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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

PCT COMMITTEE
FOR ADMINISTRATIVE AND LEGAL MATTERS

Seventh Session
Geneva, November 29 to December 3, 1999

REPORT

adopted by the Committee

INTRODUCTION

1. The seventh session of the PCT Committee for Administrative and Legal Matters (hereinafter referred to as "the Committee") was held in Geneva from November 29 to December 3, 1999.

2. The following members of the Committee were represented at the session: (i) the following 87 States, members of the International Patent Cooperation Union (PCT Union): Armenia, Australia, Austria, Azerbaijan, Barbados, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, China, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominica, Estonia, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Hungary, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Kyrgyzstan, Latvia, Lesotho, Liberia, Lithuania, Madagascar, Malawi, Mali, Mauritania, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Niger, Norway, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Sierra Leone, Slovakia, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, The Former Yugoslav Republic of Macedonia, Togo, Turkey, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of

America, Uzbekistan, Viet Nam, Zimbabwe; (ii) the European Patent Office in its capacity as International Searching and Preliminary Examining Authority.

3. The following eight States, members of the International Union for the Protection of Industrial Property (Paris Union), participated in the session as observers: Argentina, Burundi, Colombia, Ecuador, Iraq, Mauritius, Philippines, Zambia.

4. The following intergovernmental organization was represented by an observer: Interstate Council on the Protection of Industrial Property (ICPIP).

5. The following three international non-governmental organizations were represented by observers: International Association for the Protection of Industrial Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), Union of European Practitioners in Industrial Property (UEPIP).

6. The following three national non-governmental organizations were represented by observers: American Bar Association (Section of Intellectual Property Law) (ABA), American Intellectual Property Law Association (AIPLA), Japan Patent Attorneys Association (JPAA)

7. The list of participants is contained in Annex I to this report.

OPENING OF THE SESSION

8. Mr. François Curchod (Deputy Director General, WIPO) opened the session and welcomed the participants.

ELECTION OF A CHAIR AND TWO VICE-CHAIRS

9. The session unanimously elected Mr. Alan Troicuk (Canada) as Chair and Mrs. Elizabeth Owiredu-Gyampoh (Ghana) and Mr. Valeriy Petrov (Ukraine) as Vice-Chairs.

ADOPTION OF THE AGENDA

10. The Committee adopted for its session the agenda appearing in Annex II to this report.

PROPOSED AMENDMENTS OF THE PCT REGULATIONS AND MODIFICATIONS OF THE PCT ADMINISTRATIVE INSTRUCTIONS, RELATING TO THE DRAFT PATENT LAW TREATY¹

11. Discussion was based on the proposals by the International Bureau as set out in document PCT/CAL/7/2, and proposals of the European Patent Office (documents PCT/CAL/7/3 and 4) and Madagascar (document PCT/CAL/7/5). In addition, the Committee took into account the text of the basic proposal to be submitted to the PLT Diplomatic Conference to be held in Geneva from May 11 to June 2, 2000 (documents PT/DC/3 and 4). Furthermore, the Committee noted the International Bureau's proposal that the PCT Assembly meet in Geneva from March 13 to 17, 2000, to consider adoption of the proposed amendments of the PCT Regulations.

12. The Delegation of France expressed its concern that the proposed amendments of the PCT Regulations discussed by this Committee were foreseen to be adopted by the PCT Assembly in March 2000, that is, before the scheduled adoption of the PLT by the Diplomatic Conference in May 2000. The Delegation wondered whether it would not be better to postpone the final adoption of the amendments until the September 2000 session of the PCT Assembly in order to avoid that participants at the PLT Diplomatic Conference would be bound by decisions taken by the PCT Assembly.

13. In reply to the Delegation of France, the International Bureau explained that this order of events had been chosen since the Draft Patent Law Treaty contained references to the PCT and Delegates at the Diplomatic Conference would need to know the precise content of the PCT before adopting the Patent Law Treaty. In addition, since any amendments adopted by the PCT Assembly in March 2000 would be unlikely to enter into force before January 2001 at the earliest, there would be time, if during the course of the PLT Diplomatic Conference it should become apparent that further changes to the amended Rules were required, to adopt them at the September 2000 session of the PCT Assembly.

14. The proposed amendments of the Regulations and proposed modifications of the Administrative Instructions set out in Annexes III and IV to this report were approved by the Committee with a view to their submission to the Assembly of the PCT Union in March 2000, subject to the comments and clarifications appearing in the following paragraphs and to possible further drafting changes to be made by the International Bureau.

15. In response to a question by the Delegation of Cameroon, it was pointed out that the proposed amendments were not final in nature, and that any delegation was free to make further proposals to the Assembly, preferably in advance of the Assembly's meeting.

¹ References in this document to "Articles," "Rules" and "Sections" are, respectively, to those of the Patent Cooperation Treaty (PCT), of the Regulations under the PCT ("the Regulations") and of the Administrative Instructions under the PCT ("the Administrative Instructions"), or to such provisions as proposed to be amended or added, as the case may be. References to "draft PLT Articles" and "draft PLT Rules" are, respectively, to those of the draft Patent Law Treaty (PLT) contained in the basic proposal for submission to the PLT Diplomatic Conference (document PT/DC/3) and of the draft Regulations under the Patent Law Treaty ("draft PLT Regulations") contained in the basic proposal (document PT/DC/4). Any reference to "national" law, "national" applications, "national" Offices, etc., is to be construed as also including a reference to regional law, regional applications, regional Offices, etc.

16. The Delegation of the European Patent Office, noting that the subject matter itself was often rather complex, emphasized the need to avoid complexity in drafting amendments of the Regulations. The International Bureau expressed its agreement with that view, noting that the need for the Regulations to be aligned with and take account of a multiplicity of differing national laws often made it difficult to avoid some complexity of expression when attempting to simplify procedures. The Delegation of Gambia pointed out that, while more concise language was often preferable, additional words might in some cases make the provisions in question easier to comprehend even if those words were not strictly necessary.

Rules 4.1(c) and 51bis.1(a-bis) and (a-ter)

17. The Committee noted that designated Offices would be free to accept a declaration which did not conform to the standardized wording set out in the Administrative Instructions pursuant to Rules 4.17 to 4.19. The Committee also noted that a designated Office need not accept the substance of the matters contained in a declaration merely because the declaration conformed to that standardized wording. While the Committee agreed that there was no need for a Rule expressly dealing with those understandings, it would be desirable for them to be reflected in the report of the Assembly when adopting the proposed amendments.

