

Meeting of International Authorities under the Patent Cooperation Treaty (PCT)

Twenty-Eighth Session
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PCT MINIMUM DOCUMENTATION TASK FORCE: STATUS REPORT

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SUMMARY

1. With a view to undertaking a comprehensive review of the PCT Minimum Documentation, since 2017, the PCT Minimum Documentation Task Force (“the Task Force”) follows the work plan endorsed by the Meeting of International Authorities under the PCT (MIA) in early 2017. In that work plan, the Task Force’s work has been divided in four objectives referred to as Objectives A, B, C and D (Appendix to document PCT/MIA/24/4). The work on Objectives A, B and C is being led by the European Patent Office (EPO) and the work on Objective D is being led by the United States Patent and Trademark Office (USPTO). Objective A was already achieved in the last quarter of 2017. Since 2018, the Task Force is working on Objectives B, C and D. The discussions that took place so far revealed that Rules 34 and 36 would need to be amended.

2. Usually, the Task Force conducts its work using an electronic forum made available by WIPO (“the wiki”). In addition, where felt appropriate to facilitate progress in the discussions, the Task Force meets either physically or virtually. The first meeting of the Task Force took place on May 21 and 22, 2019 at the EPO’s headquarters in Munich. Due to the COVID-19 pandemic, the second meeting of the Task Force took place by videoconference from December 7 to 11, 2020 (two hours each day). The summary of discussions of that second meeting (document PCT/MD/2/6) is included as an Appendix to the present status report.

BACKGROUND

3. In 2005, the MIA decided to set up a Task Force to undertake a comprehensive review of the PCT Minimum Documentation. The Task Force was mandated to address issues relating to both patent documentation and non-patent literature, including traditional knowledge-related databases (document PCT/MIA/11/14). However, due to various reasons the process stalled

for several years. In January 2016, there was consensus at the MIA to reactivate the Task Force and the International Bureau invited one of the International Searching Authorities (ISAs) to take up the role of Task Force leader. In February 2016, the EPO responded positively to the call of the International Bureau and, thereafter, the Task Force was reactivated under the lead of the EPO.

4. Since 2017, the Task Force follows the work plan endorsed by the MIA in early 2017 with a view to achieving the following four objectives (Appendix to document PCT/MIA/24/4):

- Objective A: Create an up-to-date inventory of the patent literature and non-patent literature parts of the current PCT Minimum Documentation.
- Objective B: Recommend criteria and standards for including a national patent collection in the PCT Minimum Documentation.
- Objective C: Propose clearly-defined bibliographic and text components of patent data that should be present in patent collections belonging to the PCT Minimum Documentation.
- Objective D: Recommend criteria and standards for the review, addition and maintenance of non-patent literature and traditional knowledge-based prior art, and afterwards assess, on the basis of the criteria that will have been established, the revised proposal from the Indian authorities on the Indian Traditional Knowledge Digital Library database.

5. Usually, the Task Force conducts its work using the wiki. The discussions on Objectives A, B and C are being led by the EPO and the discussions on Objective D are being led by the USPTO.

STATE OF PLAY

6. The discussions on Objective A were successfully concluded by end 2017, i.e. when the up-to-date inventory of the current PCT Minimum Documentation was adopted by the Task Force members. The up-to-date inventory of the non-patent literature part of the PCT Minimum Documentation was published on October 30, 2020 by the International Bureau on the WIPO website and the up-to-date inventory of the patent literature part should be published soon. Since 2018, the Task Force is working on Objectives B, C and D through a series of discussion rounds in the wiki.

7. With regard to Objective B, the first discussion round focused on addressing two main issues, namely:

- (a) The first issue relates to the language-based criteria currently contained in Rule 34.1 which give rise to the following situation:
- the national patent collections of some ISAs do not belong to the PCT Minimum Documentation;
 - the contents of the PCT Minimum Documentation vary depending on the ISA's official language(s) and the availability of English abstracts; and
 - the patent literature part of the PCT Minimum Documentation is limited to patent documents published in a limited number of languages.

(b) The second issue relates to utility models. Currently, Rule 34.1 explicitly mentions the utility certificates of France as being part of the PCT Minimum Documentation, but omits significant utility model collections that are important sources of relevant prior art.

8. With regard to Objective C, the first discussion round focused on examining whether the Authority File Standard ST.37 could be used to facilitate describing the contents of patent and utility model collections belonging to the PCT Minimum Documentation.

9. With regard to Objective D, the first step was the preparation by the USPTO of a questionnaire directed to the PCT International Authorities regarding their use of non-patent literature and traditional knowledge-based prior art sources and databases in their prior art searches. The questionnaire also addressed updates and additions of non-patent literature and traditional knowledge information and databases to the list of PCT Minimum Documentation, the requirements for such databases to be useable by the International Authorities, possible problems in utilizing those databases and questions regarding potential confidentiality and other requirements attached to the use of those databases. The International Bureau sent the questionnaire to the International Authorities on July 9, 2018 in Circular C. PCT 1544.

10. At the twenty-sixth session of the MIA on February 13 and 14, 2019, the EPO presented in the Task Force's status report (document PCT/MIA/26/8) the conclusions that could be drawn from the first discussion rounds on Objectives B and C. The USPTO presented in an Annex to that report some preliminary observations on the replies to the questionnaire contained in Circular C. PCT 1544 (Annex IV to document PCT/MIA/26/8). Authorities welcomed the progress that had been made in all areas, discussed the Task Force's status report (document PCT/MIA/26/8) and made several comments on issues related to Objectives B, C and D (paragraphs 74 to 83 of document PCT/MIA/26/13). The EPO drew the attention to the fact that the outstanding details in Objectives B and C were complex and finalizing them through the electronic forum could be slow and difficult and, therefore, suggested to convene a physical meeting of the Task Force where the experts could meet face to face (paragraph 75 of document PCT/MIA/26/13).

