for its member States; or

(ii) it is competent in respect of, and has its own legislation binding on all its member States concerning, matters covered by this Treaty, and it has, or has charged, a regional Office for the purpose of granting patents with effect in its territory in accordance with that legislation.

Subject to paragraph (3), any such declaration shall be made at the time of the deposit of the instrument of ratification or accession.

“(3) [Regional Patent Organizations] The European Patent Organisation, the Eurasian Patent Organization and the African Regional Industrial Property Organization, having made the declaration referred to in paragraph (2)(i) or (ii) in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty as an intergovernmental organization, if it declares, at the time of the deposit of the instrument of ratification or accession that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.”

...

8. Rule 7 of the *WIPO General Rules of Procedure* should therefore be replaced by a Special Rule ensuring that the definition of “Delegations” is expanded to include those intergovernmental organizations which will become Contracting Parties in accordance with Article 20(2) or (3) of the PLT:

Rule 7: Delegations

(1) Each State member of a body shall be represented by one or more delegates, who may be assisted by alternates, advisors, and experts.

(2) Any intergovernmental organization which becomes a party to the PLT in accordance with Article 20(2) or (3) of that Treaty shall be deemed a delegation, and shall enjoy, in the Assembly, the same rights as a State delegation, in accordance with the provisions of these rules.

(3) Each delegation shall have a head of delegation.

(4) Any alternate, advisor or expert may act as delegate by orders of the head of his delegation.

(5) Each delegate or alternate shall be accredited by the competent authority of the State or intergovernmental organization which he represents. The Director General shall be notified of the appointment of delegates and alternates in writing, issuing preferably from the Ministry of Foreign Affairs, or the competent authority of the intergovernmental organization.

(b) Voting

9. The *WIPO General Rules of Procedure* specify that only delegations may vote:

“Rule 25: Voting

“Proposals and amendments submitted by a delegation shall be put to the vote only if they are supported by at least one other delegation.

“Rule 39: Observers

“Observers shall not have the right to vote.”

10. However, PLT Article 17(4)(b)(ii) states:

“Assembly

...

“(ii) any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of another such intergovernmental organization and that other intergovernmental organization participates in that vote.”

...

11. In view of the PLT provisions allowing certain intergovernmental organizations to become parties, to be delegations, and to vote in the PLT Assembly, it is proposed to replace Rule 25 of the *WIPO General Rules of Procedure*, with the following Special Rule:

Rule 25: Voting

(1) Proposals and amendments submitted by a delegation shall be put to the vote only if they are supported by at least one other delegation.

(2) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa. In addition, no such intergovernmental organization shall participate in the vote if any one of its Member States party to this Treaty is a Member State of another such intergovernmental organization and that other intergovernmental organization participates in that vote.

12. The PLT Assembly is invited to consider and adopt, as its own Rules of Procedure, the WIPO General Rules of Procedure referred to in paragraph 3 above, as amended in paragraphs 8 and 11 above.

[End of document]

¹ “Rule 56: Amendment of General Rules of Procedure

“(1) These General Rules of Procedure may be amended, as far as each body which has adopted them is concerned, by a decision of that body, provided that the said decision is taken as far as possible in joint meeting and that the said body accepts the amendment according to the procedure laid down for amendment of its own rules of procedure.

“(2) Any amendment to these General Rules of Procedure shall enter into force for each body which has adopted these General Rules of Procedure when that body has accepted the amendment.”

[Endnote continued from previous page]

² “Rule 7: Delegations

“(1) Each State member of a body shall be represented by one or more delegates, who may be assisted by alternates, advisors, and experts [...].”

³ “Rule 8: Observers

“(1) The Director General shall invite such States and intergovernmental organizations to be represented by observers as are entitled to observer status under a treaty or agreement.”