18. The Delegation of the Russian Federation suggested the addition in Rule 4.1(c) of a new item (iv) giving applicants the opportunity to furnish documents in support of declarations made under Rule 4.1(c)(iii). Such documents could be communicated by the International Bureau to designated Offices upon request. The Delegation pointed out that, with future automation and particularly in the framework of WIPONET, the International Bureau would be able to handle such documents in electronic form. Several delegations supported the general concept of the proposal. The Representative of FICPI indicated that PCT users would like to see a central recordal system for evidence of various kinds which could be called upon by designated Offices.

19. The International Bureau indicated that it would be willing to consider the possibility of this and other kinds of additional communications when PCT procedures had been fully automated, but in the meantime it would not be in a position to undertake such a task. Such matters could be implemented by way of the Administrative Instructions in the context of the implementation of electronic filing and processing of international applications (see Rules 89*bis* and 89*ter*). The Chair noted that the matter was not one which needed to be resolved in the immediate context of the coming PLT Diplomatic Conference.

Rules 4.17 to 4.19

20. The Committee agreed, as proposed by the Delegation of the European Patent Office (see document PCT/CAL/7/3), that the provisions establishing the standardized wording of declarations under proposed Rule 4.17(a) to (c) should appear in the Administrative Instructions rather than the Regulations themselves. This would simplify the Regulations and retain more flexibility for future amendment, if necessary, as to the precise wording of the declarations. It was noted that the wording of declarations under proposed Rules 4.18 and 4.19 was already proposed to be included in the Administrative Instructions (see document PCT/CAL/7/2), and that existing Rule 89*bis* left the establishment of procedures for electronic filing, processing and transmission of international applications to the Administrative Instructions. While agreeing with the proposal, the Delegation of Japan and several other delegations emphasized that the standardized wording of the declarations

should, as a general rule, not be amended frequently, so as to assure the legal stability of the texts.

21. In response to a question by the Delegation of the Republic of Korea, the International Bureau confirmed that Rule 49.5(a)(i) would enable a designated Office to request the applicant to furnish a translation of a declaration under Rules 4.17 to 4.19, noting that such declarations would form part of the request. However, since the declarations would use standardized wording, it should be possible for designated Offices to rely on the declarations in the language in which they were submitted.

22. The Delegation of Australia suggested that some kind of numbering code should be used to identify the various elements of declarations under Rules 4.17 to 4.19. Through such a system, the elements of a specific declaration could more readily be identified and understood by a designated Office, even if the declaration was not in an official language of the Office. The Committee requested the International Bureau to look at the possibility of such a numbering system.

23. In reply to a question by the Representative of AIPPI, the International Bureau noted that most of the declarations would have to be prepared individually by applicants, by including, omitting, repeating and re-ordering items to fit the circumstances of particular cases, and thus did not lend themselves to presentation on sheets as pre-printed forms. They would be best presented on one or more supplemental sheets in the request as necessary. The declaration under Rule 4.19, which might lend itself to presentation in pre-printed form, would also be best presented on a supplemental sheet. In any event, the preparation of all of the declarations would be greatly facilitated by using appropriate software such as the PCT-EASY software available from the International Bureau, which would be modified to generate the declarations.

Rule 4.17(b) and (c), and Sections 212 and 213

24. The Delegation of China stated that its national law required that a person claiming entitlement to apply as employer of the inventor was required to make an indication that the invention was made as a service invention, and noted that the declaration under Rule 4.17(b) did not provide for such a statement to be made (see Section 212 and the standardized declaration text therein at item (ii)). Similar considerations applied to the right to claim priority (see Rule 4.17(c), Section 213 and the standardized declaration text therein at item (i)).

25. The Committee noted that such a declaration did not of itself establish the right of an employer to apply for or be granted a patent; rather, its purpose was to assert that such a right did in fact exist, distinguishing this type of entitlement (which arose as an employer) from other types of entitlement (such as arising by way of assignment). The Committee agreed that the possibility of filing a declaration using standardized wording did not affect the determination in accordance with the applicable national law of the legal rights of the parties according to the circumstances in each case. The Committee suggested that this understanding should be reflected in the report of the Assembly when it adopted the amendments.

Rule 26ter

26. The Delegation of the Russian Federation made the suggestion that Rule 26ter should make express provision for the applicant to cancel a declaration which had already been filed. The Delegation of Spain, with which the Delegations of Hungary, Madagascar and Sweden agreed, stated that to provide expressly for a procedure, whereby the name of an inventor could be removed from the application by unilateral action of the applicant, would be inconsistent with the principles embodied in their national laws. The Committee agreed not to approve the said suggestion while noting that changes in the person of the inventor could already be made by way of recordal of a change under Rule 92bis and that such changes would also be possible when a correction under Rule 26ter resulted in the changing or deletion of a declaration in which the inventor was named.

27. The Delegation of Germany questioned whether a correction or addition under Rule 26ter of a declaration under Rules 4.17 to 4.19 would have to be separately signed by the applicant. The Committee noted that existing Rule 92.1, which required that any paper submitted by the applicant in the course of the international procedure shall be accompanied by a letter signed by the applicant, would apply to corrections and added declarations under Rule 26ter.

28. The Committee noted that, according to proposed Rule 26ter.1, any corrections or additions of declarations under Rules 4.17 to 4.19 should be submitted to the International Bureau. The Delegation of the Republic of Korea suggested that, if an applicant furnished a correction or added declaration to a receiving Office, that Office should forward it without delay to the International Bureau. The Committee agreed and noted that this understanding should be reflected in the PCT Receiving Office Guidelines.

29. The Committee noted that proposed Rule 26ter.2(a) did not oblige receiving Offices or the International Bureau to check, or even more to look into the correctness in a substantive sense of, declarations under Rules 4.17 to 4.19. The receiving Office and the International Bureau had the option, but no obligation, in a case where it was noticed that a declaration was not worded or signed as required by the applicable Rule, of bringing such a defect to the attention of the applicant. That understanding should be reflected in the PCT Receiving Office Guidelines.

30. Considering a question raised by the Delegation of the Russian Federation, the Committee noted that existing Rule 28 dealt exclusively with corrections of defects under Article 14, and that any defects in declarations under proposed Rules 4.17 to 4.19 would not fall into that category. There would thus be no conflict or overlap between Rules 26ter and 28.