11. Following the above suggestion from the EPO, the first session of the Task Force took place on May 21 and 22, 2019 at the EPO's headquarters in Munich. At that session, the EPO presented proposals aiming at updating and streamlining the definition of the patent literature part of the PCT Minimum Documentation (documents PCT/MD/1/2 and PCT/MD/1/3). More specifically, document PCT/MD/1/2 contained proposals for amendments of Rules 34 and 36, and document PCT/MD/1/3 proposals for the technical and accessibility requirements for which the proposed revised Rules refer to the PCT Administrative Instructions. The USPTO reported on the replies to the questionnaire contained in Circular C. PCT 1544, summarized some of the recurring themes noted in the replies and proposed several questions for additional discussion (document PCT/MD/1/4). That two-day session allowed the Task Force members to have constructive discussions and provided substantial input for making further progress. All delegations agreed on the need of reviewing the PCT Minimum Documentation, and generally agreed with the objectives of the reform. However, the issues that have been addressed showed that much had still to be done to come to an agreement on how that reform should be. Further details may be found in the summary of discussions of that first session (document PCT/MD/1/5, reproduced in the Appendix to document PCT/MIA/27/11).

12. At the twelfth session of the PCT Working Group from June 11 to 14, 2019, the EPO presented a status report (document PCT/WG/12/16) and orally reported about the first session of the Task Force. The PCT Working Group noted the contents of document PCT/WG/12/16 and all delegations taking the floor underlined the importance of the work of the Task Force (paragraphs 144 and 145 of document PCT/WG/12/24).

13. The follow-up work to the first session of the Task Force started on the wiki in summer 2019. With regard to Objectives B and C, at the beginning of August, the EPO launched the second discussion round on Objectives B and C. More specifically, the EPO posted on the wiki a document aiming at following up on the conclusions reached at that session regarding the proposals for amendments to the PCT Regulations (document PCT/MD/1/2/REV). In that document, the EPO presented, in particular, revised proposals for amendments of Rules 34 and 36. Together with document PCT/MD/1/2/REV, the EPO posted on the wiki a template for the assessment by ISAs of the current status of their patent document collections and a summary presenting the EPO's collection status. The EPO invited the other Task Force members to post by September 27, 2019 their comments on document PCT/MD/1/2/REV as well as a summary presenting the status of their collections.

14. The EPO received comments on document PCT/MD/1/2/REV only from the Finnish Patent and Registration Office, the Japan Patent Office, the Canadian Intellectual Property Office, the Indian Patent Office, the Korean Intellectual Property Office and the USPTO as well as from the International Bureau. The EPO also received summaries of the status of the patent documents' collections from the Finnish Patent and Registration Office, the Japan Patent Office, the Indian Patent Office, the Korean Intellectual Property Office and the USPTO. Moreover, the International Bureau has made available on the WIPO website a list indicating the data coverage of patent collections on PATENTSCOPE and the extent of coverage of documents in full text electronic searchable format.

15. With regard to Objective D, the USPTO posted in June 2019 on the wiki a spreadsheet compiling all of the replies to the questionnaire contained in Circular C. PCT 1544. Moreover, at the end of July, the USPTO posted an additional questionnaire on non-patent literature which should help the development of criteria and standards for the review, addition, and maintenance of non-patent literature and traditional knowledge-based prior art in the PCT Minimum Documentation. The Task Force members were invited to reply to that questionnaire by the end of November 2019. Only five Offices (Brazilian National Institute of Industrial Property, Canadian Intellectual Property Office, EPO, Japan Patent Office and USPTO) had replied to that questionnaire by the end of December 2019 when the USPTO posted a spreadsheet compiling all the replies on the wiki. The Korean Intellectual Property Office replied in January 2020.

16. At the twenty-seventh session of the MIA (February 6 and 7, 2020) the EPO reported on the progress made so far on Objectives A to C (document PCT/MIA/27/11) and the USPTO on Objective D (document PCT/MIA/27/12). The EPO announced that it was considering organizing a second physical meeting of the Task Force in Munich on April 28 and 29, 2020 but that this still needed to be confirmed. It was indicated that "the Task Force would seek to develop proposals for presentation to the Meeting and to the PCT Working Group, with a view to recommending that the PCT Assembly approve amendments to the PCT Regulations in 2022, to enter into force before work commences on the next round of reappointment of International Authorities in 2026" (paragraph 70 of document PCT/MIA/27/16). Authorities thanked the European Patent Office and the Task Force for the work done and discussed the status reports presented by the EPO and the USPTO (paragraphs 70 to 74 and 77 to 80 of document PCT/MIA/27/16). The Meeting noted the report on progress of the Task Force and recommended that the work continue as proposed, including the convening of a physical meeting of the Task Force (paragraphs 75 and 81 of document PCT/MIA/27/16).

17. Due to the COVID-19 pandemic, the second session of the Task Force had to be postponed. With a view to making progress despite these circumstances, the EPO and the USPTO prepared documents to be discussed in the wiki.

18. With regard to Objectives B and C, on July 16, 2020, the EPO posted on the wiki two documents, i.e. document PCT/MD/1/2/REV2 containing revised proposals for Rule amendments and document PCT/MD/1/3/REV containing revised proposals for the technical and accessibility requirements under Objectives B and C, and invited the other Task Force members to provide comments on these documents. The EPO received comments only from the Japan Patent Office, the USPTO and the International Bureau. In parallel, the EPO consulted informally the UK, German and French Offices on the proposals contained in these documents. The proposals presented in documents PCT/MD/1/2/REV2 and PCT/MD/1/3/REV are summarized in Annexes I and II of document PCT/WG/13/12 for the thirteenth session of the PCT Working Group that took place from October 5 to 8, 2020.

