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INTERNATIONAL PATENT COOPERATION UNION
(PCT UNION)

WORKING GROUP ON REFORM OF THE PATENT
COOPERATION TREATY (PCT)

First Session
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PROPOSED FEE FOR CORRECTION OF DEFECTS UNDER ARTICLE 14

Proposal submitted by Australia

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1. One of the factors affecting the workloads of offices is the quality of the applications filed with an office. It is inevitable that a poorly prepared application will result in greater work for an office than a well-prepared application. This can manifest itself in many ways. For example, poorly drafted claims will typically lead to difficulties with the quality of the search conducted by the ISA, and with the examination conducted by the IPEA.

2. One aspect relating to the preparation of applications is the workload impact of non-compliance with the comparatively straightforward requirements of Article 14. A recent survey of applications filed in the Australian receiving Office indicated that only 15% of new filings met all the Article 14 requirements. By any quality measure, this is an incredibly low level of compliance. Interestingly, the great majority of the Article 14 defects involved a combination of only three issues – namely:

No power of attorney	85%
“Informal” drawings	55%
No signature	10%

3. The above defects arise almost exclusively with applications filed using patent agents. While undoubtedly agents are able to provide a variety of reasons for not meeting these requirements at the time of filing, there is no penalty if these defects are present – and hence little incentive for agents to ensure they are met at the time of filing. The result is an unnecessary workload imposed on the office.

4. IPAustralia is not aware of whether this level of Article 14 defects is peculiar to Australia. Accordingly IPAustralia invites the meeting to consider whether defects under Article 14 are causing unnecessary workloads for Offices generally.

5. If this is the case, IPAustralia invites the meeting to consider whether it would be appropriate to amend the rules to allow for a receiving Office to impose a penalty fee to encourage applicants to minimize the occurrence of Article 14 defects. This might be effected by including in Rule 26 a new paragraph such as:

26.2bis

The correction of defects under Article 14(1)(a) may be subjected by the receiving Office to the payment of a fee, for its own benefit, equal to the transmittal fee charged by that Office under Rule 14.

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