Rules 51bis.1(a-quater), (e) and (f) and 51bis.2(c)

31. The Committee noted that certain provisions of Rules 51bis.1(a) and (e) and 51bis.2(a) as proposed to be amended may be incompatible with the existing national laws in certain designated States, and that accordingly some Offices may need to make reservations under Rules 51bis.1(a-quater) and (f) and 51bis.2(c). Such reservations would be effective until such time as the incompatibility was removed by amendment of the national laws concerned. In this connection, the Delegation of India stated that the proposed deletion of Rule 51bis.1(a)(iii) and (iv) and proposed amended Rule 51bis.1(a-bis) and (e) would be inconsistent with its national law; the Delegation of the Republic of Korea stated that

proposed amended Rule 51*bis*.2(a) would be inconsistent with its national law; and the Delegation of the European Patent Office indicated that the proposed amendments of Rule 51*bis*.1(e) would be inconsistent with the European Patent Convention.

32. In connection with proposed new paragraph (e) of Rule 51*bis*.1, the Delegation of Greece noted that it would not be affected by that paragraph as a national Office, since the designation of Greece automatically had the effect of the designation of Greece for a European patent, and stated that it accordingly had no objection to the paragraph. The Delegation noted, however, that this position did not affect the reservation that it had expressed in connection with draft PLT Rule 4(4) (see document PT/DC/4).

START OF FUNCTIONS AS INTERNATIONAL SEARCHING AND PRELIMINARY EXAMINING AUTHORITY BY THE KOREAN INDUSTRIAL PROPERTY OFFICE

33. The Delegation of the Republic of Korea made a statement announcing that the Korean Industrial Property Office was starting its functions as an International Searching Authority and International Preliminary Examining Authority under the PCT from December 1, 1999. The Delegation expressed its appreciation to the International Bureau for its assistance to the Office in making preparations for these functions. It also thanked other Contracting States who had helped the Office in various ways, directly or indirectly, to fulfill the PCT minimum documentation requirements. The Delegation stated that the Office would try its utmost to contribute to international harmonization with a view to developing user-friendly patent systems as well as to make the patent system of the Republic of Korea more transparent and adjustable to the demands of applicants from all over the world.

34. The Chair, the Committee and the International Bureau warmly congratulated the Delegation on the Office's achievement.

ELECTRONIC FILING AND PROCESSING OF INTERNATIONAL APPLICATIONS: ADMINISTRATIVE INSTRUCTIONS

35. The Delegation of Japan, with which the Delegations of the United States of America and the European Patent Office agreed, emphasized the need for the finalization, as soon as possible, of modifications to the Administrative Instructions necessary to implement electronic filing and processing of international applications. It was essential to ensure compatibility in this area between the PCT and the draft PLT, a number of whose provisions related to electronic filing. There was hence a need to progress the drafting of the Administrative Instructions before the PLT Diplomatic Conference, and preferably before the meeting of the Assembly planned for March 2000.

36. The International Bureau outlined the progress which had already been made in developing the legal framework and the necessary technical standard for implementing electronic filing and processing. Both legal and technical aspects would be included in the Administrative Instructions. The International Bureau noted that the WIPO Standing Committee on Information Technologies (SCIT) would be considering a draft action plan when meeting in Geneva from December 6 to 10, 1999. The draft action plan provided for a revised draft of the implementing Administrative Instructions to be made available before the end of December 1999. The International Bureau expressed its intention of meeting that

deadline, and referred to the possibility of discussing the draft Administrative Instructions on the occasion of the meeting of the PCT Assembly in March 2000.

37. The Committee unanimously adopted this report on December 3, 1999.

[Annex I follows]

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

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*(dans l'ordre alphabétique des noms français des États/
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RÉPUBLIQUE POPULAIRE DÉMOCRATIQUE DE CORÉE/
DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

JONG Jin Song, Director, Patent Information Department, Invention Office of the Democratic People's Republic of Korea, Pyongyang

KWON Dae Yon, officier de la Direction d'Académie d'État, Mission permanente, Genève

JANG Chun Sik, Permanent Mission, Geneva

RÉPUBLIQUE TCHÈQUE/CZECH REPUBLIC

Marta HOŠKOVÁ (Mrs.), Deputy Director, Industrial Property Office, Prague

RÉPUBLIQUE-UNIE DE TANZANIE/UNITED REPUBLIC OF TANZANIA

Leonillah K. KISHEBUKA (Mrs.), Principal Assistant Registrar of Patents, Business Registrations and Licensing Agency, Ministry of Industry and Commerce, Dar-es-Salaam

ROUMANIE/ROMANIA

Viorel PORDEA, chef du Service "Examen préliminaire", Office de l'État pour les inventions et les marques, Bucarest

ROYAUME-UNI/UNITED KINGDOM

Richard C. KENNEL, Senior Legal Adviser, The Patent Office, Newport

Joe BRADLEY, Second Secretary, Permanent Mission, Geneva

SIERRA LEONE

Salimatu KOROMA (Mrs.), Administrator and Registrar-General, Administrator and Registrar-General's Department, Freetown

SLOVAQUIE/SLOVAKIA

Ludmila HLADKÁ (Mrs.), Deputy Director, International Affairs and PCT Department, Industrial Property Office, Banská Bystrica

SOUDAN/SUDAN

Yasir S.A. EL HASSAN YOSIF, Senior Legal Advisor, Attorney General's Chambers, The Commercial Registrar General, Ministry of Justice, Khartoum

SRI LANKA

Gamage D.D.K. PERERA, Assistant Director of Intellectual Property, National Intellectual Property Office of Sri Lanka, Colombo

SUÈDE/SWEDEN

Jan-Eric BODIN, Deputy-Head, Patents, Swedish Patent and Registration Office, Stockholm

Marie ERIKSSON (Ms.), Head, Legal Division, Swedish Patent and Registration Office, Stockholm

SUISSE/SWITZERLAND

Lukas BÜHLER, juriste au Service juridique des brevets et designs de l'Institut fédéral de la propriété intellectuelle, Berne

Rolf HOFSTETTER, chef du Service de l'administration des brevets à la Division des brevets, Institut fédéral de la propriété intellectuelle, Berne

SWAZILAND

Beatrice S. SHONGWE (Mrs.), Acting Registrar-General, Registrar-General's Office,
Ministry of Justice, Mbabane

TCHAD/CHAD

GONGA KOYANG FEOLIDA, chef du Service de la documentation et de l'information à la
SNL/OAPI – Direction de l'industrie, Ministère du développement industriel, commercial et
de l'artisanat, N'Djamena

TOGO

Komlan A. AHENOU, chargé des brevets d'invention et de la technologie à la Structure
nationale de la propriété industrielle (SNPIT), Ministère de l'industrie, Lomé