19. With regard to Objective D, on April 3, 2020, the USPTO posted on the wiki a document entitled "Criteria for the Evaluation of Non-Patent Literature (NPL) including Traditional Knowledge-based (TK) Prior Art for Inclusion in the NPL Patent Cooperation Treaty (PCT) Minimum Documentation List". That document proposed a process and criteria by which NPL, including traditional knowledge-based prior art, could be considered for inclusion to the list, and how the list could be maintained over time. Moreover, that document contained a set of questions for discussion. The USPTO invited the other Task Force members to post their comments and replies on the wiki by June 30, 2020. Only four Offices (Canadian Intellectual Property Office, EPO, Japan Patent Office, Indian Patent Office) and the International Bureau replied to the USPTO's document.

20. In view of the COVID-19 pandemic, the second session of the Task Force took place by videoconference on the WebEx platform from December 7 to 11, 2020 (two hours each day). At that session, the EPO presented revised versions of the proposals contained in documents PCT/MD/1/2/REV2 and PCT/MD/1/3/REV (documents PCT/MD/2/2 and PCT/MD/2/3), the USPTO presented a revised version of its document of April (document PCT/MD/2/4) and the Indian Patent Office gave a presentation on the Indian Traditional Knowledge Digital Library (document PCT/MD/2/5). This virtual meeting allowed the Task Force to make considerable progress on all pending objectives. Regarding Objective B, the Task Force provisionally agreed on the proposals for Rule amendments proposed by the EPO, subject to further feedback from Offices in the electronic forum and overall agreement over both Objectives B and C. Regarding Objective C, the Task Force is close to reaching consensus on the way of using WIPO Standard ST.37 Authority Files for that purpose (including any required extensions of such Authority Files) as well as on the cut-off date for the applicability of the new technical and accessibility requirements. Regarding Objective D, the Task Force has almost agreed on the criteria for NPL. Further details may be found in the summary of discussions of that session (document PCT/MD/2/6), which is included as an Appendix to the present status report.

21. The Task Force will continue making progress via its electronic forum. In that regard, the USPTO posted on December 11, 2020 an updated version of its document PCT/MD/2/4 reflecting the input received during the second session of the Task Force and invited the other Task Force members to provide comments. The EPO as Task Force leader was mandated to call for the next (virtual) meeting of the Task Force to take place in 2021, preferably before the summer.

22. The Meeting is invited to note of the contents of this document.

[Appendix follows]

PCT Minimum Documentation Task Force

Second session By videoconference, 7-11 December 2020

Summary of discussions

adopted by the Task Force

1. The PCT Minimum Documentation Task Force (“the Task Force”) held its second session by videoconference from 7 to 11 December 2020.
2. The list of participants is contained in the Annex I to this document.

Item 1: Opening of the session

3. Mr C. Bogliolo, Head of Department PCT Affairs, European Patent Office (EPO) welcomed the participants as Chair of the session. In his opening remarks, Mr Bogliolo recalled that initially the EPO intended to organise the second session of the Task Force in Munich in spring, but that due to the COVID-19 pandemic, the second session of the Task Force had to be postponed and transformed into a virtual meeting. He thanked all participants for having joined this virtual second session and noted that the number of participating Offices was higher than at the first session. He emphasised that, in addition to 15 Task Force members, this session was also attended by three observer Offices, i.e. the French, German and UK Offices, upon invitation from the EPO in view of the fact that their patent documentation is part of the PCT Minimum Documentation. In that regard, he thanked the Task Force members for having accepted in the Task Force’s electronic forum (“the wiki”) the participation of these three observer Offices, and the observer Offices for their readiness to join this meeting. Mr Bogliolo proposed that the following rules would apply to the observers: they may contribute to the discussions at any time when they are invited to do so and take the floor upon their own initiative after the Task Force members.
4. The International Bureau of WIPO (IB) thanked the EPO for organising this meeting and warmly welcomed the three observer Offices. For the sake of efficiency, the IB suggested that one representative of each observer Office could receive access to the wiki rather than rely on the EPO forwarding them the documents and information posted in the wiki. The Chair welcomed this suggestion, which was endorsed by the Task Force. The observer Offices were then invited to contact the IB to receive access to the wiki. The Intellectual Property Office of the UK (UKIPO) thanked all Task Force members for the possibility to participate in this meeting.

5. The Task Force adopted the agenda as set out in document PCT/MD/2/1/REV.
6. CNIPA thanked the Task Force members for the work done so far and indicated that it would need more time before being able to take a position on the various proposals. CNIPA will provide its feedback in the electronic forum after having carefully assessed each of them.

Item 2: Objective B: Proposed amendments of Rules 34 and 36 PCT

7. Discussions were based on document PCT/MD/2/2.
8. The EPO presented its document PCT/MD/2/2 by showing a PowerPoint presentation recapitulating the proposals contained in that document, which is posted in the wiki under the following reference: PCT/MD/2/2/PPT. In addition, the EPO addressed also comments made in the wiki by the Federal Service for Intellectual Property of the Russian Federation (Rospatent) regarding the proposal to mention the inventors' certificates issued by the former Soviet Union as a distinct item instead of listing them under the patent documents. In that regard, the EPO explained that this proposal aimed simply at keeping the inventors' certificates issued by the former Soviet Union in the PCT Minimum Documentation whilst acknowledging their specificities. Indeed, the EPO believed that the technical and accessibility requirements proposed in document PCT/MD/2/3 might not be adaptable to inventors' certificates issued by the former Soviet Union. However, the EPO underlined that, if Rospatent considers that the said requirements could be fulfilled by the inventors' certificates issued by the former Soviet Union, they should be listed as patent documents.
9. The United States Patent and Trademark Office (USPTO) raised a question in relation to the proposal to remove the requirement regarding the language facilities from Rule 36 PCT. In particular, the USPTO asked whether other International Authorities would be comfortable with producing the translations they would need in order to be able to search all the PCT Minimum Documentation collections. The USPTO added that it would be willing to take up the burden of producing these translations for its own purposes but that it would be interested in hearing the other Offices' view on this matter. The EPO clarified that it is only in the absence of an English abstract that Offices would need to produce translations for themselves reducing the related workload this would represent.
10. Regarding the proposal to delete current paragraph (f) of Rule 34.1 PCT specifying that, for the purposes of this Rule, applications which have only been laid open for public inspection are not considered published applications, the Spanish Patent and Trademark Office (OEPM) wondered whether documents which originally were only laid open for public inspection but afterwards scanned and uploaded in a public database would form part of the PCT Minimum Documentation. The EPO answered that there were two options: (a) considering that there would be an obligation for each Office to include those documents in its collection by including them in the PCT Minimum Documentation, or (b) considering them as not being included in an Office's collection, and thus not as part of the PCT minimum documentation, but without preventing Offices to include them in their collections and other Authorities to search them. The EPO noted that it would be in favour of this second option, which is the current status quo. This second option was acceptable for the OEPM. The EPO also stressed that such cases usually cover older collections before patents were published electronically.