TURQUIE/TURKEY

Hülya ÇAYLI (Mrs.), Head, Patent Department, Turkish Patent Institute, Ankara

UKRAINE

Valeriy PETROV, Chairman, State Patent Office of Ukraine (SPOU), Kyiv

Volodymir RADOMSKY, Deputy Head, Legislation and Patent Policy Department,
State Patent Office of Ukraine (SPOU), Kyiv

Lyudmila TSYBENKO (Mrs.), Head, Patent Legislation Sector, Legislation and Patent Policy
Department, State Patent Office of Ukraine (SPOU), Kyiv

VIET NAM

PHAN Ngan Son, Deputy Director, Invention and Utility Solution Division, National Office
of Industrial Property (NOIP), Hanoi

TRAN Cam Hung (Mrs.), First Secretary, Permanent Mission, Geneva

ZIMBABWE

Fidelis MAREDZA, Deputy Controller, National Patent Office, Ministry of Justice, Harare

Cleopas ZVIRAWA, Advisor, Permanent Mission, Geneva

OFFICE EUROPÉEN DES BREVETS (OEB)/EUROPEAN PATENT OFFICE (EPO)

York BUSSE, Principal Administrator, Directorate International Legal Affairs, European Patent Office, Munich

Claire ACÉTI (Mrs.), Senior Lawyer, Directorate Patent Law, European Patent Office, Munich

II. ÉTATS OBSERVATEURS/OBSERVER STATES

ARGENTINE/ARGENTINA

Alberto Jesus D'NAPOLI, Director Asuntos Legales, Instituto Nacional de Propiedad Industrial, Buenos aires

BURUNDI

Épiphanie KABUSHEMEYE-NTAMWANA (Mme), premier conseiller, Mission permanente, Genève

COLOMBIE/COLOMBIA

Camilo REYES RODRIGUEZ, Embajador, Representante Permanente, Misión Permanente, Ginebra

Amparo OVIEDO ARBELÁEZ (Sra.), Ministra Consejera, Misión Permanente, Ginebra

ÉQUATEUR/ECUADOR

Antonio RODAS POZO, Ministro, Representante Permanente Adjunto, Misión Permanente, Ginebra

IRAQ

Ghalib F. ASKAR, Second Secretary, Permanent Mission, Geneva

Raad MAHMOUD, Second Secretary, Permanent Mission, Geneva

MAURICE/MAURITIUS

Ravindranath SAWMY, Second Secretary, Permanent Mission, Geneva

PHILIPPINES

Ma. Angelina STA. CATALINA (Mrs.), First Secretary, Permanent Mission, Geneva

ZAMBIE/ZAMBIA

Edward CHISANGA, Second Secretary (Commercial Affairs), Permanent Mission, Geneva

III. ORGANISATIONS INTERGOUVERNEMENTALES/
INTERGOVERNMENTAL ORGANIZATIONS

CONSEIL INTERÉTATIQUE POUR LA PROTECTION DE LA PROPRIÉTÉ
INDUSTRIELLE (CIPPI)/INTERSTATE COUNCIL ON THE PROTECTION OF
INDUSTRIAL PROPERTY (ICPIP)

Valeriy PETROV, Chairman, Kyiv

IV. ORGANISATIONS INTERNATIONALES
NON GOUVERNEMENTALES/
INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association internationale pour la protection de la propriété industrielle (AIPPI)/International
Association for the Protection of Industrial Property (AIPPI) : Heinz BARDEHLE, Chairman,
PCT Commission c/o Bardehle, Pagenberg, & Kollegen, Munich; Gianfranco DRAGOTTI,
Secretary of Special Committee Q109, c/o Dragotti & Associati, Milan

Fédération internationale des conseils en propriété industrielle (FICPI)/International
Federation of Industrial Property Attorneys (FICPI) : Jan MODIN, Group Reporter of
Group 3 Study and Work Commission, c/o Axel Ehners Patentbyrå AB, Stockholm

Union des praticiens européens en propriété industrielle (UPEPI)/Union of European
Practitioners in Industrial Property (UEPIP) : Sietse U. OTTEVANGERS, c/o Vereenigde
Octrooibureaux, The Hague

V. ORGANISATIONS NATIONALES NON GOUVERNEMENTALES/
NATIONAL NON-GOVERNMENTAL ORGANIZATIONS

Association des avocats américains (Section of Intellectual Property Law) (ABA)/American Bar Association (Section of Intellectual Property Law) (ABA) : Stephen L. NOE, Member, Council, c/o Perkins Engines Company, Ltd., Peterborough, England

Association américaine du droit de la propriété intellectuelle (AIPLA)/American Intellectual Property Law Association (AIPLA) : David J. LEE, Vice Chair, PCT Issues Committee, c/o Lee & Fishman, Boulder (Colorado)

Association japonaise des conseils en brevets (JPAA)/Japan Patent Attorneys Association (JPAA) : Muneo YAMAMOTO, Vice-President, Patent Committee, Osaka; Ken-ichi TAKADA, Member, Patent Committee, Osaka

VI. BUREAU/OFFICERS

Président/Chair : Alan TROICUK (Canada)

Vice-présidents/Vice-Chair : Elizabeth OWIREDU-GYAMPOH (Mrs.) (Ghana)
Valeriy PETROV (Ukraine)

Secrétaire/Secretary : Philip THOMAS (OMPI/WIPO)

VII. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
PROPRIÉTÉ INTELLECTUELLE (OMPI)/INTERNATIONAL BUREAU OF
THE WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

François CURCHOD, vice-directeur général/Deputy Director General

Bureau du PCT/Office of the PCT : Gary SMITH (directeur/Director); Jean-Luc PERRIN (directeur du Département de l'administration du PCT/Director, PCT Administration Department); WANG Zhengfa (directeur de la Division des pays en développement (PCT)/Director, Developing Countries (PCT) Division)

Division juridique du PCT/PCT Legal Division : Philip THOMAS (directeur/Director); Isabelle BOUTILLON (Mlle) (directrice adjointe/Deputy Director); Takao KATO (juriste principal/Senior Legal Officer); Mamue KAMM (Mrs.) (administratrice de programme/Program Officer); Kevin KRAMER (juriste/Legal Officer); Matthias REISCHLE (administrateur adjoint/Associate Officer)

Division du droit de la propriété industrielle/Industrial Property Law Division : Albert TRAMPOSCH (directeur/Director); Philippe BAECHTOLD (chef de la Section du droit des brevets/Head, Patent Law Section); Tomoko MIYAMOTO (Ms.) (juriste principale/Senior Legal Officer)

[L'annexe II suit/Annex II follows]

ANNEX II

AGENDA

1. Opening of the session
2. Election of a Chair and two Vice-Chairs
3. Adoption of the agenda
4. Proposed amendments of the PCT Regulations and modifications of the PCT Administrative Instructions, relating to the draft Patent Law Treaty (documents PCT/CAL/7/2 to 5)
5. Other matters
6. Adoption of the report of the session
7. Closing of the session

[Annex III follows]

PROPOSED AMENDMENTS OF THE PCT REGULATIONS²

Rule 4

The Request (Contents)

4.1 *Mandatory and Optional Contents; Signature*

[...]

(c) The request may contain:

[...]

(ii) a request to the receiving Office to prepare and transmit the priority document to the International Bureau where the application whose priority is claimed was filed with the national Office or intergovernmental authority which is the receiving Office,

(iii) declarations as provided in Rules 4.17 to 4.19.

[...]

² Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. In a small number of cases, text the need for which, or the precise wording of which, is in doubt is included in square brackets. Provisions which are not proposed to be amended are also included where they are particularly relevant to the provisions proposed to be amended; if they are not included, they are replaced by the indication “[...]”.

[Rule 4.1, continued]

[DRAFT NOTE FOR REQUEST FORM: Notes along the following lines would be included the request form: “The various declarations which may be included in the request are set out in Rules 4.17 to 4.19. Only declarations which conform to the standardized wordings provided for in the Administrative Instructions may be included in the request. If the circumstances are such that those standardized wordings are not applicable, the applicant should not attempt to make use of the declarations set out in Rules 4.17 to 4.19 but rather will have to comply with the national requirements concerned upon entry into the national phase. The fact that a declaration is made under Rules 4.17 to 4.19 does not of itself establish the matters declared; those matters remain for determination by the designated Offices in accordance with the applicable national law. A designated Office is free, but is not obliged, to accept a declaration for the purposes of the applicable national law even if the wording of the declaration does not conform to the standardized wording provided for in the Administrative Instructions pursuant to Rules 4.17 to 4.19.”]

4.5 *The Applicant*

[...]

(e) Where the applicant is registered with the national Office that is acting as receiving Office, the request may indicate the number or other indication under which the applicant is so registered.

4.6 *The Inventor*

(a) Where Rule 4.1(a)(v) or (c)(i) applies, the request shall indicate the name and address of the inventor or, if there are several inventors, of each of them.

[...]

4.7 *The Agent*

(a) If ~~agents are designated~~ an agent is appointed, the request shall so indicate, and shall state ~~their~~ the agent's names and addresses.

(b) Where the agent is registered with the national Office that is acting as receiving Office, the request may indicate the number or other indication under which the agent is so registered.

4.8 *Common Representative*

If a common representative is ~~designated~~ appointed, the request shall so indicate.

[...]

4.17 Declarations as to National Requirements Referred to in Rule 51bis.1(a)(i) to (iii)

(a) The request may contain a declaration identifying the inventor (Rule 51bis.1(a)(i)).

The declaration shall be worded as prescribed by the Administrative Instructions.

(b) The request may contain a declaration that the applicant is, as at the international filing date, entitled to apply for and be granted a patent (Rule 51bis.1(a)(ii)). The declaration shall be worded as prescribed by the Administrative Instructions.

(c) The request may, if, as at the international filing date, the applicant is not the applicant who filed the earlier application from which priority is claimed or if the applicant's name has changed between the date on which the earlier application was filed and the international filing date, contain a declaration that the applicant is entitled to claim priority of the earlier application (Rule 51bis.1(a)(iii)). The declaration shall be worded as prescribed by the Administrative Instructions.

4.18 Declaration as to Non-Prejudicial Disclosures or Exceptions to Lack of Novelty Referred to in Rule 51bis.1(a)(iv)

The request may contain a declaration as to non-prejudicial disclosures or exceptions to lack of novelty (Rule 51bis.1(a)(iv)). The declaration shall be worded as prescribed by the Administrative Instructions.

4.19 Declaration of Inventorship Referred to in Rule 51bis.1(a)(v)

Where the international application designates a State whose national law requires that national applications be filed by the inventor, the request may contain a declaration of inventorship (Rule 51bis.1(a)(v)). The declaration shall be worded and signed as prescribed by the Administrative Instructions.

4.20 Additional Matter

(a) The request shall contain no matter other than that specified in Rules 4.1 to ~~4.16~~ 4.19, provided that the Administrative Instructions may permit, but cannot make mandatory, the inclusion in the request of any additional matter specified in the Administrative Instructions.

(b) If the request contains matter other than that specified in Rules 4.1 to ~~4.16~~ 4.19 or permitted under paragraph (a) by the Administrative Instructions, the receiving Office shall *ex officio* delete the additional matter.

Rule 26ter

Correction or Addition of Declarations Under Rules 4.17 to 4.19

26ter.1 Correction or Addition of Declarations

The applicant may correct or add to the request any declaration referred to in Rules 4.17 to 4.19 by a notice submitted to the International Bureau within a time limit of 16 months from the priority date, provided that any notice which is received by the International Bureau after the expiration of that time limit shall be considered to have been received on the last day of that time limit if it reaches it before the technical preparations for international publication have been completed.

26ter.2 Processing of Declarations

(a) Where the receiving Office or the International Bureau finds that any declaration referred to in Rules 4.17 to 4.19 is not worded as required or, where applicable, is not signed as required, the receiving Office or the International Bureau, as the case may be, may invite the applicant to correct the declaration within a time limit of 16 months from the priority date.

(b) Where the International Bureau receives any declaration referred to in Rules 4.17 to 4.19, or any correction under Rule 26ter.1, after the expiration of the time limit under Rule 26ter.1, the International Bureau shall notify the applicant accordingly and shall proceed as provided for in the Administrative Instructions.

Rule 47

Communication to Designated Offices

47.1 *Procedure*

[...]

(a-ter) The notification under paragraph (a-bis) shall include any declaration referred to in Rule 4.17 or 4.19, and any correction under Rule 26ter.1, which was received by the International Bureau before the expiration of the time limit under Rule 26ter.1, provided that the designated Office has informed the International Bureau that the applicable national law requires the furnishing of documents or evidence relating to the matter to which the declaration relates.

[...]

Rule 48

International Publication

[...]

48.2 *Contents*

(a) The pamphlet shall contain:

[...]

(ix) any information concerning a priority claim considered not to have been made under Rule 26bis.2(b), the publication of which is requested under Rule 26bis.2(c),

(x) any declaration referred to in Rule 4.18, and any correction under Rule 26ter.1, which was received by the International Bureau before the expiration of the time limit under Rule 26ter.1.