11. The Indian Patent Office (IPO) raised a concern regarding a lack of kind code for the publication of its documents. As opposed to other Offices, the IPO does not create separate PDFs with kind codes when it makes the bibliographic data available on its website. The EPO confirmed that this approach would not require an adaptation of the proposed wording of the Rules and was tackled in the technical requirements.
12. Following a question raised by the IB, the Chair clarified that the proposals contained in document PCT/MD/2/2 (Objective B) were linked to the proposals contained in document PCT/MD/2/3 (Objective C) and there would be thus no final agreement on the proposals contained in document PCT/MD/2/2 (Objective B) until the proposals contained in document PCT/MD/2/3 (Objective C) were also agreed upon. The proposed Rule changes would be adopted by the PCT Assembly on the assumption that the technical requirements are also settled. In other words, this is a package.
13. Finally, a discussion took place regarding the inclusion of the utility models in the PCT Minimum Documentation as an optional or mandatory item. The IB and the OEPM recalled that the PCT Minimum Documentation is intended to be a *minimum*, not a set of recommendations for an International Searching Authority to consult. In their view, including utility models documents in the PCT Minimum Documentation only as an optional recommended part would thus not be a consistent approach. Rather, they would be in favour of removing the word “preferably” from the proposed paragraph (b)(iii) of Rule 34.1 PCT in order to include utility models in the PCT Minimum Documentation as a mandatory part.
14. The Chair recalled that the proposed option of including utility models documents in the PCT Minimum Documentation as an optional recommended part aims at finding a compromise between the importance of utility model documents as prior art and the serious practical concerns expressed by several Authorities at the first session of the Task Force when this matter was extensively discussed. Having the utility models as an option, both for Offices to make them available in a similar manner than the patent documentation under the agreed technical requirements on the one hand, and for International Searching Authorities to search them on the other hand, would already be a positive development with respect to the current situation.
15. The EPO provided a few figures to show the magnitude of extra effort needed for including utility models, namely it mentioned that, today, the PCT Minimum Documentation contains around 85 million documents, and, if utility models were to be included, it would add 20 million documents to the PCT Minimum Documentation set, the majority (around 11 million) coming from the China National Intellectual Property Administration (CNIPA).
16. The USPTO expressed its support to the EPO compromise solution as proposed in document PCT/MD/2/2. The OEPM further proposed to make it optional for Offices to make their utility model collections available, but mandatory for International Searching Authorities to search utility model collections made available by other Offices. The USPTO indicated that it could not accept this proposal in light of the volume of documents at play, which was considered a primary concern. In reply, the OEPM noted that it would then be more appropriate not to include utility models at all in the PCT Minimum Documentation, rather than including them as an optional recommended part.

17. The Chair invited the other participating Offices to share their comments on the EPO compromise solution proposed in document PCT/MD/2/2. No further comment being made, the Chair concluded that the compromise solution seemed to be agreeable to the vast majority of the Task Force members and expressed hopes that this represents an accepted consensus for all Task Force members.
18. The Chair invited the Task Force members to provide comments on any of the other proposals contained in document PCT/MD/2/2. The National Institute of Industrial Property (INPI) (France) expressed its appreciation for the proposal aiming at keeping the French utility certificates, which are similar to patents under French law, in the mandatory part of the PCT Minimum Documentation.

19. The Task Force took note of document PCT/MD/2/2 and provisionally agreed on the proposals for Rule amendments contained in Annex II, subject to further feedback from Offices in the electronic forum and overall agreement over both Objectives B and C.

Item 3: Objectives B and C: Technical and accessibility requirements for patent and utility model data, including bibliographic and text components of that data

20. Discussions were based on document PCT/MD/2/3.
21. The EPO presented the proposals contained in document PCT/MD/2/3 by showing a PowerPoint presentation, which is posted in the wiki under the following reference: PCT/MD/2/3/PPT. The EPO focused first its explanations on the proposed extensions of WIPO Standard ST.37 Authority Files. In that regard, the EPO recalled that it proposes that Patent Offices whose patent collections belong to the PCT Minimum Documentation shall append three extra columns in their ST.37-conforming Authority Files to indicate the presence or absence of the following elements for each publication number therein:
- full text in searchable text format,
 - original abstract available in searchable text format, and
 - English language abstract available in searchable text format.
- More specifically, the EPO proposes that the inclusion of these three extra columns be mandatory, but that only the one providing information on the availability of the full text in searchable text format shall be mandatorily filled out. In other words, it would be optional for Offices to fill out the other two columns.
22. The IB wondered why the EPO proposes that filling out the column providing information on the availability of the original abstract in searchable text format be optional and not mandatory. The EPO replied that some Offices do not necessarily feel the need to provide an abstract in searchable text format if they provide the full text in searchable text format. The EPO added that abstracts are not well documented in certain patent collections and that many abstracts are in an image format for older collections.
23. Moreover, the IB asked for a clarification of the meaning of “full text”, i.e. whether the presence of both description and claims in searchable text format is required in order to consider that full text in searchable text format is available. The EPO indicated that this had not yet been discussed by the Task Force but that full-text comprises usually the complete text of a patent document therefore covers both the description and the claims.