(b) Subject to paragraph (c), the front page shall include:

[...]

(iii) the abstract; if the abstract is both in English and in another language, the English text shall appear first,

(iv) an indication that the request contains any declaration referred to in Rules 4.17 to 4.19 which was received by the International Bureau before the expiration of the time limit under Rule 26ter.1.

[...]

Rule 51bis

Certain National Requirements Allowed Under Article 27~~(1), (2), (6) and (7)~~

51bis.1 Certain National Requirements Allowed

(a) ~~The documents referred to in Article 27(2)(ii), or the evidence referred to in Article 27(6), which the applicant may be required to furnish under the national law applicable by the designated Office include~~ Subject to paragraphs (a-bis) and (a-ter), the national law applicable by the designated Office may, in accordance with Article 27, require the applicant to furnish, in particular:

(i) any document relating to the identity of the inventor,

(ii) any document relating to ~~any transfer or assignment of the right to the application~~ the applicant's entitlement to apply for or be granted a patent,

~~(iii) any document containing an oath or a declaration by the inventor alleging his inventorship,~~

~~(iv) any document containing a declaration by the applicant designating the inventor or alleging the right to the application,~~

[Rule 51bis.1(a), continued]

~~(v)~~ (iii) any document containing any proof ~~of the right of the applicant to claim priority where he is different from the applicant having filed the earlier application the priority of which is claimed~~ of the applicant's entitlement to claim priority of an earlier application where the applicant is not the applicant who filed the earlier application or where the applicant's name has changed since the date on which the earlier application was filed,

~~(vi)~~ (iv) any evidence concerning non-prejudicial disclosures or exceptions to lack of novelty, such as disclosures resulting from abuse, disclosures at certain exhibitions and disclosures by the applicant during a certain period of time,

(v) where the international application designates a State whose national law requires that national applications be filed by the inventor, any document containing an oath or declaration of inventorship,

(vi) where the invention was invented as part of the work performed under a contract with the government of the designated State, any document containing a statement indicating any government license rights in the invention and identifying the government contract.

[Rule 51bis.1, continued]

(a-bis) Where the applicable national law does not require that national applications be filed by the inventor, the designated Office shall not, unless it has reasonable doubts as to the veracity of the indications or declaration concerned, require a document or evidence:

(i) relating to the identity of the inventor (paragraph (a)(i)), where indications concerning the inventor are contained in the request in accordance with Rule 4.6;

(ii) relating to the identity of the inventor (paragraph (a)(i)), the applicant's entitlement, as at the international filing date, to apply for or be granted a patent (paragraph (a)(ii)) or the applicant's entitlement to claim priority of an earlier application if, as at the international filing date, the applicant is not the applicant who filed the earlier application or if the applicant's name has changed between the date on which the earlier application was filed and the international filing date (paragraph (a)(iii)), where a declaration relating to such a matter in accordance with Rule 4.17(a), (b) or (c), respectively, is contained in the request or is submitted directly to the designated Office.

(a-ter) Where the applicable national law requires that national applications be filed by the inventor, the designated Office shall not, unless it has reasonable doubts as to the veracity of the indications or declaration concerned, require a document or evidence:

(i) relating to the identity of the inventor (paragraph (a)(i)) (other than a document containing an oath or declaration of inventorship (paragraph (a)(v))), where indications concerning the inventor are contained in the request in accordance with Rule 4.6:

(ii) relating to the applicant's entitlement to claim priority of an earlier application, if, as at the international filing date, the applicant is not the applicant who filed the earlier application or if the applicant's name has changed between the date on which the earlier application was filed and the international filing date (paragraph (a)(iii)), or containing an oath or declaration of inventorship (paragraph (a)(v)), where a declaration relating to such a matter in accordance with Rule 4.17(c) or 4.19, respectively, is contained in the request or is submitted directly to the designated Office.

(a-quater) If, on [date], paragraph (a-bis) is not compatible with the national law applied by the designated Office in relation to any matter referred to in Rule 51bis.1(a)(i) to (iii) or (v), that paragraph shall not apply in respect of that Office in relation to that matter for as long as that paragraph continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly, specifying the matter or matters concerned, by [date]. The information received shall be promptly published by the International Bureau in the Gazette.

[Rule 51bis.1, continued]

[...]

(d) The national law applicable by the designated Office may, in accordance with Article 27(2)(ii), require that the translation of the international application furnished by the applicant under Article 22 be verified by the applicant or the person having translated the international application in a statement to the effect that, to the best of his knowledge, the translation is complete and faithful. No designated Office shall require certification of the translation of the international application by a public authority or sworn translator except where the designated Office reasonably doubts the accuracy of the translation.

(e) The national law applicable by the designated Office may, in accordance with Article 27(6), require that a translation of the priority document be furnished in the language, or in one of the languages of, or a language admitted by, the designated Office only where the validity of the priority claim is relevant to the determination of whether the invention concerned is patentable.

(f) If, on [date], paragraph (e) is not compatible with the national law applied by the designated Office, that paragraph shall not apply in respect of that Office for as long as that paragraph continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [date]. The information received shall be promptly published by the International Bureau in the Gazette.

51bis.2 *Opportunity to Comply with National Requirements*

~~(b) (a) The national law applicable by the designated Office may, in accordance with Article 27(2)(ii), require that the applicant, upon invitation by the designated Office, furnish a certification of the translation of the international application by a public authority or a sworn translator, if the designated Office deems such certification to be necessary under the circumstances, within a time limit which shall be reasonable under the circumstances and shall be fixed in the invitation.~~ Where any requirement of the national law applicable by the designated Office which that Office may apply in accordance with Article 27(1) or (2) is not already fulfilled during the same period within which the requirements under Article 22 must be complied with, the designated Office shall invite the applicant to comply with the requirement within a time limit which shall not be less than two months from the date of the invitation. Each designated Office may require that the applicant pay a fee for complying with national requirements in response to the invitation.

~~(a) (b) Where any of the requirements referred to in Rule 51bis.1, or any other~~ requirement of the national law applicable by the designated Office which that Office may apply ~~under~~ in accordance with Article ~~27(1), (2),~~ 27(6) or (7), is not already fulfilled during the same period within which the requirements under Article 22 must be complied with, the applicant shall have an opportunity to comply with the requirement after the expiration of that period.

[Rule 51bis.2, continued]

(c) If, on [date], paragraph (a) is not compatible with the national law applied by the designated Office in relation to the time limit referred to in that paragraph, the said paragraph shall not apply in respect of that Office in relation to that time limit for as long as the said paragraph continues not to be compatible with that law, provided that the said Office informs the International Bureau accordingly by [date]. The information received shall be promptly published by the International Bureau in the Gazette.

Rule 53

The Demand

[...]

53.5 Agent or Common Representative

If an agent or common representative is ~~designated~~ appointed, the demand shall so indicate. Rules 4.4 and 4.16 shall apply, and Rule 4.7 shall apply *mutatis mutandis*.

[...]

Rule 66

**Procedure Before the
International Preliminary Examining Authority**

[...]

66.7 Priority Document

[...]

(b) If the application whose priority is claimed in the international application is in a language other than the language or one of the languages of the International Preliminary Examining Authority, that Authority may, [where the validity of the priority claim is relevant for the formulation of the opinion referred to in Article 33\(1\)](#), invite the applicant to furnish a translation in the said language or one of the said languages within two months from the date of the invitation. If the translation is not furnished within that time limit, the international preliminary examination report may be established as if the priority had not been claimed.

[...]

[Annex IV follows]

PROPOSED MODIFICATIONS OF THE
ADMINISTRATIVE INSTRUCTIONS UNDER THE PCT³

Section 211

Declaration Identifying the Inventor

Any declaration under Rule 4.17(a) identifying the inventor shall be worded as follows:

“Declaration (in relation to international application No. ...) identifying the inventor (Rules 4.17(a) and 51bis.1(a)(i)), in a case where the declarations under Rules 4.17(b) and 4.19 are not appropriate:

(i) ... (name) of ... (address) is the inventor of the subject matter for which protection is sought by way of (the) (this) international application

(ii) this declaration is made for the purposes of (include as applicable):

(a) all designations (except the designation of the United States of America)

(b) the following designations (, except the designation of the United States of America,) for national and/or regional patents ...”

³ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned. In a small number of cases, text the need for which, or the precise wording of which, is in doubt is included in square brackets. Provisions which are not proposed to be amended are also included where they are particularly relevant to the provisions proposed to be amended; if they are not included, they are replaced by the indication “[...]”.

[Section 211, continued]

[DRAFT NOTE FOR REQUEST FORM: Notes along the following lines would be included the request form: “A declaration in accordance with Rule 4.17(a) is not necessary in respect of any inventor who is indicated as such in Box II or III in accordance with Rule 4.6. A declaration in accordance with Rule 4.17(a) is also not necessary where the inventor is indicated as the applicant in Box II or III in accordance with Rule 4.5, but, in such a case, the declaration under Rule 4.17(b) may be appropriate for the purposes of all designated States except the United States of America. For details as to the oath or declaration by the inventor of inventorship required by the United States of America as a designated State, see Rule 4.19 and the relevant part of these Notes. Ellipses and words in parentheses indicate that information is required to be inserted. More than one inventor may be named in a single declaration, or separate declarations may be made. The wording may be adapted from the singular to the plural as necessary. Declarations may be corrected or added under Rule 26ter after the filing of the international application. Any such correction or addition should be submitted with a letter signed by the applicant as provided in Rule 92.1. For details as to national law requirements regarding identification of inventors, see the relevant National Chapters in the PCT Applicant’s Guide, Volume II.”]

Section 212

**Declaration as to Applicant's Entitlement
to Apply for and Be Granted a Patent**

Any declaration under Rule 4.17(b) that the applicant is, as at the international filing date, entitled to apply for and be granted a patent shall be worded as follows, with such inclusion, omission, repetition and re-ordering of the matters listed as items (i) to (viii) as is necessary to explain the applicant's entitlement:

"Declaration (in relation to international application No. ...) as to the applicant's entitlement, as at the international filing date, to apply for and be granted a patent (Rules 4.17(b) and 51bis.1(a)(ii)), in a case where the declaration under Rule 4.19 is not appropriate:

... (name) is entitled to apply for and be granted a patent by virtue of the following:

(i) ... (name) (of ... (address)) is the inventor of the subject matter for which protection is sought by way of (the) (this) international application

(ii) ... (name) is (was) entitled as employer of the inventor, ... (inventor's name)

(iii) an agreement between ... (name) and ... (name), dated ...

(iv) an assignment from ... (name) to ... (name), dated ...

[Section 212, continued]

- (v) consent from ... (name) in favor of ... (name), dated ...

- (vi) a court order issued by ... (name of court), effecting a transfer from ... (name) to ... (name), dated ...

- (vii) other transfer of entitlement from ... (name) to ... (name) by way of ... (specify kind of transfer), dated ...

- (viii) the applicant's name changed from ... (name) to ... (name) on ... (date)

- (ix) this declaration is made for the purposes of (include as applicable):
 - (a) all designations (except the designation of the United States of America)

 - (b) the following designations (, except the designation of the United States of America,) for national and/or regional patents ...”

[Section 212, continued]

[DRAFT NOTE FOR REQUEST FORM: Notes along the following lines would be included the request form: “Include only those items which are applicable, omitting those which do not apply. Ellipses and words in parentheses indicate that information is required to be inserted. In connection with item (vii), other possible kinds of transfer of entitlement include merger, acquisition, inheritance, donation, etc. Where there has been a succession of transfers from the inventor, the order in which transfers are listed should follow the actual succession of transfers, and items may be included more than once, as necessary to explain the applicant’s entitlement. More than one person may be named in a single declaration, or separate declarations may be made. The wording may be adapted from the singular to the plural as necessary. Declarations may be corrected or added under Rule 26ter after the filing of the international application. Any such correction or addition should be submitted with a letter signed by the applicant as provided in Rule 92.1. For details as to national law requirements regarding the applicant’s entitlement to apply for and be granted a patent, see the relevant National Chapters in the PCT Applicant’s Guide, Volume II. For details as to the oath or declaration of inventorship required by the United States of America as a designated State, see Rule 4.19 and the relevant part of these Notes.”]

Section 213

**Declaration as to Applicant's Entitlement
to Claim Priority of Earlier Application**

Any declaration under Rule 4.17(c) that the applicant is, as at the international filing date, entitled to claim priority of an earlier application shall be worded as follows, with such inclusion, omission, repetition and re-ordering of the matters listed as items (i) to (viii) as is necessary to explain the applicant's entitlement:

"Declaration (in relation to international application No. ...) as to the applicant's entitlement, as at the international filing date, to claim priority where the applicant is not the applicant who filed the earlier application from which priority is claimed or where the applicant's name has changed since the filing of the earlier application (Rules 4.17(c) and 51bis.1(a)(iii)):

... (name) is entitled to claim priority of earlier application No. ... by virtue of the following:

(i) ... (name) is (was) entitled as employer of the inventor, ... (inventor's name)

(ii) an agreement between ... (name) and ... (name), dated ...