24. A question was raised regarding the way to fill out the above mentioned three extra columns, in particular the one regarding the English language abstract, when the original language is English. In general, it was considered that leaving blank columns should be avoided (i.e. indicating “yes” in all three columns seems to be the best approach).
25. In that context, the OEPM underlined that abstracts are only useful in a searchable format and, therefore, suggested that if the abstract is in an image format, there should be a “no” in the column.
26. IPO – India proposed to include in the Authority Files the language of the original abstract. This proposal found the support of various Offices. The use of the language code of the language of publication was suggested for that purpose.
27. The IB asked whether the Task Force had considered (a) an indicator whether the full text is as filed (or official publication) or OCRred for search purpose; and (b) information on changes between the previous and current Authority File (in particular with the new proposed additional columns). In reply to a question regarding the possibility to introduce an indicator of the quality of the full text, the EPO reminded the Task Force that the magnitude of work required to add that indicator should not be underestimated and wondered whether all Offices with large collections were in a position to include such indicator in their Authority File.
28. The Chair also recalled that the Task Force’s mandate was to focus on the technical requirements from a PCT Minimum Documentation viewpoint. It was agreed that, once the Task Force had agreed on the additions to the ST.37, the proposal would be handed over to the CWS Authority File Task Force to consider adapting Standard ST.37 where appropriate.
29. The discussions focused then on the issue of the cut-off date as of which the proposed technical and accessibility requirements, in particular the availability in machine-readable searchable form, should become mandatory. The Chair reminded that a 10-year transition period from the date of entry into force of the revised Rules 34 and 36 would apply. The aim of such a transition period was to give sufficient time for Offices to comply with those requirements as far as the backfiles (prior to the date of entry into force of the revised rules) are concerned.
30. The EPO explained the issues at stake on the basis of a graph showing the citations used in all international search reports since the entry into force of the PCT. It appears that such citations become really meaningful in volumes as from 1950. The Task Force members were invited to share their comments on this delicate issue and, in particular, to give an idea of the cut-off date that they would consider most appropriate.
31. The National Institute of Industrial Property (INPI - Brazil) suggested that the cut-off date should preferably depend on the Offices’ possibilities.
32. Considering the workload and the cost involved for each Office, the JPO indicated that the decision about the cut-off date should be taken on the basis of an analysis of the most recent international search reports. Furthermore, the JPO noted that only the documents available in a machine-readable searchable form should be included in the PCT Minimum Documentation and that patent documents which are published between 1920 and the cut-off date but not available in the machine-readable searchable form

should not be included in the PCT Minimum Documentation. The JPO understands that the aim is to include all informative documents in the PCT Minimum Documentation. However, the JPO is of the view that patent documents which are not available in machine-readable searchable form cannot be considered as being informative.

33. The USPTO recommended an analysis of both the last 10 years and the last 20 years, and then compare those analyses to the current scope/results. KIPO indicated that it could be in a position to support 1920 as a cut-off date and, as to the analysis, preferred a 20 years' time scope.
34. IPO – India highlighted that after the end of the 10-year transition period the relevance of the cut-off period will be moved accordingly. The EPO noted that the process had to start somewhere. Furthermore, IPO – India indicated that, according to the Indian patent law, it is required to publish applications after 2005, but that before 2005 only the publication of granted patents was required. India has full text searchable data (digitised collection) from 1995 onwards, but would not be able to commit to creating an Authority File with entries published from 1995 onwards that contained the appropriate publication exception codes for each individual entry.
35. The IB advocated a more ambitious approach. The quality of search should not be lowered just because a late cut-off date is convenient for Offices. The Chair reminded delegations that the goal of the Task Force was indeed to increase the quality of PCT searches.
36. The JPO indicated it currently makes its patent collection published as from 1993 available in searchable electronic form, but it would be difficult for the Office to go beyond that date. If the OCR data is considered to meet the requirements of PCT/MD/2/3, the JPO has provided full text and abstract of documents published as from 1971 in searchable electronic form.
37. The Finnish Patent and Registration Office (PRH) indicated that their patent collection starts to grow from the Second World War. Hence, the Office does not have many documents between 1920 and 1950. Changing the cut-off date from 1920 to 1950 would not make much difference to them. To alleviate the workload a bit, PRH - Finland suggested the year 1960 as a cut-off date.
38. The OEPM mentioned that electronic documents needed to be properly characterized and identifiable. Therefore, it suggested to add as an additional mandatory element for each document, a bibliographic data file which would include the name of applicant, inventor, title, application number etc. (proposed point d) under paragraph 36 of document PCT/MD/2/3). The EPO clarified that this bibliographic data is already embedded in the ST.36 or ST.96 file containing a patent's full text. Additionally, some portions of this bibliographic data are also included in the Authority File (such as the patent number and the publication date), thus there is no need to add that mandatory element.
39. The IB inquired about the requirements which would be applicable to the documents which are not in a machine-readable format. In reply to the IB's question, the EPO explained that there are a small number of documents which cannot be provided in machine-readable formats because the original documents do not exist, either because the number was never used, or else because the document no longer exists in the

Office's official collection; such documents cannot be searched. For the other case of documents in non-machine-readable format without a full-text abstract, such documents would only be searchable on paper.

40. When the above discussions concluded on 8 December 2020, the EPO announced that it would post on the wiki a summary of questions and issues needing further consideration. The discussions on the technical and accessibility requirements under Objectives B and C were resumed on 10 December 2020 on the basis of the said summary of questions and issues (document PCT/MD/2/7). Document PCT/MD/2/7 contained a series of questions aiming at seeking information on the status of Offices' collections with a view to facilitating the determination of an appropriate cut-off date for the mandatory applicability of the new requirements. Moreover, document PCT/MD/2/7 contained proposals aiming at fine-tuning the proposed extensions of WIPO Standard ST.37 Authority Files.
41. The EPO briefly recalled the proposals of document PCT/MD/2/7 aiming at fine-tuning the proposed extensions of WIPO Standard ST.37 Authority Files, namely:
- the proposal to include in the Authority File the language of the original abstract in an additional new column and to indicate the language code of the language of publication of the original abstract in that new column;
 - the proposal that all extra columns proposed to be added to the ST.37 Authority File in document PCT/MD/2/3 always be populated for each entry in the Authority File according to the indications contained in document PCT/MD/2/7.
42. The EPO summarised the comments and suggestions received so far from other Offices in the wiki and drew in particular the attention to the following suggestions:
- The UKIPO indicated that, in addition to proposing that the data always be populated in each of the four additional columns proposed, it may be worth having a third data value other than Y/N, e.g. unknown. This would allow Offices to know whether a document is unavailable because no such document exists, e.g. an English abstract, or whether it's unavailable because the Office does not have that information to hand.
 - The Canadian Intellectual Property Office (CIPO) suggested to allow an owning Office to identify two languages as original language of publication of the abstract. In such cases two (or more) language codes could be separated by a comma: e.g. "EN, FR".
 - Regarding the mandatory elements for each document in a collection, the JPO recommended that the complete full text should be mandatory, but not the facsimile images of all the pages of each document.
43. The OEPM indicated that, for the purpose of simplicity, it might be better to avoid having many additional columns and to include directly the code of the language of original abstract in the column "Original abstract available?" if the said abstract is available. In addition, the OEPM suggested that a "U" could be indicated in that column where it is unknown whether the original abstract is available, and a "N" where it is not available. INPI – Brazil supported the proposals from the OEPM. Besides, the OEPM indicated that it has some concerns regarding the above-mentioned suggestion from the JPO. More specifically, the OEPM explained that, if the entire collections of Offices are included in

the PCT Minimum Documentation as of 1920 independently of their electronic searchability but the facsimile images of all the pages of each document are not required, documents for which the complete full text is not available could not be analysed. Therefore, the OEPM suggested that the facsimile images of all the pages of each document be required when the complete full text is not available. The EPO supported the OEPM's position and noted that this aspect should be further considered.

44. The IB noted that, for PCT applications, we would have to record the language of publication, which would be the language in which the ISA confirmed the abstract, rather than necessarily the original language in which it was provided by the applicant.
45. CNIPA expressed some concerns regarding the workload created by the proposed extensions of WIPO Standard ST.37 Authority Files, and was invited by the Chair to specify its concerns in the wiki.
46. IPO – India had some concerns regarding already digitized old collections. It noted that there is a possibility of unforeseen hurdles in conforming such data to the new requirements and that such hurdles may also be faced while attempting to create Authority Files.
47. The EPO concluded the discussions on this topic by drawing the attention to the usefulness of Definition Files. The EPO underlined that the proposed extensions of WIPO Standard ST.37 Authority Files will be less efficient if Offices will not provide a Definition File, and that therefore the EPO would recommend making the provision of a Definition File mandatory. The EPO invited all delegations to reconsider the possibility of providing a Definition File. The OEPM and INPI – Brazil were in favour of making Definition Files mandatory whereas the USPTO and the Finnish Patent Office (PRH-Finland) expressed a preference for keeping Definition Files optional.

48. The Task Force took note of documents PCT/MD/2/3 and PCT/MD/2/7 and requested the EPO to further adapt its proposals along the lines of the discussions, with a view to continuing making progress via the wiki.

Item 4: Objective D: Criteria and standards for the review, addition and maintenance of non-patent literature and traditional knowledge-based prior art

49. Discussions were based on documents PCT/MD/2/4 and PCT/MD/2/5.
50. The USPTO opened the discussions on Objective D by proposing the following discussion plan:
 - presentation of document PCT/MD/2/4 by the USPTO and exchange on the discussion items,
 - presentation on the Indian Traditional Knowledge Digital Library (TKDL) by IPO – India,
 - discussion related to traditional knowledge and the PCT Minimum Documentation,
 - discussion on other questions, concerns arising at that stage.
51. The USPTO summarised the proposals contained in document PCT/MD/2/4 by showing a PowerPoint presentation and invited the other Offices to share their thoughts on these proposals.

52. INPI – Brazil reported that it has some concerns regarding the proposal that, upon consensus of the PCT Minimum Documentation's NPL List, ISAs would have one year to reach compliance and obtain access to the required resources. More specifically, in view of certain internal legal constraints, INPI – Brazil would not be able to comply with that one-year period and would need at least two years to get access to new resources. Moreover, INPI – Brazil wondered whether it was desirable to have a criterion aiming at reflecting a variety of fields and wondered how compliance with such criterion could be measured. In reply to the latter question, the USPTO indicated that such criterion was actually intended more as a goal. The EPO noted that a possible approach could be to request that the broad sections of the IPC be represented by a minimum amount of titles. The USPTO noted that it would update the document accordingly.
53. Regarding the time period to reach compliance and obtain access to the required resources, the OEPM shared the point of view of INPI – Brazil that one year was too short and agreed that two years are acceptable. The USPTO invited any Office that considers a two-year period as still too short to take the floor. No comments were raised. The USPTO noted that it would update the document accordingly.
54. Regarding the proposed maintenance requirements, CNIPA wondered why a complete review of the PCT Minimum Documentation's NPL List should take place every three years. CNIPA considered that this would be too frequent and that five years would be more reasonable. As far as the review for discontinued resources is concerned, CNIPA would prefer that such review would take place every two years, rather than every year as proposed in document PCT/MD/2/4. The USPTO replied that these figures correspond to the middle-line which emerged from the discussions in the wiki, but that they may of course be changed.
55. IPO – India took the floor to share a concern regarding the proposed criterion that *“all eligible resources must be [electronically] accessible by the public (either for a reasonable commercial fee, as part of a personal or institutional subscription, or for free) as per Rule 33.1(a) of the PCT”*. More specifically, it noted that the Indian TKDL might have difficulties in fulfilling this criterion due to the term “electronically”. IPO – India recalled that the prior art contained in that database is accessible by the public.
56. The IB noted that Rule 33.1 PCT defining the relevant prior art for the international search does not require the electronic availability. The EPO added that the electronic availability is also not required by the EPC provisions.
57. The Chair suggested that a wording avoiding that electronic availability of the eligible resources be a requirement but still indicating that preferably the resources should be electronically available could be considered with a view to avoiding using two different definitions of the availability to the public under the PCT, but at the same time underlining a strong recommendation towards electronic availability.
58. IPO – India gave a presentation on the Indian TKDL (document PCT/MD/2/5) aiming at explaining the specificities of that database. In reply to various questions, IPO – India acknowledged that patent Offices have a “privileged access” to the TKDL but underlined that the contents of that database are otherwise easily accessible to the public.