(iii) an assignment from ... (name) to ... (name), dated ...

(iv) consent from ... (name) in favor of ... (name), dated ...

[Section 213, continued]

- (v) a court order, issued by (name of court), effecting a transfer from ... (name) to ... (name), dated ...
- (vi) other transfer of entitlement from ... (name) to ... (name) by way of ... (specify kind of transfer), dated ...
- (vii) the applicant's name changed from ... (name) to ... (name) on ... (date)
- (viii) the applicant is the inventor of the subject matter for which protection was sought by way of the earlier application"
- (ix) this declaration is made for the purposes of (include as applicable):

 - (a) all designations
 - (b) the following designations for national and/or regional patents ..."

[Section 213, continued]

[DRAFT NOTE FOR REQUEST FORM: Notes along the following lines would be included the request form: “This declaration is only applicable where the person or name of the applicant is different from that of the applicant who filed the earlier application from which priority is claimed. Include only those items which are applicable, omitting those which do not apply. Ellipses and words in parentheses indicate that information is required to be inserted. In connection with item (vi), other possible kinds of transfer of entitlement include merger, acquisition, inheritance, donation, etc. Where there has been a succession of transfers from the applicant in respect of the earlier application, the order in which transfers are listed should follow the actual succession of transfers, and items may be included more than once, as necessary to explain the applicant’s entitlement. More than one person may be named in a single declaration, or separate declarations may be made. The wording may be adapted from the singular to the plural as necessary. Declarations may be corrected or added under Rule 26ter after the filing of the international application. Any such correction or addition should be submitted with a letter signed by the applicant as provided in Rule 92.1. For details as to national law requirements regarding the applicant’s entitlement to claim priority of an earlier application, see the National Chapters in the PCT Applicant’s Guide, Volume II.”]

Section 214

**Declaration as to Non-Prejudicial Disclosures
or Exceptions to Lack of Novelty**

Any declaration under Rule 4.18 as to non-prejudicial disclosures or exceptions to lack of novelty shall be worded as follows, with such inclusion, omission, repetition and re-ordering of the matters listed as items (i) to (iv) as is necessary:

“Declaration (in relation to international application No. ...) as to non-prejudicial disclosures or exceptions to lack of novelty (Rules 4.18 and 51bis.1(a)(iv)):

“... (name) declares that [an] [the] invention that is the subject of (the) (this) international application was disclosed as follows:

(i) kind of disclosure (include as applicable):

(a) international exhibition

(b) publication

(c) abuse of [a] [the] claimed invention

(d) other: ... (specify)

(ii) date of disclosure: ...

[Section 214, continued]

(iii) title of disclosure (if applicable): ...

(iv) place of disclosure (if applicable): ...

(v) this declaration is made for the purposes of (include as applicable):

(a) all designations

(b) the following designations for national and/or regional patents ...”

[DRAFT NOTE FOR REQUEST FORM: Notes along the following lines would be included the request form: “Ellipses and words in parentheses indicate that information is required to be inserted or that items are to be included only if applicable to a given factual situation. More than one applicant may be named in a single declaration, or separate declarations may be made. The wording may be adapted from the singular to the plural as necessary. Declarations may be corrected or added under Rule 26ter after the filing of the international application. Any such correction or addition should be submitted with a letter signed by the applicant as provided in Rule 92.1. For details on national law requirements regarding non-prejudicial disclosures or exceptions to lack of novelty, see the relevant National Chapters in the PCT Applicant’s Guide, Volume II.”]

Section 215

Declaration of Inventorship

(a) A declaration of inventorship (Rule 51bis.1(a)(v)) referred to in Rule 4.19 that is furnished for the purposes of the designation of the United States of America shall be worded as follows:

“Declaration of inventorship (Rules 4.19 and 51bis.1(a)(v)):

I hereby declare that I am the original, first and sole (if only one inventor is listed) or joint (if more than one inventor is listed) inventor of the subject matter which is claimed and for which a patent is sought.

This declaration is directed to the international application of which it forms a part (if filing declaration with application).

This declaration is directed to international application No. PCT/... (if furnishing declaration pursuant to Rule 26ter).

[Section 215, continued]

I hereby state that I have reviewed and understand the contents of the description, claims and drawings of said application. I have identified in the request of said application any claim to foreign priority, and I have identified below, under the heading “Prior Applications,” any application for a patent or inventor’s certificate filed in a country other than the United States of America and having a filing date prior to the filing date of the earliest filed application in the request or prior to the international filing date (if no priority is claimed).

I hereby acknowledge the duty to disclose information that is known by me to be material to patentability as defined by 37 C.F.R. § 1.56.

Further, if this international application is a continuation-in-part application of a prior United States application for patent, I acknowledge the duty to disclose information that is known by me to be material to patentability as defined by 37 C.F.R. § 1.56 which became available between the filing date of the prior application and the international filing date of the present application. (This paragraph may be omitted if the international application is not a continuation-in-part application of a prior United States application.)

[Section 215, continued]

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Name: ...

Residence: ...

Post Office Address: ...

Citizenship: ...

Prior Applications: ...

Signature: ... (if not contained in the request, or if declaration is corrected or added under Rule 26ter after the filing of the international application)

[Section 215, continued]

Date: ... (of signature which is not contained in the request, or of the declaration that is corrected or added under Rule 26ter after the filing of the international application)”

(b) Any correction or addition under Rule 26ter.1 of a declaration referred to in paragraph (a) shall take the form of a declaration referred to in that paragraph and be signed by the inventor. In addition, any such correction shall be entitled “Supplemental declaration of inventorship (Rules 4.19 and 51bis.1(a)(v)).”

[DRAFT NOTE FOR REQUEST FORM: Notes along the following lines would be included the request form: “Words in parentheses indicate instructions to the inventor, and ellipses indicate information which is required to be inserted. All inventors should be named in a single declaration, and bibliographic data, such as address of residence and citizenship, must be included for each inventor. Such a declaration may be added pursuant to Rule 26ter after the filing of an international application. For an oath or declaration filed with the international application, the inventor need not sign and date the oath or declaration if he has signed the request. However, for an oath or declaration corrected or added after the filing of an international application, the inventor must sign the oath or declaration. Any such correction or addition should be submitted with a letter signed by the applicant as provided in Rule 92.1.”]

[End of Annex and of document]