59. A few questions were raised with a view to understanding better the request of IPO – India with respect to the inclusion of the TKDL in the PCT Minimum Documentation. In that regard, it was in particular referred back to the discussions of the first session of the Task Force where two options regarding the inclusion of databases such as TKDL were identified, namely either (1) listing sources contained in such databases and see whether they could be separately included in the PCT Minimum Documentation together with other titles, or (2) deal with such databases as a specific different item of the PCT Minimum Documentation.
60. IPO – India acknowledged that including the titles as such could be a way forward and indicated that it would need to discuss the matter further internally. It also indicated that India is reflecting about the possibility of facilitating the access of the public to the TKDL.
61. The USPTO was in favor of the option of analyzing the individual titles contained in the TKDL and following the process and criteria outlined in the proposal in considering whether to include them individually in the PCT Minimum Documentation. Indeed, it was considered quite difficult to envisage including as a block the whole TKDL without an analysis title by title, except if a special category would be created for TK databases.
62. Invited to take the floor, IPO – India emphasized the specificities and advantages of TKDL. IPO – India also clarified that it requests the inclusion in the PCT Minimum Documentation of the TKDL database and not of the individual titles.
63. The EPO considering the various viewpoints expressed during the first session on the TKDL topic proposed a possible way forward regarding the inclusion of the content searched through TKDL by patent offices in the PCT Minimum Documentation:
- TKDL offers an access to a unique and important source of Traditional Knowledge and is used by 13 Patent Offices. There are concerns expressed as regards the public access to the TKDL search system. The PCT Minimum Documentation primarily aims at equipping ISAs with an adequate and quality prior art collection to perform their work. The data searched under TKDL belong to the disclosed prior art to be considered by an Office.
 - So far, we never considered search systems to be included under the PCT Minimum Documentation, as collections of prior art searched by such systems are of a changing nature. TKDL appears as a search system accessing well defined public sources. A possible consensus to include TKDL under the PCT Minimum Documentation could be possible if:
 - The documents and collections covered by TKDL are precisely documented. Those collections would be mentioned precisely under the PCT Minimum Documentation and not TKDL as a whole.
 - TKDL should be offered to all ISAs under conditions that would be acceptable to those Offices to perform their international searches.
64. The EPO hopes that such a proposal could contribute in finding a way forward addressing some of the concerns expressed and looks forward to further discussions on this topic.
65. The USPTO stated that in order that the whole TKDL database could be included in the PCT Minimum Documentation, all titles would need to satisfy all the proposed criteria for

inclusion, including the availability to the public. The USPTO reiterated that it has significant concerns with regard to the availability to the public of TKDL. Moreover, the USPTO recalled that, before deciding on the inclusion of TKDL, the criteria for inclusion have to be decided upon by the Task Force. The USPTO thus invited the Task Force members to focus for the time being on the criteria.

66. The USPTO summarised the outcome of the discussions on the criteria by recapitulating that the proposals contained in document PCT/MD/2/4 could be further fine-tuned by discussing:

- the methods by which eligible resources should be available to the public (section 7b of document PCT/MD/2/4);
- softening the language on subject matter so that a variety of subject matter is a recommendation; considering the additional recommendation that we organise titles using IPC high level subject classification (section 8 of the said document);
- adjusting the required retention period from 5 years effective from current date, to a rolling 5 years starting effective when a title is added to the list (section 9 of the said document);
- expanding the timeframe to reach compliance to two years (section 11 of the said document);
- changing the date for review of discontinued resources and metadata to two years (section 15a of the said document);
- the recommendation that WIPO and not International Authorities review and update the list every two years (section 15a of the said document);
- changing the date for complete review to every five years (section 15b of the said document).

67. The other Offices tacitly agreed with the above conclusions. The IB noted that it could coordinate the review of the list, but that the review itself would need to be performed by an International Authority. The USPTO acknowledged the latter.

68. The USPTO indicated that most of the review work will take place via the wiki. The USPTO thanked Rospatent for having posted on the wiki suggestions on these aspects.

69. The Task Force took note of documents PCT/MD/2/4 and PCT/MD/2/5, and agreed to continuing making progress via the wiki. The USPTO indicated that it intends to soon post points for discussion and that it would appreciate receiving feedback by 18 December 2020.

Item 5: Conclusions of discussions, report, closing remarks

70. The Chair concluded by wishing everyone to stay safe and by thanking everyone for the very constructive discussions. The feedback received helped to make considerable progress with regard to the objectives.

71. The revised documents will be uploaded with a view to continuing discussions next year (early summer 2021). He encouraged Offices to keep being active and constructive in the discussions via the wiki.

[Annexes follow]

ANNEX I
LIST OF PARTICIPANTS

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ANNEX II

PROPOSED RULE AMENDMENTS¹

Rule 34 Minimum Documentation

34.1 *Definition*

(a) The definitions contained in Article 2(i) and (ii) shall not apply for the purposes of this Rule. For the purposes of this Rule, "patent documents" shall include:

- (i) published international (PCT) applications.
- (ii) published regional patents.
- (iii) national patents issued by a national Office or its legal predecessor in and after 1920.
- (iv) utility certificates issued by France in and after 1920.
- (v) inventors' certificates issued by the former Soviet Union, and
- (vi) applications for any of the forms of title referred to in items (ii) to (v) above, published in and after 1920.

(b) The documentation referred to in Article 15(4) ("minimum documentation") shall consist of:

(i) the "~~national~~ patent documents" as specified in paragraph ~~(a)~~ (a), that have been made available by or on behalf of the relevant national Office or its legal successor or, as the case may be, by the International Bureau in accordance with the technical and accessibility requirements specified in the Administrative Instructions and, where applicable, with the provisions of Rule 36.1(ii).

~~(ii) the published international (PCT) applications, the published regional applications for patents and inventors' certificates, and the published regional patents and inventors' certificates;~~

(ii) preferably, the utility model documents consisting of the utility models issued, and the utility model applications published, in and after 1920 by a national Office or its legal predecessor, provided that the said utility model documents have been made available by or on behalf of the relevant national Office or its legal successor in accordance with the technical and accessibility requirements specified in the Administrative Instructions.

(iii) such other published items of non-patent literature as the International Searching Authorities shall agree upon and which shall be published in a list by the International Bureau when agreed upon for the first time and whenever changed².

¹ Proposed additions and deletions are indicated, respectively, by inserting in blue and striking through in red the text concerned.

² This provision will need to be adapted following the discussions under Objective D.

~~(c) Subject to paragraphs (d) and (e), the "national patent documents" shall be the following:~~

~~(i) the patents issued in and after 1920 by France, the former Reichspatentamt of Germany, Japan, the former Soviet Union, Switzerland (in the French and German languages only), the United Kingdom, and the United States of America,~~

~~(ii) the patents issued by the Federal Republic of Germany, the People's Republic of China, the Republic of Korea and the Russian Federation,~~

~~(iii) the patent applications, if any, published in and after 1920 in the countries referred to in items (i) and (ii),~~

~~(iv) the inventors' certificates issued by the former Soviet Union,~~

~~(v) the utility certificates issued by, and the published applications for utility certificates of, France,~~

~~(vi) such patents issued by, and such patent applications published in, any other country after 1920 as are in the English, French, German or Spanish language and in which no priority is claimed, provided that the national Office of the interested country sorts out these documents and places them at the disposal of each International Searching Authority.~~

(c) Each national Office making its patent documents and, where applicable, its utility model documents available in accordance with the requirements specified in the Administrative Instructions shall:

(i) notify the International Bureau accordingly.

(ii) make newly published patent documents and, where applicable, utility model documents available regularly, and

(iii) provide to the International Bureau at least annually an authority file, detailing the current extent of the available patent documents and, where applicable, utility model documents in accordance with the Administrative Instructions.

(d) The International Bureau shall validate the availability of the patent and utility model documents notified in accordance with paragraph (c) and, following consultation with the International Searching Authorities, publish in the Gazette details of the documents concerned and the date from which they will become a part of the minimum documentation. The International Bureau shall administer a repository containing the authority files referred to in paragraph (c)(iii) as specified in the Administrative Instructions.

~~(d)(e) Where an application is republished once (for example, an Offenlegungsschrift as an Auslegeschrift) or more than once, no each International Searching Authority shall be obliged to keep all versions in its documentation only the first published version if none of the subsequently published versions contains more prior art information; consequently, each such Authority shall be entitled not to keep more than one version. Furthermore, where an application is granted and is issued in the form of a patent or a utility certificate (France), no International Searching Authority shall be obliged to keep both the application and the patent or utility certificate (France) in its documentation; consequently, each such Authority shall be entitled to keep either the application only or the patent or utility certificate (France) only.~~

~~(e) Any International Searching Authority whose official language, or one of whose official languages, is not Chinese, Japanese, Korean, Russian or Spanish is entitled not to include in its documentation those patent documents of the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the former Soviet Union as well as those patent documents in the Spanish language, respectively, for which no abstracts in the English language are generally available. English abstracts becoming generally available after the date of entry into force of these Regulations shall require the inclusion of the patent documents to which the abstracts refer no later than six months after such abstracts become generally available. In case of the interruption of abstracting services in English in technical fields in which English abstracts were formerly generally available, the Assembly shall take appropriate measures to provide for the prompt restoration of such services in the said fields.~~

~~(f) For the purposes of this Rule, applications which have only been laid open for public inspection are not considered published applications.~~

Rule 36 **Minimum Requirements for International Searching Authorities**

36.1 *Definition of Minimum Requirements*

The minimum requirements referred to in Article 16(3)(c) shall be the following:

(i) the national Office or intergovernmental organization must have at least 100 full-time employees with sufficient technical qualifications to carry out searches in the required technical fields;

(ii) that Office or organization must make available for consultation as part of the minimum documentation referred to in Rule 34, in accordance with the requirements specified in the Administrative Instructions, any patent issued, and any patent application published, by it, and where applicable by its legal predecessor(s), in and after 1920;

~~(ii)~~ (iii) that Office or organization must have in its possession, or have access to, at least the minimum documentation referred to in Rule 34, properly arranged for search purposes, on paper, in microform or stored on electronic media;

~~(iii) that Office or organization must have a staff which is capable of searching the required technical fields and which has the language facilities to understand at least those languages in which the minimum documentation referred to in Rule 34 is written or is translated;~~

(iv) that Office or organization must have in place a quality management system and internal review arrangements in accordance with the common rules of international search;

(v) that Office or organization must hold an appointment as an International Preliminary Examining Authority.

[End of Appendix and of document]